

# Company Law of the People's Republic of China (Revised in 2023)

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Presidential Decree No. 15

The Company Law of the People's Republic of China, adopted upon revision at the 7th Session of the Standing Committee of the Fourteenth National People's Congress of the People's Republic of China on December 29, 2023, is hereby promulgated, effective July 1, 2024.

Xi Jinping

President of the People's Republic of China

December 29, 2023

Company Law of the People's Republic of China

(Adopted at the 5th Session of the Standing Committee of the Eighth National People's Congress on December 29, 1993; amended for the first time in accordance with the Decision on Amending the Company Law of the People's Republic of China made at the 13th Session of the Standing Committee of the Ninth National People's Congress on December 25, 1999; amended for the second time in accordance with the Decision on Amending the Company Law of the People's Republic of China made at the 11th Session of the Standing Committee of the Tenth National People's Congress on August 28, 2004; revised for the first time at the 18th Session of the Standing Committee of the Tenth National People's Congress on October 27, 2005; amended for the third time in accordance with the Decision on Amending Seven Laws Including the Marine Environmental Protection Law of the People's Republic of China made at the 6th Session of the Standing Committee of the Twelfth National People's Congress on December 28, 2013; amended for the fourth time in accordance with the Decision on Amending the

Company Law of the People's Republic of China made at the 6th Session of the Standing Committee of the Thirteenth National People's Congress on October 26, 2018; and revised for the second time at the 7th Session of the Standing Committee of the Fourteenth National People's Congress on December 29, 2023)

## Chapter I General Provisions

**Article 1** The present Law is enacted in accordance with the Constitution with a view to regulating the organizations and activities of companies, protecting the lawful rights and interests of companies, shareholders, employees and creditors, improving the modern enterprise system with Chinese characteristics, carrying forward the entrepreneurship, maintaining the social economic order and promoting the development of the socialist market economy.

**Article 2** For the purpose of this Law, a "company" refers to a limited liability company or a joint stock limited company established within the territory of the People's Republic of China according to this Law.

**Article 3** A company is an enterprise legal person, which has independent corporate property and enjoys the property right of the legal person. It shall bear the liability for its debts with all of its property.

The lawful rights and interests of the company shall be protected by law, which shall not be infringed upon.

**Article 4** The shareholders of a limited liability company is liable to the company to the extent of the amount of capital contributions they have made; while the shareholders of a joint stock limited company is liable to the company to the extent of shares they have subscribed for.

The shareholders of a company is entitled to such rights as deriving proceeds from assets of the company, participating in making important decisions and selecting managers of the company according to law.

**Article 5** A company shall formulate its articles of association pursuant to the law when it is established, which shall be binding on the company, shareholders, directors, supervisors and senior executives.

**Article 6** A company shall have its own name. The name of the company shall be in compliance with the relevant provisions of the State.

The right to name of a company shall be protected by law.

**Article 7** A limited liability company established according to this Law shall indicate the words "limited liability company" or "limited company" in its name.

A joint stock limited company established in accordance with this Law shall indicate the words "joint stock limited company" or "joint stock company" in its name.

**Article 8** A company is domiciled at the place where its main administrative office is located.

**Article 9** The business scope of a company shall be prescribed in the articles of association. The company may amend its articles of association and change its business scope.

Where any item within the business scope of a company is subject to approval as stipulated by any law or administrative regulation, the approval shall be obtained in accordance with the law.

**Article 10** A director or manager who represents a company to execute corporate affairs shall serve as the legal representative of the company under the articles of association.

Where the director or manager who serves as the legal representative resigns, he/she shall be deemed to have resigned from the position of the legal representative at the same time.

Where the legal representative resigns, the company shall appoint a new legal representative within 30 days after the date of his/her resignation.

**Article 11** A company shall bear the legal consequences arising from the civil activities conducted by the legal representative in the name of the company.

Any restrictions on the functions and powers of the legal representative imposed by the articles of association or the shareholders' meeting shall not be asserted against a bona fide third party.

Where the legal representative of a company causes damage to others while performing his/her duties, the company shall assume the civil liability. After assuming the civil liability, the company may, in accordance with the provisions of law or the articles of association of the company, claim indemnification against the legal representative who is at fault.

**Article 12** Where a limited liability company is changed into a joint stock limited company, it shall satisfy the conditions for joint stock limited companies as prescribed in the present Law. A joint stock limited company proposing to be converted into a limited liability company shall satisfy the conditions for limited liability companies as prescribed in this Law.

In the case of conversion from a limited liability company into a joint stock limited company or vice versa, the claims and debts of the company prior to the conversion shall be assumed by the company after the conversion.

**Article 13** A company may set up subsidiaries which have the corporate capacity and independently bear the civil liability in accordance with the law.

A company may set up branches which do not have the corporate capacity and whose civil liability shall be borne by the company.

**Article 14** A company may make investments in other enterprises.

If it is prescribed by any law that a company shall not become a capital contributor that shall bear the joint and several liability for the debts of the enterprises it invests in, such provisions shall prevail.

**Article 15** Where a company intends to invest in any other enterprise or provide guaranty for any other person, such matter shall, in accordance with the articles of association, be decided by the board of directors or the shareholders' meeting. If the articles of association prescribe any limit on the total amount of investments or guaranties, or on the amount of a single investment or guaranty, the aforesaid prescribed limit shall not be exceeded.

Where a company provides a guaranty for any shareholder or actual controller of the company, it shall be subject to a resolution of the shareholders' meeting.

The shareholder as mentioned in the preceding paragraph or the shareholder controlled by the actual controller as set forth in the preceding paragraph shall not participate in voting on any matter as prescribed in the preceding paragraph. Such matter shall be adopted by more than half of the voting rights held by other shareholders present at the meeting.

**Article 16** A company shall protect the lawful rights and interests of its employees, conclude labor contracts with its employees according to law, participate in social insurances and strengthen labor protection to realize work safety.

The company shall adopt various forms to strengthen the vocational education and on-the-job training of its employees so as to improve their quality.

**Article 17** The employees of a company shall, in accordance with the Trade Union Law of the People's Republic of China, organize a trade union to carry out the trade union activities and maintain the lawful rights and interests of the employees. The company shall provide necessary conditions for its trade union to carry out activities. The trade union of a company shall, on behalf of the employees, conclude a collective contract with the company with respect to such matters as the labor remuneration, working hours, rest and vacations, labor safety and sanitation, insurance and welfare, etc.

A company shall, according to the Constitution and other related laws, establish and improve a democratic management system with the employees' representative congress as the basic form and carry out democratic management through the employees' representative congress or by any other means.

When making a decision on restructuring, dissolution, application for bankruptcy or any other major issue in the respect of business operation, or formulating any important regulation, a company shall solicit the opinions of its trade union and listen to the opinions and proposals of the employees through the employees' representative congress or by any other means.

**Article 18** An organization of the Communist Party of China shall, according to the Constitution of the Communist Party of China, be set up in a company to carry out the activities of the Party. The company shall provide necessary conditions to facilitate the activities of the Party organization.

**Article 19** When engaging in business operations, a company shall comply with the laws and regulations, social morality and business ethics, be honest and faithful and accept the supervision of the government and the general public.

**Article 20** When engaging in business operations, a company shall take into full consideration the interests of its employees, consumers and other stakeholders, as well as the protection of ecological environment and other public interests and assume social responsibilities.

The State encourages companies to take part in public welfare activities and release their social responsibility reports.

**Article 21** A shareholder of a company shall comply with laws, administrative regulations and the articles of association, exercise the shareholder's rights according to law, and may not damage the interests of the company or of other shareholders by abusing its rights.

Where any shareholder of a company causes any loss to the company or any other shareholder by abusing the shareholder's rights, it shall be liable for compensation.

**Article 22** None of the controlling shareholders, actual controllers, directors, supervisors or senior executives of a company may damage the interests of the company by taking advantage of any related-party relationship.

Whoever causes any loss to the company by violating the provisions of the preceding paragraph shall be liable for compensation.

**Article 23** Where any shareholder of a company evades the debts by abusing the independent status of juridical person of the company or the limited liability of shareholders and thus seriously damages the interests of any creditor of the company, it shall be jointly and severally liable for the debts of the company.

Where a shareholder commits any of the acts as mentioned in the preceding paragraph by using two or more companies under its control, each company shall be jointly and severally liable for the debts of any company.

In the case of any company with only one shareholder, if the shareholder is unable to prove that the property of the company are independent of its own property, it shall be jointly and severally liable for the debts of the company.

**Article 24** The shareholders' meeting, board of directors or board of supervisors of a company may hold a meeting or vote by way of electronic communications, unless it is otherwise prescribed by the articles of association of the company.

**Article 25** Where any resolution of the shareholders' meeting or board of directors violates any of the laws or administrative regulations, it shall be invalidated.

**Article 26** Where the procedures for convening a meeting of the shareholders' meeting or of the board of directors or the voting method is contrary to any law, administrative regulation or the articles of association, or the contents of any resolution are contrary to the articles of association, shareholders may, within 60 days as of the day when the resolution is made, request the people's court to cancel the resolution, except where the procedures for convening a meeting of the shareholders' meeting or the board of directors or the voting method only has some minor defects, which produces no substantial effect on the resolution.

Any shareholder who fails to be notified to attend the shareholders' meeting may, within 60 days as of the day when it knows or ought to know that the resolution of the shareholders' meeting is made, request the people's court to cancel the resolution. If the right of cancellation is not exercised within one year as of the date when the resolution is made, it shall be extinguished.

**Article 27** Under any of the following circumstances, a resolution of the shareholders' meeting or the board of directors shall be invalid:

- (I) the resolution fails to be made at any shareholders' meeting or meeting of the board of directors;
- (II) the shareholders' meeting or meeting of the board of directors fails to vote on the resolution;

(III) the number of persons attending the meeting or the number of the voting rights held by them does not reach the number as prescribed by this Law or the articles of association; or

(IV) the number of persons consenting to the resolution or the number of the voting rights held by them fails to reach the number as prescribed by this Law or the articles of association.

**Article 28** Where a resolution of the shareholders' meeting or the board of directors is declared null and void, cancelled or confirmed to be invalid by the people's court, a company shall file an application with the company registration authority for cancelling the registration having been made pursuant to the said resolution.

Where a resolution of the shareholders' meeting or the board of directors is declared null and void, cancelled or confirmed to be invalid by the people's court, the civil legal relationship formed between the company and any bona fide third party according to the said resolution shall not be affected.

## **Chapter II Registration of Companies**

**Article 29** To establish a company, an applicant shall file an application with the company registration authority for registration of incorporation under the law.

Where it is prescribed by any law or administrative regulation that the establishment of a company shall be submitted for approval, the approval formalities shall be gone through according to law prior to the registration of the company.

**Article 30** To apply for establishing a company, an applicant shall submit an application form for the registration of establishment, the articles of association and other documents. The relevant materials submitted shall be authentic, lawful and valid.

If the application materials are incomplete or do not satisfy the statutory form, the company registration authority shall inform the applicant once for all of the materials to be supplemented and corrected.

**Article 31** Where an application for establishing a company satisfies the conditions as prescribed in this Law, the company shall be registered by the company registration authority as a limited liability company or joint stock limited company respectively. Where the application fails to satisfy the conditions as prescribed in this Law, it shall not be registered as a limited liability company or joint stock limited company.

**Article 32** The items of company registration shall include:

(I) name;

(II) domicile;

(III) registered capital;

(IV) business scope;

(V) name of the legal representative; and

(VI) names of the shareholders of a limited liability company or of the promoters of a joint stock limited company.

The company registration authority shall make public the company registration items as prescribed in the preceding paragraph through the National Enterprise Credit Information Publicity System.

**Article 33** The company registration authority shall issue a business license to a company lawfully established. The date of issuance of the business license shall be the date of establishment of the company.

The business license shall state the name, domicile, registered capital, business scope, name of the legal representative and other items of the company.

The company registration authority may issue an electronic business license to the company. Both electronic business license and paper business license shall be equally authentic.

**Article 34** Where any of the registered items of a company is changed, the company shall go through the modification registration according to law.

Failure to make registration or modification registration of any registered item of a company may not be asserted against any bona fide third party.

**Article 35** To apply for modification registration, a company shall submit to the company registration authority a written application form for modification registration signed by the legal representative of the company, the resolution or decision on the modification and other documents as made according to law.

Where the item of modification registration of the company involves the amendment of its articles of association, the amended articles of association shall be submitted.

Where the legal representative of a company is changed, the written application form for modification registration shall be signed by the legal representative after change.

**Article 36** Where any of the items as stated in the business license of a company is changed, the company registration authority shall issue a new business license after the modification registration completed by the company.

**Article 37** Where a company needs to be terminated due to dissolution, being declared bankrupt or any other statutory cause, it shall apply to the company registration authority for deregistration, and the company registration authority shall make a public announcement on its termination.

**Article 38** To establish a branch, a company shall file an application with the company registration authority for registration and obtain a business license.

**Article 39** Where a company is approved for registration of establishment by making a false declaration of its registered capital, submitting false materials or concealing any important fact by any other fraudulent means, the company registration authority shall cancel the registration in accordance with the laws and administrative regulations.

**Article 40** A company shall make public the following matters via the National Enterprise Credit Information Publicity System as required:

(I) the amounts of capital contributions subscribed for and actually paid by the shareholders of a limited liability company, and the method and date of capital contributions; the number of shares subscribed for by the promoters of a joint stock limited company;

(II) the information on the change of equity or shares of the shareholders of a limited liability company or of the promoters of a joint stock limited company;

(III) the information on approval, modification or deregistration of administrative licensing; and

(IV) other information prescribed by any law or administrative regulation.

The company shall ensure that the information released in the preceding paragraph is authentic, accurate and complete.

**Article 41** The company registration authority shall optimize the procedures for company registration, enhance the company registration efficiency, strengthen information technology development and promote online handling and other convenient methods so as to raise the level of facilitation in company registration.

The market regulatory department under the State Council shall, according to the present Law and the provisions of relevant laws and administrative regulations, formulate specific measures for company registration.

### **Chapter III Establishment and Organizational Structure of a Limited Liability Company**

#### **Section 1 Establishment**

**Article 42** A limited liability company shall be established with capital contributions made by not less than one but not more than 50 shareholders.

**Article 43** The shareholders of a limited liability company may conclude an agreement on establishment so as to specify their respective rights and obligations during the process of company establishment.

**Article 44** Where the shareholders of a limited liability company engage in the civil activities for establishing the company, the legal consequences therefrom shall be undertaken by the company.

If the company fails to be established, the legal consequences incurred shall be undertaken by the shareholders at the time of the establishment of the company. If there are two or more shareholders at the time of the establishment, they shall enjoy the claims and assume the debts jointly and severally.

If a shareholder at the time of the establishment of the company engages in the civil activities in its own name for the purpose of establishing the company, the third party has the right to request the company or such shareholder to assume the civil liability incurred.

Where a shareholder at the time of the establishment of a company causes any damage to any other person due to fulfilling the duties for the establishment of the company, the company or the shareholder who is not at fault may, after making compensations, claim the compensation from the shareholder who is at fault.

**Article 45** To establish a limited liability company, the shareholders shall jointly formulate the articles of association.

**Article 46** The articles of association of a limited liability company shall state the following matters:

- (I) name and domicile of the company;
- (II) business scope of the company;
- (III) registered capital of the company;

(IV) name or title of the shareholders;

(V) amount, method and date of capital contributions made by the shareholders;

(VI) organizations of the company and their formation, functions and rules of procedure;

(VII) method of appointment and alteration of the legal representative of the company; and

(VIII) other matters to be specified by the shareholders' meeting.

The shareholders shall affix their signatures or seals on the articles of association of the company.

**Article 47** The registered capital of a limited liability company shall be the amount of capital contributions subscribed for by all the shareholders as registered with the company registration authority. The amount of capital contributions subscribed for by all the shareholders shall, according to the articles of association, be fully paid up by the shareholders within 5 years as of the date of establishment.

Where it is otherwise provided for in any law, administrative regulation or decision of the State Council on the actual payment of registered capital, the minimum amount of registered capital and the time limit for capital contributions by shareholders of a limited liability company, such provisions shall prevail.

**Article 48** A shareholder may make capital contributions in currency, or in kind, intellectual property, land use right, stock rights, creditor's rights or other non-monetary property that may be assessed in currency and transferred according to law, except the property that may not be used as capital contributions according to any law or administrative regulation.

The non-monetary property as capital contributions shall be assessed and verified, which may not be overvalued or undervalued. If there are provisions on the assessment of value in any law or administrative regulation, such provisions shall prevail.

**Article 49** Shareholders shall make their respective capital contributions subscribed for in the articles of association on time and in full amount.

If a shareholder makes its capital contributions in currency, it shall deposit the full amount of monetary capital contributions into a bank account opened by the limited liability company. If the capital contributions are made in non-monetary property, the procedures for the transfer of the property rights therein shall be gone through according to law.

If a shareholder fails to make its capital contributions on schedule and in full amount, it shall, apart from making full amount capital contributions to the company, be liable for compensation for the losses it causes to the company.

**Article 50** Where any shareholder fails to make actual capital contributions according to the provisions of the articles of association, or the actual value of non-monetary property for actual capital contributions is obviously lower than the amount of capital contributions subscribed for at the time of establishment of a limited liability company, other shareholders at the time of the establishment shall bear joint and several liability with such shareholder to the extent of the insufficient capital contributions.

**Article 51** After a limited liability company is established, the board of directors shall verify the capital contributions of shareholders. If it finds that any shareholder has not made capital contributions on schedule and in full amount as provided for in the articles of association, the company shall send a written notice of call to the shareholder to call up capital contributions.

Where any loss is caused to the company due to failure to fulfill the obligations as prescribed in the preceding paragraph in a timely manner, the responsible director shall make compensation.

**Article 52** Where any shareholder fails to make capital contributions on the date of capital contribution as provided for in the articles of association, and a company issues a written notice of call for capital contribution according to the first paragraph of the preceding Article, it may specify the grace period for the capital contribution, which shall be not less than 60 days as of the issuance of the notice of call. If, upon the expiration of the grace period, the shareholder still has not fulfilled the obligation of capital contribution, the company may, upon a resolution of the board of directors, send a notice of forfeiture to the shareholder, and the notice shall be given in written form. As of the issuance of the notice, the shareholder shall forfeit its the equities for which the capital contribution has not been paid.

The forfeited equities in accordance with the provisions of the preceding paragraph shall be transferred according to law, or the registered capital thereof shall be reduced, and the equities shall be written off. If the equities are not transferred or written off within 6 months, other shareholders of the company shall make corresponding capital contributions in full amount in proportion to their capital contributions.

If the shareholder has any dissent to the forfeiture of rights, it shall file a lawsuit with the people's court within 30 days as of the receipt of the notice of forfeiture.

**Article 53** After a company has been established, none of the shareholders may illicitly withdraw the capital contributions.

In the case of violation of the provisions of the preceding paragraph, the shareholder shall return the capital contributions withdrawn. If it causes any loss to the company, the responsible directors, supervisors and senior executives shall bear the joint and several liability with the shareholder.

**Article 54** Where a company is unable to pay off the due debts, the company or the creditors of the due credits may request the shareholders who have subscribed for the capital contributions but whose time limit for capital contributions has not expired to make capital contributions in advance.

**Article 55** After a limited liability company is established, it shall issue to the shareholders a capital contribution certificate, which shall state the following matters:

- (I) name of the company;
- (II) date of establishment of the company;
- (III) registered capital of the company;
- (IV) name of the shareholder, amount of capital contributions subscribed for and actually paid, method and date of capital contributions; and
- (V) serial number and date of issuance of the capital contribution certificate.

The capital contribution certificate shall bear the signature of the legal representative and the seal of the company.

**Article 56** A limited liability company shall prepare a register of shareholders, which shall state the following matters:

- (I) name and domicile of each shareholder;
- (II) amount of capital contributions subscribed for and actually paid by shareholders, the form and date of capital contributions;
- (III) serial number of the capital contribution certificate; and
- (IV) date for obtaining or losing the shareholder's qualifications.

The shareholders recorded in the register of shareholders may, in light of the register of shareholders, claim to exercise the shareholders' rights.

**Article 57** Shareholders are entitled to consult and copy the articles of association, register of shareholders, minutes of shareholders' meetings, resolutions of meetings of the board of directors or board of supervisors, as well as financial and accounting reports of a company.

The shareholders may request to consult the accounting books and accounting vouchers of the company. Where a shareholder requests to access the accounting books or accounting vouchers of the company, it shall make a written request and state the purposes therefor. If the company, with justifiable reasons, considers that the shareholder's request to consult the accounting books or accounting vouchers has any improper purpose and may damage the lawful rights and interests of the company, it may reject the request of the shareholder, and shall, within 15 days as of the day when the shareholder makes the written request, give the shareholder a written reply and state the reasons therefor. If the company refuses to provide access, the shareholder may bring a lawsuit to a people's court.

To consult the materials as mentioned in the preceding paragraph, a shareholder may entrust such intermediaries as an accounting firm or law firm to do so.

When the shareholder and the accounting firm, law firm or other intermediaries entrusted thereby consult or copy the relevant materials, they shall comply with the laws and administrative regulations on protecting state secrets, trade secrets, personal privacy, personal information, etc.

Where a shareholder requests to consult or copy the relevant materials of the wholly-owned subsidiaries of the company, the provisions of the preceding 4 paragraphs shall apply.

## **Section 2 Organizational Structure**

**Article 58** The shareholders' meeting of a limited liability company shall consist of all the shareholders. The shareholders' meeting is the authority of the company, which shall exercise its functions and powers according to this Law.

**Article 59** The shareholders' meeting shall exercise the following functions and powers:

- (I) electing and replacing directors and supervisors and deciding on their remunerations;
- (II) deliberating on and approving the reports of the board of directors;
- (III) deliberating on and approving the reports of the board of supervisors;
- (IV) deliberating on and approving the plans for profit distribution and making up losses of the company;
- (V) making resolutions on the increase or decrease of the registered capital of the company;

(VI) making resolutions on the issuance of corporate bonds;

(VII) making resolutions on the merger, split-up, dissolution, liquidation or change of corporate form of the company;

(VIII) amending the articles of association; and

(IX) other functions and powers as prescribed in the articles of association.

The shareholders' meeting may authorize the board of directors to make resolutions on the issuance of corporate bonds.

If the shareholders unanimously agree in writing to the matters as set forth in the first paragraph of this Article, they may directly make a decision without convening the shareholders' meeting, and all the shareholders shall affix their signatures or seals to the decision documents.

**Article 60** A limited liability company with only one shareholder may not set up the shareholders' meeting. When the shareholder makes a decision on any of the matters as specified in the first paragraph of the preceding Article, such decision shall be made in written form and kept in the company after being affixed with the signature or seal of the shareholder.

**Article 61** The shareholder who has made the largest capital contribution shall convene and preside over the first shareholders' meeting and exercise its functions and powers according to this Law.

**Article 62** The shareholders' meetings are classified into regular meetings and interim meetings.

The regular meetings shall be held on time according to the provisions of the articles of association. Where it is proposed by the shareholders representing one tenth or more of the voting rights, or by one third or more of the directors, or by the board of supervisors, an interim meeting shall be held.

**Article 63** The shareholders' meeting shall be convened by the board of directors and presided over by the chairman of the board of directors. If the chairman of the board is unable or fails to perform his/her duties, the meeting shall be presided over by the deputy chairman. If the deputy chairman is unable or fails to perform his/her duties, the meeting shall be presided over by a director jointly elected by more than half of the directors.

If the board of directors is unable or fails to perform the duty of convening the shareholders' meeting, the meeting shall be convened and presided over by the board of supervisors. If the board of supervisors does not convene or preside over such a meeting, the shareholders representing one tenth or more of the voting rights may convene and preside over such a meeting by themselves.

**Article 64** When a shareholders' meeting is to be held, all the shareholders shall be notified 15 days before the meeting is held, unless it is otherwise prescribed by the articles of association or otherwise agreed by all the shareholders.

The shareholders' meeting shall prepare meeting minutes for the decisions on the matters discussed. The shareholders present at the meeting shall affix their signatures or seals to the meeting minutes.

**Article 65** Shareholders shall exercise their voting rights at the shareholders' meeting in proportion to their capital contributions, unless it is otherwise prescribed by the articles of association.

**Article 66** The discussion methods and voting procedures of the shareholders' meeting shall be prescribed in the articles of association, unless it is otherwise provided for by this Law.

A resolution made by the shareholders' meeting shall be adopted by the shareholders representing more than half of the voting rights.

A resolution made by the shareholders' meeting on modifying the articles of association, increasing or decreasing the registered capital, as well as merger, division, dissolution or change of corporate form of the company shall be adopted by the shareholders representing two thirds or more of the voting rights.

**Article 67** A limited liability company shall set up a board of directors, unless it is otherwise provided for in Article 75 hereof.

The board of directors shall exercise the following functions and powers:

(I) convening the shareholders' meeting and reporting its work to the shareholders' meeting;

(II) executing the resolutions of the shareholders' meeting;

(III) deciding the business plans and investment scheme of the company;

(IV) formulating the plans for profit distribution and making up for loss of the company;

(V) formulating the plan for increasing or decreasing the registered capital, as well as the plan for issuance of corporate bonds;

(VI) formulating the plan for merger, division, dissolution, or change of corporate form of the company;

(VII) deciding the establishment of the internal management body of the company;

(VIII) deciding the appointment or dismissal of the manager of the company and the remuneration thereof, and, according to the nomination of the manager, deciding on hiring or dismissing deputy managers and financial director of the company as well as their remuneration;

(IX) formulating the basic management rules of the company; and

(X) other functions and powers specified in the articles of association or granted by the shareholders' meeting.

