

Securities Law of the People's Republic of China

Order of the President

(Order No. 43 [2005])

The Securities Law of the People's Republic of China was amended and adopted at the 18th Meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005. We hereby promulgate the Securities Law of the People's Republic of China, as amended, which shall come into force as of January 1, 2006.

President of the People's Republic of China Hu Jintao

October 27, 2005

Securities Law of the People's Republic of China

(Adopted at the 6th Meeting of the Standing Committee of the 9th National People's Congress on December 29, 1998, amended at the 18th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on October 27, 2005 according to the Decision on Amending the Securities Law of the People's Republic of China which was made at the 11th meeting of the Standing Committee of the 10th People's Congress on August 28, 2004)

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Chapter I General Provisions

Article 1 The present Law is formulated in order to standardize the issuance and trading of securities, protect the legitimate rights and interests of investors, safeguard the economic order and public interests of the society and promote the development of the socialist market economy.

Article 2 The present Law shall apply to the issuance and trading of stocks, corporate bonds as well as any other

securities as lawfully recognized by the State Council within the territory of the People's Republic of China. Where there is no such provision in the present Law, the provisions of the Corporation Law of the People's Republic of China and other relevant laws and administrative regulations shall apply.

Any listed trading of government bonds and share of securities investment funds shall be governed by the present Law. In case there is any special provision in any other law or administrative Regulation, such special provision shall prevail.

The measures for the administration of issuance and trading of securities derivatives shall be prescribed by the State Council according to the principles of the Present Law.

Article 3 The issuance and trading of securities shall be carried out according to the principles of openness, fairness and impartiality.

Article 4 The parties involved in any issuance or transaction of securities shall have equal legal status and shall uphold the principles of free will, compensation, and uprightness and creditworthiness.

Article 5 The issuance and trading of securities shall abide by laws and administrative regulations. Any fraud, insider trading or manipulation of the securities market shall be prohibited.

Article 6 The divided operation and management shall be applied to the industries of securities, banking, trust and insurance. The securities companies and the business organs of banks, trust, and insurance shall be separately established, unless it is otherwise provided for by the state.

Article 7 The securities regulatory authority under the State Council shall carry out centralized and unified supervision and administration of the national securities market.

The securities regulatory authority under the State Council may, according to the relevant requirements, establish dispatched offices, which shall perform their duties and functions of supervision and administration according to their authorization.

Article 8 Under the centralized and unified supervision and administration of the state regarding the issuance and trading of securities, a securities industrial association shall be established according to law, which shall adopt the self-regulating administration.

Article 9 The auditing organs of the state shall carry out auditing supervision of the securities exchanges, securities companies, securities registration and clearing institutions, and securities regulatory bodies.

Chapter II Issuance of Securities

Article 10 A public issuance of securities shall meet the requirements of the relevant laws and administrative regulations, and shall be reported to the securities regulatory authority under the State Council or any department as authorized by the State Council for examination and approval according to law. Without any examination and approval according to law, no entity or individual may make a public issuance of any securities.

It shall be deemed as a public issuance under any of the following circumstances:

- (1) Making a public issuance of securities towards unspecified objects;
- (2) Making a public issuance of securities to accumulatively more than 200 specified objects;
- (3) Making a public issuance as prescribed by any law or administrative regulation.

For any securities that are not issued in a public manner, the means of advertising, public inducement or public issuance in any disguised form shall not be adopted thereto.

Article 11 An issuer that applies for the public issuance of stocks or convertible corporate bonds by means of underwriting according to law or for the public issuance of any other securities, which is subject to recommendation as is prescribed by any law or administrative regulation, shall hire an institution with the qualification of recommendation as its recommender. A recommender shall observe the operational rules and industrial norms and, based on the principles of being honesty,

creditworthy, diligent and accountable, carry out a prudent examination of the application documents and information disclosure materials of its issuers as well as supervise and urge its issuers to operate in a regulative manner. The qualification requirements of the recommender as well as the relevant measures for administration shall be formulated by the securities regulatory authority under the State Council.

Article 12 A public offer of stocks for establishing a joint stock limited company shall meet the requirements as prescribed in the Corporation Law of the People's Republic of China as well as any other requirements as prescribed by the securities regulatory authority under the State Council which have been approved by the State Council. An application for public offer of stocks as well as the following documents shall be reported to the securities regulatory authority under the State Council:

- (1) The constitution of the company;
- (2) The promoter's agreement;
- (3) The name or title of the promoter, the amount of shares as subscribed to by the promoters, the category of contributed capital as well as the capital verification certification;
- (4) The prospectus;
- (5) The name and address of the bank that receives the funds as generated from the issuance of stocks on the behalf of the company; and
- (6) The name of the underwriting organization as well as the relevant agreements.

Where a recommender shall be hired, as is prescribed by the present Law, a Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.

Where the establishment of a company shall be reported for approval, as is prescribed by any law or administrative regulation, the relevant approval documents shall be submitted as well.

Article 13 An initial public offer (IPO) of stocks of a company shall meet the following requirements:

- (1) Having a complete and well-operated organization;
- (2) Having the capability of making profits continuously and a sound financial status;
- (3) Having no false record in its financial statements over the latest 3 years and having no other major irregularity; and
- (4) Meeting any other requirements as prescribed by the securities regulatory authority under the State Council which have been approved by the State Council.

A listed company that makes any initial non-public offer of stocks shall meet the requirements as prescribed by the securities regulatory authority under the State Council, which have been approved by the State Council and shall be reported to the securities regulatory authority under the State Council for examination and approval.

Article 14 A company that makes an IPO of stocks shall file an application for public offer of stocks and submit the following documents to the securities regulatory authority under the State Council:

- (1) The business license of the company;
- (2) The constitution of the company;
- (3) The resolution of the general assembly of shareholders;
- (4) The prospectus;
- (5) The financial statements;
- (6) The name and address of the bank that receives the funds as generated from the public offer of stocks on the behalf of the company; and
- (7) The name of the underwriting institution as well as the relevant agreements.

Where a recommender shall be hired, as is prescribed by the present Law, the Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.

Article 15 The funds as raised through public offer of stocks made by a company shall be used according to the purpose as prescribed in the prospectus. Any alteration of the use of funds as prescribed in the prospectus shall be subject to a

resolution of the general assembly of shareholders. Where the company fails to correct any unlawful alteration of its use of funds or where any alteration of its use of funds fails to be adopted by the general assembly of shareholders, the relevant company shall not make any IPO of stocks. In the foregoing circumstance, a company shall not make any non-public offer of stocks.

Article 16 A public issuance of corporate bonds shall meet the following requirements:

- (1) The net asset of a joint stock limited company is no less than RMB 30 million yuan and the net asset of a limited-liability company is no less than RMB 60 million yuan;
- (2) The accumulated bond balance constitutes no more than 40 % of the net asset of a company;
- (3) The average distributable profits over the latest 3 years are sufficient to pay the 1-year interests of corporate bonds;
- (4) The investment of raised funds complies with the industrial policies of the state;
- (5) The yield rate of bonds does not surpass the level of interest rate as set by the State Council; and
- (6) Any other requirements as prescribed by the State Council.

The funds as raised through public issuance of corporate bonds shall be used for the verified purposes and shall not be used for covering any deficit or non-production expenditure.

The public issuance of convertible corporate bonds as made by a listed company shall not only meet the requirements as provided for in paragraph 1 herein but also meet the requirements of the present Law on the public offer of stocks, and shall be reported to the securities regulatory authority under the State Council for examination and approval.

Article 17 As to an application for public issuance of corporate bonds, the following documents shall be reported to the department as authorized by the State Council or the securities regulatory authority under the State Council:

- (1) The business license of the company;
- (2) The constitution of the company;
- (3) The procedures for issuing corporate bonds;
- (4) An asset appraisal report and an asset verification report; and
- (5) Any other document as prescribed by the department as authorized by the State Council or by the securities regulatory authority under the State Council.

Where a recommender shall be hired, as is prescribed by the present Law, the Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.

Article 18 Under any of the following circumstances, no more public issuance of corporate bonds may be carried out:

- (1) Where the corporate bonds as issued in the previous public issuance haven't been fully subscribed;
- (2) Where a company has any breach relating to the corporate bonds as publicly issued or any other debts, or has postponed the payment of the relevant principal plus interests, and such situation still exists; or
- (3) Where a company violates the present Law by altering the purpose of use of the funds raised through public issuance of corporate bonds.

Article 19 The formats and ways of submitting application documents as reported by an issuer for examination and approval of securities issuance according to law shall be prescribed by the competent organ or department in charge of examination and approval.

Article 20 The application documents for securities issuance as reported by an issuer to the securities regulatory authority under the State Council or the department as authorized by the State Council shall be authentic, accurate and complete. A securities trading service institution and its staff that produces the relevant documents for securities issuance shall strictly perform its/his statutory functions and duties and guarantee the authenticity, accuracy and integrity of the documents as produced thereby.

Article 21 Where an issuer applies for an IPO of stocks, it shall, after submitting the application documents, disclose the relevant application documents in advance according to the provisions of the securities regulatory authority under the

State Council.

Article 22 The securities regulatory authority under the State Council shall establish an issuance examination committee, which shall examine the applications for stock issuance according to law.

The issuance examination committee shall be composed of professionals from the securities regulatory authority under the State Council and other relevant experts from outside the said authority, cast votes to decide on the applications for stock issuance and give its examination opinions.

The specific formulation measures, tenure of members as well as work procedures of the issuance examination committee shall be formulated by the securities regulatory authority under the State Council.

Article 23 The securities regulatory authority under the State Council shall take charge of the examination and approval of the applications for stock issuance according to the statutory requirements. The procedures for examination and approval shall be publicized and shall be subject to supervision according to law.

The personnel participating in the examination and verification of stock issuance shall not have any interest relationship with an issuance applicant, shall not directly or indirectly accept any present of the issuance applicant, not hold any stock as verified for issuance, and shall not have any private contact with an issuance applicant.

The department as authorized by the State Council shall carry out the examination and approval of applications for issuance of corporate bonds by referring to the preceding 2 paragraphs herein.

Article 24 The securities regulatory authority under the State Council or the department as authorized by the State Council shall, within 3 months as of accepting an application for securities issuance, make an decision on approval or disapproval according to the statutory requirements and procedures, but the time for an issuer to supplement or correct its application documents for issuance according to the relevant requirements shall not be calculated in the aforesaid term for examination and approval. In the case of disapproval, an explanation shall be given.

Article 25 Where an application for securities issuance has been approved, the relevant issuer shall, according to the provisions of the relevant laws and administrative regulations, announce the relevant financing documents of public issuance before publicly issuing any securities and shall make the aforesaid documents available for public reference in a designated place.

Before the information of securities issuance is publicized according to law, no insider may publicize or divulge relevant information.

An issuer shall not issue any securities before making an announcement of the relevant financing documents of public issuance.

Article 26 The securities regulatory authority under the State council or the department as authorized by the State Council shall, where finding any decision on approving securities issuance fails to comply with the relevant statutory requirements and procedures and if the relevant securities haven't been issued, revoke the decision on approval and terminate the issuance. For any securities that have been issued but haven't been listed, the relevant decision on approval for issuance shall be revoked. The relevant issuer shall, according to the issuing price plus interests as calculated at the bank deposit rate for the corresponding period of time, refund the securities holders. A recommender shall bear several and joint liabilities together with the relevant issuer, except for one who is able to prove that he has no fault therein. Where any controlling shareholder or actual controller has any fault, he shall bear several and joint liabilities together with the relevant issuer,

Article 27 After a legal offer of stocks, an issuer shall be responsible for any flux in its operations or profits by itself. The investment risk as incurred therefrom shall be borne by investors themselves.

Article 28 Where an issuer issues any securities to any non-specified object and if the said securities shall be underwritten by a securities company, as is provided for by any law or administrative regulation, the issuer shall conclude an

underwriting agreement with a securities company. The forms of "sale by proxy" or "exclusive sale" shall be adopted for the underwriting of securities.

The term "sale by proxy" refers to an underwriting form, whereby a securities company sells securities as a proxy of the relevant issuer and, upon the end of the underwriting period, returns all the securities unsold to the relevant issuer.

The term "exclusive sale" refers to an underwriting form, whereby a securities company purchases all of the securities of an issuer according to the agreement there between or purchases all of the remaining unsold securities by itself upon the end of the underwriting period.

Article 29 An issuer that makes public issuance of securities has the right to select a securities company for underwriting according to law at its own will. A securities company shall not canvass any securities underwriting business by any unjust competition means.

Article 30 Where a securities company underwrites any securities, it shall conclude an agreement with the relevant issuer on sale by proxy or exclusive sale, which shall indicate the following items:

- (1) The name, domicile as well as the name of the legal representative of the parties concerned;
- (2) The classes, quantity, amount as well as issuing prices of the securities under sale by proxy or exclusive sale;
- (3) The term of sale by proxy or exclusive sale as well as the start-stop date;
- (4) The ways and date of payment for sale by proxy or exclusive sale;
- (5) The expenses for and settlement methods of sale by proxy or exclusive sale;
- (6) The liabilities for breach; and
- (7) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 31 A securities company that engages in the underwriting of securities shall carry out verification on the authenticity, accuracy and integrity of the financing documents of public issuance. Where any false record, misleading statement or major omission is found, no sales activity may be carried out. Where any securities have been sold out under the foregoing circumstances, the relevant sales activity shall be immediately terminated and measures for correction shall be taken.

Article 32 Where the total face value of securities as issued to non-specified objects exceed RMB 50 million yuan, the said securities shall be underwritten by an underwriting syndicate. An underwriting syndicate shall be composed of a securities company acting as the principal underwriter and other participant underwriters.

Article 33 The term for sale by proxy or exclusive sale shall not exceed than 90 days at the most.

A securities company shall, within the term of sale by proxy or exclusive sale, guarantee the priority of the relevant subscribers in purchasing securities under sale by proxy or exclusive sale. A securities company shall not reserve in advance any securities under sale by proxy thereby or purchase in advance and sustain any securities under exclusive sale thereby.

Article 34 Where any stock is issued at a premium, the issuing price thereof shall be determined through negotiation between the relevant issuer and the securities company that engages in the underwriting.

Article 35 As for a public offer of stocks through sale by proxy, when the term of sale by proxy expires and if the number of stocks fails to reach 70 % of the planned number in the public offer, it shall be deemed as a failure. The relevant issuer shall refund the issuing price plus interests as calculated at the bank deposit rate for the contemporary period of time to the subscribers of stocks.

Article 36 In a public offer of stocks, when the term for sale by proxy or exclusive sale expires, the issuer shall report the information on stock issuance to the securities regulatory authority under the State Council for archival filing within the prescribed term.

Chapter III Trading of Securities

Section I General Provisions

Article 37 The securities as purchased and sold by any party who is involved in any securities trading shall be the securities that have been legally issued and delivered.

Any securities that have been illegally issued shall not be purchased or sold.

Article 38 Any stocks, corporate bonds or any other securities that have been legally issued, where there are any restrictive provisions of laws on the term of transfer thereof, shall not be purchased or sold within the restricted term.

Article 39 Any stocks, corporate bonds or any other securities that have been publicly issued according to law shall be listed in a stock exchange as legally established or in any other places for securities trading as approved by the State Council.

Article 40 The means of public and centralized trading or any other means as approval by the securities regulatory authority under the State Council shall be adopted for the listed trading of securities in stock exchanges.

Article 41 The securities as purchased or sold by the parties involved in securities trading may be in paper form or in any other form as approval by the securities regulatory authority under the State Council.

Article 42 The securities trading shall be carried out in the form of spot goods as well as any other form as prescribed by the State Council.

Article 43 The practitioners in stock exchanges, securities companies and securities registration and clearing institutions, the functionary of securities regulatory bodies, as well as any other personnel who have been prohibited by any law or administrative regulation from engaging in any stock trading shall not, within their tenures or the relevant statutory term, hold or purchase or sell any stock directly or in any assumed name or in the name of any other person, nor may they accept any stocks from any other person as a present.

Anyone, before becoming any person as prescribed in the preceding paragraph herein, shall transfer the stocks he has held according to law.

Article 44 The stock exchanges, securities companies, as well as securities registration and clearing institutions shall keep confidential the accounts as opened for their clients according to law.

Article 45 A securities trading service institution and the relevant personnel that produce such documents as auditing reports, asset appraisal reports or legal opinions for stock issuance shall not purchase or sell any of the aforesaid stocks within the underwriting term of stocks or within 6 months as of the expiration of the underwriting term of stocks. Except for the provisions as prescribed in the preceding paragraph herein, a securities trading service institutions and the relevant personnel that produce such documents as auditing reports, asset appraisal reports or legal opinions for listed companies shall not purchase or sell any of the aforesaid stocks within the period from the day when he accepts the entrustment of the listed company to the day when the aforesaid documents are publicized.

Article 46 The fee charge for securities trading shall be reasonable. The charging items, rates and methods shall be publicized.

The charging items, rates, and administrative measures of securities trading shall be uniformly formulated by the relevant administrative department of the State Council.

Article 47 Where any director, supervisor and senior manager of a listed company or any shareholder who holds more than 5% of the shares of a listed company, sells the stocks of the company as held within 6 months after purchase, or purchases any stock as sold within 6 months thereafter, the proceeds as generated therefrom shall be incorporated into the profits of the relevant company. The board of directors of the company shall take back the proceeds. However, where

a securities company holds more than 5% of the shares of a listed company, which are the residual stocks after sale by proxy as purchased thereby, the sale of the foregoing stocks shall not be limited by the term of 6 months.

Where the board of directors of a company fails to implement the provisions as prescribed in the preceding paragraph herein, the shareholders concerned have the right to require the board of directors to implement them within 30 days.

Where the board of directors of a company fails to implement them within the aforesaid term, the shareholders shall have the right to directly file a lawsuit with the people's court in their own names for the interests of the company.

Where the board of directors of a company fails to implement the provisions as prescribed in paragraph 1 herein, the directors in charge shall bear several and joint liabilities according to law.

Section II Listing of Securities

Article 48 An application for the listing of any securities shall be filed with a stock exchange and shall be subject to the examination and approval of the stock exchange according to law, and a listing agreement shall be concluded by both parties.

Stock exchanges shall, according to the decision of the department as authorized by the State Council, arrange for the listing of government bonds.

Article 49 For an application for the listing of any stocks, convertible corporate bonds or any other securities, which are subject to recommendation as is prescribed by any law or administrative regulation, an institution with the qualification of recommendation shall be hired as the recommender.

The provisions of paragraphs 2 and 3 of Article 11 of the present Law shall apply to the recommender of stock listing.

Article 50 A joint stock limited company that applies for the listing of its stocks shall meet the following requirements:

- (1) The stocks shall have been publicly issued upon the approval of the securities regulatory authority under the State Council;
- (2) The total amount of capital stock of the company shall be no less than RMB 30 million yuan;
- (3) The shares as publicly issued shall reach more than 25 % of the total amount of corporate shares; where the total amount of capital stock of a company exceeds RMB 0.4 billion yuan, the shares as publicly issued shall be no less than 10% thereof; and
- (4) The company shall not have any major irregularity over the latest three years and there is no false record in its financial statements.

A stock exchange may prescribe the requirements of listing that are more strict than those as prescribed in the preceding paragraph herein, which shall be reported to the securities regulatory authority under the State Council for approval.

Article 51 The state encourages the listing of corporate stocks that comply with the relevant industrial policies and meet the relevant requirements of listing.

Article 52 As to an application for the listing of stocks, the following documents shall be submitted to a stock exchange:

- (1) The listing report;
- (2) The resolution of the general assembly of shareholders regarding the application for the listing of stocks;
- (3) The constitution of the company;
- (4) The business license of the company;
- (5) The financial statements of the company for the latest three years as audited by an accounting firm according to law;
- (6) The legal opinions as well as the Recommendation Letter of Listing;
- (7) The latest prospectus; and
- (8) Any other document as prescribed by the listing rules of the stock exchange.

Article 53 Where an application for the listing of stocks have been approved by the stock exchange, the relevant company that has concluded a listing agreement thereon shall announce the relevant documents for stock listing within the

prescribed period and shall make the said documents available for public reference in designated places.