Any restrictions on the functions and powers of the board of directors set out in the articles of association may not be asserted against any bona fide third party.

**Article 68** If the board of directors of a limited liability company has three or more members, it may include an employees' representative of the company. Where a limited liability company has 300 or more employees, the board of directors shall include the employees' representatives of the company unless the board of supervisors has been established and includes employees' representatives of the company according to law. The employees' representatives in the board of directors shall be democratically elected by the employees through the employees' representative congress, employees' congress or by other means.

The board of directors shall have one chairman and may have deputy chairmen. The measures for election of the chairman and deputy chairmen shall be prescribed in the articles of association.

**Article 69** A limited liability company may, under the articles of association, set up an audit committee composed of directors in the board of directors, which shall exercise the functions and powers of the board of supervisors as prescribed by this Law, with no board of supervisors or supervisors established. Employees' representatives who serve as members of the board of directors may become members of the audit committee.

**Article 70** The term of office of directors shall be prescribed in the articles of association, but each term shall not exceed three years. After the term of office of a director expires, he/she may be reelected to serve another term.

Where a director is not reelected timely upon expiration of the term of office, or the resignation of any director during his/her term of office results in the number of members of the board of directors being less than the quorum, the original director shall, before a newly elected director takes office, perform his/her duties as a director according to the laws, administrative regulations and the articles of association.

Where a director resigns, he/she shall notify the company in written form, and the resignation shall become effective on the day when the company receives the notice. However, under any of the circumstances as mentioned in the preceding paragraph, the director shall continue performing his/her duties.

**Article 71** The shareholders' meeting may adopt a resolution to remove a director, and the removal shall become effective on the day when the resolution is made.

Where a director is removed prior to the expiration of term of office without any justifiable reason, the director may require the company to make compensation.

**Article 72** The meetings of the board of directors shall be convened and presided over by the chairman of the board of directors. Where the chairman is unable or fails to perform his/her duties, the meeting shall be convened and presided over by the deputy chairman. Where the deputy chairman is unable or fails to perform his/her duties, the meeting shall be convened and presided over by a director jointly elected by more than half of the directors.

**Article 73** The discussion methods and voting procedures of the board of directors shall be prescribed in the articles of association unless it is otherwise provided for by this Law.

No meeting of the board of directors may be held unless more than half of the directors are present. When the board of directors makes a resolution, it shall require the affirmative votes of more than half of all the directors.

For the voting on a resolution of the board of directors, each director shall have one vote.

The board of directors shall prepare minutes regarding the decisions on the matters discussed at the meeting, which shall be affixed with the signatures of the directors present at the meeting.

**Article 74** A limited liability company may have a manager, who shall be appointed or removed by the board of directors.

The manager shall be responsible to the board of directors and exercise his/her functions and powers according to the articles of association or the authorization of the board of directors. The manager shall attend the meetings of the board of directors as a non-voting member.

**Article 75** A limited liability company with a relatively small scale or a relatively small number of shareholders may dispense with the board of directors and may have one director to exercise the

functions and powers of the board as prescribed by this Law. The director may concurrently hold the post of the manager of the company.

**Article 76** A limited liability company shall have a board of supervisors, unless it is otherwise provided for in Articles 69 and 83 hereof.

There are three or more members in the board of supervisors. The members of the board of supervisors shall include shareholders' representatives and an appropriate proportion of employees' representatives, and the proportion of the employees' representatives shall be no less than one third of the total number of the members, the specific proportion of which shall be provided for in the articles of association. The employees' representatives in the board of supervisors shall be democratically elected by the employees through the employees' representative congress, the employees' congress or by other means.

The board of supervisors shall have one chairman, who shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of the board of supervisors is unable or fails to implement his/her duties, the meeting of the board of supervisors shall be convened and presided over by a supervisor jointly elected by more than half of the supervisors.

Any director or senior executive shall not concurrently act as a supervisor.

**Article 77** The term of office of a supervisor shall be three years. Upon expiration of term of office, a supervisor may serve consecutive terms if reelected.

If a supervisor fails to be reelected timely upon expiration of the term of office, or the resignation of a supervisor during term of office results in the number of the members of the board of supervisors being less than the quorum, the original supervisor shall, before a newly elected supervisor takes office, continue to exercise the duties of the supervisor according to the law, administrative regulations and the articles of association.

**Article 78** The board of supervisors shall exercise the following functions and powers:

(I) examining the financial affairs of the company;

(II) supervising the acts of the directors and senior executives in the performance of their duties, and proposing the removal of the directors and senior executives who have violated laws, administrative regulations, the articles of association or the resolutions of the shareholders' meeting;

(III) requiring the directors and senior executives to correct their acts if such acts damage the interests of the company;

(IV) proposing to convene interim shareholders' meetings, and convening and presiding over the shareholders' meeting when the board of directors fails to implement the duties to convene and preside over the shareholders' meeting as prescribed in this Law;

(V) presenting proposals to the shareholders' meetings;

(VI) initiating lawsuits against the directors and senior executives according to Article 189 hereof; and

(VII) other functions and powers provided for in the articles of association.

**Article 79** A supervisor may attend the meetings of the board of directors as a non-voting member and raise inquiries or suggestions concerning the matters subject to resolutions to be adopted by the board of directors.

If the board of supervisors finds any abnormality in the operation of the company, it may carry out an investigation. If necessary, it may hire an accounting firm to assist in its work at the expense of the company.

**Article 80** The board of supervisors may demand the directors or senior executives to submit reports on the performance of their duties.

The directors and senior executives shall truthfully provide relevant information and materials to the board of supervisors, none of them may impede the exercise of powers by the board of supervisors or supervisors.

**Article 81** The meeting of the board of supervisors shall be held at least once a year. The supervisors may propose to convene interim meetings of the board of supervisors.

The discussion methods and voting procedures of the board of supervisors shall be specified in the articles of association, unless it is otherwise provided for by this Law.

The resolution of the board of supervisors shall be adopted by more than half of all the supervisors.

For the voting on a resolution of the board of supervisors, each supervisor shall have one vote.

The board of supervisors shall prepare minutes for the decisions regarding the matters discussed, which shall be signed by the supervisors present at the meeting.

**Article 82** The expenses necessary for the board of supervisors to exercise its functions and powers shall be borne by the company.

**Article 83** A limited liability company with a small scale or a relatively small number of shareholders may dispense with the board of supervisors and have a supervisor, who shall exercise the functions and powers of the board of supervisors as provided for in this Law; or it may dispense with the supervisor upon the unanimous approval by all of the shareholders.

#### **Chapter IV Transfer of Equities of a Limited Liability Company**

**Article 84** Shareholders of a limited liability company may transfer all or part of their equities to other shareholders of the company.

Where a shareholder transfers its equities to a person who is not a shareholder of the company, it shall notify other shareholders in writing of the quantity of equities to be transferred, transfer price, payment method and the term of the transfer. The other shareholders shall have a right of first refusal under the equivalent conditions. Where any shareholder fails to respond within thirty days after the receipt of the written notice, it shall be deemed to have waived the right of first refusal. If two or more shareholders exercise the right of first refusal, they shall determine the purchase percentage through negotiation. If no agreement is reached upon negotiation, they shall exercise the right of first refusal in proportion to their respective capital contributions at the time of equity transfer.

If the equity transfer is otherwise provided for in the articles of association, such provisions shall prevail.

**Article 85** Where a people's court transfers the equities held by a shareholder under the enforcement procedures provided for in laws, it shall notify the company and all the shareholders, and the other shareholders shall enjoy the right of first refusal under the equivalent conditions. Where any of the other shareholders fails to exercise the right of first refusal within 20 days after the receipt of the notice of the people's court, it shall be deemed to have waived the right of first refusal.

**Article 86** Where a shareholder transfers its equities, it shall notify the company in written form and request to modify the register of shareholders; if it is necessary to go through the modification registration formalities, it shall request the company to go through the modification registration formalities with the company registration authority. If the company refuses to do so or fails to give a reply within a reasonable time limit, the transferor and the transferee may lodge a lawsuit with the people's court according to law.

Where any equity is transferred, the transferee may claim to the company for exercising the shareholder's rights as of the time when it is recorded into the register of shareholders.

**Article 87** After the equity transfer according to the present Law, a company shall timely deregister the capital contribution certificate of the original shareholder, issue a capital contribution certificate to the new shareholder and modify the records of relevant shareholders and their capital contributions in the articles of association and the register of shareholders accordingly. No vote of the shareholders' meeting is needed for such modification of the articles of association.

**Article 88** Where a shareholder transfers the equities for which capital contributions have been subscribed for but the time limit for capital contribution has not expired, the transferee shall bear the obligation of making such capital contribution. If the transferee fails to make a capital contribution on time and in full amount, the transferor shall bear the supplementary liability for the overdue capital contribution of the transferee.

If a shareholder, who fails to make capital contribution on the date of capital contribution as prescribed in the articles of association, or whose actual value of the non-monetary property used as capital contribution is clearly lower than the amount of capital contribution subscribed for, transfers its equities, the transferor and transferee shall bear joint and several liability to the extent of the insufficient capital contribution. If the transferee is not aware and ought not to know about the existence of the aforesaid circumstances, the corresponding liability shall be assumed by the transferor.

**Article 89** Under any of the following circumstances, a shareholder, who votes against the resolution of the shareholders' meeting, may require the company to purchase its equities at a reasonable price:

(I) the company has not distributed any profit to the shareholders for five consecutive years, though the company has made profits for five consecutive years and meets the profit distribution requirements as prescribed in this Law;

(II) the company is merged, split-up or transfers the main property; or

(III) the term of business operation as prescribed in the articles of association expires or any other cause for dissolution as prescribed in the articles of association occurs, or the shareholders' meeting makes the company continue existing by adopting a resolution to modify the articles of association.

Where the shareholder and the company fail to reach an agreement on the purchase of equities within 60 days after the resolution is made by the shareholders' meeting, such shareholder may lodge a lawsuit to the people's court within 90 days after the resolution is made by the shareholders' meeting.

Where any controlling shareholder of the company abuses its shareholder's right and seriously damages the interests of the company or other shareholders, other shareholders have the right to require the company to purchase their equities at a reasonable price.

The equities purchased by the company under any of the circumstances as mentioned in the first or third paragraph of this Article shall be legally transferred or deregistered within 6 months.

**Article 90** After a natural person shareholder dies, his/her lawful inheritor may inherit the qualification of the shareholder, unless it is otherwise provided for in the articles of association.

## **Chapter V Establishment and Organizational Structure of a Joint Stock Limited Company**

### **Section 1 Establishment**

**Article 91** A joint stock limited company may be established by means of promotion or stock floatation.

The term "establishment by means of promotion" means that the promoters establish a company by subscribing for all the shares that shall be issued at the time of establishment.

The term "establishment by means of stock floatation" means that the promoters establish a company by subscribing for some of the shares that shall be issued at the time of establishment and offering the remaining shares to specific objects or to the general public.

**Article 92** To establish a joint stock limited company, there shall be not less than 1 but not more than 200 promoters, more than half of whom shall have their domiciles within the territory of the People's Republic of China.

**Article 93** Promoters of a joint stock limited company shall undertake the preparatory matters of the company.

The promoters shall conclude an agreement of promoters so as to specify their respective rights and obligations during the process of establishing the company.

**Article 94** To establish a joint stock limited company, promoters shall jointly draft the articles of association.

**Article 95** The articles of association of a joint stock limited company shall state the following matters:

(I) name and domicile of the company;

(II) business scope of the company;

(III) method of establishment;

(IV) registered capital, the number of issued shares and the number of issued shares at the time of establishment of the company, and the amount per share of par value share;

(V) number of shares of each classified share and the rights and obligations if classified shares are issued;

(VI) names of the promoters, the number of shares subscribed for, and the form of capital contributions;

(VII) composition, powers and rules of procedure of the board of directors;

(VIII) method for the appointment and alteration of the legal representative of the company;

(IX) composition, powers and rules of procedure of the board of supervisors;

(X) method for the profit distribution of the company;

(XI) causes of dissolution of the company and liquidation method;

(XII) methods for notices or public announcements of the company; and

(XIII) other matters that the shareholders' meeting believes necessary to be specified.

**Article 96** The registered capital of a joint stock limited company shall be the total share capital of the issued shares as registered with the company registration authority. Before the capital for the shares subscribed for by the promoters are paid in full, the company may not offer any share to others.

Where there is any provision on the minimum amount of the registered capital of a joint stock limited company in any law, administrative regulation or decision of the State Council, such provision shall prevail.

**Article 97** Where a joint stock limited company is to be established by means of promotion, promoters shall fully subscribe for the shares that shall be issued at the time of the establishment of the company as provided for in the articles of association.

If a joint stock limited company is to be established by means of stock floatation, the promoters shall subscribed for not less than 35% of the total shares that shall be issued at the time of the establishment of the company as provided for in the articles of association; however, where laws and administrative regulations provide otherwise, such provisions shall prevail.

**Article 98** Promoters shall make full payment for the shares they have subscribed for prior to the establishment of a company.

The capital contributions by promoters shall be governed by the provisions of Article 48 and paragraph 2 of Article 49 hereof on the capital contributions by the shareholders of a limited liability company.

**Article 99** Where any promoter fails to make payment for the shares subscribed for, or the actual value of the non-monetary property used as capital contributions is obviously lower than the shares subscribed for, other promoters shall bear several and joint liability with such promoter to the extent of the insufficient capital contributions.

**Article 100** In making a public offering of shares, promoters shall publish the prospectus and prepare a subscription warrant. The subscription warrant shall state the items specified in paragraph 2 and paragraph 3 of Article 154 hereof, and the subscriber shall fill in the number of shares subscribed for, amount and domicile and affix his/her signature or seal to the subscription warrant. The subscriber shall make full payment for the shares subscribed for.

**Article 101** After the share capital for a public offering has been paid in full, the capital verification shall be conducted by a lawfully established capital verification agency, which shall issue a certification.

**Article 102** A joint stock limited company shall make a register of shareholders and keep it in the company. The register of shareholders shall contain the following items:

- (I) name and domicile of each shareholder;
- (II) class and number of shares subscribed for by each shareholder;
- (III) serial number of shares if the shares are issued in paper form; and
- (IV) date for each shareholder to obtain shares.

**Article 103** Promoters of a joint stock limited company established by means of stock floatation shall, within 30 days after full payment has been made for the shares to be issued at the time of establishment, hold an establishment meeting of the company. The promoters shall notify each subscriber of the date of the meeting or make a public announcement 15 days before the meeting is held. The establishment meeting may not be held unless the subscribers who hold more than half of the voting rights attend the meeting.

Where a joint stock limited company is established by means of promotion, the convening and voting procedures for the establishment meeting shall be prescribed by the articles of association of the company or the agreement of the promoters.

**Article 104** The establishment meeting of a company shall exercise the following functions and powers:

- (I) deliberating on the report on the preparations for establishment of the company by promoters;
- (II) adopting the articles of association;
- (III) electing directors and supervisors;
- (IV) reviewing the expenses for the establishment of the company;
- (V) reviewing the valuations of the non-monetary property contributed by the promoters; and
- (VI) where any force majeure or any major change of business conditions directly affects the establishment of the company, the resolution of not establishing the company may be made.

The resolutions made at the establishment meeting about the matters as mentioned in the preceding paragraph shall be adopted by the subscribers present at the meeting who represent more than half of the voting rights.

**Article 105** Where the shares to be issued have not been fully subscribed for at the time of the establishment of a company, or the promoters fail to hold an establishment meeting within 30 days after the full payment has been made for the shares to be issued, subscribers may claim against the promoters for refund of the payment for shares plus the interest on the bank deposits for the same term.

The promoters and subscribers may not withdraw their share capital after they have made payment for the shares or delivered non-monetary property as capital contributions, except that the shares have not been fully subscribed for within the time limit, the promoters fail to hold the establishment meeting on schedule, or the establishment meeting decides not to establish the company.

**Article 106** The board of directors shall, within 30 days after the end of the establishment meeting of a company, authorize a representative to file an application for registration of establishment with the company registration authority.

**Article 107** The provisions of Article 44, Paragraph 3 of Article 49, Articles 51 through 53 hereof shall apply to joint stock limited companies.

**Article 108** Where a limited liability company is changed into a joint stock limited company, the total amount of the paid-in capital converted shall not be more than the net assets of the company. Where a limited liability company is changed into a joint stock limited company and makes a public offering of shares for increasing its registered capital, it shall do so according to law.

**Article 109** A joint stock limited company shall preserve the articles of association, register of shareholders, minutes of shareholders' meetings, minutes of meetings of the board of directors and of the board of supervisors, financial and accounting reports and register of bondholders in the company.

**Article 110** Shareholders are entitled to consult or copy the articles of association, register of shareholders, minutes of shareholders' meetings, resolutions of meetings of the board of directors and of the board of supervisors and financial and accounting reports and may bring forward suggestions or raise inquiries about the business operation of the company.

Where the shareholders who separately or aggregately hold 3% or more of the company's shares for 180 consecutive days or more request to consult the accounting books or accounting vouchers of the company, the provisions of Paragraphs 2 through 4 of Article 57 hereof shall apply. Where the articles of association prescribe a relatively lower proportion of shareholding, such provisions shall prevail.

Where the shareholders request to consult or copy the relevant materials of a wholly-owned subsidiary of the company, the provisions of the preceding two paragraphs shall apply.

When consulting or copying the relevant materials, shareholders of a listed company shall comply with the Securities Law of the People's Republic of China and other laws and administrative regulations.

## **Section 2 Shareholders' Meeting**

**Article 111** The shareholders' meeting of a joint stock limited company shall consist of all the shareholders. The shareholders' meeting is the authority of the company, which shall exercise its functions and powers according to this Law.

**Article 112** The provisions of Paragraphs 1 and 2 of Article 59 hereof on the functions and powers of the shareholders' meeting of a limited liability company shall apply to the shareholders' meeting of a joint stock limited company.

The provision in Article 60 hereof that a limited liability company with only one shareholder may not establish a shareholders' meeting shall apply to a joint stock limited company with sole shareholder.

**Article 113** An annual shareholders' meeting shall be held every year. If any of the following circumstances occurs, an interim shareholders' meeting shall be held within two months:

- (I) where the number of directors is less than two thirds of the number as provided for by this Law or the articles of association;
- (II) where the unrecovered losses of the company reach one third of the total capital stock;
- (III) where the shareholders who separately or aggregately hold 10% or more of the company's shares so request;
- (IV) where the board of directors deems it necessary;
- (V) where the board of supervisors so proposes; or
- (VI) other circumstances as provided for in the articles of association.

**Article 114** The shareholders' meeting shall be convened by the board of directors and presided over by the chairman of the board of directors. If the chairman is unable or fails to perform his/her duties, the meeting shall be presided over by the deputy chairman. If the deputy chairman is unable or fails to perform his/her duties, the meeting shall be presided over by a director jointly elected by more than half of the directors.

If the board of directors is unable or fails to perform the duties of convening the shareholders' meeting, the board of supervisors shall timely convene and preside over the meeting. If the board of supervisors fails to convene and preside over the meeting, shareholders who separately or aggregately hold 10% or more of the shares of the company for 90 or more consecutive days may convene and preside over the meeting by themselves.

If the shareholders who separately or aggregately hold 10% or more of the shares of the company request to convene an interim shareholders' meeting, the board of directors and the board of supervisors shall, within 10 days after the receipt of such request, decide whether to hold an interim shareholders' meeting and reply to the shareholders in writing.

**Article 115** The time and place of the meeting and the matters to be deliberated shall be notified to each shareholder 20 days before a shareholders' meeting is held. For an interim shareholders' meeting, a notice shall be served 15 days in advance.

The shareholders who separately or aggregately hold 1% or more of the shares of the company may, 10 days before a shareholders' meeting is held, submit an interim proposal in writing to the board of

directors. The interim proposal shall contain a clear topic for discussion and specific matters for resolution. The board of directors shall, within 2 days after it receives such a proposal, notify other shareholders and submit the interim proposal to the shareholders' meeting for deliberation, unless the interim proposal is in violation of any law, administrative regulation or the articles of association or fails to fall into the scope of functions of the shareholders' meeting. The company shall not raise the shareholding proportion of the shareholder who brings forward any interim proposal.

A company offering shares to the public shall make the notices as mentioned in the preceding 2 paragraphs by way of announcement.

The shareholders' meeting shall not make any resolution on any matter not specified in the notice.

**Article 116** A shareholder who attends the shareholders' meeting has one vote for each share held by it, except the shareholders of classified shares. The company may not have a voting right for the shares it holds.

A resolution made at the shareholders' meeting shall be adopted by more than half of the voting rights held by the shareholders who attend the meeting.

A resolution made at the shareholders' meeting on modifying the articles of association, increasing or reducing the registered capital as well as merger, split-up, dissolution or change of the corporate form shall be adopted by two thirds or more of the voting rights held by the shareholders who attend the meeting.

**Article 117** The shareholders' meeting may, in electing the directors or supervisors, adopt a cumulative voting system according to the articles of association or the resolutions of the shareholders' meeting.

For the purpose of this Law, the "cumulative voting system" means that when the shareholders' meeting elects the directors or supervisors, each shareholder is entitled to one vote per share, multiplied by the number of candidates and uses them all for one candidate for director or supervisor.

**Article 118** Where a shareholder entrusts an agent to attend the shareholders' meeting, it shall clarify the matters, power and time limit of the agent. The agent shall present a power of attorney issued by the shareholder to the company and exercise voting rights within the authorized scope.

**Article 119** The minutes of shareholders' meeting shall be made for the decisions about the matters discussed at the meeting, which shall be signed by the presider and the directors present. The minutes of the meeting shall be preserved together with the book of signatures of the shareholders present as well as the power of attorney thereof.

### Section 3 Board of Directors and Managers

**Article 120** A joint stock limited company shall set up a board of directors, except it is otherwise provided for in Article 128 hereof.

The provisions of Article 67, Paragraph 1 of Article 68, Article 70, Article 71 hereof shall apply to joint stock limited companies.

**Article 121** A joint stock limited company may, under the articles of association, set up an audit committee composed of directors in the board of directors, which shall exercise the functions and powers of the board of supervisors as provided for in this Law. It may not have a board of supervisors or supervisors.

The audit committee shall be composed of at least 3 members, and more than half of the members shall not assume any position other than the director in the company and shall not have any relationship with the company that may affect their independent and objective judgments. Among the members of the board of directors of the company, an employees' representative may become a member of the audit committee.

A resolution made by the audit committee shall be adopted by more than half of the members thereof.

For voting on a resolution of the audit committee, each member shall have one vote.

The discussion methods and voting procedures of the audit committee shall be prescribed in the articles of association, unless it is otherwise provided for by this Law.

A company may set up other committees in the board of directors under the articles of association.

**Article 122** The board of directors shall have one chairman and may have deputy chairmen. The chairman and deputy chairmen shall be elected by more than half of all the directors.

The chairman shall convene and preside over the meetings of the board of directors and check the implementation of the resolutions of the board of directors. The deputy chairman shall assist the chairman in work. If the chairman is unable or fails to perform his/her duties, the deputy chairman shall perform such duties. If the deputy chairman is unable or fails to perform his/her duties, a director jointly elected by more than half of the directors shall perform such duties.

**Article 123** The board of directors shall convene at least two meetings every year. Each meeting shall be notified to all directors and supervisors 10 days before it is held.

The shareholders representing one tenth or more of the voting rights, one third or more of the directors, or the board of supervisors may propose to convene an interim meeting of the board of directors. The chairman of the board of directors shall, within 10 days upon receipt of such a proposal, convene and preside over a meeting of the board of directors.

If the board of directors holds an interim meeting, it may separately decide the method and time limit for the notification on convening meetings of the board of directors.

**Article 124** No meeting of the board of directors may be held unless more than half of the directors are present. A resolution made by the board of directors shall be adopted by more than half of all the directors.

For voting on a resolution of the board of directors, each director shall have one vote.

The board of directors shall prepare minutes regarding the decisions on the matters discussed at the meetings, which shall be signed by the directors present.

**Article 125** The directors shall attend the meeting of the board of directors in person. Where any director is unable to attend the meeting for any reason, he/she may, by issuing a written power of attorney, entrust another director to attend the meeting on his/her behalf. The power of attorney shall indicate the scope of authorization.

The directors shall be responsible for the resolutions made by the board of directors. Where a resolution of the board of directors is in violation of any law, administrative regulation, article of association or resolution of the shareholders' meeting and causes any serious loss to the company, the directors who participate in adopting such resolution shall be liable for compensation to the company. If a director is proved to have expressed his/her objection to the voting on such resolution and such objection has been recorded in the minutes, he/she may be exempted from liability.

**Article 126** A joint stock limited company may have a manager, who shall be appointed or removed as decided by the board of directors.

The manager shall be responsible to the board of directors and exercise his/her functions and powers according to the articles of association or the authorization of the board of directors. The manager shall attend the meetings of the board of directors as a non-voting member.

**Article 127** The board of directors of a company may decide to appoint a member of the board of directors to concurrently serve as the manager.

**Article 128** A joint stock limited company with a relatively small scale or relatively small number of shareholders may dispense with the board of directors and have one director to exercise the functions and powers of the board of directors as prescribed by this Law. The director may concurrently hold the post of the manager of the company.