Article 54 A company that has concluded a listing agreement shall not only announce the documents as prescribed in the preceding Article herein but also announce the following items:

- (1) The date when the stocks have been approved to be listed in a stock exchange;
- (2) The name list of the top 10 shareholders who hold the largest number of shares in the company as well as the amount of stocks they hold;
- (3) The actual controller of the company; and
- (4) The names of the directors, supervisors and senior managers of the company as well as the relevant information on the stocks and bonds of the company they hold.

Article 55 Where a listed company is under any of the following circumstances, the stock exchange shall decide to suspend the listing of its stocks:

- (1) Where the total amount of capital stock or share distribution of the company changes and thus fails to meet the requirements for listing;
- (2) Where the company fails to publicize its financial status according to the relevant provisions or has any false record in its financial statements, which may mislead the investors;
- (3) Where the company has any major irregularity;
- (4) Where the company has been operating at a loss for the latest 3 consecutive years; or
- (5) Under any other circumstance as prescribed in the listing rules of the stock exchange.

Article 56 Where a listed company is under any of the following circumstances, the stock exchange shall decide to terminate the listing of its stocks:

- (1) Where the total amount of capital stock or share distribution of the company changes and thus fails to meet the requirements of listing, and where the company fails again to meet the requirements of listing within the period as prescribed by the stock exchange;
- (2) Where the company fails to publicize its financial status according to the relevant provisions or has any false record in its financial statements, and refuses to make any correction;
- (3) Where the company has been operating at a loss for the latest 3 consecutive years and fails to gain profits in last year;
- (4) Where the company is dissolved or is declared bankrupt; or
- (5) Under any other circumstance as prescribed in the listing rules of the stock exchange.

Article 57 A company shall, when applying for the listing of corporate bonds, meet the following requirements:

- (1) The term of corporate bonds shall be more than 1 year;
- (2) The amount of corporate bonds to be actually issued shall be no less than RMB 50 million yuan; and
- (3) The company shall meet the statutory requirements for the issuance of corporate bonds when applying for the listing of its bonds.

Article 58 A company shall, when applying for the listing of its corporate bonds, report the following documents to the stock exchange:

- (1) The listing report;
- (2) The resolution as adopted by the board of directors regarding the application for listing;
- (3) The constitution of the company;
- (4) The business license of the company;
- (5) The measures for financing through the issuance of corporate bonds;
- (6) The amount of corporate bonds to be actually issued; and
- (7) Any other document as prescribed in the listing rules of the stock exchange.

As to an application for the listing of convertible corporate bonds, the Recommendation Letter of Listing as produced by

the relevant recommender shall be submitted.

Article 59 Where an application for the listing of corporate bonds has been approved by the stock exchange, the company that has concluded a listing agreement thereon shall, within the prescribed period, announce its report on the listing of its corporate bonds as well as the relevant documents, and make its application documents available for public reference in designated places.

Article 60 After any corporate bonds are listed, where the relevant company is under any of the following circumstances, the stock exchange may decide to suspend the listing of its corporate bonds:

- (1) Where the company has any major irregularity;
- (2) Where the company has any major change and thus fails to meet the requirements for the listing of corporate bonds;
- (3) Where the funds as raised through the issuance of corporate bonds fail to be used according to the verified purposes of use;
- (4) Where the company fails to perform its obligations according to the measures for financing through the issuance of corporate bonds; or
- (5) Where the company has been operating at a loss for the latest 2 consecutive years.

Article 61 Where a company is under any of the circumstances as described in item (1) or (4) of the preceding Article and the consequences as incurred therefrom have been verified to be serious, or where a company is under any of the circumstances as described in item (2), (3), or (5) of the preceding Article and fails to eliminate the relevant consequences within a specified time limit, the stock exchange shall decide to terminate the listing of corporate bonds of the company. Where a company is dissolved or declared bankrupt, the stock exchange shall terminate the listing of the corporate bonds thereof.

Article 62 Any company, which is dissatisfied with the decision of the stock exchange on disapproving, suspending or terminating its listing, may apply to the review organ as established by the stock exchange for review.

Section III On-going Disclosure of Information

Article 63 The information as disclosed by issuers and listed companies according to law shall be authentic, accurate and complete and shall not have any false record, misleading statement or major omission.

Article 64 For the stocks that have been publicly issued upon the verification of the securities regulatory authority under the State Council or for the corporate bonds that have been publicly issued upon the verification of the department as authorized by the State Council according to law, the prospectus or the measures for financing through the issuance of corporate bonds shall be announced. In an IPO of stocks or corporate bonds, the relevant financial statements shall be announced as well.

Article 65 A company whose shares or bonds have been listed for trading shall, within two months as of the end of the first half of each accounting year, submit to the securities regulatory authority under the State Council and the stock exchange a midterm report indicating the following contents and make a public announcement for it:

- (1) The financial statements and business situation of the company;
- (2) The major litigation the company is involved in;
- (3) The particulars of any change concerning the shares or corporate bonds thereof it has already issued;
- (4) The important matters as submitted to the general assembly of shareholders for deliberation; and
- (5) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 66 A listed company whose shares or bonds have been listed for trading shall, within four months as of the end of each accounting year, submit to the securities regulatory authority under the State Council and the stock exchange an annual report indicating the following contents, and make a public announcement for it:

- (1) A brief account of the company's general situation;
- (2) The financial statement and business situation of the company;
- (3) A brief introduction to the directors, supervisors, and senior managers of the company well as the information regarding their shareholdings;
- (4) The information on the shares and corporate bonds it has already issued, including a name list of the top 10 shareholders who hold the largest number of shares in the company as well as the amount of shares each of them holds; and
- (5) The actual controller of the company; and
- (6) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 67 In the case of a major event that may considerably affect the trading price of a listed company's shares and that is not yet known to the investors, the listed company shall immediately submit a temporary report regarding the said major event to the securities regulatory authority under the State Council and the stock exchange, and make an announcement to the general public as well, in which the cause, present situation, and possible legal consequence of the event shall be indicated:

The term "major event" as mentioned in the preceding paragraph herein refers to any of the following circumstances:

- (1) A major change in the business guidelines or business scope of the company;
- (2) A decision of the company on any major investment or major asset purchase;
- (3) An important contract as concluded by the company, which may have an important effect on the assets, liabilities, rights, interests or business achievements of the company;
- (4) The incurrence of any major debt in the company or default on any major debt that is due;
- (5) The incurrence of any major deficit or a major loss in the company;
- (6) A major change in the external conditions for the business operation of the company;
- (7) A change concerning directors, no less than one-third of supervisors or managers of the company;
- (8) A considerable change in the holdings of shareholders or actual controllers each of whom holds or controls no less than 5% of the company's shares;
- (9) A decision of the company on capital decrease, merger, division, dissolution, or application for bankruptcy;
- (10) Any major litigation in which the company is involved, or where the resolution of the general assembly of shareholders or the board of directors have been cancelled or announced invalid;
- (11) Where the company is involved in any crime, which has been filed as a case as well as investigated into by the judicial organ or where any director, supervisor or senior manager of the company is subject to compulsory measures as rendered by the judicial organ; or
- (12) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 68 The directors and senior managers of a listed company shall produce written opinions to confirm the periodic reports of the company.

The board of supervisors of a listed company shall carry out an examination on the periodic report of its company as formulated by the board of directors and produce the relevant examination opinions in written form.

The directors, supervisors and senior managers of a listed company shall guarantee the authenticity, accuracy and integrity of the information as disclosed by the listed company.

Article 69 Where any of the prospectus, measures for financing through the issuance of corporate bonds, financial statements, listing reports, annual reports, midterm reports, temporary reports or any disclosed information that has been announced by an issuer or listed company has any false record, misleading statement or major omission, and thus incurs losses to investors in the process of securities trading, the issuer or the listed company shall bear the liabilities of compensation. Any director, supervisor, senior manager or any other person of the issuer or the listed company as held to be directly responsible shall take several and joint liabilities of compensation, unless he is able to prove that he has no

fault therein. Where any shareholder or actual controller of an issuer or a listed company has any fault, he or it shall bear several and joint liabilities of compensation together with the relevant issuer or listed company.

Article 70 The information which must be disclosed as prescribed by law shall be publicized through the media as designated by the securities regulatory authority under the State Council and shall, at the same time, be made available for public reference at the company's domicile and the stock exchange.

Article 71 The securities regulatory authority under the State Council shall carry out supervision over the annual reports, midterm reports, temporary reports of listed companies as well as their announcements, over the distribution or rationing of new shares of such listed companies, and over the controlling shareholders and information disclosure obligors of the listed companies.

The securities regulatory body, stock exchange, recommender or securities company involved in underwriting as well as the relevant personnel thereof shall not, before an announcement is made by the company according to the provisions of the relevant laws and administrative regulations, divulge any content concerned before making the announcement.

Article 72 Where a stock exchange decides to suspend or terminate the listing of any securities, it shall announce the decision in a timely manner and report it to the securities regulatory authority under the State Council for archival filing.

Section IV Prohibited Trading Acts

Article 73 Any insider who has access to any insider information of securities trading or who has unlawfully obtained any insider information is prohibited from taking advantage of the insider information he holds to engage in any securities trading.

Article 74 The insiders who have access to insider information of securities trading include:

- (1) Directors, supervisors, and senior managers of an issuer;
- (2) Shareholders who hold more than 5% of the shares of a company as well as the directors, supervisors, and senior managers thereof, or the actual controller of a company as well as the directors, supervisors, and senior managers thereof;
- (3) The holding company of an issuer as well as the directors, supervisors, and senior managers thereof;
- (4) The personnel who may take advantage of their posts in their company to obtain any insider information of the company concerning the issuance and trading of its securities;
- (5) The functionaries of the securities regulatory body, and other personnel who administer the issuance and trading of securities pursuant to their statutory functions and duties;
- (6) The relevant personnel of the recommendation institutions, securities companies engaging in underwriting, stock exchanges, securities registration and clearing institutions, and securities trading service organizations; and
- (7) Any other person as prescribed by the securities regulatory authority under the State Council.

Article 75 The term "insider information" refers to the information that concerns the business or finance of a company or may have a major effect on the market price of the securities thereof and that hasn't been publicized in securities trading. All of the following information falls into the scope of insider information:

- (1) The major events as prescribed in paragraph 2 of Article 67 of the present Law;
- (2) The plan of a company concerning any distribution of dividends or increase of capital;
- (3) Any major change in the company's equity structure;
- (4) Any major change in the guaranty of the company's debt;
- (5) Where the mortgaged, sold or discarded value of any major asset as involved in the business operation of the company exceeds 30 % of the said asset at a single time;
- (6) Where any act as conducted by any director, supervisor or senior manager of the company may be rendered to be responsible for any major damage and compensation;

- (7) The relevant plan of a listed company regarding acquisition; and
- (8) Any other important information that has been recognized by the securities regulatory authority under the State Council as having a marked effect on the trading prices of securities.

Article 76 Any insider who has access to insider information or has unlawfully obtained any insider information on securities trading may not purchase or sell the securities of the relevant company, or divulge such information, or advise any other person to purchase or sell such securities.

Where there is any other provision of the present Law on governing the purchase of shares of a listed company by a natural person, legal person or any other organization who individually holds or holds with any other person no less than 5% of the company's shares by means of an agreement or any other arrangement, such provision shall prevail.

Where any insider trading incurs any loss to investors, the actor shall make compensations according to law.

Article 77 Anyone is prohibited from manipulating the securities market by any of the following means:

- (1) Whether anyone, independently or in collusion with others, manipulates the trading price of securities or trading quantity of securities by centralizing their advantages in funds, their shareholding advantages or taking their information advantage to trade jointly or continuously;
- (2) Where anyone collaborates with any other person to trade securities pursuant to the time, price and method as agreed upon in advance, thereby affecting the price or quantity of the securities traded;
- (3) Where anyone trades securities between the accounts under his own control, thereby affecting the price or quantity of the securities traded; or
- (4) Where anyone manipulates the securities market by any other means.

Where anyone incurs any loss to investors by manipulating the securities market, the actor shall be subject to the liabilities of compensation according to law.

Article 78 It is prohibited for state functionaries, practitioners of the news media as well as other relevant personnel concerned to disturb the securities market by fabricating or disseminating any false information.

It is prohibited for stock exchanges, securities companies, securities registration and clearing institutions, securities trading service institutions and the practitioners thereof, as well as the securities industry associations, the securities regulatory bodies and their functionaries to make any false statement or give any misleading information in the activities of securities trading.

The securities market information as disseminated by any media shall be authentic and objective. Any dissemination of misleading information is prohibited.

Article 79 It is prohibited for a securities company as well as the practitioners thereof to commit any of the following fraudulent acts in the process of securities trading, which may injure the interests of their clients:

- (1) Violating the entrustment of its client by purchasing or selling any securities on its behalf;
- (2) Failing to provide any client with written confirmation of any transaction within the prescribed period of time;
- (3) Misappropriating the securities as entrusted by any client for purchase or sale, or misappropriating the funds in any client's account;
- (4) Unlawfully purchasing or selling securities for its client without authorization, or unlawfully purchasing or selling any securities in the name of any client;
- (5) Inveigling any client into making any unnecessary purchase or sale of securities in order to obtain commissions;
- (6) Making use of mass media or by any other means to provide or disseminate any false or misleading information to investors; or
- (7) Having any other act that goes against the true intention as expressed by a client and damages the interests thereof.

Where anyone practices any trickery and thus incurs any loss to the relevant clients, the actor shall make compensations according to law.

Article 80 It's prohibited for any legal person to unlawfully make use of any other person's account to undertake any securities trading. It's prohibited for any legal person to lend its own or any other person's securities account.

Article 81 The channel for capital to enter into the stock market shall be broadened according to law. It's prohibited for any unqualified capital to go into the stock market.

Article 82 It's prohibited for any person to misappropriate any public fund to trade securities.

Article 83 The state-owned enterprises and state-controlled enterprises that engage in any trading of listed stocks shall observe the relevant provisions of the state.

Article 84 When stock exchanges, securities companies, securities registration and clearing institutions, securities trading service organizations as well as their functionaries discover any prohibited activities in securities trading, they shall report such activities to the securities regulation body in a timely manner.

Chapter IV Acquisition of Listed Companies

Article 85 An investor may purchase a listed company by means of tender offer or agreement as well as by any other legal means.

Article 86 When an investor, through securities trading at a stock exchange, comes to hold individually or with any other person 5 % of the shares as issued by a listed company by means of agreement or any other arrangement, the investor shall, within three days as of the date when such shareholding becomes a fact, submit a written report to the securities regulatory authority under the State Council and the stock exchange, notify the relevant listed company and announce the fact to the general public. Within the aforesaid prescribed period, the investor may not purchase or sell any more shares of the listed company.

Once an investor holds individually or with any other person 5 % of the shares as issued by a listed company by means of agreement or any other arrangement, he shall, pursuant to the provisions of the preceding paragraph herein, make a report and announcement for each 5% increase or decrease in the proportion of the issued shares of the said company he holds through securities trading at the stock exchange. Within the reporting period as well as two days after the relevant the report and announcement are made, the investor may not purchase or sell any more shares of the listed company.

Article 87 The written report and announcement as made according to the provisions of the preceding article shall include the following contents:

- (1) The name and domicile of the shareholder;
- (2) The description and amount of the shares as held; and
- (3) The date on which the shareholding or any increase or decrease in the shareholding reaches the statutory percentage.

Article 88 Where an investor holds individually or with any other person 30% of the stocks as issued by a listed company by means of agreement or any other arrangement through securities trading at the stock exchange and continues the purchase, he shall issue a tender offer to all the shareholders of the said listed company to purchase all of or part of the shares of the listed company.

It shall be stipulated in a tender offer as issued to a listed company that, where the amount of shares the shareholders of the target company promise to sell exceeds the scheduled amount of stocks for purchase, the purchaser shall carry out the acquisition in proportion.

Article 89 Before any tender offer is issued pursuant to the provisions in the preceding article, the relevant purchaser shall submit a report on the acquisition of a listed company to the securities regulatory authority under the State Council beforehand, which shall indicate the following items:

- (1) The name and domicile of the purchaser;
- (2) The decision of the purchaser on acquisition;

- (3) The name of the target listed company;
- (4) The purpose of acquisition;
- (5) The detailed description of the shares to be purchased and the amount of shares scheduled to be purchased in schedule;
- (6) The term and price of the acquisition;
- (7) The amount and warranty of the funds as required by the acquisition; and
- (8) The proportion of the amount of shares of the target company as held by the purchaser in the total amount of shares issued by the target company, when the report on the acquisition of the listed company is reported.

A purchaser shall concurrently submit to the stock exchange a report on the acquisition of the relevant company.

Article 90 A purchaser shall, 15 days after the report on the acquisition of a listed company is submitted pursuant to the preceding article, announce its tender offer. Within the aforesaid term, where the securities regulatory authority under the State Council finds that the acquisition report of the listed company fails to meet the provisions of the relevant laws and administrative regulations, it shall notify the relevant purchaser in a timely manner, and the relevant purchaser shall not announce its tender offer.

The term for acquisition as stipulated in a tender offer shall be no less than 30 days but no more than 60 days.

Article 91 Within the term for acceptance as prescribed in the tender offer, no purchaser may revoke its tender offer. Where a purchaser requests for altering its tender offer, it shall submit a report to the securities regulatory authority under the State Council and the stock exchange in advance and announce the alteration upon their approval.

Article 92 All the terms and conditions of acquisition as stipulated in a tender offer shall apply to all the shareholders of a target company.

Article 93 In the case of an acquisition by tender offer, a purchaser shall not, within the term for acquisition, sell any share of the target company, nor shall it buy any share of the target company by any other means that hasn't been stipulated in its tender offer or that go beyond the terms and conditions as stipulated in its tender offer.

Article 94 In the case of an agreement-based acquisition, a purchaser may carry out share transfer with the shareholders of the target company by means of agreement according to the provisions of the relevant laws and administrative regulations.

In the case of an acquisition of a listed company by agreement, a purchaser shall, within three days after the acquisition agreement is reached, submit a written report on the acquisition agreement to the securities regulatory authority under the State Council and the stock exchange, and shall announce it to the general public.

No acquisition agreement may be performed before the relevant announcement is made.

Article 95 In the case of an agreement-based acquisition, both parties to the agreement may temporarily entrust a securities registration and clearing institution to keep the stocks as transferred and deposit the relevant funds in a designated bank.

Article 96 In the case of an agreement-based acquisition, where a purchaser has purchased, held individually or with any other person 30% of the shares as issued by a listed company through agreement or any other arrangement and if the acquisition continues, the purchaser shall issue an offer to all of the shareholders of the target listed company for purchasing all of or part of the company's shares, unless it is exempted from making a tender offer by the securities regulatory authority under the State Council.

A purchaser that purchases the shares of a listed company by means of tender offer according to the provisions of the preceding paragraph herein shall observe the provisions of Articles 89 through 93 of the present Law.

Article 97 Upon the expiration of a term for acquisition, where the share distribution of an target company fails to meet the requirements of listing, the listing of stocks of the said listed company shall be terminated by the stock exchange

according to law. The shareholders that still hold the shares of the target company have the right to sell their shares in light of the equal terms as stipulated in the relevant tender offer, and the purchaser shall make the purchase. When an acquisition is concluded, if a target company fails to meet the requirements for remaining a joint stock limited company any more, its form of enterprise shall be altered according to law.

Article 98 In the acquisition of a listed company, the stocks of the target company held by a purchaser shall not be transferred within 12 months after the acquisition is concluded.

Article 99 When an acquisition is concluded, if the purchaser merges with the target company by dissolving the target company, the original shares of the dissolved company shall be exchanged by the purchaser according to law.

Article 100 Where an acquisition is concluded, a purchaser shall, within 15 days, report the acquisition to the securities regulatory authority under the State Council and the stock exchange, and shall make an announcement for it.

Article 101 The purchase of the shares of a listed company as held by an organization that has been authorized by the state for investment shall be subject to the approval of the relevant administrative departments according to the provisions of the State Council.

The securities regulatory authority under the State Council shall formulate specific measures for the acquisition of listed companies according to the principles of the present Law.