**Article 129** A company shall regularly disclose to its shareholders the information about remunerations obtained by the directors, supervisors and senior executives from the company.

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

**Article 130** A joint stock limited company shall have a board of supervisors, except it is otherwise provided in Paragraph 1 of Article 121 and Article 133 hereof.

The board of supervisors shall comprise 3 members or more. The members of the board of supervisors shall include shareholders' representatives and an appropriate proportion of employees' representatives of the company, among which the proportion of the employees' representatives shall not be lower than one third, and the concrete proportion shall be specified in the articles of association. The employees' representatives who serve as members of the board of supervisors shall be democratically elected by employees through the employees' representative congress, employees' congress or by other means.

The board of supervisors shall have one chairman and may have deputy chairmen. The chairman and deputy chairmen of the board of supervisors shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of the board of supervisors is unable or fails to perform his/her duties, the deputy chairman of the board of supervisors shall convene and preside over the meeting. If the deputy chairman is unable or fails to perform his/her duties, a supervisor jointly elected by more than half of the supervisors shall convene and preside over such meeting.

No director or senior executive may concurrently hold the post of supervisor.

The provisions of Article 77 hereof on the term of office of supervisors of a limited liability company shall apply to that of the supervisors of a joint stock limited company.

**Article 131** The provisions of Articles 78 through 80 hereof shall apply to the board of supervisors of a joint stock limited company.

The expenses necessary for the board of supervisors to exercise its functions and powers shall be borne by the company.

**Article 132** The board of supervisors shall convene at least one meeting every 6 months. The supervisors may propose to convene an interim meeting of the board of supervisors.

The discussion methods and voting procedures of the board of supervisors shall be prescribed in the articles of association, unless it is otherwise provided for by this Law.

Resolutions made by the board of supervisors shall be adopted by more than half of all the supervisors.

For voting on a resolution by the board of supervisors, each supervisor shall have one vote.

The board of supervisors shall prepare minutes for the decisions on the matters discussed at the meeting, which shall be signed by the supervisors present.

**Article 133** A joint stock limited company with a relatively small scale or relatively small number of shareholders may dispense with the board of supervisors, but may have one supervisor, who shall exercise the functions and powers of the board of supervisors as prescribed by this Law.

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

**Article 134** For the purpose of this Law, a "listed company" refers to the joint stock limited company whose stocks are listed and traded on a stock exchange.

**Article 135** Where the amount of any major asset purchased or sold or any guaranty provided to others by a listed company within one year exceeds 30% of the total amount of its assets, a resolution shall be made by the shareholders' meeting and adopted by the shareholders representing two thirds of the voting rights who are present at the meeting.

**Article 136** A listed company shall have independent directors. The specific measures for the administration of independent directors shall be formulated by the securities regulatory authority of the State Council.

The articles of association of a listed company shall not only specify the matters as prescribed in Article 95 hereof, but also specify the matters such as the composition and functions and powers of the ad hoc committees of the board of directors, as well as the remuneration and appraisal mechanism for directors, supervisors and senior executives according to the relevant laws and administrative regulations.

**Article 137** Where a listed company sets up an audit committee under the board of directors, any of the following matters shall be subject to the affirmative votes of more than half of all the members of the audit committee before the board of directors makes a resolution:

- (I) hiring or removing the accounting firm that undertakes the audit engagements of the company;
- (II) appointing or removing the financial director;
- (III) disclosing the financial and accounting reports; and
- (IV) any other matter as prescribed by the securities regulatory authority of the State Council.

**Article 138** A listed company may have a secretary of the board of directors, who shall be responsible for the preparations of the shareholders' meetings and meetings of the board of directors, the preservation of documents, the management of the shareholders' information of the company, the handling of information disclosure, etc.

**Article 139** Where any director of a listed company has any related-party relationship with any enterprise or individual involved in the matter to be decided at the meeting of the board of directors, such director shall submit a written report to the board of directors in a timely manner. Any director with any related-party relationship shall not vote on such resolution, nor may he/she vote on behalf of any other director. The meeting of the board of directors shall not be held unless more than half of the unrelated directors are present at the meeting. A resolution made by the board of directors shall require the affirmative votes of more than half of the unrelated directors. If less than 3 unrelated directors are present at the meeting of the board of directors, the matter shall be submitted to the shareholders' meeting of the listed company for deliberation.

**Article 140** A listed company shall disclose the information about its shareholders and actual controllers according to law, and the relevant information shall be authentic, accurate and complete.

It is prohibited to hold the stocks of any listed company on an agency basis in violation of laws and administrative regulations.

**Article 141** Any subsidiary controlled by a listed company shall not acquire the shares of the aforesaid listed company.

In case any subsidiary controlled by a listed company holds the shares of the listed company due to the merger of the company or exercise of pledge right, it shall not exercise the voting right corresponding to the shares it holds and timely dispose of the relevant shares of the listed company.

## **Chapter VI Issuance and Transfer of Shares of a Joint Stock Limited Company**

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

**Article 142** The capital of a company shall be divided into shares. All the shares of the company shall alternatively be shares with or without par value in accordance with the articles of association. Where par value shares are adopted, all the shares shall be of equal value.

The company may, according to the articles of association, convert all the issued par value shares into no par value shares, or vice versa.

Where no par value shares are adopted, more than half of the proceeds from the issuance of the shares shall be included in the registered capital.

**Article 143** Shares shall be issued under the principle of fairness and impartiality. The shares of the same class shall rank *pari passu*.

Shares of the same class in the same issue shall be issued at the same price and on same conditions. The same price shall be paid for each share subscribed for by a subscriber.

**Article 144** A company may, according to the articles of association, issue the following classified shares, which have different rights from those of the common shares:

- (I) shares with priority or inferior rights to profits or remaining property in distribution;
- (II) shares with more or less voting rights per share than those of the common shares;
- (III) shares whose transfer is subject to the consent of the company and other restrictions; or
- (IV) other classified shares provided for by the State Council.

A company making a public offering of shares shall not issue any of the classified shares as prescribed in Items (II) and (III) of the preceding paragraph, except those issued prior to the public offering.

Where a company issues the classified shares as mentioned in Item (II) of Paragraph 1 of the present Article, the number of voting rights per classified share shall be the same as that of the common share for the election and replacement of the supervisors or the members of the audit committee.

**Article 145** A company that issues classified shares shall state the following items in its articles of association:

- (I) the sequence for the distribution of profits or remaining property of the classified shares;
- (II) the number of voting rights of the classified shares;

(III) the restriction on the transfer of classified shares;

(IV) measures for protecting the rights and interests of minority shareholders; and

(V) other matters that the shareholders' meeting believes necessary to be specified.

**Article 146** Where any of the matters as prescribed in Paragraph 3 of Article 116 hereof occurs to a company that issues classified shares and may affect the rights of the classified shareholders, it shall not only be decided by the shareholders' meeting according to Paragraph 3 of Article 116, but also be adopted by shareholders representing two thirds of the voting rights who are present at the classified shareholders' meeting.

Other matters that need to be decided at the classified shareholders' meeting may be provided for in the articles of association of the company.

**Article 147** Shares in a company take the form of share certificates. Share certificates are certificates issued by the company evidencing the shares held by the shareholders.

The shares issued by a company shall be registered shares.

**Article 148** The issue price of par value stock may be based on the face value or exceed the face value but shall not be lower than the face value.

**Article 149** A stock shall be in paper form or in any other form prescribed by the securities regulatory authority of the State Council.

A stock in paper form shall state the following main items:

(I) the name of the company;

(II) the date of establishment of the company or the time for the issuance of the stocks; and

(III) the class and par value of the stock, and the number of shares it represents; the number of shares the stock represents if any no par value stock is issued.

A stock in paper form shall also state the serial number of the stock, which shall be signed by the legal representative and sealed by the company.

Stocks issued to promoters in paper form shall bear the words "promoter's stocks".

**Article 150** A joint stock limited company shall formally deliver the stocks to the shareholders after its establishment. No company may deliver any stock to the shareholders before its establishment.

**Article 151** Where a company intends to issue new stocks, its shareholders' meeting shall make a resolution about the following matters:

- (I) the class and amount of the new stocks;
- (II) the issuing price of the new stocks;
- (III) the beginning and ending dates for the issuance of the new stocks;
- (IV) the class and amount of the new stocks to be issued to the original shareholders; and
- (V) if any no par value stock is issued, the proceeds from the issuance of the new stocks shall be included into the registered capital.

Where a company issues new stocks, it may make the pricing plan in light of its business operations and financial status.

**Article 152** The articles of association or the shareholders' meeting may authorize the board of directors to decide to issue not more than 50% of the shares that have been issued within three years. However, if the capital contributions are to be made using non-monetary property, they shall be subject to a resolution made by the shareholders' meeting.

Where the board of directors decides to issue shares pursuant to the preceding paragraph, and thus results in a change in the registered capital or the number of issued shares of the company, the voting at the shareholders' meeting may not be needed to revise such item set forth in the articles of association of the company.

**Article 153** Where the articles of association or the shareholders' meeting of a company authorizes the board of directors to decide on issuing new stocks, a resolution of the board of directors shall be adopted by two thirds of all the directors.

**Article 154** Where a company intends to make public offering of shares, it shall go through the registration with the securities regulatory authority of the State Council and announce the prospectus.

The prospectus shall be attached with the articles of association and state the following matters:

- (I) the total number of shares to be issued;

(II) the par value and issuance price of the par value stocks, or the issuance price of the no par value stocks;

(III) the purposes of proceeds;

(IV) the rights and obligations of subscribers;

(V) the varieties of the shares and the rights and obligations thereof; and

(VI) the beginning and ending dates of the current offering and a statement that the subscribers may withdraw shares subscribed for if the shares are not fully offered within the time limit.

Where the shares are issued at the time of establishment of a company, the number of shares subscribed for by the promoters shall also be stated.

**Article 155** The shares to be offered to the general public by a company shall be underwritten by a lawfully established securities company, with which an underwriting agreement shall be concluded.

**Article 156** Where a company intends to offer shares to the general public, it shall conclude an agreement with a bank on the collection of share capital on behalf of the company.

The bank entrusted to collect the share capital shall, under the agreement, collect and keep the share capital on behalf of the company, issue receipts to the subscribers who have made the payments, and shall be obliged to issue certification of receipt of payments to the relevant authorities.

After the share capital is raised by a company making offering of shares, an announcement shall be made.

## **Section 2 Transfer of Shares**

**Article 157** The shares held by a shareholder of a joint stock limited company may be transferred to other shareholders or to persons other than the shareholders of the company. Where the articles of association of the company have any restriction on the transfer of shares, the transfer shall be carried out in accordance with the articles of association.

**Article 158** The share transfer by a shareholder shall be conducted on a lawfully established stock exchange or by any other means as prescribed by the State Council.

**Article 159** The stocks shall be transferred by a shareholder in the form of endorsement or by any other means prescribed by the relevant laws or administrative regulations. After the transfer, the company shall record the name and domicile of the transferee in the register of shareholders.

The register of shareholders shall not be modified within 20 days before any shareholders' meeting is held, or within 5 days prior to the benchmark date decided by the company for the distribution of dividends. Where it is otherwise provided for in any law, administrative regulation or by the securities regulatory authority of the State Council for the modification of the register of shareholders of a listed company, such provisions shall prevail.

**Article 160** The shares issued before a company makes a public offering of shares shall not be transferred within 1 year as of the day when the stocks of the company are listed and traded on the stock exchange. Where it is otherwise provided for in any law, administrative regulation or by the securities regulatory authority of the State Council for the transfer of shares held by the shareholders or actual controllers of a listed company, such provisions shall prevail.

The directors, supervisors and senior executives of the company shall declare to the company the shares they hold and the changes thereof. During the term of office as determined when they assume the posts, the shares transferred each year shall not exceed 25% of the total shares they hold of the company. The shares of the company held by them shall not be transferred within 1 year as of the day when the stocks of the company are listed and traded on the stock exchange. Any of the aforesaid persons shall not transfer the shares of the company held within six months after he/she leaves office. Any other restrictions on the transfer of company shares held by directors, supervisors or senior executives may be specified in the articles of association.

Where the shares are pledged within the time limit for restricted transfer as provided for by laws and administrative regulations, the pledgee may not exercise the pledge right within such restricted period.

**Article 161** Under any of the following circumstances, a shareholder, who votes against the resolution of the shareholders' meeting, may require the company to purchase its shares at a reasonable price, except a company making public offering of shares:

(I) the company has not distributed any profit to the shareholder for 5 consecutive years, though the company has made profits for five consecutive years and meets the profit distribution requirements as prescribed in this Law;

(II) the company has transferred its main property; or

(III) the business operation term as prescribed in the articles of association expires or any other cause for dissolution as prescribed in the articles of association occurs, and the shareholders' meeting makes the company continue existing by adopting a resolution to modify the articles of association.

Where the shareholder fails to reach a share purchase agreement with the company within 60 days as of the day when the resolution is made by the shareholders' meeting, it may, within 90 days as of the day when the resolution is made by the shareholders' meeting, lodge a lawsuit in the people's court.

The shares purchased by the company itself under any of the circumstances as mentioned in the first paragraph of the present Article shall be transferred or deregistered according to law within 6 months.

**Article 162** No company may purchase its own shares except under any of the following circumstances:

(I) where the company's registered capital is reduced;

(II) where it merges with another company holding its shares;

(III) where its shares are used for employee stock ownership plan or equity incentives;

(IV) where any shareholder, who raises objections to the resolution of the shareholders' meeting on the merger or split-up of the company, requests the company to purchase its shares;

(V) where its shares are used for converting the corporate bonds into convertible stocks issued by the company; or

(VI) it is necessary for a listed company to maintain its company value and its shareholders' equity.

Where a company purchases its own shares under any of the circumstances as mentioned in Items (I) or (II) of the preceding paragraph, a resolution of the shareholders' meeting shall be adopted. Where a company purchases its own shares under any of the circumstances as mentioned in Items (III), (V) or (VI) of the preceding paragraph, a resolution shall be adopted at the meeting of the board of directors with the attendance of not less than two thirds of the directors, according to the articles of association or the shareholders' meeting of the company.

After the company purchases its own shares according to the first paragraph of this Article, the shares purchased shall be written off within ten days as of the purchase date under the circumstance as mentioned in Item (I); the shares shall be transferred or written off within six months under the circumstance as mentioned in Item (II) or (IV); and the shares held accumulatively by the company shall not exceed 10% of the total shares issued and be transferred or written off within three years under any of the circumstances as mentioned in Item (III), (V) or (VI).

Where a listed company purchases its own shares, it shall perform its obligation of information disclosure according to the provisions of the Securities Law of the People's Republic of China. Where a listed company purchases its own shares due to any of the circumstances as mentioned in Items (III), (V) or (VI) of Paragraph 1 of this Article, such purchase shall be conducted by way of public centralized trading.

No company may accept the shares of its own as the subject matter of pledge.

**Article 163** No company may provide gifts, loans, guarantees or other financial aids for others to obtain the shares of the company or the parent company thereof unless it carries out an employee stock ownership plan.

For the benefits of the company, the company may, upon a resolution by the shareholders' meeting or by the board of directors under the articles of association or the authorization of the shareholders' meeting, provide financial aids for others to obtain the shares of the company or the parent company thereof, provided that the total accumulative amount of the financial aids shall not exceed 10% of the total issued share capital. A resolution by the board of directors shall be adopted by two thirds of all the directors.

Any director, supervisor or senior executive who is liable for any loss to the company due to violation of the provisions of the preceding two paragraphs shall make compensations.

**Article 164** Where any stock is stolen, lost or destroyed, a shareholder may request the people's court to declare the stock invalid in light of the procedure of public summons for exhortation prescribed in the Civil Procedure Law of the People's Republic of China. After the people's court has invalidated the stock, the shareholder may file an application with the company for issuance of new stock.

**Article 165** The stocks of a listed company shall be listed and traded according to the relevant laws, administrative regulations, as well as the trading rules of the stock exchange.

**Article 166** A listed company shall disclose the relevant information in accordance with laws and administrative regulations.

**Article 167** After a natural person shareholder dies, his/her lawful inheritor may inherit the qualifications of the shareholder, unless it is otherwise prescribed by the articles of association of a joint stock limited company whose transfer of shares is restricted.

## **Chapter VII Special Provisions on the Organizational Structure of State-invested Companies**

**Article 168** The provisions of this Chapter shall apply to the organizational structure of state-invested companies. Where there is no relevant provision in this Chapter, other provisions of this Law shall apply.

For the purpose of this Law, "state-invested companies" refer to the solely state-owned companies or state-owned capital holding companies invested by the state, including the limited liability companies and joint stock limited companies invested by the state.

**Article 169** As to the state-invested companies, the State Council or the local people's governments shall, on behalf of the state, perform the contributor's duties and enjoy the contributor's rights and interests. The State Council or the local people's governments may authorize the state-owned assets supervision and administration agencies or any other departments or organs to perform the contributor's duties for the state-invested companies on behalf of the people's governments at the corresponding level.

The organs and departments that perform the contributor's duties on behalf of the people's governments at the corresponding level are hereinafter referred to collectively as the agencies that perform the contributor's duties.

**Article 170** The organization of the Communist Party of China in a state-invested company shall play a leading role in accordance with the Constitution of the Communist Party of China, study and discuss the significant matters concerning the operation and management of the company and support the organization of the company in exercising its functions and powers in accordance with the law.

**Article 171** The articles of association of a solely state-owned company shall be formulated by the agency that performs the contributor's duties.

**Article 172** A solely state-owned company shall not set up the shareholders' meeting, and the functions and powers of the shareholders' meeting shall be exercised by the agency that performs the contributor's duties. The agency that performs the contributor's duties may authorize the board of directors to exercise some of the functions and powers of the shareholders' meeting, provided that the formulation and modification of the articles of association, merger, division, dissolution, application for bankruptcy, increase or decrease of registered capital, and distribution of profits of the company shall be determined by the agency that performs the contributor's duties.

**Article 173** The board of directors of a solely state-owned company shall exercise its functions and powers in accordance with this Law.

More than half of the members of the board of directors of a solely state-owned company shall be external directors and include employees' representatives of the company.

The members of the board of directors shall be designated by the agency that performs the contributor's duties. However, the employees' representatives in the board of directors shall be elected through the employees' representative congress of the company.

The board of directors shall have one chairman and may have deputy chairmen. The chairman and deputy chairmen shall be designated by the agency that performs the contributor's duties from among the members of the board of directors.

**Article 174** The manager of a solely state-owned company shall be appointed or removed by the board of directors.

A member of the board of directors may concurrently serve as the manager subject to the consent of the agency that performs the contributor's duties.

**Article 175** No director or senior executive of a solely state-owned company may concurrently hold a post in any other limited liability company, joint stock limited company or any other economic organization without the consent of the agency that performs the contributor's duties.

**Article 176** Where a solely state-owned company sets up an audit committee composed of directors under the board of directors to exercise the functions and powers of a board of supervisors as prescribed in this Law, it may dispense with a board of supervisors or supervisors.

**Article 177** A state-invested company shall establish a sound internal supervision and risk control system in accordance with the law and intensify its internal compliance management.

## **Chapter VIII Qualifications and Obligations of Directors, Supervisors and Senior Executives of a Company**

**Article 178** Under any of the following circumstances, anyone may not act as a director, supervisor or senior executive of a company:

(I) having no capacity for civil conduct or having limited capacity for civil conduct;

(II) having been sentenced to any criminal penalty due to an offence of corruption, bribery, encroachment of property, misappropriation of property or disrupting the order of the socialist market economy, or having been deprived of political rights due to a crime, where a five-year period has not elapsed since the expiration of execution period; If he/she is pronounced for suspension of sentence, a two-year period has not elapsed since the expiration of the suspension of sentence;

(III) serving as a director, factory director or manager of a company or enterprise which has been bankrupt and liquidated and being personally liable for the bankruptcy of such company or enterprise, where a three-year period has not elapsed since the completion of the bankruptcy and liquidation;

(IV) acting as the legal representative of a company or enterprise whose business license has been revoked or which was ordered to close down due to any violation of the law and being personally liable, where a three-year period has not elapsed since the date of revocation of business license or the order for closure; or

(V) being listed as a dishonest person subject to enforcement by the people's court due to his/her failure to pay off a relatively large amount of due debts.

Where the election or appointment of any director or supervisor, or employment of any senior executive is in violation of the preceding paragraph, it shall be invalidated.

Where any director, supervisor or senior executive, during his/her term of office, is under any of the circumstances set out in the first paragraph of this Article, the company shall remove him/her from office.

**Article 179** Directors, supervisors and senior executives shall comply with laws, administrative regulations and the articles of association.

**Article 180** Directors, supervisors and senior executives shall assume the obligation of loyalty to the company and take measures to avoid the conflict between their own interests and those of the company and may not seek any improper interests by taking advantage of their powers.

The directors, supervisors and senior executives shall assume the duty of diligence to the company. When performing their duties, they shall, for the best interests of the company, exercise the reasonable care that shall be generally possessed by a manager.

The provisions of the preceding two paragraphs shall apply to the controlling shareholder or actual controller of a company who does not serve as a director but actually executes the affairs of the company.

**Article 181** No director, supervisor or senior executive may have any of the following acts:

(I) embezzling the property or misappropriating the funds of the company;

(II) depositing the funds of the company into an account opened in his/her own name or in the name of any other individual;

- (III) giving bribes or accepting any other illegal proceeds by taking advantage of his/her power;
- (IV) taking commissions from the transactions between the company and any other person into his/her own pocket;
- (V) unlawfully disclosing the confidential information of the company; or
- (VI) other acts in violation of the obligation of loyalty to the company.

**Article 182** Where any director, supervisor or senior executive directly or indirectly concludes a contract or conducts a transaction with his/her company, he/she shall report the matters relating to the conclusion of the contract or transaction to the board of directors or shareholders' meeting, which shall be subject to the resolution of the board of directors or shareholders' meeting according to the articles of association.

Where any of the near relatives of the directors, supervisors or senior executives, or any of the enterprises directly or indirectly controlled by the directors, supervisors or senior executives or any of their near relatives, or any of the related parties who has any other related-party relationship with the directors, supervisors or senior executives, concludes a contract or conducts a transaction with the company, the provisions of the preceding paragraph shall apply.

**Article 183** No director, supervisor or senior executive may take advantage of his/her position to seek any business opportunity that belongs to the company for himself/herself or any other person except under any of the following circumstances:

- (I) where he/she has reported to the board of directors or the shareholders' meeting and has been approved by a resolution of the board of directors or the shareholders' meeting according to the articles of association; or
- (II) where the company cannot make use of the business opportunity as stipulated by laws, administrative regulations or the articles of association.

**Article 184** Where any director, supervisor or senior executive fails to report to the board of directors or the shareholders' meeting and obtain an approval by resolution of the board of directors or the shareholders' meeting according to the articles of association, he/she may not engage in any business that is similar to that of the company where he/she holds office for himself/herself or for any other person.

**Article 185** When the board of directors makes a resolution on any of the matters as specified in Articles 182 through 184 hereof, the related directors shall not participate in the voting, and their voting rights shall not be calculated into the total voting rights. If the number of unrelated directors present at

the meeting of the board of directors is less than 3, the matter shall be submitted to the shareholders' meeting for deliberation.

**Article 186** The incomes derived by any director, supervisor or senior executive in violation of Articles 181 through 184 hereof shall belong to the company.

**Article 187** If the shareholders' meeting demands a director, supervisor or senior executive to attend the meeting as a non-voting delegate, he/she shall do so and answer shareholders' inquiries.

**Article 188** Where any director, supervisor or senior executive violates any law, administrative regulation or the articles of association during the performance of duties and causes any loss to the company, he/she shall be liable for compensation.

**Article 189** Where any director or senior executive is under the circumstance as mentioned in the preceding Article, the shareholders of a limited liability company or the shareholders of a joint stock limited company separately or aggregately holding 1% or more of the total shares of the company for 180 consecutive days or more may request the board of supervisors in writing to initiate a lawsuit in the people's court. If any supervisor is under the circumstance in the preceding Article, the aforesaid shareholders may request the board of directors in writing to file a lawsuit with the people's court.

Where the board of supervisors or the board of directors refuses to initiate a lawsuit after it receives a written request of the shareholders as mentioned in the preceding paragraph, or fails to file a lawsuit within 30 days upon receipt of the request, or in an emergency, the failure to initiate a lawsuit immediately will cause irreparable damage to the interests of the company, the shareholders in the preceding paragraph shall have the right to directly initiate a lawsuit in the people's court in their own name for the interests of the company.

If others infringe upon the legitimate rights and interests of a company and cause losses to the company, the shareholders stipulated in the first paragraph of this Article may initiate a lawsuit in the people's court in accordance with the provisions of the preceding two paragraphs.

If a director, supervisor or senior executive of a wholly-owned subsidiary of the company is under the circumstance specified in the preceding Article, or if the legitimate rights and interests of a wholly-owned subsidiary of the company are impaired by any other person, thus causing any losses, the shareholders of a limited liability company or shareholders of a joint stock limited company separately or aggregately holding 1% or more of the total shares of the company for 180 consecutive days or more may request the board of supervisors or the board of directors of the wholly-owned subsidiary in written form to initiate a lawsuit in the people's court or directly files a lawsuit with the people's court in their own name.