Chapter V Stock Exchanges

Article 102 The term "stock exchange" refers to a legal person that provides the relevant place and facilities for concentrated securities trading, organizes and supervises the securities trading and applies a self-regulated administration.

The establishment and dissolution of a stock exchange shall be subject to the decision of the State Council.

Article 103 A constitution shall be formulated for the establishment of a stock exchange.

The formulation and revision of the constitution of a stock exchange shall be subject to the approval of the securities regulatory authority under the State Council.

Article 104 The words "stock exchange" shall be indicated in the name of a stock exchange. No other entity or individual may use the words "stock exchange" or its like in its or his name.

Article 105 The income at the discretion of a stock exchange which is generated from various commissions shall first be used to guarantee the normal operation of the place and facilities of the stock exchange as well as the gradual improvement thereof.

The gains as accumulated by a stock exchange that adopts a membership system shall belong to its members. The rights and interests of the stock exchange shall be jointly shared by its members. No accumulated gains of a stock exchange may be distributed to any member within its existence.

Article 106 A stock exchange shall have a council.

Article 107 A stock exchange shall have a general manager, who shall be subject to the appointment and dismissal of the securities regulatory authority under the State Council.

Article 108 Anyone, who is under the circumstance as prescribed in [Article 147](#) of the Corporation Law of the People's Republic of China or any of the following circumstances, shall not assume the post of person-in-charge of a stock exchange:

(1) Where the person-in-charge of a stock exchange or securities registration and clearing institution or any director, supervisor or senior manager of a securities company who has been removed from his post for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he was removed from his post; or

(2) Where a professional of a law firm, accounting firm, or investment consulting organization, financial advising organization, credit rating institution, asset appraisal institution or asset verification institution who has been disqualified for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he was removed from his post.

Article 109 A practitioner of a stock exchange, securities registration and clearing institution, securities trading service organization or securities company or any functionary of the state organ, who has been dismissed for his irregularity or disciplinary breach, shall not be employed as a practitioner of any stock exchange.

Article 110 Anyone who enters into a stock exchange to engage in the centralized trading of securities must be a member of the stock exchange.

Article 111 An investor shall conclude an entrustment agreement with a securities company on securities trading, open a securities trading account in a securities company and entrust the securities company, in written form, by telephone or any other means, to purchase or sell securities on its behalf.

Article 112 A securities company shall, based on the entrustment of its investors, declare for securities dealings and engage in the centralized trading at a stock exchange according to the rules of securities trading and shall, on the basis of trading results, bear the relevant liabilities of settlement and delivery. A securities registration and clearing institution shall, on the basis of trading results and according to the rules of settlement and delivery, conduct settlement and delivery of securities and capital with the relevant securities company, and handle the formalities of transfer registration of securities for the clients of the relevant securities company.

Article 113 A stock exchange shall guarantee a fair centralized trading, announce up-to-the-minute quotations of securities trading, formulate the quotation tables of the securities market on the basis of trading days, and make announcements for it.

Without permission of the stock exchange, no entity or individual may announce any up-to-the-minute quotations of securities trading.

Article 114 Where any normal trading of securities is disturbed by an emergency, a stock exchange may take the measures of a technical suspension of trading. In the case of an emergency of force majeure or for the purpose of preserving the normal order of securities trading, a stock exchange may decide a temporary speed bump. Where a stock exchange adopts the measure of technical suspension of trading or decides on a temporary speed bump, it shall report it to the securities regulatory authority under the State Council in a timely manner.

Article 115 A stock exchange shall exercise a real-time monitoring of securities trading and shall, according to the requirements of the securities regulatory authority under the State Council, report any abnormal trading thereto. A stock exchange shall carry out supervision over the information as disclosed by the listed companies or the relevant obligor of information disclosure, supervise and urge them to disclose information in a timely and accurate manner according to law.

A stock exchange may, when it so requires, restrict the trading through a securities account where there is any major abnormal trading and shall report it to the securities regulatory authority under the State Council for archival filing.

Article 116 A stock exchange shall withdraw a certain proportion of funds from the transaction fees, membership fees and seat fees it has charged to establish a risk fund. The risk fund shall be subject to the administration of the council of the stock exchange.

The specific withdrawal proportion and use of the risk fund shall be provided for by the securities regulatory authority under the State Council in collaboration with the fiscal department of the State Council.

Article 117 A stock exchange shall deposit its risk fund into a special account of its opening bank and shall not unlawfully use it.

Article 118 A stock exchange shall, pursuant to the laws and administrative regulations on securities, formulate rules on listing, trading and membership administration as well as any other relevant rules, and shall report them to the securities regulatory authority under the State Council for approval.

Article 119 Where any person-in-charge and any other practitioner of a stock exchange has any interest relationship or any of his relatives has any interest relationship with the performance of his duties relating to securities trading, he shall withdraw.

Article 120 Any trading result of a transaction, which has been conducted in accordance with the trading rules as formulated according to law, shall not be altered. A trader who has conducted any rule-breaking trading shall not be exempted from civil liabilities. The proceeds as generated from the rule-breaking trading shall be dealt with pursuant to the relevant regulations.

Article 121 Where any staff member of a stock exchange who engages in securities trading violates any trading rule of the stock exchange, the stock exchange shall impose upon him a disciplinary sanction. Under any serious circumstances, the qualification thereof shall be revoked and the violator shall be prohibited from entering into the stock exchange to engage in any securities trading.

Chapter VI Securities Companies

Article 122 The establishment of a securities company shall be subject to the examination and approval of the securities regulatory authority under the State Council. No entity or individual may engage in any securities operations without the approval of the securities regulatory authority under the State Council.

Article 123 The term "securities company" as mentioned in the present Law refers to a limited-liability company or joint stock limited company that is established and engages in the business operation of securities according to the Corporation Law of the People's Republic of China as well as the provisions of the present Law.

Article 124 The establishment of a securities company shall meet the following requirements:

- (1) Having a corporation constitution that meets the relevant laws and administrative regulations;
- (2) The major shareholders having the ability to make profits continuously, enjoying good credit standing, and having no irregular or rule-breaking record over the latest 3 years, and its net asset being no less than 0.2 billion yuan.
- (3) Having a registered capital that meets the provisions of the present Law;
- (4) The directors, supervisors and senior managers thereof having the qualification for assuming such posts and its practitioners having the qualification to engage in the securities business;
- (5) Having a complete risk management system as well as an internal control system;
- (6) Having a qualified business place and facilities for operations; and
- (7) Meeting any other requirement as prescribed by laws and administrative regulations as well as the provisions of the securities regulatory authority under the State Council, which have been approved by the State Council.

Article 125 A securities company may undertake some or all of the following business operations upon the approval of the securities regulatory authority under the State Council:

- (1) Securities brokerage;
- (2) Securities Investment consultation;
- (3) Financial advising relating to the activities of securities trading or securities investment;
- (4) Underwriting and recommendation of securities;
- (5) Self-operations of securities;
- (6) Securities asset management; and
- (7) Any other business operations concerning securities.

Article 126 A securities company shall indicate the words "limited-liability securities company" or "joint stock limited securities company" in its name.

Article 127 Where a securities company engages in the business operation as prescribed in item (1), (2) or (3) of Article 125 of the present Law, its registered capital shall be RMB 50 million yuan at the least. Where a securities company engages in any of the business operations as prescribed in item (4), (5), (6) or (7) therein, its bottom-line registered capital shall be RMB 100 million yuan; Where a securities company engages in two or more business operations as prescribed in item (4), (5), (6) or (7) therein, its bottom-line registered capital shall be 500 million yuan. The registered capital of a securities company shall be paid-in capital.

The securities regulatory authority under the State Council may, according to the principle of prudent supervision and in light of the risk rating of all business operations, adjust the requirement of minimum amount of registered capital, which shall be no less than the minimum amount as prescribed in the preceding paragraph herein.

Article 128 The securities regulatory authority under the State Council shall, within 6 months as of accepting an application for establishing a securities company, carry out an examination according to the statutory requirements and procedures and on the basis of the principle of prudent supervision, make a decision on approval or disapproval, and thereafter notify the relevant applicant. In the case of disapproval, an explanation shall be given.

Where an application for establishing a securities company has been approved, an applicant shall, within the prescribed period, apply for registration of establishment with the organ in charge of corporation registration and collect its business license therefrom.

A securities company shall, within 15 days as of collecting its business license, apply for a Securities Business Permit with the securities regulatory authority under the State Council. Without a Securities Business Permit, a securities company shall not engage in any business operation of securities.

Article 129 Where a securities company establishes, purchases or cancels a branch, alters its business scope or registered capital, alters its shareholders who hold more than 5% of its stock rights or the actual controller, alters any important article of its constitution, has any merger or split-up, alters its form of corporation, suspends its business operations, goes through dissolution or bankruptcy procedures, it shall be subject to the approval of the securities regulatory authority under the State Council.

Where a securities company establishes or purchases a securities operation institution abroad or purchases the shares of any securities operational institution abroad, it shall be subject to the approval of the securities regulatory authority under the State Council.

Article 130 The securities regulatory authority under the State Council shall formulate provisions on the risk control indicators of a securities company such as net capital, the ratio between net capital and liabilities, the ratio between net capital and net assets, the ratio between net capital and operational scale of self-operation, underwriting and asset management, the ratio between liabilities and net asset, as well as the ratio between current assets and current liabilities. A securities company shall not provide any financing or guaranty for its shareholders or any related person thereof.

Article 131 The directors, supervisors and senior managers of a securities company shall be honest and upright, have good morals, be familiar with the laws and administrative regulations on securities, and have the ability of operation and management as required by the performance of their functions and duties, and shall have obtained the post-holding qualification as verified by the securities regulatory authority under the State Council before assuming their posts.

Anyone who is under any circumstance as prescribed in [Article 147 of the Corporation Law of the People's Republic of China](#) or is under any of the following circumstances shall not hold the post of director, supervisor or senior manager of a securities company:

(1) Where a person-in-charge of a stock exchange or securities registration and clearing institution or a director, supervisor or senior manager of a securities company has been removed from his post for his irregularity or disciplinary

breach and 5 years have not elapsed as of the day when he is removed from his post; and

(2) Where a professional of a law firm, accounting firm or investment consulting organization, financial advising organization, credit rating institution, asset appraisal institution or asset verification institution has been disqualified for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he is removed from his post.

Article 132 A practitioner of a stock exchange, securities registration and clearing institution, securities trading service institution or securities company or any functionary of the state organ, who has been dismissed for his irregularity or disciplinary breach, shall not be employed as a practitioner of a stock exchange.

Article 133 A functionary of any state organ and any other personnel as prohibited by any law or administrative regulation from taking any part-time job in a company shall not take any job in a securities company on a part-time basis.

Article 134 The state shall establish a securities investor protection fund. The securities investor protection fund shall be composed of the capital paid by securities companies and any other capital lawfully raised. The specific measures for financing, administration and use of the foregoing fund shall be formulated by the State Council.

Article 135 A securities company shall withdraw a trading risk reserve from its annual after-tax profits to cover any possible loss from securities trading. The specific proportion for withdrawal shall be prescribed by the securities regulatory authority under the State Council.

Article 136 A securities company shall establish and improve an internal control system, adopt effective measures of separation so as to prevent any interest conflict between the company and its clients or between different clients thereof. A securities company shall undertake its operations of securities brokerage, underwriting, self-operation and asset management in a separate manner and may not mix them up.

Article 137 A securities company shall undertake its self-operations in its own name and shall not do so in the name of any other person or in any individual's name.

A securities company shall undertake its self-operations by using its own capital and funds it has lawfully raised.

A securities company shall not lend its self-operation account to any other person.

Article 138 A securities company may enjoy its right of independent management according to law and its legal operations shall not be interfered.

Article 139 The trading settlement funds of the clients of a securities company shall be deposited in a commercial bank and be managed through the separate accounts as opened in the name of each client. The specific measures and implementation procedures shall be formulated by the State Council.

A securities company shall not incorporate any trading settlement funds or securities of its clients into its own assets. Any entity or individual is prohibited from misusing any trading settlement funds or securities of its/his clients in any form.

Where a securities company goes through bankruptcy procedures or is under liquidation, the trading settlement funds or securities of its client shall not be defined as its insolvent assets or liquidation assets. Under any other circumstance as irrelevant to the liabilities of its clients or under any other circumstance as prescribed by law, the trading settlement funds or securities of its clients shall not be sealed-up, frozen, deducted or enforced compulsorily.

Article 140 Where a securities company engages in any brokerage business, it shall arrange for a uniformly formulated power of attorney of securities trading for the entrusting party. Where any other means of entrustment is adopted, the relevant entrustment records shall be made.

For an entrustment of securities trading as made by a client, disregard whether the trading is concluded or not, the entrustment records shall be kept in the relevant securities company within the prescribed period.

Article 141 Upon accepting an entrustment for securities trading, a securities company shall, on the basis of the description of the securities, trading volume, method of quoting, price band, etc. as indicated in the power of attorney,

undertake securities trading as an agent according to the trading rules and make trading faithful records. After a transaction is concluded, a securities company shall, according to the relevant regulations, formulate a transaction report and deliver it to the relevant clients.

The statements in check sheet made for confirming trading acts against the results of securities trading shall be authentic. Such statements shall be subject to the examination of an examiner other than the relevant transaction handler himself, on a transaction-by-transaction basis, so as to guarantee the consistency between the balance of securities in book account and the securities as actually held.

Article 142 Where a securities company provides any service of securities financing through securities trading for its client, it shall meet the provisions of the State Council and shall be subject to the approval of the securities regulatory authority under the State Council.

Article 143 A securities company that engages in brokerage operations shall not decide any purchase or sale of securities, class selection of securities, trading volume or trading price on the basis of full entrustment of its client.

Article 144 A securities company shall not make any promise to its clients on the proceeds as generated from securities trading or on compensating the loss as incurred from securities trading by any means.

Article 145 A securities company and the practitioners thereof shall not privately accept any entrustment of its client for securities trading beyond its business place as established according to law.

Article 146 Where any practitioner of a securities company violates the trading rules by implementing the instructions of his securities company or taking advantage of his post in any securities trading, the relevant securities company shall bear all the liabilities as incurred therefrom.

Article 147 A securities company shall keep the materials of its clients regarding account opening, entrustment records, trading records and internal management as well as its business operations in a proper manner. No one may conceal, forge, alter or damage any of the aforesaid materials. The term for keeping the aforesaid materials shall be no less than 20 years.

Article 148 A securities company shall, according to the relevant provisions, report the information and materials regarding its operations and management such as its business operations and financial status to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council is empowered to require the securities company as well as the shareholders and actual controllers thereof to provide the relevant information and materials within a prescribed period.

The information and materials as reported or provided by the securities company and the shareholders and actual controllers thereof to the securities regulatory authority under the State Council shall be authentic, accurate and complete.

Article 149 The securities regulatory authority under the State Council may, when believing it is necessary, entrust an accounting firm or an asset appraisal institution to carry out an auditing or appraisal on the financial status, internal control as well as asset value of any securities company. The specific measures thereof shall be formulated by the securities regulatory authority under the State Council in collaboration with the relevant administrative departments.

Article 150 Where the net capital or any other indicator of risk control of a securities company fails to satisfy the relevant provisions, the securities regulatory authority under the State Council shall order it to correct in a prescribed period. Where a securities company fails to correct within the prescribed period or any act thereof has injured the sound operation of the securities company or has damaged the legitimate rights and interests of its clients, the securities regulatory authority under the State Council may take the following measures in light of different circumstances:

(1) Restricting its business operations, ordering it to suspend some business operations and stopping the approval of any new operations thereof;

- (2) Stopping the approval for establishing or taking over any business branch;
- (3) Restricting its distribution of dividends, restricting the payment of remunerations to or provision of welfare for its directors, supervisors or senior managers;
- (4) Restricting any transfer of property or the setting of any other right to its property;
- (5) Ordering it to alter its directors, supervisors and senior managers or restricting the right thereof;
- (6) Ordering the controlling shareholders to transfer their stock rights or restricting its shareholders from exercising the shareholders' rights; and
- (7) Revoking the relevant business license.

A securities company shall, upon rectification, submit a report to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council shall lift the relevant measures as prescribed in the preceding paragraph herein within 3 days as of concluding the relevant examination and acceptance of the securities company that has met the requirements of risk control indicators upon examination and acceptance.

Article 151 Where a shareholder of a securities company makes any fake capital contribution or spirits away registered capital, the securities regulatory authority under the State Council shall order him to correct within a prescribed period and may order him to transfer the stock rights of the securities company it holds.

Before a shareholder as prescribed in the preceding paragraph herein corrects his irregularity and transfers the stock right of the securities company it holds according to the relevant requirements, the securities regulatory authority under the State Council may restrict the shareholders' rights thereof.

Article 152 Where any director, supervisor or senior manager of a securities company fails to fulfill his fiduciary duties and thus incurs any major irregularity or rule-breaking act or major risk to his securities company, the securities regulatory authority under the State Council may revoke the post-holding qualification thereof and order his company to remove him from his post and replace him with a new one.

Article 153 Where any illegal operation of a securities company or any major risk thereof seriously disturbs the order of the securities market or injures the interests of the relevant investors, the securities regulatory authority under the State Council may take such supervisory measures as suspending its business for rectification, designating any other institution for trusteeship, take-over or cancellation.

Article 154 During a period when a securities company is ordered to suspend its business for rectification, or is designated for trusteeship, or is being taken over or liquidated, or where any major risk occurs, the following measures may be adopted to the directors, supervisors, senior managers or any other person of the securities company as held to be directly responsible, upon the approval of the securities regulatory authority under the State Council:

- (1) Notifying the exit administrative organ to prevent him from exiting the Chinese territory; and
- (2) Requesting the judicial organ to prohibit him from moving, transferring his properties or disposing of his properties by any other means, or setting any other right to his properties.

Chapter VII Securities Registration and Clearing Institutions

Article 155 A securities registration and clearing institution is a non-profit legal person that provides centralized registration, custody and settlement services for securities trading.

The establishment of a securities registration and clearing institution shall be subject to the approval of the securities regulatory authority under the State Council.

Article 156 The establishment of a securities registration and clearing institution shall meet the following requirements:

- (1) Its self-owned capital shall be no less than 0.2 billion yuan;
- (2) It shall have a place and the facilities as required by the services of securities registration, custody and settlement;
- (3) Its major managers and practitioners shall have the securities practice qualification; and

(4) It shall meet any other requirement as prescribed by the securities regulatory authority under the State Council. The words "securities registration and clearing" shall be indicated in the name of a securities registration and clearing institution.

Article 157 A securities registration and clearing institution shall perform the following functions:

- (1) The establishment of securities accounts and settlement accounts;
- (2) The custody and transfer of securities;
- (3) The registration of roster of securities holders;
- (4) The settlement and delivery for listed securities trading of a stock exchange;
- (5) The distribution of securities rights and interests on the basis of the entrustment of issuers;
- (6) The handling of any inquiry relating to the aforesaid business operations; and
- (7) Any other business operations as approved by the securities regulatory authority under the State Council.

Article 158 The way of nationally centralized and unified operations shall be adopted for the registration and settlement of securities.

The constitution and operational rules of a securities registration and clearing institution shall be formulated according to law and shall be subject to the approval of the securities regulatory authority under the State Council.

Article 159 The securities as held by the relevant holders shall all be put under the custody of a securities registration and clearing institution in a listed trading.

A securities registration and clearing institution shall not misappropriate any securities of its clients.

Article 160 A securities registration and clearing institution shall provide the roster of securities holders as well as the relevant materials to a securities issuer.

A securities registration and clearing institution shall, according to the result of securities registration and settlement, affirm the fact that a securities holder holds the relevant securities and provide the relevant registration materials to the securities holder.

A securities registration and clearing institution shall guarantee the authenticity, accuracy and integrity of the roster of securities holders as well as records of transfer registration, and shall not conceal, forge, alter or damage any of the aforesaid materials.

Article 161 A securities registration and clearing institution shall take the following measures to guarantee the sound operation of its business:

- (1) Having the necessary service equipment and complete data protection measures;
- (2) Having established complete management systems concerning operation, finance and security protection; and
- (3) Having established a complete risk control system.