**Article 190** Where any director or senior executive damages the shareholders' interests by violating any law, administrative regulation or the articles of association, the shareholders may initiate a lawsuit in the people's court.

**Article 191** Where any director or senior executive causes any damage to any other person in the performance of duties, the company shall be liable for compensation. If any director or senior executive is intentional or has gross negligence, he/she shall also be liable for compensation.

**Article 192** Where any controlling shareholder or actual controller of a company instructs any director or senior executive to carry out any act damaging the interests of the company or the shareholders, it shall bear joint and several liability with the director or senior executive.

**Article 193** A company may, during the term of office of a director, purchase the liability insurance for the compensation liability to be borne by the director in performing the duties.

After the company purchases liability insurance or renews the insurance for the director, the board of directors shall report the insured amount, coverage and premium rate etc. of the liability insurance to the shareholders' meeting.

## **Chapter IX Corporate Bonds**

**Article 194** For the purpose of this Law, the term "corporate bonds" refers to the negotiable securities issued by a company that agrees to pay principal and interest on schedule.

Corporate bonds can be issued publicly or non-publicly.

The offering and trading of corporate bonds shall comply with the Securities Law of the People's Republic of China and other laws and administrative regulations.

**Article 195** A public offering of a corporate bond shall be registered with the securities regulatory authority of the State Council and a corporate bond prospectus shall be made.

The corporate bond prospectus shall state the major items as follows:

- (I) the company's name;
- (II) the purposes of use of bond proceeds;
- (III) the total amount and par value of the bond;
- (IV) the method for determining the interest rate of the bond;

(V) the term and manner of debt service;

(VI) bond guarantees;

(VII) the offering price of the bond, beginning and ending dates of the offering;

(VIII) net assets of the company;

(IX) the total amount of outstanding corporate bonds; and

(X) underwriter of the corporate bond.

**Article 196** Where a company issues corporate bonds in paper form, it shall specify on the bonds such matters as the name of the company, the par value of the bonds, the interest rate, the time limit for repayment, etc. The bonds shall be signed by the legal representative and sealed by the company.

**Article 197** Corporate bonds shall be registered.

**Article 198** A company issuing corporate bonds shall keep a register of corporate bond holders.

Where corporate bonds are issued, the following matters shall be stated in the register of bondholders of the company:

(I) the name and domicile of the bondholders;

(II) the dates on which the bondholder acquires the bonds and the serial number of the bonds;

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

(IV) the date on which the bonds are issued.

**Article 199** The registration and settlement agency for corporate bonds shall establish the systems for bond registration, depository, interest payment and redemption as well as other relevant systems.

**Article 200** Corporate bonds can be transferred, and the transfer price shall be agreed between the transferor and transferee.

The transfer of corporate bonds shall comply with the provisions of laws and administrative regulations.

**Article 201** The transfer of corporate bonds shall be effected by the bondholder's endorsement or other means prescribed by laws and administrative regulations; after the transfer, the company shall record the name and domicile of the transferee in the register of holders of corporate bonds.

**Article 202** A joint stock limited company may, under a resolution of the shareholders' meeting, or under a resolution of the board of directors authorized by the articles of association or the shareholders' meeting, issue corporate bonds convertible into shares and provide for specific conversion methods. The issuance of corporate bonds convertible into stock by a listed company shall be registered with the securities regulatory authority of the State Council.

The corporate bonds that can be converted into stock shall be marked with the words "convertible corporate bonds", and the number of convertible corporate bonds shall be specified in the register of holders of corporate bonds.

**Article 203** Where convertible corporate bonds are issued, the company shall exchange its stock for the bonds held by the bondholders in the prescribed method of conversion, provided that the bondholders have the option on whether or not to convert their bonds into stock, except as otherwise prescribed by any law or administrative regulation.

**Article 204** In the case of a public offering of corporate bonds, a bondholders' meeting shall be established for the bondholders of the same issue, and procedures for the convening procedures of the bondholders' meeting, the meeting rules and other important matters shall be stipulated in the bond prospectus. The bondholders' meeting may make resolutions on matters in which the bondholders have an interest.

Unless otherwise agreed in the corporate bond prospectus, the resolution of the bondholders' meeting shall be effective for all bondholders of the same issue.

**Article 205** In the case of a public offering of corporate bonds, the issuer shall engage a bond trustee for the bondholders, who shall handle such matters for the bondholders as receiving payment in liquidation, preservation of claims, litigation relating to the bonds and participation in the debtor's bankruptcy proceedings.

**Article 206** The bond trustee shall fulfill its obligations with due diligence, fairly perform the entrusted management duties, and shall not damage the interests of the bondholders.

Where there is any conflict of interests between the bond trustee and the bondholders, which may damage the interests of the bondholders, the bondholders' meeting may make a resolution to replace the bond trustee.

The bond trustee shall be liable for compensation if it violates laws, administrative regulations or a resolution of the bondholders' meeting to the detriment of the interests of the bondholders.

## **Chapter X Financial Affairs and Accounting of a Company**

**Article 207** A company shall establish its own financial and accounting systems according to laws, administrative regulations and provisions of the financial department of the State Council.

**Article 208** A company shall prepare a financial accounting report at the end of each fiscal year and have it audited by an accounting firm in accordance with the law.

The financial accounting report shall be made in accordance with the laws, administrative regulations and the provisions of the financial department of the State Council.

**Article 209** A limited liability company shall submit a financial accounting report to each shareholder within the time limit as prescribed in the articles of association.

The financial accounting report of a joint stock limited company shall be made available for inspection by the shareholders at the company not later than twenty days before the annual meeting of shareholders; a joint stock limited company that has publicly issued shares shall announce its financial accounting report.

**Article 210** When a company distributes its after-tax profit for the current year, 10% of the profit shall be accrued and included in the company's statutory reserve. Such accrual is no longer required when the accumulated amount of the company's statutory reserve is 50% or more of the company's registered capital.

Where the accumulative amount of the company's statutory reserve is not enough to make up for the losses of the previous year, the current year's profits shall first be used to make up for the losses before the statutory reserve is accrued according to the provisions of the preceding paragraph.

After having accrued statutory reserve from the after-tax profits, a company can also set aside discretionary reserve from the after-tax profits upon a resolution made by the shareholders' meeting.

The residual after-tax profits after a company has made up its losses and accrued reserve shall be distributed by the company (in the case of a limited liability company) in proportion to the capital

contribution paid up by its shareholders, except where all the shareholders have agreed not to distribute the profits in accordance with the proportion of the capital contribution; or such profits shall be distributed by the company (in the case of a joint stock limited company) in proportion to the shares held by its shareholders, except as otherwise provided for in the company's articles of association.

Profit shall not be distributed for a company's shares held by this company.

**Article 211** Where a company distributes profits to shareholders in violation of the provisions of this Law, the shareholders shall refund the profits distributed to the company, and the shareholders and the liable directors, supervisors and senior executives shall be held liable for compensation if any loss is caused to the company.

**Article 212** If the shareholders' meeting resolves to distribute profits, the board of directors shall do so within six months after the resolution is made.

**Article 213** The premiums received by a company from the issuance of shares at an issue price in excess of the par value of the shares, the amount of share proceeds from the issuance of no-par shares that have not been credited to the registered capital, and other items required by the financial department of the State Council to be included in the capital reserve shall be classified as the capital reserve of the company.

**Article 214** The reserve of a company shall be used for making up losses, expanding the production and business scale or increasing the registered capital of the company.

Where the reserve of a company is used for making up losses, the discretionary reserve and statutory reserve shall be firstly used. If losses still cannot be made up, the capital reserve can be used according to the relevant provisions.

Where the statutory reserve is converted to increase registered capital, the amount of such reserve retained shall not be less than 25% of the registered capital of the company prior to the conversion.

**Article 215** The employment or dismissal of an accounting firm undertaking a company's auditing business shall be decided by the shareholders' meeting, the board of directors or the board of supervisors in accordance with the provisions of the company's articles of association.

When a company's shareholders' meeting, board of directors or the board of supervisors votes on the dismissal of an accounting firm, the accounting firm shall be allowed to state its own opinions.

**Article 216** A company shall provide true and complete accounting documents, accounting books, financial accounting reports and other accounting information to the accounting firm engaged by it, and shall not refuse, conceal or misrepresent them.

**Article 217** No company may keep any accounting books other than the statutory accounting books.

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

## **Chapter XI A Merger of Companies, and Demerger, Capital Increase and Capital Reduction of a Company**

**Article 218** A merger of companies may take the form of merger by absorption or merger by new establishment.

In the case of a merger by absorption, a company absorbs another company and the absorbed company shall be dissolved. In the case of a merger by new establishment, two or more companies combine together for the establishment of a new one, and the pre-merger companies shall be dissolved.

**Article 219** Where a company merges with another company in which the former holds not less than 90 % of the shares, the merged company is not required to adopt a resolution at the shareholders' meeting, but shall notify other shareholders, who have the right to request the company to acquire their equity or shares at a reasonable price.

If the price paid for the merger of the companies is not more than 10 % of the net assets of the company, it is not required to adopt a resolution at the shareholders' meeting, unless it is otherwise provided for in the articles of association of the company.

For the merger of the companies as provided for in the preceding two paragraphs, a resolution of the board of directors shall be adopted instead of a resolution of the shareholders' meeting.

**Article 220** In the case of a merger of companies, a merger agreement shall be concluded by the merging parties and a balance sheet and an inventory of property shall be prepared. The companies involved shall notify their creditors within ten days from the date of the resolution on the merger and make an announcement in newspaper or on the National Enterprise Credit Information Publicity System within thirty days. The creditors may request the said companies to settle the debts or provide corresponding guarantees within thirty days from the date of receipt of the notice or within forty-five days from the date of the announcement if the notice is not received.

**Article 221** In the case of a merger of companies, the claims and debts of the merging parties shall be succeeded by the company that survives the merger or by the newly established company.

**Article 222** Where a company is demerged, its property shall be divided correspondingly.

A company shall prepare a balance sheet and a list of its property if it is to be demerged. The company shall notify its creditors within ten days from the date of the resolution on demerger and make an announcement in the newspaper or the National Enterprise Credit Information Publicity System within thirty days.

**Article 223** Unless otherwise agreed in a written agreement between a company and its creditors on the settlement of debts before a demerger, the debts of the company before the demerger shall be jointly and severally liable by the companies after the demerger.

**Article 224** When reducing its registered capital, a company shall prepare a balance sheet and an inventory of property.

The company shall notify its creditors within ten days from the date of the resolution of the shareholders' meeting to reduce the registered capital and make an announcement in the newspaper or the National Enterprise Credit Information Publicity System within thirty days. The creditors have the right to demand the company to settle the debts or provide corresponding guarantees within thirty days from the date of receipt of the notice, or within forty-five days from the date of the announcement if the notice has not been received.

Where a company reduces its registered capital, it shall reduce the amount of capital contribution or shares in proportion to the capital contribution or shares held by the shareholders, unless it is otherwise prescribed by any law, or is agreed upon by all the shareholders of a limited liability company or is otherwise prescribed by the articles of association of a joint stock limited company.

**Article 225** If a company still has losses after making up for them in accordance with the provisions of Paragraph 2 of Article 214 of this Law, it may reduce its registered capital to make up for the losses. If the registered capital is reduced to make up for the loss, the company shall not make any distribution to the shareholders, nor shall the shareholders be exempted from their obligation to pay the capital contribution or the share capital.

If the registered capital is reduced in accordance with the provisions of the preceding paragraph, the provisions of the second paragraph of the preceding Article shall not apply, but the resolution to reduce

the registered capital shall be made by the shareholders' meeting within thirty days from the date of the announcement in the newspapers or on the National Enterprise Credit Information Publicity System.

After a company reduces its registered capital in accordance with the provisions of the preceding two paragraphs, it shall not distribute profits until the accumulated amount of statutory reserve and discretionary reserve reaches 50% of the company's registered capital.

**Article 226** When a company reduces its registered capital in violation of the provisions of this Law, its shareholders shall refund the funds they have received, and if the capital contributions of the shareholders are reduced or exempted, such capital contributions shall be restored to the original status; if any loss is caused to the company, the shareholders and the liable directors, supervisors and senior executives shall bear the liability for compensation.

**Article 227** When a limited liability company increases its registered capital, its shareholders shall have the preemptive right to subscribe for the increased capital in proportion to their paid-in capital contribution on the same terms. However, exceptions apply where all the shareholders agree that the capital contributions are not to be subscribed for in proportion to their respective capital contributions.

When a joint stock limited company issues new shares to increase its registered capital, its shareholders shall not have the preemptive right, unless it is otherwise provided in the company's articles of association or the shareholders' meeting resolves that the shareholders enjoy the preemptive right.

**Article 228** When a limited liability company increases its registered capital, the contribution of its shareholders to the new capital shall be made in accordance with the relevant provisions of this Law regarding the payment of capital contributions for the establishment of a limited liability company.

When a joint stock limited company issues new shares to increase its registered capital, the subscription for new shares by its shareholders shall be governed by the relevant provisions of this Law regarding the payment of stock capital for the establishment of a joint stock limited company.

## **Chapter XII Dissolution and Liquidation of a Company**

**Article 229** A company is dissolved for any of the following reasons:

- (I) the expiration of the business period stipulated in the company's articles of association or the occurrence of other causes of dissolution stipulated in the company's articles of association;
- (II) dissolution by a resolution of the shareholders' meeting;
- (III) dissolution due to merger or demerger of the company;

(IV) suspension of the business license, being ordered to close down or being revoked in accordance with the law; or

(V) being dissolved by the People's Court in accordance with the provisions of Article 231 hereof.

If any of the situations as mentioned in the preceding paragraph arises, a company shall publicize the situations through the National Enterprise Credit Information Publicity System within ten days.

**Article 230** Where a company falls under the circumstance as mentioned in Items (I) or (II) of Paragraph 1 of the preceding Article, and it has not distributed the assets to its shareholders yet, it may survive by modifying its articles of association or upon a resolution of the shareholders' meeting.

To modify its articles of association or make a resolution of the shareholders' meeting according to the provisions of the preceding paragraph, the consent of the shareholders who hold two thirds or more of the voting rights is required in the case of a limited liability company, and the consent of two thirds or more of the voting rights of the shareholders who attend the meeting of the shareholders' meeting is required in the case of a joint stock limited company.

**Article 231** Where a company meets any serious difficulty in its operation or management, and the interests of its shareholders will be subject to heavy loss if the company survives, which cannot be solved by any other means, the shareholders who hold 10% or more of the voting rights of the company may request the people's court to dissolve the company.

**Article 232** Where a company is dissolved according to the provisions of Item (I) (II) (IV) or (V) of Paragraph 1 of Article 229 hereof, it shall be liquidated. The directors, who are the liquidation obligors of the company, shall form a liquidation group to carry out liquidation within 15 days from the date of occurrence of the cause of dissolution.

The liquidation group shall be composed of the directors, unless it is otherwise provided for in the company's articles of association or it is otherwise elected by the shareholders' meeting.

The liquidation obligors shall be liable for compensation if they fail to fulfill their obligations of liquidation in a timely manner, and thus any loss is caused to the company or the creditors.

**Article 233** Where a company shall be liquidated in accordance with the provisions of paragraph 1 of the preceding Article, and the liquidation group fails to be formed within the time limit or fails to carry out the liquidation after its formation, any interested party may request the people's court to designate relevant persons to form a liquidation group. The people's court shall accept such request and organize a liquidation group to carry out the liquidation in a timely manner.

Where a company is dissolved according to Item (IV) of Paragraph 1 of Article 229 hereof, the department or company registration authority that made the decision to revoke the company's business license, ordered the company to close down or dissolved the company may request the people's court to designate relevant persons to form a liquidation group for liquidation of the company.

**Article 234** The liquidation group may exercise the following functions during the period of liquidation:

- (I) liquidating the property of the company, preparing a balance sheet and an inventory of property, respectively;
- (II) notifying the company's creditors by mail or public announcement;
- (III) handling and liquidating the unfinished business of the company;
- (IV) paying off the taxes overdue by the company and the taxes incurred in the process of liquidation;
- (V) liquidation of claims and debts;
- (VI) distributing the remaining property after all the debts of the company are paid off; and
- (VII) representing the company in civil litigation activities.

**Article 235** The liquidation group shall notify the company's creditors within ten days as of its formation and shall make a public announcement in the newspaper or on the National Enterprise Credit Information Publicity System within 60 days. The creditors shall file their proofs of claim with the liquidation group within 30 days as of the receipt of the notice or within 45 days as of the issuance of the public announcement in the case of failing to receive such notice.

When filing a proof of claim, the creditor shall describe the relevant matters of claim and provide the relevant evidentiary materials. The liquidation group shall register the proof of claim.

During the period for filing proofs of claims, the liquidation group shall not pay off for any of the creditors.

**Article 236** The liquidation group shall, after liquidating the property of the company and preparing a balance sheet and an inventory of property, make a plan of liquidation and report the same to the shareholders' meeting or the people's court for confirmation.

After paying off the liquidation expenses, wages of employees, social insurance premiums and statutory compensations, the outstanding taxes and the debts of the company with the property of the company, the remaining assets may, in the case of a limited liability company, be distributed in proportion to capital

contributions of the shareholders, and in the case of a joint stock limited company, distributed in proportion to the shares held by the shareholders.

During the period of liquidation, the company survives, but shall not carry out any business operation unrelated to the liquidation. The property of the company shall not be distributed to the shareholders until it has been liquidated in accordance with the preceding paragraph.

**Article 237** Where the liquidation group finds that the property of the company are not sufficient for paying off the debts after liquidating the property of the company and preparing a balance sheet and an inventory of property, it shall file an application to a people's court for bankruptcy liquidation.

After the people's court accepts the application for bankruptcy, the liquidation group shall hand over the liquidation matters to the bankruptcy administrator designated by the people's court.

**Article 238** The members of the liquidation group performing their duties of liquidation are obliged to loyalty and diligence.

Any member of the liquidation group who neglects to fulfill his/her liquidation duties, thus causing any loss to the company shall be liable for compensation, and any member of the liquidation group who cause any loss to any creditor due to his/her intentional or gross negligence shall be liable for compensation.

**Article 239** Upon completion of the liquidation of the company, the liquidation group shall produce a liquidation report, report the same to the shareholders' meeting or the people's court for confirmation, and submit the same to the company registration authority to apply for deregistration of the company.

**Article 240** Where, during the period of survival, a company has not incurred any debts or has paid off all the debts, the company may, upon a commitment of all the shareholders, be deregistered under the summary procedures according to the relevant provisions.

The deregistration of a company under the summary procedures shall be announced through the National Enterprise Credit Information Publicity System for a period of no less than 20 days. If there is no objection after the expiry of the announcement period, the company may apply for deregistration of the company with the company registration authority within 20 days.

For a company deregistered under the summary procedures, its shareholders shall be jointly and severally liable for the debts incurred before the deregistration if they have made an untrue commitment to the contents as described in Paragraph 1 of this Article.

**Article 241** Where, after three years since the business license of a company is revoked, or the company is ordered to close down or is revoked, the company fails to apply for its deregistration with the company registration authority, the said authority may announce the company's deregistration through the National Enterprise Credit Information Publicity System for a period of no less than 60 days. If there is no objection after the announcement period expires, the company registration authority may deregister the company.

The deregistration of a company according to the provisions of the preceding paragraph will not affect the liability of the original shareholders or liquidation obligors.

**Article 242** Any company declared bankrupt according to law shall carry out a bankruptcy liquidation in accordance with the provisions concerning bankruptcy liquidation.

### **Chapter XIII Branches of Foreign Companies**

**Article 243** For the purpose of this Law, the term "a foreign company" refers to any company established outside the territory of the People's Republic of China according to any foreign law.

**Article 244** Any foreign company that intends to establish a branch within the territory of the People's Republic of China shall file an application with the competent Chinese authority, with its articles of incorporation, certificate of incorporation issued in its country of domicile, and other supporting documentation submitted, and shall, upon obtaining approval, fulfill relevant registration procedures with the company registration authority in accordance with the law, and obtain a business license.

The measures for the approval of branches of foreign companies shall be provided by the State Council separately.

**Article 245** When establishing a branch within the territory of the People's Republic of China, a foreign company shall designate a representative or agent within the territory of the People's Republic of China to take charge of the branch, and allocate funds to the branch appropriate to the business activities in which it is engaged.

Where a minimum amount of operating funds is required for branches of foreign companies, it shall be provided by the State Council separately.

**Article 246** A branch of a foreign company shall indicate in its name the nationality and form of liability of the foreign company.

A branch of a foreign company shall make the articles of association of the foreign company available at its premises.

**Article 247** Any branch of a foreign company established within the territory of the People's Republic of China do not have Chinese legal personality.

A foreign company shall bear civil liability for the business activities conducted by any of its branches within the territory of the People's Republic of China.

**Article 248** In engaging in business activities within the territory of the People's Republic of China, branches of foreign companies approved to be established shall abide by Chinese laws and shall not jeopardize the social and public interests of China, and their lawful rights and interests shall be protected by the laws of China.

**Article 249** When closing down a branch within the territory of the People's Republic of China, a foreign company shall fully settle the debts of the branch in accordance with the law and liquidate it in accordance with the provisions of this Law relating to the procedure for the liquidation of a company. No property of the branch may be transferred out of the territory of the People's Republic of China before the branch's debts are fully settled.

#### **Chapter XIV Legal Liability**

**Article 250** For any company that, in violation of the provisions of this Law, obtains company registration by misrepresenting its registered capital, submitting false materials or adopting other fraudulent means to conceal important facts, the company registration authority shall order it to make rectification and impose a fine of not less than 5% but not more than 15% of the amount of the misrepresented registered capital on the company that has misrepresented its registered capital; the company that submits false materials or adopts other fraudulent means to conceal important facts, the company shall be imposed a fine of not less than 50,000 yuan but not more than 2 million yuan; and if the circumstances are serious, the company's business license shall be revoked; and the directly responsible supervisory personnel and other personnel directly liable for the offence shall be imposed a fine of not less than 30,000 yuan but not more than 300,000 yuan.

**Article 251** For any company that fails to disclose relevant information in accordance with the provisions of Article 40 hereof or fails to truthfully disclose relevant information, the company registration authority shall order it to make rectification, and may impose a fine of not less than 10,000 yuan and not more than 50,000 yuan on it. If the circumstances are serious, the company shall impose a fine of not less than 50,000 yuan and not more than 200,000 yuan; and the directly responsible supervisory

personnel and other personnel directly liable for the offence shall be imposed a fine of not less than 10,000 yuan but not more than 100,000 yuan.

**Article 252** For any promoter or shareholder of a company who makes a false capital contribution or fails to deliver, or fails to deliver on schedule, monetary or non-monetary property as a capital contribution, the company registration authority shall order it/him to make rectification, and may impose a fine of not less than 50,000 yuan and not more than 200,000 yuan on it/him; if the circumstances are serious, the company shall be imposed on a fine of not less than 5% but not more than 15% of the amount of the false capital contribution or the capital contribution failed to be made; and the directly responsible supervisory personnel and other persons directly liable for the offence shall be imposed on a fine of not less than 10,000 yuan and not more than 100,000 yuan.

**Article 253** For any promoter or shareholder of a company who, after the establishment of the company, unlawfully withdraws its capital contribution, the company registration authority shall order it/him to make rectification and impose a fine of not less than 5% and not more than 15% of the amount of the withdrawn capital on it/him; and impose a fine of not less than 30,000 yuan and not more than 300,000 yuan on the supervisors directly in charge and other persons directly liable for the offence.

**Article 254** For either of the following practice, the financial department of the people's governments at or above the county level concerned shall impose penalties in accordance with the Accounting Law of the People's Republic of China and other laws and administrative regulations:

- (I) having any separate accounting books other than the statutory accounting books; or
- (II) providing any financial accounting report with any false records or important facts concealed.

**Article 255** For any company that fails to notify its creditors by way of notice or public announcement of a merger, demerger, decrease in registered capital or liquidation of the company, as required by this Law, the company registration authority shall order it to make corrections and impose a fine of not less than 10,000 yuan but not more than 100,000 yuan on it.

**Article 256** For any company that, during its liquidation, conceals any of its property or makes any false entries in its balance sheet or inventory of property, or distributes its property before fully settling its outstanding debts, the company registration authority shall order it to make rectification and impose on it a fine of not less than 5% but not more than 10% of the value of the concealed property or the property distributed before full settlement of debts; and shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan on the directly responsible supervisory personnel and other personnel directly liable for the offence.

**Article 257** Any agency undertaking asset appraisal, capital verification, or certification that provides false materials or submits any report with material omissions shall be subjected to penalties by the relevant authority in accordance with the Asset Appraisal Law of the People's Republic of China, the Law of the People's Republic of China on Certified Public Accountant and other applicable administrative regulations.

Any agency undertaking asset appraisal, capital verification, or certification that issues any untrue appraisal results or certificates of capital verification or certification, resulting in losses to any creditor of a company, shall be liable for compensation to the extent of the amount of the discrepancy from truth, unless it can prove no fault on its part.

**Article 258** For the company registration authority which violates any laws or administrative regulations by failing to perform its duties or to properly performs its duties, governmental sanctions shall be imposed in accordance with the law on the responsible leader(s) and directly liable personnel.

**Article 259** For any business which is conducted in the name of a limited liability company or joint stock limited company without registering the relevant entity as such in accordance with the law, or conducted in the name of a branch of a limited liability company or joint stock limited company without registering the relevant entity as such in accordance with the law, the company registration authority shall order the entity to make correction or ban the entity, and may concurrently impose a fine of not more than 100,000 yuan on it.

**Article 260** For any company that fails to commence business within six months of establishment or suspends its business of its own volition for six consecutive months or more after commencing business without justified reason, the company registration authority may revoke its business license, except where the company has fulfilled the procedure for business dormancy in accordance with the law.

Any company that fails to complete the relevant alteration registration in accordance with this Law for any changes in its registered particulars shall be ordered by the company registration authority to fulfill the procedure within a specific period, failing which it shall be imposed of a fine of not less than 10,000 yuan but not more than 100,000 yuan.

**Article 261** Any foreign company that violates this Law by establishing a branch within the territory of the People's Republic of China without approval shall be ordered by the company registration authority to make corrections or to close down the branch, and may be imposed a fine of not less than 50,000 yuan but not more than 200,000 yuan.

**Article 262** For any serious illegal activity engaged in the name of a company that endangers national security or social or public interests, the business license of that company shall be revoked.

**Article 263** Any company that is liable for civil compensation, any fines or financial penalties for any violations of this Law shall be first liable for civil compensation if its property is insufficient to cover all the liabilities.

**Article 264** For any violation of this Law that constitutes a criminal offense, criminal liability shall be pursued in accordance with the law.

## **Chapter XV Supplementary Provisions**

**Article 265** For the purposes of this Law, the terms listed below shall have the following definitions:

(I) "Senior executives" refers to the company manager, deputy company manager, head of finance, secretary to the board of directors of a listed company, and any other persons as specified in the company's articles of association.

(II) "Controlling shareholder" refers to a shareholder whose capital contribution exceeds 50% of the total capital in the case of a limited liability company, or a shareholder whose shares exceed 50% of the total share capital in the case of a joint stock limited company, or a shareholder whose capital contribution or share proportion is less than 50% of the total capital or share capital but whose voting rights are sufficient to exert a material influence on resolutions of the shareholders' meeting.

(III) "Actual controller" refers to any person who can exert actual control over a company through any investment relationships, agreements, or other arrangements.

(IV) "Related-party relationship" refers to any relationship between a controlling shareholder, actual controller, director, supervisor, or senior officer of a company and an enterprise directly or indirectly controlled by that person, as well as any other relationship that may result in the transfer of any interest in the company. However, state-controlled enterprises do not have a related-party relationship between them solely due to being controlled by the state.

**Article 266** This Law shall come into force on July 1, 2024.

For the companies already registered for establishment before this Law comes into force, if their capital contribution period exceeds the period stipulated herein, such period shall be gradually adjusted to within the period prescribed in this Law, unless otherwise provided by laws, administrative regulations or the State Council; For the period of capital contribution or the amount of capital contribution that is obviously

abnormal, the company registration authority may require adjustment in a timely manner in accordance with the law. The specific implementing methods shall be prescribed by the State Council.



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# 中华人民共和国公司法（2023 修订）

发 文 机 关:全国人民代表大会常务委员会

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## 主席令第十五号

《中华人民共和国公司法》已由中华人民共和国第十四届全国人民代表大会常务委员会第七次会议于 2023 年 12 月 29 日修订通过，现予公布，自 2024 年 7 月 1 日起施行。

中华人民共和国主席 习近平

2023 年 12 月 29 日

## 中华人民共和国公司法

（1993 年 12 月 29 日第八届全国人民代表大会常务委员会第五次会议通过 根据 1999 年 12 月 25 日第九届全国人民代表大会常务委员会第十三次会议《关于修改〈中华人民共和国公司法〉的决定》第一次修正 根据 2004 年 8 月 28 日第十届全国人民代表大会常务委员会第十一次会议《关于修改〈中华人民共和国公司法〉的决定》第二次修正 2005 年 10 月 27 日第十届全国人民代表大会常务委员会第十八次会议第一次修订 根据 2013 年 12 月 28 日第十二届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国海洋环境保护法〉等七部法律的决定》第三次修正 根据 2018 年 10 月 26 日第十三届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国公司法〉的决定》第四次修正 2023 年 12 月 29 日第十四届全国人民代表大会常务委员会第七次会议第二次修订）

### 第一章 总 则

**第一条** 为了规范公司的组织和行为，保护公司、股东、职工和债权人的合法权益，完善中国特色现代企业制度，弘扬企业家精神，维护社会经济秩序，促进社会主义市场经济的发展，根据宪法，制定本法。

**第二条** 本法所称公司，是指依照本法在中华人民共和国境内设立的有限责任公司和股份有限公司。

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

公司的合法权益受法律保护，不受侵犯。

**第四条** 有限责任公司的股东以其认缴的出资额为限对公司承担责任；股份有限公司的股东以其认购的股份为限对公司承担责任。

公司股东对公司依法享有资产收益、参与重大决策和选择管理者等权利。

**第五条** 设立公司应当依法制定公司章程。公司章程对公司、股东、董事、监事、高级管理人员具有约束力。

**第六条** 公司应当有自己的名称。公司名称应当符合国家有关规定。

公司的名称权受法律保护。

**第七条** 依照本法设立的有限责任公司，应当在公司名称中标明有限责任公司或者有限公司字样。

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

**第八条** 公司以其主要办事机构所在地为住所。

**第九条** 公司的经营范围由公司章程规定。公司可以修改公司章程，变更经营范围。

公司的经营范围中属于法律、行政法规规定须经批准的项目，应当依法经过批准。

**第十条** 公司的法定代表人按照公司章程的规定，由代表公司执行公司事务的董事或者经理担任。

担任法定代表人的董事或者经理辞任的，视为同时辞去法定代表人。

法定代表人辞任的，公司应当在法定代表人辞任之日起三十日内确定新的法定代表人。

**第十一条** 法定代表人以公司名义从事的民事活动，其法律后果由公司承受。

公司章程或者股东会对法定代表人职权的限制，不得对抗善意相对人。

法定代表人因执行职务造成他人损害的，由公司承担民事责任。公司承担民事责任后，依照法律或者公司章程的规定，可以向有过错的法定代表人追偿。

**第十二条** 有限责任公司变更为股份有限公司，应当符合本法规定的股份有限公司的条件。股份有限公司变更为有限责任公司，应当符合本法规定的有限责任公司的条件。

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

**第十三条** 公司可以设立子公司。子公司具有法人资格，依法独立承担民事责任。

公司可以设立分公司。分公司不具有法人资格，其民事责任由公司承担。

**第十四条** 公司可以向其他企业投资。

法律规定公司不得成为对所投资企业的债务承担连带责任的出资人的，从其规定。

**第十五条** 公司向其他企业投资或者为他人提供担保，按照公司章程的规定，由董事会或者股东会决议；公司章程对投资或者担保的总额及单项投资或者担保的数额有限额规定的，不得超过规定的限额。

公司为公司股东或者实际控制人提供担保的，应当经股东会决议。

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

**第十六条** 公司应当保护职工的合法权益，依法与职工签订劳动合同，参加社会保险，加强劳动保护，实现安全生产。

公司应当采用多种形式，加强公司职工的职业教育和岗位培训，提高职工素质。

**第十七条** 公司职工依照《中华人民共和国工会法》组织工会，开展工会活动，维护职工合法权益。公司应当为本公司工会提供必要的活动条件。公司工会代表职工就职工的劳动报酬、工作时间、休息休假、劳动安全卫生和保险福利等事项依法与公司签订集体合同。

公司依照宪法和有关法律的规定，建立健全以职工代表大会为基本形式的民主管理制度，通过职工代表大会或者其他形式，实行民主管理。

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

**第十八条** 在公司中，根据中国共产党章程的规定，设立中国共产党的组织，开展党的活动。公司应当为党组织的活动提供必要条件。

**第十九条** 公司从事经营活动，应当遵守法律法规，遵守社会公德、商业道德，诚实守信，接受政府和社会公众的监督。

**第二十条** 公司从事经营活动，应当充分考虑公司职工、消费者等利益相关者的利益以及生态环境保护等社会公共利益，承担社会责任。

国家鼓励公司参与社会公益活动，公布社会责任报告。

**第二十一条** 公司股东应当遵守法律、行政法规和公司章程，依法行使股东权利，不得滥用股东权利损害公司或者其他股东的利益。

公司股东滥用股东权利给公司或者其他股东造成损失的，应当承担赔偿责任。

**第二十二条** 公司的控股股东、实际控制人、董事、监事、高级管理人员不得利用关联关系损害公司利益。

违反前款规定，给公司造成损失的，应当承担赔偿责任。

**第二十三条** 公司股东滥用公司法人独立地位和股东有限责任，逃避债务，严重损害公司债权人利益的，应当对公司债务承担连带责任。

股东利用其控制的两个以上公司实施前款规定行为的，各公司应当对任一公司的债务承担连带责任。

只有一个股东的公司，股东不能证明公司财产独立于股东自己的财产的，应当对公司债务承担连带责任。

**第二十四条** 公司股东会、董事会、监事会召开会议和表决可以采用电子通信方式，公司章程另有规定的除外。

**第二十五条** 公司股东会、董事会的决议内容违反法律、行政法规的无效。

**第二十六条** 公司股东会、董事会的会议召集程序、表决方式违反法律、行政法规或者公司章程，或者决议内容违反公司章程的，股东自决议作出之日起六十日内，可以请求人民法院撤销。但是，股东会、董事会的会议召集程序或者表决方式仅有轻微瑕疵，对决议未产生实质影响的除外。

未被通知参加股东会会议的股东自知道或者应当知道股东会决议作出之日起六十日内，可以请求人民法院撤销；自决议作出之日起一年内没有行使撤销权的，撤销权消灭。

**第二十七条** 有下列情形之一的，公司股东会、董事会的决议不成立：

- （一）未召开股东会、董事会会议作出决议；
- （二）股东会、董事会会议未对决议事项进行表决；
- （三）出席会议的人数或者所持表决权数未达到本法或者公司章程规定的人数或者所持表决权数；

（四）同意决议事项的人数或者所持表决权数未达到本法或者公司章程规定的人数或者所持表决权数。

**第二十八条** 公司股东会、董事会决议被人民法院宣告无效、撤销或者确认不成立的，公司应当向公司登记机关申请撤销根据该决议已办理的登记。

股东会、董事会决议被人民法院宣告无效、撤销或者确认不成立的，公司根据该决议与善意相对人形成的民事法律关系不受影响。

## 第二章 公司登记

**第二十九条** 设立公司，应当依法向公司登记机关申请设立登记。

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

**第三十条** 申请设立公司，应当提交设立登记申请书、公司章程等文件，提交的相关材料应当真实、合法和有效。

申请材料不齐全或者不符合法定形式的，公司登记机关应当一次性告知需要补正的材料。

**第三十一条** 申请设立公司，符合本法规定的设立条件的，由公司登记机关分别登记为有限责任公司或者股份有限公司；不符合本法规定的设立条件的，不得登记为有限责任公司或者股份有限公司。

**第三十二条** 公司登记事项包括：

- （一）名称；
- （二）住所；
- （三）注册资本；
- （四）经营范围；
- （五）法定代表人的姓名；
- （六）有限责任公司股东、股份有限公司发起人的姓名或者名称。

公司登记机关应当将前款规定的公司登记事项通过国家企业信用信息公示系统向社会公示。

**第三十三条** 依法设立的公司，由公司登记机关发给公司营业执照。公司营业执照签发日期为公司成立日期。

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

公司登记机关可以发给电子营业执照。电子营业执照与纸质营业执照具有同等法律效力。

**第三十四条** 公司登记事项发生变更的，应当依法办理变更登记。

公司登记事项未经登记或者未经变更登记，不得对抗善意相对人。

**第三十五条** 公司申请变更登记，应当向公司登记机关提交公司法定代表人签署的变更登记申请书、依法作出的变更决议或者决定等文件。

公司变更登记事项涉及修改公司章程的，应当提交修改后的公司章程。

公司变更法定代表人的，变更登记申请书由变更后的法定代表人签署。

**第三十六条** 公司营业执照记载的事项发生变更的，公司办理变更登记后，由公司登记机关换发营业执照。

**第三十七条** 公司因解散、被宣告破产或者其他法定事由需要终止的，应当依法向公司登记机关申请注销登记，由公司登记机关公告公司终止。

**第三十八条** 公司设立分公司，应当向公司登记机关申请登记，领取营业执照。

**第三十九条** 虚报注册资本、提交虚假材料或者采取其他欺诈手段隐瞒重要事实取得公司设立登记的，公司登记机关应当依照法律、行政法规的规定予以撤销。

**第四十条** 公司应当按照规定通过国家企业信用信息公示系统公示下列事项：

（一）有限责任公司股东认缴和实缴的出资额、出资方式 and 出资日期，股份有限公司发起人认购的股份数；

（二）有限责任公司股东、股份有限公司发起人的股权、股份变更信息；

（三）行政许可取得、变更、注销等信息；

（四）法律、行政法规规定的其他信息。

公司应当确保前款公示信息真实、准确、完整。

**第四十一条** 公司登记机关应当优化公司登记办理流程，提高公司登记效率，加强信息化建设，推行网上办理等便捷方式，提升公司登记便利化水平。

国务院市场监督管理部门根据本法和有关法律、行政法规的规定，制定公司登记注册的具体办法。

### 第三章 有限责任公司的设立和组织机构

#### 第一节 设立

**第四十二条** 有限责任公司由一个以上五十个以下股东出资设立。

**第四十三条** 有限责任公司设立时的股东可以签订设立协议，明确各自在公司设立过程中的权利和义务。

**第四十四条** 有限责任公司设立时的股东为设立公司从事的民事活动，其法律后果由公司承受。

公司未成立的，其法律后果由公司设立时的股东承受；设立时的股东为二人以上的，享有连带债权，承担连带债务。

设立时的股东为设立公司以自己的名义从事民事活动产生的民事责任，第三人有权选择请求公司或者公司设立时的股东承担。

设立时的股东因履行公司设立职责造成他人损害的，公司或者无过错的股东承担赔偿责任后，可以向有过错的股东追偿。

**第四十五条** 设立有限责任公司，应当由股东共同制定公司章程。

**第四十六条** 有限责任公司章程应当载明下列事项：

（一）公司名称和住所；

（二）公司经营范围；

（三）公司注册资本；

（四）股东的姓名或者名称；

（五）股东的出资额、出资方式和出资日期；

（六）公司的机构及其产生办法、职权、议事规则；

（七）公司法定代表人的产生、变更办法；

（八）股东会认为需要规定的其他事项。

股东应当在公司章程上签名或者盖章。

**第四十七条** 有限责任公司的注册资本为在公司登记机关登记的全体股东认缴的出资额。全体股东认缴的出资额由股东按照公司章程的规定自公司成立之日起五年内缴足。

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

**第四十八条** 股东可以用货币出资，也可以用实物、知识产权、土地使用权、股权、债权等可以用货币估价并可以依法转让的非货币财产作价出资；但是，法律、行政法规规定不得作为出资的财产除外。

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

**第四十九条** 股东应当按期足额缴纳公司章程规定的各自所认缴的出资额。

股东以货币出资的，应当将货币出资足额存入有限责任公司在银行开设的账户；以非货币财产出资的，应当依法办理其财产权的转移手续。

股东未按期足额缴纳出资的，除应当向公司足额缴纳外，还应当对给公司造成的损失承担赔偿责任。

**第五十条** 有限责任公司设立时，股东未按照公司章程规定实际缴纳出资，或者实际出资的非货币财产的实际价额显著低于所认缴的出资额的，设立时的其他股东与该股东在出资不足的范围内承担连带责任。

**第五十一条** 有限责任公司成立后，董事会应当对股东的出资情况进行核查，发现股东未按期足额缴纳公司章程规定的出资的，应当由公司向该股东发出书面催缴书，催缴出资。

未及时履行前款规定的义务，给公司造成损失的，负有责任的董事应当承担赔偿责任。

**第五十二条** 股东未按照公司章程规定的出资日期缴纳出资，公司依照前条第一款规定发出书面催缴书催缴出资的，可以载明缴纳出资的宽限期；宽限期自公司发出催缴书之日起，不得少于六十日。宽限期届满，股东仍未履行出资义务的，公司经董事会决议可以向该股东发出失权通知，通知应当以书面形式发出。自通知发出之日起，该股东丧失其未缴纳出资的股权。

依照前款规定丧失的股权应当依法转让，或者相应减少注册资本并注销该股权；六个月内未转让或者注销的，由公司其他股东按照其出资比例足额缴纳相应出资。

股东对失权有异议的，应当自接到失权通知之日起三十日内，向人民法院提起诉讼。

**第五十三条** 公司成立后，股东不得抽逃出资。

违反前款规定的，股东应当返还抽逃的出资；给公司造成损失的，负有责任的董事、监事、高级管理人员应当与该股东承担连带赔偿责任。

**第五十四条** 公司不能清偿到期债务的，公司或者已到期债权的债权人有权要求已认缴出资但未届出资期限的股东提前缴纳出资。

**第五十五条** 有限责任公司成立后，应当向股东签发出资证明书，记载下列事项：

（一）公司名称；

- （二）公司成立日期；
- （三）公司注册资本；
- （四）股东的姓名或者名称、认缴和实缴的出资额、出资方式和出资日期；
- （五）出资证明书的编号和核发日期。

出资证明书由法定代表人签名，并由公司盖章。

**第五十六条** 有限责任公司应当置备股东名册，记载下列事项：

- （一）股东的姓名或者名称及住所；
- （二）股东认缴和实缴的出资额、出资方式和出资日期；
- （三）出资证明书编号；
- （四）取得和丧失股东资格的日期。

记载于股东名册的股东，可以依股东名册主张行使股东权利。

**第五十七条** 股东有权查阅、复制公司章程、股东名册、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。

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

股东查阅前款规定的材料，可以委托会计师事务所、律师事务所等中介机构进行。

股东及其委托的会计师事务所、律师事务所等中介机构查阅、复制有关材料，应当遵守有关保护国家秘密、商业秘密、个人隐私、个人信息等法律、行政法规的规定。

股东要求查阅、复制公司全资子公司相关材料的，适用前四款的规定。

## 第二节 组织机构

**第五十八条** 有限责任公司股东会由全体股东组成。股东会是公司的权力机构，依照本法行使职权。

**第五十九条** 股东会行使下列职权：

- （一）选举和更换董事、监事，决定有关董事、监事的报酬事项；
- （二）审议批准董事会的报告；
- （三）审议批准监事会的报告；
- （四）审议批准公司的利润分配方案和弥补亏损方案；
- （五）对公司增加或者减少注册资本作出决议；
- （六）对发行公司债券作出决议；
- （七）对公司合并、分立、解散、清算或者变更公司形式作出决议；
- （八）修改公司章程；
- （九）公司章程规定的其他职权。

股东会可以授权董事会对发行公司债券作出决议。

对本条第一款所列事项股东以书面形式一致表示同意的，可以不召开股东会会议，直接作出决定，并由全体股东在决定文件上签名或者盖章。

**第六十条** 只有一个股东的有限责任公司不设股东会。股东作出前条第一款所列事项的决定时，应当采用书面形式，并由股东签名或者盖章后置备于公司。

**第六十一条** 首次股东会会议由出资最多的股东召集和主持，依照本法规定行使职权。

**第六十二条** 股东会会议分为定期会议和临时会议。

定期会议应当按照公司章程的规定按时召开。代表十分之一以上表决权的股东、三分之一以上的董事或者监事会提议召开临时会议的，应当召开临时会议。

**第六十三条** 股东会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由过半数的董事共同推举一名董事主持。

董事会不能履行或者不履行召集股东会会议职责的，由监事会召集和主持；监事会不召集和主持的，代表十分之一以上表决权的股东可以自行召集和主持。

**第六十四条** 召开股东会会议，应当于会议召开十五日前通知全体股东；但是，公司章程另有规定或者全体股东另有约定的除外。

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

**第六十五条** 股东会会议由股东按照出资比例行使表决权；但是，公司章程另有规定的除外。

**第六十六条** 股东会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

股东会作出决议，应当经代表过半数表决权的股东通过。

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

**第六十七条** 有限责任公司设董事会，本法第七十五条另有规定的除外。

董事会行使下列职权：

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

公司章程对董事会职权的限制不得对抗善意相对人。

**第六十八条** 有限责任公司董事会成员为三人以上，其成员中可以有公司职工代表。职工人数三百人以上的有限责任公司，除依法设监事会并有公司职工代表的外，其董事会成员中应当有公司职工代表。董事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

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

**第六十九条** 有限责任公司可以按照公司章程的规定在董事会中设置由董事组成的审计委员会，行使本法规定的监事会的职权，不设监事会或者监事。公司董事会成员中的职工代表可以成为审计委员会成员。

**第七十条** 董事任期由公司章程规定，但每届任期不得超过三年。董事任期届满，连选可以连任。

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

董事辞任的，应当以书面形式通知公司，公司收到通知之日辞任生效，但存在前款规定情形的，董事应当继续履行职务。

**第七十一条** 股东会可以决议解任董事，决议作出之日解任生效。

无正当理由，在任期届满前解任董事的，该董事可以要求公司予以赔偿。

**第七十二条** 董事会会议由董事长召集和主持；董事长不能履行职务或者不履行职务的，由副董事长召集和主持；副董事长不能履行职务或者不履行职务的，由过半数的董事共同推举一名董事召集和主持。

**第七十三条** 董事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

董事会会议应当有过半数的董事出席方可举行。董事会作出决议，应当经全体董事的过半数通过。

董事会决议的表决，应当一人一票。

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

**第七十四条** 有限责任公司可以设经理，由董事会决定聘任或者解聘。

经理对董事会负责，根据公司章程的规定或者董事会的授权行使职权。经理列席董事会会议。

**第七十五条** 规模较小或者股东人数较少的有限责任公司，可以不设董事会，设一名董事，行使本法规定的监事会的职权。该董事可以兼任公司经理。

**第七十六条** 有限责任公司设监事会，本法第六十九条、第八十三条另有规定的除外。

监事会成员为三人以上。监事会成员应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

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

董事、高级管理人员不得兼任监事。

**第七十七条** 监事的任期每届为三年。监事任期届满，连选可以连任。

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

**第七十八条** 监事会行使下列职权：

（一）检查公司财务；

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

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

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

（五）向股东会会议提出提案；

（六）依照本法第一百八十九条的规定，对董事、高级管理人员提起诉讼；

（七）公司章程规定的其他职权。

**第七十九条** 监事可以列席董事会会议，并对董事会决议事项提出质询或者建议。

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

**第八十条** 监事会可以要求董事、高级管理人员提交执行职务的报告。

董事、高级管理人员应当如实向监事会提供有关情况和资料，不得妨碍监事会或者监事行使职权。

**第八十一条** 监事会每年度至少召开一次会议，监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经全体监事的过半数通过。

监事会决议的表决，应当一人一票。

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

**第八十二条** 监事会行使职权所必需的费用，由公司承担。

**第八十三条** 规模较小或者股东人数较少的有限责任公司，可以不设监事会，设一名监事，行使本法规定的监事会的职权；经全体股东一致同意，也可以不设监事。

#### 第四章 有限责任公司的股权转让

**第八十四条** 有限责任公司的股东之间可以相互转让其全部或者部分股权。

股东向股东以外的人转让股权的，应当将股权转让的数量、价格、支付方式和期限等事项书面通知其他股东，其他股东在同等条件下有优先购买权。股东自接到书面通知之日起三十日内未答复的，视为放弃优先购买权。两个以上股东行使优先购买权的，协商确定各自的购买比例；协商不成的，按照转让时各自的出资比例行使优先购买权。

公司章程对股权转让另有规定的，从其规定。

**第八十五条** 人民法院依照法律规定的强制执行程序转让股东的股权时，应当通知公司及全体股东，其他股东在同等条件下有优先购买权。其他股东自人民法院通知之日起满二十日不行使优先购买权的，视为放弃优先购买权。

**第八十六条** 股东转让股权的，应当书面通知公司，请求变更股东名册；需要办理变更登记的，并请求公司向公司登记机关办理变更登记。公司拒绝或者在合理期限内不予答复的，转让人、受让人可以依法向人民法院提起诉讼。

股权转让的，受让人自记载于股东名册时起可以向公司主张行使股东权利。

**第八十七条** 依照本法转让股权后，公司应当及时注销原股东的出资证明书，向新股东签发出资证明书，并相应修改公司章程和股东名册中有关股东及其出资额的记载。对公司章程的该项修改不需再由股东会表决。

**第八十八条** 股东转让已认缴出资但未届出资期限的股权的，由受让人承担缴纳该出资的义务；受让人未按期足额缴纳出资的，转让人对受让人未按期缴纳的出资承担补充责任。

未按照公司章程规定的出资日期缴纳出资或者作为出资的非货币财产的实际价额显著低于所认缴的出资额的股东转让股权的，转让人与受让人在出资不足的范围内承担连带责任；受让人不知道且不应当知道存在上述情形的，由转让人承担责任。