Article 162 A securities registration and clearing institution shall keep the original voucher of registration, custody and settlement as well as the relevant documents and materials in a proper manner. The term for keeping the aforesaid materials shall be no less than 20 years.

Article 163 A securities registration and clearing institution shall establish a clearing risk fund so as to pay in advance or make up any loss of the securities registration and clearing institution as incurred from default delivery, technical malfunction, operational fault or force majeure.

The securities clearing risk fund shall be withdrawn from the business incomes and proceeds of the securities registration and clearing institution and may be paid by clearing participants according to a specified percentage of securities trading volume.

The measures for raising and managing the securities clearing risk fund shall be formulated by the securities regulatory authority under the State Council in collaboration with the fiscal department of the State Council.

Article 164 The securities clearing risk fund shall be deposited into a special account of a designated bank and shall be subject to special management.

Where a securities registration and clearing institution makes any compensation by using the securities clearing risk fund, it may recourse the payment to the relevant person who is held responsible.

Article 165 An application for dissolving a securities registration and clearing institution shall be subject to the approval of the securities regulatory authority under the State Council.

Article 166 An investor who entrusts a securities company to undertake any securities trading shall apply for opening a securities account. A securities registration and clearing institution shall, according to the relevant provisions, open a securities account for the investor in his own name.

An investor who applies for opening an account shall hold the legitimate certificates certifying his identity of a Chinese citizen or its qualification of a Chinese legal person, unless it is otherwise provided for by the state.

Article 167 A securities registration and clearing institution shall, when providing netting service for a stock exchange, require the relevant clearing participant to deliver securities and funds in full amount and provide guaranty of delivery according to the principles of delivery versus payment (DVP).

Before a delivery is concluded, nobody may use the securities, funds or collaterals as involved in the delivery.

Where a clearing participant fails to perform the duty of delivery according to the schedule, a securities registration and clearing institution has the right to dispose of the properties as prescribed in the preceding paragraph herein according to the operational rules.

Article 168 The clearing funds and securities as collected by a securities registration and clearing institution according to the operational rules shall be deposited into a special account for settlement and delivery. The settlement and delivery that can only be applied to the securities trading as concluded according to the operational rules and shall not be enforced compulsorily.

Chapter VIII Securities Trading Service Institutions

Article 169 Where an investment consulting institution, financial advising institution, credit rating institution, asset appraisal institution, or accounting firm engages in any securities trading service, it shall be subject to the approval of the securities regulatory authority under the State Council and the relevant administrative departments.

The measures for the administration of examination and approval of the practice of securities trading services by the investment consulting institutions, financial advising institutions, credit rating institutions, asset appraisal institutions and accounting firms shall be formulated by the securities regulatory authority under the State Council and the relevant administrative departments.

Article 170 The staff of an investment consulting institution, financial advising institution or credit rating institution who engage in securities trading services shall have the special knowledge of securities as well as work experience in the securities business or securities trading services for more than 2 years. The standards for recognizing the securities practice qualification and the measures for administration thereof shall be formulated by the securities regulatory authority under the State Council.

Article 171 An investment consulting institution as well as its practitioners that engage in securities trading services shall not have any of the following acts:

- (1) Engaging in any securities investment as an agent on behalf of its entrusting party;
- (2) Concluding any agreement with any entrusting party on sharing the gains of securities investment or bearing the loss of securities investment;
- (3) Purchasing or selling any stock of a listed company, for which the consulting institution provides services;
- (4) Providing or disseminating any false or misleading information to investors through media or by any other means; or

(5) Having any other act as prohibited by any law or administrative regulation.

Any institution or person that has any of the acts as prescribed in the preceding paragraph herein and thus incurs any loss to investors shall bear the liabilities of compensation.

Article 172 An investment consulting institution or credit rating institution that engages in securities trading services shall charge commissions for the services it provides according to the rates of or measures for fee charging as formulated by the relevant administrative department of the State Council.

Article 173 Where a securities trading service institution formulates and issues any auditing report, asset appraisal report, financial advising report, credit rating report or legal opinions for the issuance, listing and trading of securities, it shall be assiduous and dutiful by carrying out examination and verification for the authenticity, accuracy and integrity of the contents of the documents applied as the base. In the case of any false record, misleading statement or major omission in the documents it has formulated or issued, which incurs any loss to any other person, the relevant securities trading service institution shall bear several and joint liabilities together with the relevant issuer and listed company, unless a securities trading service institution has the ability to prove its faultlessness.

Chapter IX Securities Industrial Associations

Article 174 A securities industrial association is a self-disciplinary organization for the securities industry and is a public organization with the status of a legal person.

A securities company shall join a securities industrial association.

The organ of power of a securities industrial association is the general assembly of its members.

Article 175 The constitution of a securities industrial association shall be formulated by the general assembly of its members and shall be reported to the securities regulatory authority under the State Council for archival filing.

Article 176 A securities industrial association shall perform the following functions and duties:

- (1) Educating and organizing its members to observe the laws and administrative regulations on securities;
- (2) Safeguarding the legitimate rights and interests of its members and reporting the suggestions and demands of its members to the securities regulatory body;
- (3) Collecting and sorting out the securities information and providing services for its members;
- (4) Formulating the rules that shall be observed by its members, organizing the vocational training for the practitioners of its member entities and carrying out vocational exchanges between its members;
- (5) Holding mediation over any dispute regarding securities operation between its members or between its members and clients;
- (6) Organizing its members to do research on the development, operation, etc. of the securities industry;
- (7) Supervising and examining the acts of its members and, according to the relevant provisions, giving a disciplinary sanction to any member that violates any law or administrative regulation or the constitution of the association; and
- (8) Performing any other functions and duties as stipulated by the constitution of the industrial association.

Article 177 A council shall be established within the securities industrial association. The members of the council shall be selected through election according to the provisions of the constitution.

Chapter X Securities Regulatory Bodies

Article 178 The securities regulatory authority under the State Council shall carry out supervision and administration of the securities market according to law so as to preserve the order of the securities market and guarantee the legitimate operations thereof.

Article 179 The securities regulatory authority under the State Council shall perform the following functions and duties regarding the supervision and administration of the securities market:

- (1) Formulating the relevant rules and regulations on the supervision and administration of the securities market and exercising the power of examination or verification according to law;
- (2) Carrying out the supervision and administration of the issuance, listing, trading, registration, custody and settlement of securities according to law;
- (3) Carrying out supervision and administration of the securities activities of the securities issuers, listed companies, stock exchanges, securities companies, securities registration and clearing institutions, securities investment fund management companies and securities trading service institutions according to law;
- (4) Formulating the standards for securities practice qualification and code of conduct and carrying out supervision and implementation according to law;
- (5) Carrying out supervision and examination of information disclosure regarding the issuance, listing and trading of securities;
- (6) Offering guidance for and carrying out supervision of the activities of the securities industrial associations according to law;
- (7) Investigating into and punishing any violation of any law or administrative regulation on the supervision and administration of the securities market according to law; and
- (8) Performing any other functions and duties as prescribed by any law or administrative regulation.

The securities regulatory authority under the State council may establish a cooperative mechanism of supervision and administration in collaboration with the securities regulatory bodies of other countries and regions and conducts trans-border supervision and administration.

Article 180 Where the securities regulatory authority under the State Council performs its duties and functions, it has the power to take the following measures:

- (1) Carrying an on-the-spot examination to a securities issuer, listing company, securities company, securities investment fund management company, securities trading service company, stock exchange or securities registration and clearing institution;
- (2) Making investigation and collecting evidence in a place where any suspected irregularity has happened;
- (3) Consulting the parties concerned or any entity or individual relating to a case under investigation and requiring the relevant entity or person to give explanations on the matters relating to a case under investigation;
- (4) Referring to and photocopying such materials as the registration of property right and the communication records relating to the case under investigation;
- (5) Referring to and photocopying the securities trading records, transfer registration records, financial statements as well as any other relevant documents and materials of any entity or individual relating to a case under investigation; sealing up any document or material that may be transferred, concealed or damaged;
- (6) Consulting the capital account, security account or bank account of any relevant party concerned in or any entity or individual relating to a case under investigation; in the case of any evidence certifying that any property as involved in a case, such as illegal proceeds or securities, has been or may be transferred or concealed; or where any important evidence has been or may be concealed, forged or damaged, freezing or sealing up the foregoing properties or evidence upon the approval of the principal of the securities regulatory authority under the State Council;
- (7) When investigating into any major securities irregularity such as manipulation of the securities market or insider trading, upon the approval of the principal of the securities regulatory authority under the State Council, restricting the securities trading of the parties concerned in a case under investigation, whereby the restriction term shall not exceed 15 trading days; under any complicated circumstance, the restriction term may be extended for another 15 trading day.

Article 181 Where the securities regulatory authority under the State Council performs its functions and duties of supervision or examination or investigation, there shall be no less than two people carrying out the supervision and examination, who shall show their legitimate certificates and the notice of supervision and examination as well as investigation. Where there are less than two people carrying out the supervision and examination or investigation or they

fail to show their legitimate certificates and the notice of supervision and examination or investigation, the entity under examination and investigation has the right to refuse.

Article 182 The functionary of the securities regulatory authority under the State Council shall be dutiful, impartial and clean, and handle matters according to law, and shall not take advantage of his post to seek any unjust interests or divulge any commercial secret of the relevant entity or individual it has access to in his performance of duty.

Article 183 Where the securities regulatory authority under the State Council performs its functions and duties according to law, the entity or individual under examination and investigation shall offer assistance, provide the relevant documents and materials in a faithful manner and shall not refuse any legitimate requirement, obstruct the performance of duties and functions or conceal any document or material concerned.

Article 184 The regulations, rules as well as the working system of supervision and administration as formulated by the securities regulatory authority under the State Council according to law shall be publicized to the general public. The securities regulatory authority under the State Council shall, according to the results of investigation, decide the punishment on any securities irregularity, which shall be publicized to the general public.

Article 185 The securities regulatory authority under the State Council shall establish an information pooling mechanism for supervision and administration in collaboration with any other financial regulatory authority under the State Council. Where the securities regulatory authority under the State Council performs its functions and duties of supervision and examination or investigation according to law, the relevant departments shall show cooperation.