**第八十九条** 有下列情形之一的，对股东会该项决议投反对票的股东可以请求公司按照合理的价格收购其股权：

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

（二）公司合并、分立、转让主要财产；

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

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

公司的控股股东滥用股东权利，严重损害公司或者其他股东利益的，其他股东有权请求公司按照合理的价格收购其股权。

公司因本条第一款、第三款规定的情形收购的本公司股权，应当在六个月内依法转让或者注销。

**第九十条** 自然人股东死亡后，其合法继承人可以继承股东资格；但是，公司章程另有规定的除外。

## 第五章 股份有限公司的设立和组织机构

### 第一节 设立

**第九十一条** 设立股份有限公司，可以采取发起设立或者募集设立的方式。

发起设立，是指由发起人认购设立公司时应发行的全部股份而设立公司。

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

**第九十二条** 设立股份有限公司，应当有一人以上二百人以下发起人，其中应当有半数以上的发起人在中华人民共和国境内有住所。

**第九十三条** 股份有限公司发起人承担公司筹办事务。

发起人应当签订发起人协议，明确各自在公司设立过程中的权利和义务。

**第九十四条** 设立股份有限公司，应当由发起人共同制订公司章程。

**第九十五条** 股份有限公司章程应当载明下列事项：

（一）公司名称和住所；

- （二）公司经营范围；
- （三）公司设立方式；
- （四）公司注册资本、已发行的股份数和设立时发行的股份数，面额股的每股金额；
- （五）发行类别股的，每一类别股的股份数及其权利和义务；
- （六）发起人的姓名或者名称、认购的股份数、出资方式；
- （七）董事会的组成、职权和议事规则；
- （八）公司法定代表人的产生、变更办法；
- （九）监事会的组成、职权和议事规则；
- （十）公司利润分配办法；
- （十一）公司的解散事由与清算办法；
- （十二）公司的通知和公告办法；
- （十三）股东会认为需要规定的其他事项。

**第九十六条** 股份有限公司的注册资本为在公司登记机关登记的已发行股份的股本总额。在发起人认购的股份缴足前，不得向他人募集股份。

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

**第九十七条** 以发起设立方式设立股份有限公司的，发起人应当认足公司章程规定的公司设立时应发行的股份。

以募集设立方式设立股份有限公司的，发起人认购的股份不得少于公司章程规定的公司设立时应发行股份总数的百分之三十五；但是，法律、行政法规另有规定的，从其规定。

**第九十八条** 发起人应当在公司成立前按照其认购的股份全额缴纳股款。

发起人的出资，适用本法第四十八条、第四十九条第二款关于有限责任公司股东出资的规定。

**第九十九条** 发起人不按照其认购的股份缴纳股款，或者作为出资的非货币财产的实际价额显著低于所认购的股份的，其他发起人与该发起人在出资不足的范围内承担连带责任。

**第一百条** 发起人向社会公开募集股份，应当公告招股说明书，并制作认股书。认股书应当载明本法第一百五十四条第二款、第三款所列事项，由认股人填写认购的股份数、金额、住所，并签名或者盖章。认股人应当按照所认购股份足额缴纳股款。

**第一百零一条** 向社会公开募集股份的股款缴足后，应当经依法设立的验资机构验资并出具证明。

**第一百零二条** 股份有限公司应当制作股东名册并置备于公司。股东名册应当记载下列事项：

- （一）股东的姓名或者名称及住所；
- （二）各股东所认购的股份种类及股份数；
- （三）发行纸面形式的股票的，股票的编号；
- （四）各股东取得股份的日期。

**第一百零三条** 募集设立股份有限公司的发起人应当自公司设立时应发行股份的股款缴足之日起三十日内召开公司成立大会。发起人应当在成立大会召开十五日前将会议日期通知各认股人或者予以公告。成立大会应当有持有表决权过半数的认股人出席，方可举行。

以发起设立方式设立股份有限公司成立大会的召开和表决程序由公司章程或者发起人协议规定。

**第一百零四条** 公司成立大会行使下列职权：

- （一）审议发起人关于公司筹办情况的报告；
- （二）通过公司章程；
- （三）选举董事、监事；
- （四）对公司的设立费用进行审核；
- （五）对发起人非货币财产出资的作价进行审核；
- （六）发生不可抗力或者经营条件发生重大变化直接影响公司设立的，可以作出不设立公司的决议。

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

**第一百零五条** 公司设立时应发行的股份未募足，或者发行股份的股款缴足后，发起人在三十日内未召开成立大会的，认股人可以按照所缴股款并加算银行同期存款利息，要求发起人返还。

发起人、认股人缴纳股款或者交付非货币财产出资后，除未按期募足股份、发起人未按期召开成立大会或者成立大会决议不设立公司的情形外，不得抽回其股本。

**第一百零六条** 董事会应当授权代表，于公司成立大会结束后三十日内向公司登记机关申请设立登记。

**第一百零七条** 本法第四十四条、第四十九条第三款、第五十一条、第五十二条、第五十三条的规定，适用于股份有限公司。

**第一百零八条** 有限责任公司变更为股份有限公司时，折合的实收股本总额不得高于公司净资产额。有限责任公司变更为股份有限公司，为增加注册资本公开发行股份时，应当依法办理。

**第一百零九条** 股份有限公司应当将公司章程、股东名册、股东会会议记录、董事会会议记录、监事会会议记录、财务会计报告、债券持有人名册置备于本公司。

**第一百一十条** 股东有权查阅、复制公司章程、股东名册、股东会会议记录、董事会会议决议、监事会会议决议、财务会计报告，对公司的经营提出建议或者质询。

连续一百八十日以上单独或者合计持有公司百分之三以上股份的股东要求查阅公司的会计账簿、会计凭证的，适用本法第五十七条第二款、第三款、第四款的规定。公司章程对持股比例有较低规定的，从其规定。

股东要求查阅、复制公司全资子公司相关材料的，适用前两款的规定。

上市公司股东查阅、复制相关材料的，应当遵守《中华人民共和国证券法》等法律、行政法规的规定。

## 第二节 股东会

**第一百一十一条** 股份有限公司股东会由全体股东组成。股东会是公司的权力机构，依照本法行使职权。

**第一百一十二条** 本法第五十九条第一款、第二款关于有限责任公司股东会职权的规定，适用于股份有限公司股东会。

本法第六十条关于只有一个股东的有限责任公司不设股东会的规定，适用于只有一个股东的股份有限公司。

**第一百一十三条** 股东会应当每年召开一次年会。有下列情形之一的，应当在两个月内召开临时股东会会议：

- （一）董事人数不足本法规定人数或者公司章程所定人数的三分之二时；
- （二）公司未弥补的亏损达股本总额三分之一时；
- （三）单独或者合计持有公司百分之十以上股份的股东请求时；
- （四）董事会认为必要时；
- （五）监事会提议召开时；
- （六）公司章程规定的其他情形。

**第一百一十四条** 股东会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由过半数的董事共同推举一名董事主持。

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

单独或者合计持有公司百分之十以上股份的股东请求召开临时股东会会议的，董事会、监事会应当在收到请求之日起十日内作出是否召开临时股东会会议的决定，并书面答复股东。

**第一百一十五条** 召开股东会会议，应当将会议召开的时间、地点和审议的事项于会议召开二十日前通知各股东；临时股东会会议应当于会议召开十五日前通知各股东。

单独或者合计持有公司百分之一以上股份的股东，可以在股东会会议召开十日前提出临时提案并书面提交董事会。临时提案应当有明确议题和具体决议事项。董事会应当在收到提案后二日内通知其他股东，并将该临时提案提交股东会审议；但临时提案违反法律、行政法规或者公司章程的规定，或者不属于股东会职权范围的除外。公司不得提高提出临时提案股东的持股比例。

公开发行股份的公司，应当以公告方式作出前两款规定的通知。

股东会不得对通知中未列明的事项作出决议。

**第一百一十六条** 股东出席股东会会议，所持每一股份有一表决权，类别股股东除外。公司持有的本公司股份没有表决权。

股东会作出决议，应当经出席会议的股东所持表决权过半数通过。

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

**第一百一十七条** 股东会选举董事、监事，可以按照公司章程的规定或者股东会的决议，实行累积投票制。

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

**第一百一十八条** 股东委托代理人出席股东会会议的，应当明确代理人代理的事项、权限和期限；代理人应当向公司提交股东授权委托书，并在授权范围内行使表决权。

**第一百一十九条** 股东会应当对所议事项的决定作成会议记录，主持人、出席会议的董事应当在会议记录上签名。会议记录应当与出席股东的签名册及代理出席的委托书一并保存。

### 第三节 董事会、经理

**第一百二十条** 股份有限公司设董事会，本法第一百二十八条另有规定的除外。

本法第六十七条、第六十八条第一款、第七十条、第七十一条的规定，适用于股份有限公司。

**第一百二十一条** 股份有限公司可以按照公司章程的规定在董事会中设置由董事组成的审计委员会，行使本法规定的监事会的职权，不设监事会或者监事。

审计委员会成员为三名以上，过半数成员不得在公司担任除董事以外的其他职务，且不得与公司存在任何可能影响其独立客观判断的关系。公司董事会成员中的职工代表可以成为审计委员会成员。

审计委员会作出决议，应当经审计委员会成员的过半数通过。

审计委员会决议的表决，应当一人一票。

审计委员会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

公司可以按照公司章程的规定在董事会中设置其他委员会。

**第一百二十二条** 董事会设董事长一人，可以设副董事长。董事长和副董事长由董事会以全体董事的过半数选举产生。

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

**第一百二十三条** 董事会每年度至少召开两次会议，每次会议应当于会议召开十日前通知全体董事和监事。

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

董事会召开临时会议，可以另定召集董事会的通知方式和通知时限。

**第一百二十四条** 董事会会议应当有过半数的董事出席方可举行。董事会作出决议，应当经全体董事的过半数通过。

董事会决议的表决，应当一人一票。

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

**第一百二十五条** 董事会会议，应当由董事本人出席；董事因故不能出席，可以书面委托其他董事代为出席，委托书应当载明授权范围。

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

**第一百二十六条** 股份有限公司设经理，由董事会决定聘任或者解聘。

经理对董事会负责，根据公司章程的规定或者董事会的授权行使职权。经理列席董事会会议。

**第一百二十七条** 公司董事会可以决定由董事会成员兼任经理。

**第一百二十八条** 规模较小或者股东人数较少的股份有限公司，可以不设董事会，设一名董事，行使本法规定的董事会的职权。该董事可以兼任公司经理。

**第一百二十九条** 公司应当定期向股东披露董事、监事、高级管理人员从公司获得报酬的情况。

#### 第四节 监事会

**第一百三十条** 股份有限公司设监事会，本法第一百二十一条第一款、第一百三十三条另有规定的除外。

监事会成员为三人以上。监事会成员应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

监事会设主席一人，可以设副主席。监事会主席和副主席由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由监事会副主席召集和主持监事会会议；监事会副主席不能履行职务或者不履行职务的，由过半数的监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

本法第七十七条关于有限责任公司监事任期的规定，适用于股份有限公司监事。

**第一百三十一条** 本法第七十八条至第八十条的规定，适用于股份有限公司监事会。

监事会行使职权所必需的费用，由公司承担。

**第一百三十二条** 监事会每六个月至少召开一次会议。监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经全体监事的过半数通过。

监事会决议的表决，应当一人一票。

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

**第一百三十三条** 规模较小或者股东人数较少的股份有限公司，可以不设监事会，设一名监事，行使本法规定的监事会的职权。

#### 第五节 上市公司组织机构的特别规定

**第一百三十四条** 本法所称上市公司，是指其股票在证券交易所上市交易的股份有限公司。

**第一百三十五条** 上市公司在一年内购买、出售重大资产或者向他人提供担保的金额超过公司资产总额百分之三十的，应当由股东会作出决议，并经出席会议的股东所持表决权的三分之二以上通过。

**第一百三十六条** 上市公司设独立董事，具体管理办法由国务院证券监督管理机构规定。

上市公司的公司章程除载明本法第九十五条规定的事项外，还应当依照法律、行政法规的规定载明董事会专门委员会的组成、职权以及董事、监事、高级管理人员薪酬考核机制等事项。

**第一百三十七条** 上市公司在董事会中设置审计委员会的，董事会对下列事项作出决议前应当经审计委员会全体成员过半数通过：

- （一）聘用、解聘承办公司审计业务的会计师事务所；
- （二）聘任、解聘财务负责人；

（三）披露财务会计报告；

（四）国务院证券监督管理机构规定的其他事项。

**第一百三十八条** 上市公司设董事会秘书，负责公司股东会和董事会会议的筹备、文件保管以及公司股东资料的管理，办理信息披露事务等事宜。

**第一百三十九条** 上市公司董事与董事会会议决议事项所涉及的企业或者个人有关联关系的，该董事应当及时向董事会书面报告。有关联关系的董事不得对该项决议行使表决权，也不得代理其他董事行使表决权。该董事会会议由过半数的无关联关系董事出席即可举行，董事会会议所作决议须经无关联关系董事过半数通过。出席董事会会议的无关联关系董事人数不足三人的，应当将该事项提交上市公司股东会审议。

**第一百四十条** 上市公司应当依法披露股东、实际控制人的信息，相关信息应当真实、准确、完整。禁止违反法律、行政法规的规定代持上市公司股票。

**第一百四十一条** 上市公司控股子公司不得取得该上市公司的股份。

上市公司控股子公司因公司合并、质权行使等原因持有上市公司股份的，不得行使所持股份对应的表决权，并应当及时处分相关上市公司股份。

## 第六章 股份有限公司的股份发行和转让

### 第一节 股份发行

**第一百四十二条** 公司的资本划分为股份。公司的全部股份，根据公司章程的规定择一采用面额股或者无面额股。采用面额股的，每一股的金额相等。

公司可以根据公司章程的规定将已发行的面额股全部转换为无面额股或者将无面额股全部转换为面额股。

采用无面额股的，应当将发行股份所得股款的二分之一以上计入注册资本。

**第一百四十三条** 股份的发行，实行公平、公正的原则，同类别的每一股份应当具有同等权利。

同次发行的同类别股份，每股的发行条件和价格应当相同；认购人所认购的股份，每股应当支付相同价额。

**第一百四十四条** 公司可以按照公司章程的规定发行下列与普通股权利不同的类别股：

- （一）优先或者劣后分配利润或者剩余财产的股份；
- （二）每一股的表决权数多于或者少于普通股的股份；
- （三）转让须经公司同意等转让受限的股份；
- （四）国务院规定的其他类别股。

公开发行股份的公司不得发行前款第二项、第三项规定的类别股；公开发行前已发行的除外。

公司发行本条第一款第二项规定的类别股的，对于监事或者审计委员会成员的选举和更换，类别股与普通股每一股的表决权数相同。

**第一百四十五条** 发行类别股的公司，应当在公司章程中载明以下事项：

- （一）类别股分配利润或者剩余财产的顺序；
- （二）类别股的表决权数；

- （三）类别股的转让限制；
- （四）保护中小股东权益的措施；
- （五）股东会认为需要规定的其他事项。

**第一百四十六条** 发行类别股的公司，有本法第一百一十六条第三款规定的事项等可能影响类别股股东权利的，除应当依照第一百一十六条第三款的规定经股东会决议外，还应当经出席类别股股东会议的股东所持表决权的三分之二以上通过。

公司章程可以对需经类别股股东会议决议的其他事项作出规定。

**第一百四十七条** 公司的股份采取股票的形式。股票是公司签发的证明股东所持股份的凭证。

公司发行的股票，应当为记名股票。

**第一百四十八条** 面额股股票的发行价格可以按票面金额，也可以超过票面金额，但不得低于票面金额。

**第一百四十九条** 股票采用纸面形式或者国务院证券监督管理机构规定的其他形式。

股票采用纸面形式的，应当载明下列主要事项：

- （一）公司名称；
- （二）公司成立日期或者股票发行的时间；
- （三）股票种类、票面金额及代表的股份数，发行无面额股的，股票代表的股份数。

股票采用纸面形式的，还应当载明股票的编号，由法定代表人签名，公司盖章。

发起人股票采用纸面形式的，应当标明发起人股票字样。

**第一百五十条** 股份有限公司成立后，即向股东正式交付股票。公司成立前不得向股东交付股票。

**第一百五十一条** 公司发行新股，股东会应当对下列事项作出决议：

- （一）新股种类及数额；
- （二）新股发行价格；
- （三）新股发行的起止日期；
- （四）向原有股东发行新股的种类及数额；
- （五）发行无面额股的，新股发行所得股款计入注册资本的金额。

公司发行新股，可以根据公司经营情况和财务状况，确定其作价方案。

**第一百五十二条** 公司章程或者股东会可以授权董事会在三年内决定发行不超过已发行股份百分之五十的股份。但以非货币财产作价出资的应当经股东会决议。

董事会依照前款规定决定发行股份导致公司注册资本、已发行股份数发生变化的，对公司章程该项记载事项的修改不需再由股东会表决。

**第一百五十三条** 公司章程或者股东会授权董事会决定发行新股的，董事会决议应当经全体董事三分之二以上通过。

**第一百五十四条** 公司向社会公开募集股份，应当经国务院证券监督管理机构注册，公告招股说明书。

招股说明书应当附有公司章程，并载明下列事项：

- （一）发行的股份总数；
- （二）面额股的票面金额和发行价格或者无面额股的发行价格；
- （三）募集资金的用途；
- （四）认股人的权利和义务；
- （五）股份种类及其权利和义务；
- （六）本次募股的起止日期及逾期未募足时认股人可以撤回所认股份的说明。

公司设立时发行股份的，还应当载明发起人认购的股份数。

**第一百五十五条** 公司向社会公开募集股份，应当由依法设立的证券公司承销，签订承销协议。

**第一百五十六条** 公司向社会公开募集股份，应当同银行签订代收股款协议。

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

公司发行股份募足股款后，应予公告。

## 第二节 股份转让

**第一百五十七条** 股份有限公司的股东持有的股份可以向其他股东转让，也可以向股东以外的人转让；公司章程对股份转让有限制的，其转让按照公司章程的规定进行。

**第一百五十八条** 股东转让其股份，应当在依法设立的证券交易场所进行或者按照国务院规定的其他方式进行。

**第一百五十九条** 股票的转让，由股东以背书方式或者法律、行政法规规定的其他方式进行；转让后由公司将受让人的姓名或者名称及住所记载于股东名册。

股东会会议召开前二十日内或者公司决定分配股利的基准日前五日内，不得变更股东名册。法律、行政法规或者国务院证券监督管理机构对上市公司股东名册变更另有规定的，从其规定。

**第一百六十条** 公司公开发行股份前已发行的股份，自公司股票在证券交易所上市交易之日起一年内不得转让。法律、行政法规或者国务院证券监督管理机构对上市公司的股东、实际控制人转让其所持有的本公司股份另有规定的，从其规定。

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

股份在法律、行政法规规定的限制转让期限内出质的，质权人不得在限制转让期限内行使质权。

**第一百六十一条** 有下列情形之一的，对股东会该项决议投反对票的股东可以请求公司按照合理的价格收购其股份，公开发行股份的公司除外：

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

（二）公司转让主要财产；

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

自股东会决议作出之日起六十日内，股东与公司不能达成股份收购协议的，股东可以自股东会决议作出之日起九十日内向人民法院提起诉讼。

公司因本条第一款规定的情形收购的本公司股份，应当在六个月内依法转让或者注销。

**第一百六十二条** 公司不得收购本公司股份。但是，有下列情形之一的除外：

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

公司因前款第一项、第二项规定的情形收购本公司股份的，应当经股东会决议；公司因前款第三项、第五项、第六项规定的情形收购本公司股份的，可以按照公司章程或者股东会的授权，经三分之二以上董事出席的董事会会议决议。

公司依照本条第一款规定收购本公司股份后，属于第一项情形的，应当自收购之日起十日内注销；属于第二项、第四项情形的，应当在六个月内转让或者注销；属于第三项、第五项、第六项情形的，公司合计持有的本公司股份数不得超过本公司已发行股份总数的百分之十，并应当在三年内转让或者注销。

上市公司收购本公司股份的，应当依照《中华人民共和国证券法》的规定履行信息披露义务。上市公司因本条第一款第三项、第五项、第六项规定的情形收购本公司股份的，应当通过公开的集中交易方式进行。

公司不得接受本公司的股份作为质权的标的。

**第一百六十三条** 公司不得为他人取得本公司或者其母公司的股份提供赠与、借款、担保以及其他财务资助，公司实施员工持股计划的除外。

为公司利益，经股东会决议，或者董事会按照公司章程或者股东会的授权作出决议，公司可以为他人取得本公司或者其母公司的股份提供财务资助，但财务资助的累计总额不得超过已发行股本总额的百分之十。董事会作出决议应当经全体董事的三分之二以上通过。

违反前两款规定，给公司造成损失的，负有责任的董事、监事、高级管理人员应当承担赔偿责任。

**第一百六十四条** 股票被盗、遗失或者灭失，股东可以依照《中华人民共和国民事诉讼法》规定的公示催告程序，请求人民法院宣告该股票失效。人民法院宣告该股票失效后，股东可以向公司申请补发股票。

**第一百六十五条** 上市公司的股票，依照有关法律、行政法规及证券交易所交易规则上市交易。

**第一百六十六条** 上市公司应当依照法律、行政法规的规定披露相关信息。

**第一百六十七条** 自然人股东死亡后，其合法继承人可以继承股东资格；但是，股份转让受限的股份有限公司的章程另有规定的除外。

## 第七章 国家出资公司组织机构的特别规定

**第一百六十八条** 国家出资公司的组织机构，适用本章规定；本章没有规定的，适用本法其他规定。

本法所称国家出资公司，是指国家出资的国有独资公司、国有资本控股公司，包括国家出资的有限责任公司、股份有限公司。

**第一百六十九条** 国家出资公司，由国务院或者地方人民政府分别代表国家依法履行出资人职责，享有出资人权益。国务院或者地方人民政府可以授权国有资产监督管理机构或者其他部门、机构代表本级人民政府对国家出资公司履行出资人职责。

代表本级人民政府履行出资人职责的机构、部门，以下统称为履行出资人职责的机构。

**第一百七十条** 国家出资公司中中国共产党的组织，按照中国共产党章程的规定发挥领导作用，研究讨论公司重大经营管理事项，支持公司的组织机构依法行使职权。

**第一百七十一条** 国有独资公司章程由履行出资人职责的机构制定。

**第一百七十二条** 国有独资公司不设股东会，由履行出资人职责的机构行使股东会职权。履行出资人职责的机构可以授权公司董事会行使股东会的部分职权，但公司章程的制定和修改，公司的合并、分立、解散、申请破产，增加或者减少注册资本，分配利润，应当由履行出资人职责的机构决定。

**第一百七十三条** 国有独资公司的董事会依照本法规定行使职权。

国有独资公司的董事会成员中，应当过半数为外部董事，并应当有公司职工代表。

董事会成员由履行出资人职责的机构委派；但是，董事会成员中的职工代表由公司职工代表大会选举产生。

董事会设董事长一人，可以设副董事长。董事长、副董事长由履行出资人职责的机构从董事会成员中指定。

**第一百七十四条** 国有独资公司的经理由董事会聘任或者解聘。

经履行出资人职责的机构同意，董事会成员可以兼任经理。

**第一百七十五条** 国有独资公司的董事、高级管理人员，未经履行出资人职责的机构同意，不得在其他有限责任公司、股份有限公司或者其他经济组织兼职。

**第一百七十六条** 国有独资公司在董事会中设置由董事组成的审计委员会行使本法规定的监事会职权的，不设监事会或者监事。

**第一百七十七条** 国家出资公司应当依法建立健全内部监督管理和风险控制制度，加强内部合规管理。

## 第八章 公司董事、监事、高级管理人员的资格和义务

**第一百七十八条** 有下列情形之一的，不得担任公司的董事、监事、高级管理人员：

（一）无民事行为能力或者限制民事行为能力；

（二）因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序，被判处刑罚，或者因犯罪被剥夺政治权利，执行期满未逾五年，被宣告缓刑的，自缓刑考验期满之日起未逾二年；

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

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

（五）个人因所负数额较大债务到期未清偿被人民法院列为失信被执行人。

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

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

**第一百七十九条** 董事、监事、高级管理人员应当遵守法律、行政法规和公司章程。

**第一百八十条** 董事、监事、高级管理人员对公司负有忠实义务，应当采取措施避免自身利益与公司利益冲突，不得利用职权牟取不正当利益。

董事、监事、高级管理人员对公司负有勤勉义务，执行职务应当为公司的最大利益尽到管理者通常应有的合理注意。

公司的控股股东、实际控制人不担任公司董事但实际执行公司事务的，适用前两款规定。

**第一百八十一条** 董事、监事、高级管理人员不得有下列行为：

- （一）侵占公司财产、挪用公司资金；
- （二）将公司资金以其个人名义或者以其他个人名义开立账户存储；
- （三）利用职权贿赂或者收受其他非法收入；
- （四）接受他人与公司交易的佣金归为己有；
- （五）擅自披露公司秘密；
- （六）违反对公司忠实义务的其他行为。

**第一百八十二条** 董事、监事、高级管理人员，直接或者间接与本公司订立合同或者进行交易，应当就与订立合同或者进行交易有关的事项向董事会或者股东会报告，并按照公司章程的规定经董事会或者股东会决议通过。

董事、监事、高级管理人员的近亲属，董事、监事、高级管理人员或者其近亲属直接或者间接控制的企业，以及与董事、监事、高级管理人员有其他关联关系的关联人，与公司订立合同或者进行交易，适用前款规定。

**第一百八十三条** 董事、监事、高级管理人员，不得利用职务便利为自己或者他人谋取属于公司的商业机会。但是，有下列情形之一的除外：

- （一）向董事会或者股东会报告，并按照公司章程的规定经董事会或者股东会决议通过；
- （二）根据法律、行政法规或者公司章程的规定，公司不能利用该商业机会。

**第一百八十四条** 董事、监事、高级管理人员未向董事会或者股东会报告，并按照公司章程的规定经董事会或者股东会决议通过，不得自营或者为他人经营与其任职公司同类的业务。

**第一百八十五条** 董事会对本法第一百八十二条至第一百八十四条规定的事项决议时，关联董事不得参与表决，其表决权不计入表决权总数。出席董事会会议的无关联关系董事人数不足三人的，应当将该事项提交股东会审议。

**第一百八十六条** 董事、监事、高级管理人员违反本法第一百八十一条至第一百八十四条规定所得的收入应当归公司所有。

**第一百八十七条** 股东会要求董事、监事、高级管理人员列席会议的，董事、监事、高级管理人员应当列席并接受股东的质询。

**第一百八十八条** 董事、监事、高级管理人员执行职务违反法律、行政法规或者公司章程的规定，给公司造成损失的，应当承担赔偿责任。

**第一百八十九条** 董事、高级管理人员有前条规定的情形的，有限责任公司的股东、股份有限公司连续一百八十日以上单独或者合计持有公司百分之一以上股份的股东，可以书面请求监事会向人民法院提起诉讼；监事有前条规定的情形的，前述股东可以书面请求董事会向人民法院提起诉讼。

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

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

公司全资子公司的董事、监事、高级管理人员有前条规定情形，或者他人侵犯公司全资子公司合法权益造成损失的，有限责任公司的股东、股份有限公司连续一百八十日以上单独或者合计持有公司百分之一以上股份的股东，可以依照前三款规定书面请求全资子公司的监事会、董事会向人民法院提起诉讼或者以自己的名义直接向人民法院提起诉讼。

**第一百九十条** 董事、高级管理人员违反法律、行政法规或者公司章程的规定，损害股东利益的，股东可以向人民法院提起诉讼。

**第一百九十一条** 董事、高级管理人员执行职务，给他人造成损害的，公司应当承担赔偿责任；董事、高级管理人员存在故意或者重大过失的，也应当承担赔偿责任。

**第一百九十二条** 公司的控股股东、实际控制人指示董事、高级管理人员从事损害公司或者股东利益的行为的，与该董事、高级管理人员承担连带责任。

**第一百九十三条** 公司可以在董事任职期间为董事因执行公司职务承担的赔偿责任投保责任保险。

公司为董事投保责任保险或者续保后，董事会应当向股东会报告责任保险的投保金额、承保范围及保险费率等内容。

## 第九章 公司债券

**第一百九十四条** 本法所称公司债券，是指公司发行的约定按期还本付息的有价证券。

公司债券可以公开发行，也可以非公开发行。

公司债券的发行和交易应当符合《中华人民共和国证券法》等法律、行政法规的规定。

**第一百九十五条** 公开发行公司债券，应当经国务院证券监督管理机构注册，公告公司债券募集办法。

公司债券募集办法应当载明下列主要事项：

- （一）公司名称；
- （二）债券募集资金的用途；
- （三）债券总额和债券的票面金额；

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

**第一百九十六条** 公司以纸面形式发行公司债券的，应当在债券上载明公司名称、债券票面金额、利率、偿还期限等事项，并由法定代表人签名，公司盖章。

**第一百九十七条** 公司债券应当为记名债券。

**第一百九十八条** 公司发行公司债券应当置备公司债券持有人名册。

发行公司债券的，应当在公司债券持有人名册上载明下列事项：

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

**第一百九十九条** 公司债券的登记结算机构应当建立债券登记、存管、付息、兑付等相关制度。

**第二百条** 公司债券可以转让，转让价格由转让人与受让人约定。

公司债券的转让应当符合法律、行政法规的规定。

**第二百零一条** 公司债券由债券持有人以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于公司债券持有人名册。

**第二百零二条** 股份有限公司经股东会决议，或者经公司章程、股东会授权由董事会决议，可以发行可转换为股票的公司债券，并规定具体的转换办法。上市公司发行可转换为股票的公司债券，应当经国务院证券监督管理机构注册。

发行可转换为股票的公司债券，应当在债券上标明可转换公司债券字样，并在公司债券持有人名册上载明可转换公司债券的数额。

**第二百零三条** 发行可转换为股票的公司债券的，公司应当按照其转换办法向债券持有人换发股票，但债券持有人对转换股票或者不转换股票有选择权。法律、行政法规另有规定的除外。

**第二百零四条** 公开发行公司债券的，应当为同期债券持有人设立债券持有人会议，并在债券募集办法中对债券持有人会议的召集程序、会议规则和其他重要事项作出规定。债券持有人会议可以对与债券持有人有利害关系的事项作出决议。

除公司债券募集办法另有约定外，债券持有人会议决议对同期全体债券持有人发生法律效力。

**第二百零五条** 公开发行公司债券的，发行人应当为债券持有人聘请债券受托管理人，由其为债券持有人办理受领清偿、债权保全、与债券相关的诉讼以及参与债务人破产程序等事项。

**第二百零六条** 债券受托管理人应当勤勉尽责，公正履行受托管理职责，不得损害债券持有人利益。

受托管理人与债券持有人存在利益冲突可能损害债券持有人利益的，债券持有人会议可以决议变更债券受托管理人。

债券受托管理人违反法律、行政法规或者债券持有人会议决议，损害债券持有人利益的，应当承担赔偿责任。

## 第十章 公司财务、会计

**第二百零七条** 公司应当依照法律、行政法规和国务院财政部门的规定建立本公司的财务、会计制度。

**第二百零八条** 公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。财务会计报告应当依照法律、行政法规和国务院财政部门的规定制作。

**第二百零九条** 有限责任公司应当按照公司章程规定的期限将财务会计报告送交各股东。

股份有限公司的财务会计报告应当在召开股东会年会的二十日前置备于本公司，供股东查阅；公开发行股份的股份有限公司应当公告其财务会计报告。

**第二百一十条** 公司分配当年税后利润时，应当提取利润的百分之十列入公司法定公积金。公司法定公积金累计额为公司注册资本的百分之五十以上的，可以不再提取。

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

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

公司弥补亏损和提取公积金后所余税后利润，有限责任公司按照股东实缴的出资比例分配利润，全体股东约定不按照出资比例分配利润的除外；股份有限公司按照股东所持有的股份比例分配利润，公司章程另有规定的除外。

公司持有的本公司股份不得分配利润。

**第二百一十一条** 公司违反本法规定向股东分配利润的，股东应当将违反规定分配的利润退还公司；给公司造成损失的，股东及负有责任的董事、监事、高级管理人员应当承担赔偿责任。

**第二百一十二条** 股东会作出分配利润的决议的，董事会应当在股东会决议作出之日起六个月内进行分配。

**第二百一十三条** 公司以超过股票票面金额的发行价格发行股份所得的溢价款、发行无面额股所得股款未计入注册资本的金额以及国务院财政部门规定列入资本公积金的其他项目，应当列为公司资本公积金。

**第二百一十四条** 公司的公积金用于弥补公司的亏损、扩大公司生产经营或者转为增加公司注册资本。

公积金弥补公司亏损，应当先使用任意公积金和法定公积金；仍不能弥补的，可以按照规定使用资本公积金。

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

**第二百一十五条** 公司聘用、解聘承办公司审计业务的会计师事务所，按照公司章程的规定，由股东会、董事会或者监事会决定。

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

**第二百一十六条** 公司应当向聘用的会计师事务所提供真实、完整的会计凭证、会计账簿、财务会计报告及其他会计资料，不得拒绝、隐匿、谎报。

**第二百一十七条** 公司除法定的会计账簿外，不得另立会计账簿。

对公司资金，不得以任何个人名义开立账户存储。

## 第十一章 公司合并、分立、增资、减资

**第二百一十八条** 公司合并可以采取吸收合并或者新设合并。

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

**第二百一十九条** 公司与其持股百分之九十以上的公司合并，被合并的公司不需经股东会决议，但应当通知其他股东，其他股东有权请求公司按照合理的价格收购其股权或者股份。

公司合并支付的价款不超过本公司净资产百分之十的，可以不经股东会决议；但是，公司章程另有规定的除外。

公司依照前两款规定合并不经股东会决议的，应当经董事会决议。

**第二百二十条** 公司合并，应当由合并各方签订合并协议，并编制资产负债表及财产清单。公司应当自作出合并决议之日起十日内通知债权人，并于三十日内在报纸上或者国家企业信用信息公示系统公告。债权人自接到通知之日起三十日内，未接到通知的自公告之日起四十五日内，可以要求公司清偿债务或者提供相应的担保。

**第二百二十一条** 公司合并时，合并各方的债权、债务，应当由合并后存续的公司或者新设的公司继承。

**第二百二十二条** 公司分立，其财产作相应的分割。

公司分立，应当编制资产负债表及财产清单。公司应当自作出分立决议之日起十日内通知债权人，并于三十日内在报纸上或者国家企业信用信息公示系统公告。

**第二百二十三条** 公司分立前的债务由分立后的公司承担连带责任。但是，公司在分立前与债权人就债务清偿达成的书面协议另有约定的除外。

**第二百二十四条** 公司减少注册资本，应当编制资产负债表及财产清单。

公司应当自股东会作出减少注册资本决议之日起十日内通知债权人，并于三十日内在报纸上或者国家企业信用信息公示系统公告。债权人自接到通知之日起三十日内，未接到通知的自公告之日起四十五日内，有权要求公司清偿债务或者提供相应的担保。

公司减少注册资本，应当按照股东出资或者持有股份的比例相应减少出资额或者股份，法律另有规定、有限责任公司全体股东另有约定或者股份有限公司章程另有规定的除外。

**第二百二十五条** 公司依照本法第二百一十四条第二款的规定弥补亏损后，仍有亏损的，可以减少注册资本弥补亏损。减少注册资本弥补亏损的，公司不得向股东分配，也不得免除股东缴纳出资或者股款的义务。

依照前款规定减少注册资本的，不适用前条第二款的规定，但应当自股东会作出减少注册资本决议之日起三十日内在报纸上或者国家企业信用信息公示系统公告。

公司依照前两款的规定减少注册资本后，在法定公积金和任意公积金累计额达到公司注册资本百分之五十前，不得分配利润。

**第二百二十六条** 违反本法规定减少注册资本的，股东应当退还其收到的资金，减免股东出资的应当恢复原状；给公司造成损失的，股东及负有责任的董事、监事、高级管理人员应当承担赔偿责任。

**第二百二十七条** 有限责任公司增加注册资本时，股东在同等条件下有权优先按照实缴的出资比例认缴出资。但是，全体股东约定不按照出资比例优先认缴出资的除外。

股份有限公司为增加注册资本发行新股时，股东不享有优先认购权，公司章程另有规定或者股东会决议决定股东享有优先认购权的除外。

**第二百二十八条** 有限责任公司增加注册资本时，股东认缴新增资本的出资，依照本法设立有限责任公司缴纳出资的有关规定执行。

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

## 第十二章 公司解散和清算

**第二百二十九条** 公司因下列原因解散：

- （一）公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现；
- （二）股东会决议解散；
- （三）因公司合并或者分立需要解散；
- （四）依法被吊销营业执照、责令关闭或者被撤销；
- （五）人民法院依照本法第二百三十一条的规定予以解散。

公司出现前款规定的解散事由，应当在十日内将解散事由通过国家企业信用信息公示系统予以公示。

**第二百三十条** 公司有前条第一款第一项、第二项情形，且尚未向股东分配财产的，可以通过修改公司章程或者经股东会决议而存续。

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

**第二百三十一条** 公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司百分之十以上表决权的股东，可以请求人民法院解散公司。

**第二百三十二条** 公司因本法第二百二十九条第一款第一项、第二项、第四项、第五项规定而解散的，应当清算。董事为公司清算义务人，应当在解散事由出现之日起十五日内组成清算组进行清算。

清算组由董事组成，但是公司章程另有规定或者股东会决议另选他人的除外。

清算义务人未及时履行清算义务，给公司或者债权人造成损失的，应当承担赔偿责任。

**第二百三十三条** 公司依照前条第一款的规定应当清算，逾期不成立清算组进行清算或者成立清算组后不清算的，利害关系人可以申请人民法院指定有关人员组成清算组进行清算。人民法院应当受理该申请，并及时组织清算组进行清算。

公司因本法第二百二十九条第一款第四项的规定而解散的，作出吊销营业执照、责令关闭或者撤销决定的部门或者公司登记机关，可以申请人民法院指定有关人员组成清算组进行清算。

**第二百三十四条** 清算组在清算期间行使下列职权：

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

**第二百三十五条** 清算组应当自成立之日起十日内通知债权人，并于六十日内在报纸上或者国家企业信用信息公示系统公告。债权人应当自接到通知之日起三十日内，未接到通知的自公告之日起四十五日内，向清算组申报其债权。

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

在申报债权期间，清算组不得对债权人进行清偿。

**第二百三十六条** 清算组在清理公司财产、编制资产负债表和财产清单后，应当制订清算方案，并报股东会或者人民法院确认。

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

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

**第二百三十七条** 清算组在清理公司财产、编制资产负债表和财产清单后，发现公司财产不足清偿债务的，应当依法向人民法院申请破产清算。

人民法院受理破产申请后，清算组应当将清算事务移交给人民法院指定的破产管理人。

**第二百三十八条** 清算组成员履行清算职责，负有忠实义务和勤勉义务。

清算组成员怠于履行清算职责，给公司造成损失的，应当承担赔偿责任；因故意或者重大过失给债权人造成损失的，应当承担赔偿责任。

**第二百三十九条** 公司清算结束后，清算组应当制作清算报告，报股东会或者人民法院确认，并报送公司登记机关，申请注销公司登记。

**第二百四十条** 公司在存续期间未产生债务，或者已清偿全部债务的，经全体股东承诺，可以按照规定通过简易程序注销公司登记。

通过简易程序注销公司登记，应当通过国家企业信用信息公示系统予以公告，公告期限不少于二十日。公告期限届满后，未有异议的，公司可以在二十日内向公司登记机关申请注销公司登记。

公司通过简易程序注销公司登记，股东对本条第一款规定的内容承诺不实的，应当对注销登记前的债务承担连带责任。

**第二百四十一条** 公司被吊销营业执照、责令关闭或者被撤销，满三年未向公司登记机关申请注销公司登记的，公司登记机关可以通过国家企业信用信息公示系统予以公告，公告期限不少于六十日。公告期限届满后，未有异议的，公司登记机关可以注销公司登记。

依照前款规定注销公司登记的，原公司股东、清算义务人的责任不受影响。

**第二百四十二条** 公司被依法宣告破产的，依照有关企业破产的法律实施破产清算。

### 第十三章 外国公司的分支机构

**第二百四十三条** 本法所称外国公司，是指依照外国法律在中华人民共和国境外设立的公司。

**第二百四十四条** 外国公司在中华人民共和国境内设立分支机构，应当向中国主管机关提出申请，并提交其公司章程、所属国的公司登记证书等有关文件，经批准后，向公司登记机关依法办理登记，领取营业执照。

外国公司分支机构的审批办法由国务院另行规定。

**第二百四十五条** 外国公司在中华人民共和国境内设立分支机构，应当在中华人民共和国境内指定负责该分支机构的代表人或者代理人，并向该分支机构拨付与其所从事的经营活动相适应的资金。

对外国公司分支机构的经营资金需要规定最低限额的，由国务院另行规定。

**第二百四十六条** 外国公司的分支机构应当在其名称中标明该外国公司的国籍及责任形式。

外国公司的分支机构应当在本机构中置备该外国公司章程。

**第二百四十七条** 外国公司在中华人民共和国境内设立的分支机构不具有中国法人资格。

外国公司对其分支机构在中华人民共和国境内进行经营活动承担民事责任。

**第二百四十八条** 经批准设立的外国公司分支机构，在中华人民共和国境内从事业务活动，应当遵守中国的法律，不得损害中国的社会公共利益，其合法权益受中国法律保护。

**第二百四十九条** 外国公司撤销其在中华人民共和国境内的分支机构时，应当依法清偿债务，依照本法有关公司清算程序的规定进行清算。未清偿债务之前，不得将其分支机构的财产转移至中华人民共和国境外。

### 第十四章 法律责任

**第二百五十条** 违反本法规定，虚报注册资本、提交虚假材料或者采取其他欺诈手段隐瞒重要事实取得公司登记的，由公司登记机关责令改正，对虚报注册资本的公司，处以虚报注册资本金额百分之五以上百分之十五以下的罚款；对提交虚假材料或者采取其他欺诈手段隐瞒重要事实的公司，处以五万元以上二百万元以下的罚款；情节严重的，吊销营业执照；对直接负责的主管人员和其他直接责任人员处以三万元以上三十万元以下的罚款。

**第二百五十一条** 公司未依照本法第四十条规定公示有关信息或者不如实公示有关信息的，由公司登记机关责令改正，可以处以一万元以上五万元以下的罚款。情节严重的，处以五万元以上二十万元以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

**第二百五十二条** 公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，可以处以五万元以上二十万元以下的罚款；情节严重的，处以虚假出资或者未出资金额百分之五以上百分之十五以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

**第二百五十三条** 公司的发起人、股东在公司成立后，抽逃其出资的，由公司登记机关责令改正，处以所抽逃出资金额百分之五以上百分之十五以下的罚款；对直接负责的主管人员和其他直接责任人员处以三万元以上三十万元以下的罚款。

**第二百五十四条** 有下列行为之一的，由县级以上人民政府财政部门依照《中华人民共和国会计法》等法律、行政法规的规定处罚：

- （一）在法定的会计账簿以外另立会计账簿；
- （二）提供存在虚假记载或者隐瞒重要事实的财务会计报告。

**第二百五十五条** 公司在合并、分立、减少注册资本或者进行清算时，不依照本法规定通知或者公告债权人的，由公司登记机关责令改正，对公司处以一万元以上十万元以下的罚款。

**第二百五十六条** 公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载，或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额百分之五以上百分之十以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

**第二百五十七条** 承担资产评估、验资或者验证的机构提供虚假材料或者提供有重大遗漏的报告的，由有关部门依照《中华人民共和国资产评估法》、《中华人民共和国注册会计师法》等法律、行政法规的规定处罚。

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

**第二百五十八条** 公司登记机关违反法律、行政法规规定未履行职责或者履行职责不当的，对负有责任的领导人员和直接责任人员依法给予政务处分。

**第二百五十九条** 未依法登记为有限责任公司或者股份有限公司，而冒用有限责任公司或者股份有限公司名义的，或者未依法登记为有限责任公司或者股份有限公司的分公司，而冒用有限责任公司或者股份有限公司的分公司名义的，由公司登记机关责令改正或者予以取缔，可以并处十万元以下的罚款。

**第二百六十条** 公司成立后无正当理由超过六个月未开业的，或者开业后自行停业连续六个月以上的，公司登记机关可以吊销营业执照，但公司依法办理歇业的除外。

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

**第二百六十一条** 外国公司违反本法规定，擅自在中华人民共和国境内设立分支机构的，由公司登记机关责令改正或者关闭，可以并处五万元以上二十万元以下的罚款。

**第二百六十二条** 利用公司名义从事危害国家安全、社会公共利益的严重违法行为的，吊销营业执照。

**第二百六十三条** 公司违反本法规定，应当承担民事赔偿责任和缴纳罚款、罚金的，其财产不足以支付时，先承担民事赔偿责任。

**第二百六十四条** 违反本法规定，构成犯罪的，依法追究刑事责任。

## 第十五章 附 则

**第二百六十五条** 本法下列用语的含义：

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

（二）控股股东，是指其出资额占有限责任公司资本总额超过百分之五十或者其持有的股份占股份有限公司股本总额超过百分之五十的股东；出资额或者持有股份的比例虽然低于百分之五十，但依其出资额或者持有的股份所享有的表决权已足以对股东会的决议产生重大影响的股东。

（三）实际控制人，是指通过投资关系、协议或者其他安排，能够实际支配公司行为的人。

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

**第二百六十六条** 本法自 2024 年 7 月 1 日起施行。

本法施行前已登记设立的公司，出资期限超过本法规定的期限的，除法律、行政法规或者国务院另有规定外，应当逐步调整至本法规定的期限以内；对于出资期限、出资额明显异常的，公司登记机关可以依法要求其及时调整。具体实施办法由国务院规定。



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# Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies

**Promulgated by :** China Securities Regulatory Commission

**Promulgation Date :** 2023.02.17

**Effective Date :** 2023.03.31

**Validity Status :** Effective

**Document No. :** CSRC Announcement [2023] No. 43

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## CSRC Announcement [2023] No. 43

Upon approval by the State Council, the CSRC hereby releases the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies, which will come into effect on 31 March 2023.

China Securities Regulatory Commission

17 February 2023

## Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies

### Chapter I General Provisions

**Article 1** This Measures is formulated to regulate overseas securities offering and listing activities by domestic companies, either in direct or indirect form (hereinafter collectively referred to as overseas offering and listing), and promote lawful use of overseas capital markets by domestic companies to achieve regulated and sound development, in accordance with statutes including the Securities Law of the People's Republic of China.

**Article 2** Direct overseas offering and listing by domestic companies refers to such overseas offering and listing by a joint-stock company incorporated domestically.

Indirect overseas offering and listing by domestic companies refers to such overseas offering and listing by a company in the name of an overseas incorporated entity, whereas the company's major business operations are located domestically and such offering and listing is based on the underlying equity, assets, earnings or other similar rights of a domestic company.

For the purpose of this Measures, securities refer to equity shares, depository receipts, corporate bonds convertible to equity shares, and other equity securities that are offered and listed overseas, either directly or indirectly, by domestic companies.

**Article 3** Overseas offering and listing by domestic companies shall abide by laws, administrative regulations and relevant state rules concerning foreign investment in China, state-owned asset administration, industry regulation and outbound investment. Such overseas offering and listing shall not disrupt domestic market order, harm state or public interest or undermine the lawful rights and interests of domestic investors.

**Article 4** Overseas offering and listing by domestic companies shall be supervised and regulated in accordance with the lines, principles, policies, decisions and plans of the Party and the state, ensuring both development and security.

China Securities Regulatory Commission (the "CSRC") shall exercise supervision and regulation over the overseas offering and listing activities by domestic companies according to law. The CSRC and competent authorities under the State Council shall, to the extent of their respective mandate and according to law, exercise supervision and regulation over domestic companies that offer and list securities in overseas markets, and securities companies and securities service providers that provide domestic services to such activities.

The CSRC shall set up a supervisory and regulatory coordination mechanism with competent authorities under the State Council, with a view to strengthening policy cohesiveness, regulatory coordination and cross-agency information sharing.

**Article 5** The CSRC and competent authorities under the State Council will, under the principle of reciprocity, step up supervisory and regulatory cooperation with overseas securities regulatory agencies and competent authorities to implement cross-border supervision and regulation.

## **Chapter II Overseas Offering and Listing**

**Article 6** A domestic company that seeks to offer and list securities in overseas markets shall abide by applicable laws, including the Company Law of the People's Republic of China and the Accounting Law of the People's Republic of China, administrative regulations and relevant state rules, and formulate articles of association, improve internal control system, enhance corporate governance, and promote compliance in corporate finance and accounting practices.

**Article 7** A domestic company that seeks to offer and list securities in overseas markets shall abide by national secrecy laws and relevant provisions and take necessary measures to fulfill confidentiality obligations. Divulgence of state secrets or working secrets of government agencies is strictly prohibited.

Provision of personal information, important data and etc. to overseas parties in relation to overseas offering and listing of domestic companies shall be in compliance with applicable laws, administrative regulations and relevant state rules.

**Article 8** No overseas offering and listing shall be made under any of the following circumstances:

- (1) where such securities offering and listing is explicitly prohibited by provisions in laws, administrative regulations and relevant state rules;
- (2) where the intended securities offering and listing may endanger national security as reviewed and determined by competent authorities under the State Council in accordance with law;
- (3) where the domestic company intending to make the securities offering and listing, or its controlling shareholders and the actual controller, have committed crimes such as corruption, bribery, embezzlement, misappropriation of property or undermining the order of the socialist market economy during the latest three years;
- (4) where the domestic company intending to make the securities offering and listing is suspected of committing crimes or major violations of laws and regulations, and is under investigation according to law, and no conclusion has yet been made thereof;
- (5) where there are material ownership disputes over equity held by the domestic company's controlling shareholder or by other shareholders that are controlled by the controlling shareholder and/or actual controller.

**Article 9** Overseas offering and listing by domestic companies shall be made in strict compliance with relevant laws, administrative regulations and rules concerning national security in spheres of foreign investment, cybersecurity, data security and etc., and duly fulfill their obligations to protect national security. If the intended overseas offering and listing necessitates a national security review, relevant security review procedures shall be completed according to law before the application for such offering and listing is submitted to any overseas parties such as securities regulatory agencies and trading venues.

A domestic company that seeks to offer and list securities in overseas markets shall, as per requirement by competent authorities under the State Council, take such measures as timely rectification,

commitment and divestiture of relevant business and assets, to eliminate or avert any impact on national security resulting from such overseas offering and listing.

**Article 10** Target investors of overseas offering and listing by domestic companies shall be overseas investors, unless prescribed in the following paragraph or otherwise stipulated by the state.

A domestic company that seeks to offer and list securities in overseas markets for the purpose of implementing equity incentive plans or financing asset acquisitions may offer securities to eligible domestic investors that meet the standards prescribed by the CSRC.

A domestic state-owned company that seeks to offer securities to eligible domestic investors as prescribed in the preceding paragraphs shall also comply with relevant regulations of state-owned assets administration.

**Article 11** A company that offers and lists securities on overseas markets may raise funds and pay dividends in a foreign currency or the Chinese Yuan (RMB).

Proceeds from the company's overseas securities offering shall be used and invested for purposes in compliance with laws, administrative regulations and relevant state rules.

Currency conversion and cross-border remittance of funds in relation to overseas offering and listing by domestic companies shall comply with state regulations concerning cross-border investment and financing, foreign exchange administration, and cross-border RMB administration.

**Article 12** Securities companies, securities service providers and practitioners engaged in overseas offering and listing by domestic companies shall abide by laws, administrative regulations and relevant state rules, observe industry-accepted professional standards and ethical norms, and rigorously fulfill statutory duties to ensure the truthfulness, accuracy and completeness of the documents that they produce and issue. Securities companies, securities service providers and practitioners engaged in overseas offering and listing by domestic companies shall not, in the document they produce and issue, make any comments in a manner that misrepresents or disparages laws and policies, business environment and judicial situation, etc. of the state.

### **Chapter III Filing Requirements**

**Article 13** A domestic company that seeks to offer and list securities in overseas markets shall fulfill the filing procedure with the CSRC as per requirement of this Measures, submit relevant materials that contain a filing report and a legal opinion, and provide truthful, accurate and complete information on the shareholders and etc.

**Article 14** Where a domestic company seeks to directly offer and list securities in overseas markets, the issuer shall file with the CSRC.

Where a domestic company seeks to indirectly offer and list securities in overseas markets, the issuer shall designate a major domestic operating entity, which shall, as the domestic responsible entity, file with the CSRC.

**Article 15** Any overseas offering and listing made by an issuer that meets both the following conditions will be determined as indirect:

(1) 50% or more of the issuer's operating revenue, total profit, total assets or net assets as documented in its audited consolidated financial statements for the most recent accounting year is accounted for by domestic companies; and

(2) the main parts of the issuer's business activities are conducted in the Chinese Mainland, or its main places of business are located in the Chinese Mainland, or the senior managers in charge of its business operation and management are mostly Chinese citizens or domiciled in the Chinese Mainland.

The determination as to whether or not an overseas offering and listing by domestic companies is indirect, shall be made on a substance over form basis.

**Article 16** Initial public offerings or listings in overseas markets shall be filed with the CSRC within 3 working days after the relevant application is submitted overseas.

Subsequent securities offerings of an issuer in the same overseas market where it has previously offered and listed securities shall be filed with the CSRC within 3 working days after the offering is completed.

Subsequent securities offerings and listings of an issuer in other overseas markets than where it has offered and listed shall be filed pursuant to provisions in the first paragraph of this Article.

**Article 17** A domestic company that seeks to directly or indirectly list its domestic assets in overseas markets through single or multiple acquisitions, share swaps, transfers of shares or other means, shall fulfil the filing procedure as prescribed in the first paragraph of Article 16 herein. Where overseas application documents are not required, the filing shall be made within 3 working days after the first public disclosure of the specifics of the transaction is made by the listed company.

**Article 18** For a domestic company directly offering and listing overseas, shareholders of its domestic unlisted shares applying to convert such shares into shares listed and traded on an overseas trading

venue shall conform to relevant regulations promulgated by the CSRC, and authorize the domestic company to file with the CSRC on their behalf.

The term "domestic unlisted shares" in the preceding paragraph refers to shares offered by a domestic company but not listed or quoted for trading on any domestic trading venues. Domestic unlisted shares shall be centrally registered and deposited at a domestic securities depository and settlement agency. The registration and settlement of overseas listed shares is subject to applicable rules in overseas markets.

**Article 19** Where the filing documents are complete and in compliance with stipulated requirements, the CSRC will, within 20 working days after receiving the filing documents, conclude the filing procedure and publish the filing results on the CSRC website.

Where the filing documents are incomplete or do not conform to stipulated requirements, the CSRC shall request supplementation and amendment thereto within 5 working days after receiving the filing documents. The issuer should then complete supplementation and amendment within 30 working days. During the filing process, where the issuer may be involved in circumstances prescribed in Article 8 herein, the CSRC may consult with competent authorities under the State Council. Time taken for filing document supplementation and the CSRC consultation shall not be counted in the time limit for filing.

The CSRC may formulate filing guidelines based on this Measures to illustrate specific requirements for the format, content and attachments of filing documents.

**Article 20** Filing documents for overseas offering and listing by domestic companies shall be truthful, accurate and complete. No misrepresentation, misleading statement or major omission is allowed. The domestic company and its controlling shareholders, actual controllers, board directors, supervisors, and senior executives shall fulfill their information disclosure obligations according to law, practice with integrity and due diligence in ensuring the truthfulness, accuracy and completeness of the filing documents.

Securities companies and law firms should make thorough examination and verification of filing documents, and ensure none of the circumstances specified below occurs:

- (1) the filing documents contain conflicting or inconsistent and materially different descriptions of the same facts;
- (2) the filing documents are considerably difficult to understand due to lack of clarity and logic in writing;

(3) the filing documents fail to prove whether the company meets the conditions prescribed in Article 15 herein;

(4) failure to report material events timely as required.

**Article 21** An overseas securities company that serves as a sponsor or lead underwriter for overseas securities offering and listing by domestic companies shall file with the CSRC within 10 working days after signing its first engagement agreement for such business, and submit to the CSRC, no later than January 31 each year, an annual report on its business activities in the previous year associated with overseas securities offering and listing by domestic companies.

An overseas securities company that has entered into engagement agreements before the effectuation of this Measures and is serving in practice as a sponsor or lead underwriter for overseas securities offering and listing by domestic companies shall file with the CSRC within 30 working days after this Measures takes effect.

#### **Chapter IV Supervision and Regulation**

**Article 22** Upon the occurrence of any of the material events specified below after an issuer has offered and listed securities in an overseas market, the issuer shall submit a report thereof to CSRC within 3 working days after the occurrence and public disclosure of the event:

(1) change of control;

(2) investigations or sanctions imposed by overseas securities regulatory agencies or other relevant competent authorities;

(3) change of listing status or transfer of listing segment;

(4) voluntary or mandatory delisting.

Where an issuer's main business undergoes material changes after overseas offering and listing, and is therefore beyond the scope of business stated in the filing documents, such issuer shall submit to the CSRC an ad hoc report and a relevant legal opinion issued by a domestic law firm within 3 working days after occurrence of the changes.

**Article 23** The CSRC and competent authorities under the State Council shall, to the extent of their respective mandate and according to law, carry out supervisory inspections or investigations of domestic companies whose securities are offered and listed overseas, and of the related business undertakings carried out by securities companies and securities service providers in the Chinese Mainland.

**Article 24** For violations of this Measures by domestic companies offering and listing overseas, and securities companies, securities service providers and relevant practitioners providing service to such overseas offering and listing from the Chinese Mainland, the CSRC and competent authorities under the State Council may, for the purpose of maintaining market integrity and to the extent of their respective mandate, impose administrative regulatory measures including order for correction, regulatory talks and warning letters, proportionate to the severity of the violations.

**Article 25** A domestic company found in violation of Article 8 herein prior to an overseas offering and listing shall postpone or terminate the intended overseas offering and listing, and report to the CSRC and competent authorities under the State Council in a timely manner.

**Article 26** Where the overseas offering and listing by a domestic company is in violation of this Measures, or where a foreign securities company is in violation of Article 21 herein, the CSRC may inform its regulatory counterparts in the overseas jurisdictions via cross-border securities regulatory cooperation mechanisms.

Where an overseas securities regulatory agency intends to carry out investigation and evidence collection regarding overseas offering and listing activities by a domestic company, and request assistance of the CSRC under relevant cross-border securities regulatory cooperation mechanisms, the CSRC may provide necessary assistance in accordance with law. Any domestic entity or individual providing documents and materials requested by an overseas securities regulatory agency out of investigative or evidence collection purposes, shall not provide such information without prior approval from the CSRC and competent authorities under the State Council.

## **Chapter V Legal Liabilities**

**Article 27** Where a domestic company fails to fulfill filing procedure as stipulated by Article 13 herein, or offers and lists securities in an overseas market in violation of Articles 8 and 25 herein, the CSRC shall order rectification, issue warnings to such domestic company, and impose a fine of between RMB 1,000,000 yuan and RMB 10,000,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be warned and each imposed a fine of between RMB 500,000 yuan and RMB 5,000,000 yuan.

Controlling shareholders and actual controllers of the domestic company that organize or instruct the aforementioned violations shall be imposed a fine of RMB 1,000,000 yuan and RMB 10,000,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be each imposed a fine of between RMB 500,000 yuan and RMB 5,000,000 yuan.

Securities companies and securities service providers that fail to duly urge compliance by the domestic company with Articles 8, 13 and 25 herein shall be warned and imposed a fine of between RMB 500,000 yuan and RMB 5,000,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be warned and each imposed a fine of between RMB 200,000 yuan and RMB 2,000,000 yuan.

**Article 28** Where the filing documents submitted by a domestic company contains misrepresentation, misleading statement or material omission, the CSRC shall issue correction orders and warnings, and impose a fine of between RMB 1,000,000 yuan and RMB 10,000,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be warned and each imposed a fine of between RMB 500,000 yuan and RMB 5,000,000 yuan.

Controlling shareholders and actual controllers of the domestic company that organize or instruct the aforementioned violations, or enable the aforementioned violations by concealing relevant matters, shall be imposed a fine of RMB 1,000,000 yuan and RMB 10,000,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be each imposed a fine of between RMB 500,000 yuan and RMB 5,000,000 yuan.

**Article 29** Where a securities company or securities service provider, failing to practice with due diligence, either: 1) makes misrepresentation, misleading statement or material omission in documents produced and issued in compliance with domestic laws, administrative regulations or relevant rules promulgated by the state, or; 2) makes misrepresentation, misleading statement or material omission in documents produced and issued in compliance with rules of the overseas listing market, and thereby disrupts domestic market order and undermines lawful rights and interests of domestic investors, the CSRC and competent authorities under the State Council shall issue correction orders and warnings, and impose a fine of between one and ten times of the revenue if any, or of between RMB 500,000 yuan and RMB 5,000,000 yuan in the absence of a revenue therefrom or if the revenue was less than RMB 500,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be warned and each imposed a fine of between RMB 200,000 yuan and RMB 2,000,000 yuan.

**Article 30** Violations of other articles of this Measures that are penalizable under other laws or administrative regulations shall be penalized accordingly.

**Article 31** For cases of severe violations of this Measures or other laws and administrative regulations, the CSRC may impose a ban on entering into the securities market upon the relevant responsible persons. Any such violation that constitutes a crime shall be investigated for criminal liability according to law.

**Article 32** The CSRC shall, in accordance with law, incorporate the compliance status of relevant market participants with this Measures into the Securities Market Integrity Archives and upload the record to the National Credit Information Sharing Platform, with a view to strengthening cross-agency information sharing through concerted efforts with competent authorities, and enforcing punishment and deterrence in accordance with laws and regulations.

## **Chapter VI Supplementary Provisions**

**Article 33** Overseas offering and listing by subordinate companies majority-owned by or under the actual control of a domestically listed company, and overseas issuance by domestically listed companies of securities such as depository receipts that are based on and convertible into domestic securities shall also comply with other applicable rules and regulations promulgated by the CSRC, and be filed in accordance with this Measures.

**Article 34** For the purpose of this Measures, domestic companies herein refers to companies incorporated within the Chinese Mainland, including domestic joint-stock companies whose securities are directly offered and listed overseas and the domestic operating entities of companies whose securities are indirectly offered and listed overseas.

For the purpose of this Measures, securities companies and securities service providers herein refers to securities companies and securities service providers, both domestic and overseas, that undertake business in relation to overseas offering and listing by domestic companies.

**Article 35** This Measures shall come into effect on 31 March 2023. The Notice on Implementing "Essential Clauses of Articles of Association for Companies Seeking to List Overseas" shall be simultaneously invalidated.

**Note: this English translation is sourced from the official website of CSRC**

Annex I

Annex II



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# 境内企业境外发行证券和上市管理试行办法

发 文 机 关:中国证券监督管理委员会

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中国证券监督管理委员会公告〔2023〕43号

经国务院批准，现公布《境内企业境外发行证券和上市管理试行办法》，自2023年3月31日起施行。

中国证监会

2023年2月17日

## 境内企业境外发行证券和上市管理试行办法

### 第一章 总则

**第一条** 为规范中华人民共和国境内企业直接或者间接到境外发行证券或者将其证券在境外上市交易（以下简称境外发行上市）相关活动，促进境内企业依法合规利用境外资本市场实现规范健康发展，根据《中华人民共和国证券法》等法律，制定本办法。

**第二条** 境内企业直接境外发行上市，是指在境内登记设立的股份有限公司境外发行上市。

境内企业间接境外发行上市，是指主要经营活动在境内的企业，以在境外注册的企业的名义，基于境内企业的股权、资产、收益或其他类似权益境外发行上市。

本办法所称证券，是指境内企业直接或者间接在境外发行上市的股票、存托凭证、可转换为股票的公司债券或者其他具有股权性质的证券。

**第三条** 境内企业境外发行上市活动，应当遵守外商投资、国有资产管理、行业监管、境外投资等法律、行政法规和国家有关规定，不得扰乱境内市场秩序，不得损害国家利益、社会公共利益和境内投资者合法权益。

**第四条** 境内企业境外发行上市活动的监督管理，应当贯彻党和国家路线方针政策、决策部署，统筹发展和安全。

中国证券监督管理委员会（以下简称中国证监会）依法对境内企业境外发行上市活动实施监督管理。中国证监会、国务院有关主管部门依法在各自职责范围内，对境外发行上市的境内企业以及在境内为其提供相应服务的证券公司、证券服务机构实施监督管理。

中国证监会会同国务院有关主管部门建立境内企业境外发行上市监督管理协调机制，加强政策规则衔接、监督管理协调和信息共享。

**第五条** 中国证监会、国务院有关主管部门按照对等互惠原则，加强与境外证券监督管理机构、有关主管部门的监督管理合作，实施跨境监督管理。

## 第二章 境外发行上市

**第六条** 境外发行上市的境内企业应当依照《中华人民共和国公司法》《中华人民共和国会计法》等法律、行政法规和国家有关规定制定章程，完善内部控制制度，规范公司治理和财务、会计行为。

**第七条** 境外发行上市的境内企业应当遵守国家保密法律制度，采取必要措施落实保密责任，不得泄露国家秘密和国家机关工作秘密。

境内企业境外发行上市涉及向境外提供个人信息和重要数据等的，应当符合法律、行政法规和国家有关规定。

**第八条** 存在下列情形之一的，不得境外发行上市：

- （一）法律、行政法规或者国家有关规定明确禁止上市融资的；
- （二）经国务院有关主管部门依法审查认定，境外发行上市可能危害国家安全的；
- （三）境内企业或者其控股股东、实际控制人最近3年内存在贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序的刑事犯罪的；
- （四）境内企业因涉嫌犯罪或者重大违法违规行为正在被依法立案调查，尚未有明确结论意见的；
- （五）控股股东或者受控股股东、实际控制人支配的股东持有的股权存在重大权属纠纷的。

**第九条** 境内企业境外发行上市活动，应当严格遵守外商投资、网络安全、数据安全等国家安全法律、行政法规和有关规定，切实履行维护国家安全的义务。涉及安全审查的，应当在向境外证券监督管理机构、交易场所等提交发行上市申请前依法履行相关安全审查程序。

境外发行上市的境内企业应当根据国务院有关主管部门要求，采取及时整改、作出承诺、剥离业务资产等措施，消除或者避免境外发行上市对国家安全的影响。

**第十条** 境内企业境外发行上市的发行对象应当为境外投资者，但符合本条第二款规定或者国家另有规定的除外。

直接境外发行上市的境内企业实施股权激励或者发行证券购买资产的，可以向符合中国证监会规定的境内特定对象发行证券。

境内国有企业依照前款规定向境内特定对象发行证券的，应当同时符合国有资产管理的相关规定。

**第十一条** 境内企业境外发行上市的，可以以外币或者人民币募集资金、进行分红派息。

境内企业境外发行证券所募资金的用途和投向，应当符合法律、行政法规和国家有关规定。

境内企业境外发行上市相关资金的汇兑及跨境流动，应当符合国家跨境投融资、外汇管理和跨境人民币管理等规定。

**第十二条** 从事境内企业境外发行上市业务的证券公司、证券服务机构和人员，应当遵守法律、行政法规和国家有关规定，遵循行业公认的业务标准和道德规范，严格履行法定职责，保证所制作、出具文件的真实性、准确性和完整性，不得以对国家法律政策、营商环境、司法状况等进行歪曲、贬损的方式在所制作、出具的文件中发表意见。

## 第三章 备案要求

**第十三条** 境外发行上市的境内企业，应当依照本办法向中国证监会备案，报送备案报告、法律意见书等有关材料，真实、准确、完整地说明股东信息等情况。

**第十四条** 境内企业直接境外发行上市的，由发行人向中国证监会备案。

境内企业间接境外发行上市的，发行人应当指定一家主要境内运营实体为境内责任人，向中国证监会备案。

**第十五条** 发行人同时符合下列情形的，认定为境内企业间接境外发行上市：

（一）境内企业最近一个会计年度的营业收入、利润总额、总资产或者净资产，任一指标占发行人同期经审计合并财务报表相关数据的比例超过 50%；

（二）经营活动的主要环节在境内开展或者主要场所位于境内，或者负责经营管理的高级管理人员多数为中国公民或者经常居住地位于境内。

境内企业间接境外发行上市的认定，遵循实质重于形式的原则。

**第十六条** 发行人境外首次公开发行或者上市的，应当在境外提交发行上市申请文件后 3 个工作日内向中国证监会备案。

发行人境外发行上市后，在同一境外市场发行证券的，应当在发行完成后 3 个工作日内向中国证监会备案。

发行人境外发行上市后，在其他境外市场发行上市的，应当按照本条第一款规定备案。

**第十七条** 通过一次或者多次收购、换股、划转以及其他交易安排实现境内企业资产直接或者间接境外上市，境内企业应当按照第十六条第一款规定备案，不涉及在境外提交申请文件的，应当在上市公司首次公告交易具体安排之日起 3 个工作日内备案。

**第十八条** 境内企业直接境外发行上市的，持有其境内未上市股份的股东申请将其持有的境内未上市股份转换为境外上市股份并到境外交易场所上市流通，应当符合中国证监会有关规定，并委托境内企业向中国证监会备案。

前款所称境内未上市股份，是指境内企业已发行但未在境内交易场所上市或者挂牌交易的股份。境内未上市股份应当在境内证券登记结算机构集中登记存管。境外上市股份的登记结算安排等适用境外上市地的规定。

**第十九条** 备案材料完备、符合规定的，中国证监会自收到备案材料之日起 20 个工作日内办结备案，并通过网站公示备案信息。

备案材料不完备或者不符合规定的，中国证监会在收到备案材料后 5 个工作日内告知发行人需要补充的材料。发行人应当在 30 个工作日内补充材料。在备案过程中，发行人可能存在本办法第八条规定情形的，中国证监会可以征求国务院有关主管部门意见。补充材料和征求意见的时间均不计算在备案时限内。

中国证监会依据本办法制定备案指引，明确备案操作要求、备案材料内容、格式和应当附具的文件等。

**第二十条** 境内企业境外发行上市的备案材料应当真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏。境内企业及其控股股东、实际控制人、董事、监事、高级管理人员应当依法履行信息披露义务，诚实守信、勤勉尽责，保证备案材料真实、准确、完整。

证券公司、律师事务所应当对备案材料进行充分核查验证，不得存在下列情形：

- （一）备案材料内容存在相互矛盾或者同一事实表述不一致且有实质性差异；
- （二）备案材料内容表述不清、逻辑混乱，严重影响理解；
- （三）未对企业是否符合本办法第十五条认定标准进行充分论证；
- （四）未及时报告或者说明重大事项。

**第二十一条** 境外证券公司担任境内企业境外发行上市业务保荐人或者主承销商的，应当自首次签订业务协议之日起 10 个工作日内向中国证监会备案，并应当于每年 1 月 31 日前向中国证监会报送上年度从事境内企业境外发行上市业务情况的报告。

境外证券公司在本办法施行前已经签订业务协议，正在担任境内企业境外发行上市业务保荐人或者主承销商的，应当自本办法施行之日起 30 个工作日内进行备案。

#### 第四章 监督管理

**第二十二条** 发行人境外发行上市后发生下列重大事项，应当自相关事项发生并公告之日起 3 个工作日内向中国证监会报告具体情况：

- （一）控制权变更；
- （二）被境外证券监督管理机构或者有关主管部门采取调查、处罚等措施；
- （三）转换上市地位或者上市板块；
- （四）主动终止上市或者强制终止上市。

发行人境外发行上市后主要业务经营活动发生重大变化，不再属于备案范围的，应当自相关变化发生之日起 3 个工作日内，向中国证监会提交专项报告及境内律师事务所出具的法律意见书，说明有关情况。

**第二十三条** 中国证监会、国务院有关主管部门按照职责分工，依法对境外发行上市的境内企业，以及证券公司、证券服务机构在境内开展的境内企业境外发行上市业务进行监督检查或者调查。

**第二十四条** 为维护市场秩序，中国证监会、国务院有关主管部门可以按照职责分工，视情节轻重，对违反本办法的境外发行上市的境内企业以及在境内为其提供相应服务的证券公司、证券服务机构及其相关执业人员采取责令改正、监管谈话、出具警示函等措施。

**第二十五条** 境内企业境外发行上市前存在本办法第八条所列情形的，应当暂缓或者终止境外发行上市，并及时向中国证监会、国务院有关主管部门报告。

**第二十六条** 境内企业境外发行上市违反本办法，或者境外证券公司违反本办法第二十一条规定的，中国证监会可以通过跨境监督管理合作机制通报境外证券监督管理机构。

境外证券监督管理机构对境内企业境外发行上市及相关活动进行调查取证，根据跨境监督管理合作机制向中国证监会提出协查请求的，中国证监会可以依法提供必要协助。境内单位和个人按照境外证券监督管理机构调查取证要求提供相关文件和资料的，应当经中国证监会和国务院有关主管部门同意。

#### 第五章 法律责任

**第二十七条** 境内企业违反本办法第十三条规定未履行备案程序，或者违反本办法第八条、第二十五条规定境外发行上市的，由中国证监会责令改正，给予警告，并处以 100 万元以上 1000 万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以 50 万元以上 500 万元以下的罚款。

境内企业的控股股东、实际控制人组织、指使从事前款违法行为的，处以 100 万元以上 1000 万元以下的罚款。对直接负责的主管人员和其他直接责任人员，处以 50 万元以上 500 万元以下的罚款。

证券公司、证券服务机构未按照职责督促企业遵守本办法第八条、第十三条、第二十五条规定的，给予警告，并处以 50 万元以上 500 万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以 20 万元以上 200 万元以下的罚款。

**第二十八条** 境内企业的备案材料存在虚假记载、误导性陈述或者重大遗漏的，由中国证监会责令改正，给予警告，并处以 100 万元以上 1000 万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以 50 万元以上 500 万元以下的罚款。

境内企业的控股股东、实际控制人组织、指使从事前款违法行为，或者隐瞒相关事项导致发生前款情形的，处以 100 万元以上 1000 万元以下的罚款。对直接负责的主管人员和其他直接责任人员，处以 50 万元以上 500 万元以下的罚款。

**第二十九条** 证券公司、证券服务机构未勤勉尽责，依据境内法律、行政法规和国家有关规定制作、出具的文件存在虚假记载、误导性陈述或者重大遗漏，或者依据境外上市地规则制作、出具的文件存在虚假记载、误导性陈述或者重大遗漏扰乱境内市场秩序，损害境内投资者合法权益的，由中国证监会、国务院有关主管部门责令改正，给予警告，并处以业务收入 1 倍以上 10 倍以下的罚款；没有业务收入或者业务收入不足 50 万元的，处以 50 万元以上 500 万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以 20 万元以上 200 万元以下的罚款。

**第三十条** 违反本办法的其他有关规定，有关法律、行政法规有处罚规定的，依照其规定给予处罚。

**第三十一条** 违反本办法或者其他法律、行政法规，情节严重的，中国证监会可以对有关责任人员采取证券市场禁入的措施。构成犯罪的，依法追究刑事责任。

**第三十二条** 中国证监会依法将有关市场主体遵守本办法的情况纳入证券市场诚信档案并共享至全国信用信息共享平台，会同有关部门加强信息共享，依法依规实施惩戒。

## 第六章 附则

**第三十三条** 境内上市公司控股或者实际控制的境内企业境外发行上市，以及境内上市公司以境内证券为基础在境外发行可转换为境内证券的存托凭证等证券品种，应当同时符合中国证监会的其他相关规定，并按照本办法备案。

**第三十四条** 本办法所称境内企业，是指在中华人民共和国境内登记设立的企业，包括直接境外发行上市的境内股份有限公司和间接境外发行上市主体的境内运营实体。

本办法所称证券公司、证券服务机构，是指从事境内企业境外发行上市业务的境内外证券公司、证券服务机构。

**第三十五条** 本办法自 2023 年 3 月 31 日起施行。《关于执行〈到境外上市公司章程必备条款〉的通知》同时废止。

附件：关于《境内企业境外发行证券和上市管理试行办法》的说明



扫一扫，手机阅读更方便