Article 186 Where the securities regulatory authority under the State Council finds any securities irregularity as involved in a suspected crime when performing its functions and duties according to law, it shall transfer the case to the judicial organ for handling.

Article 187 The functionary of the securities regulatory authority under the State Council shall not hold any post in any organization under its supervision.

Chapter XII Legal Liabilities

Article 188 Where any company unlawfully makes any public issuance of securities or does so in any disguised form without the examination and approval of the statutory organ, it shall be ordered to cease the issuance, return the funds it has raised plus a deposit interest as calculated at the interest rate of the bank for the corresponding period of time and be imposed a fine of 1% up to 5% of the funds it has illegally raised. A company that has been established through any unlawful public issuance of securities or through any unlawful public issuance of securities in any disguised form shall be revoked by the organ or department that performs the functions and duties of supervision and administration in collaboration with the local people's government at or above the county level. The person-in-charge or any other person as held to be directly responsible shall be given a warning and be fined 30, 000 yuan up to 300, 000 yuan.

Article 189 Where an issuer fails to meet the requirements of issuance and cheats for the verification for issuance by any fraudulent means, if the relevant securities haven't been issued, it shall be fined 300, 000 yuan up to 600, 000 yuan; if the relevant securities have been issued, it shall be fined 1% up to 5% of the illegal proceeds it has unlawfully raised. The person-in-charge and any other person as held to be directly responsible shall be fined 30, 000 yuan up to 300, 000 yuan. Any controlling shareholder or actual controller of an issuer that instigates any irregularity as prescribed in the preceding paragraph herein shall be subject to the punishments as prescribed in the preceding paragraph.

Article 190 Where a securities company underwrites or purchases or sells, as an agent, any securities which have been unlawfully issued in a public manner without examination and approval, it shall be ordered to stop its entrusted underwriting or purchase or sale. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times its illegal proceeds shall be imposed. Where there is no illegal proceeds or its illegal proceeds is less than 300, 000 yuan, a fine of 300, 000

yuan up to 60, 000 yuan shall be imposed. Where any loss has been incurred to any investor, the securities company shall bear several and joint liabilities of compensation together with the issuer. The person-in-charge and any other person as held to be directly responsible shall be given a warning and fined 30, 000 yuan up to 300, 000 yuan, and the post-holding qualification or securities practice qualification thereof shall be revoked.

Article 191 Where a securities company that engages in securities underwriting is under any of the following circumstances, it shall be ordered to correct and be given a warning. The illegal proceeds shall be confiscated and a fine of 30, 000 yuan up to 600, 000 yuan may be imposed concurrently. Under any serious circumstances, the relevant business license thereof shall be suspended or revoked. Where any loss has been incurred to any other securities underwriting institution or investor, it shall be subject to the liabilities of compensation according to law. The person-in-charge and any other person as held to be directly responsible shall be given a warning and may be concurrently fined 30, 000 yuan up to 300, 000 yuan. Under any serious circumstances, the post-holding qualification or securities practice qualification thereof shall be revoked:

- (1) Conducting any advertising or any other publicity for recommendation, which is false or may mislead investors;
- (2) Canvassing any underwriting business by any means of unjust competition; or
- (3) Having any other irregularity in violation of the relevant provisions on securities underwriting.

Article 192 Where a recommender produces a recommendation letter with any false record, misleading statement or major omission, or fails to perform any other statutory functions and duties, it shall be ordered to correct and be given a warning. Its business income shall be confiscated and a fine of 1 up to 5 times its business income shall be imposed. Under any serious circumstances, the relevant business license shall be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be fined 30, 000 yuan up to 300, 000 yuan. Under any serious circumstances, the post-holding qualification or securities practice qualification thereof shall be revoked.

Article 193 Where an issuer, a listed company or any other obligor of information disclosure fails to disclose information according to the relevant provisions or where there is any false record, misleading or major omission in the information it has disclosed, it shall be ordered to correct, given a warning and imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Where an issuer, a listed company or any other obligor of information disclosure fails to submit relevant reports or where there is any false record, misleading or major omission in any report it has submitted, it shall be ordered to correct, given a warning and imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person-in-charge as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan. The controlling shareholder or actual controller of any issuer, listed company or any other obligor of information disclosure instigates any irregularity as prescribed in the preceding 2 paragraphs herein shall be subject to the punishments as prescribed in the preceding 2 paragraphs.

Article 194 Where any issuer or listed company unlawfully alters the purpose of use of funds as raised through public issuance of securities, it shall be ordered to correct. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

The controlling shareholder or actual controller of any issuer or listed company who instigates any irregularity as prescribed in the preceding paragraph herein shall be given a warning and be imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be subject to the punishment according to the provisions of the preceding paragraph.

Article 195 Where any director, supervisor, or senior manager of a listed company or a shareholder who holds more than 5% of the shares of a listed company violates the provisions of Article 47 of the present Law by buying or purchasing any stock of the listed company, he shall be given a warning and be concurrently imposed a fine of 30,000 yuan up to 100, 000

yuan.

Article 196 Any stock exchange as illegally established shall be banned by the people's government above the county level. Its illegal proceeds shall be confiscated and a fine of 1 up to 5 times its illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 500, 000 yuan shall be imposed, The person-in-charge and an other as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 197 Any securities company that is unlawfully established or that unlawfully undertakes any securities operation without approval shall be banned by the securities regulatory body, the illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 300, 000 yuan, a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 198 Where any personnel without a post-holding qualification or securities practice qualification is unlawfully employed as in violation of the provisions of the present Law, the securities regulatory body shall order it to correct, give it a warning and impose upon it a fine of 100, 000 yuan up to 300, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan.

Article 199 Where any person who is prohibited by any law or administrative regulation from engaging in securities trading holds or purchases or sells any stock directly or in an assumed name or in the name of any other person, he shall be ordered to dispose of the stocks he unlawfully holds according to law. The illegal proceeds shall be confiscated and a fine of no more than the equivalent value of the stocks traded shall be imposed. In the case of any functionary of the state, an administrative sanction shall be given according to law.

Article 200 Where any practitioner of a stock exchange, securities company, securities registration and clearing institution or any functionary of any securities industrial association provides any false material or conceals, forges, alters or damages any trading record for the purpose of inducing investors to purchase or sell securities, the securities practice qualification thereof shall be revoked and a fine of 30, 000 yuan up to 100, 000 yuan shall be imposed. In the case of any functionary of the state, an administrative sanction shall be given according to law.

Article 201 Where a securities trading service institution and its staffs that produce any auditing report, asset appraisal report or legal opinions for the issuance of stocks violate the provisions of Article 45 of the present Law by purchasing or selling any stock, it shall be ordered to dispose of the stocks it or illegally holds according to law. The illegal proceeds shall be confiscated and a fine of no more than the equivalent value of the stocks traded shall be imposed.

Article 202 Where an insider who has access to insider information of securities trading or any person who has obtained any insider information purchases or sells the securities, divulges relevant information or advises any other person to purchase or sell securities before the information regarding the issuance or trading of securities or any other information that may have any big impact on the price of the securities is publicized, he shall be ordered to dispose of the securities he illegally holds according to law. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 600, 000 yuan shall be imposed. Where an entity is involved in any insider trading, the person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan. Any functionary of the securities regulatory body that conducts any insider trading shall be given a heavier punishment.

Article 203 Where anyone violates the present Law by manipulating the securities market, he shall be ordered to dispose of the securities he illegally holds according to law. The illegal proceeds shall be confiscated and a fine of a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30,

000 yuan, a fine of 300, 000 yuan up to 3,000, 000 yuan shall be imposed. Where an entity manipulates the securities market, the person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 100,000 yuan up to 600, 000 yuan as well.

Article 204 Where anyone violates the relevant laws by purchasing or selling any securities during a period when the transfer of such securities is prohibited, he shall be ordered to correct, be given a warning and be imposed a fine of no more than the equivalent value of the securities as traded. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 205 Where a securities company violates the present Law by providing any securities financing, the illegal proceeds shall be confiscated, the relevant business license shall be suspended or revoked, and a fine of no more than the equivalent value of the funds as raised through securities financing shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 206 Where anyone violates the provisions of paragraph 1 or 3 of Article 78 of the present Law by disturbing the securities market, the securities regulatory body shall order it to correct. The illegal proceeds shall be revoked and a fine of 1 up to 5 times of the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 200, 000 yuan shall be imposed.

Article 207 Anyone who violates Paragraph 2 of Article 78 of the present Law by making false statements or providing misleading information in securities dealings shall be ordered to correct, and be fined 30,000 yuan up to 200,000 yuan. If the violator is a state functionary, he shall be given an administrative sanction, in addition.

Article 208 Where any legal person violates the present Law by opening any account in any other person's name or making use of any other person's account to purchase or sell any securities, it shall be ordered to correct and be imposed a fine of 1 up to 5 times the illegal proceeds. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 300, 000 yuan shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan.

Where a securities company provides any securities trading account of its own or of any other person for any irregularity as prescribed in the preceding paragraph herein, he shall not only be subject to the punishments as prescribed in the preceding paragraph, the post-holding qualification or securities practice qualification of the person-in-charge or any other person as held to be directly responsible shall be revoked as well.

Article 209 Where a securities company violates the present Law by engaging in the self-operation of securities by assuming any other's name or any individual's name, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, the business license of securities self-operation shall be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 210 Where a securities company purchases or sells any securities or carries out any trading in violation of the entrustment of its clients or handles any other non-trading matter in violation of the true intention as expressed by its clients, it shall be ordered to correct and be imposed a fine of 10, 000 yuan up to 100, 000 yuan. Where any loss has been incurred to its client, it shall be subject to the liabilities of compensation according to law.

Article 211 Where a securities company or securities registration and clearing institution misappropriates any fund or securities of its client, or unlawfully purchases or sells any securities for its client without any entrustment, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be

imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close or the relevant business license thereof shall be revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan and the relevant post-holding qualification or securities practice qualification thereof shall be revoked.

Article 212 Where a securities company undertakes any brokerage business, accepts the full entrustment of any client to purchase or sell any securities or makes any promise on the proceeds as generated from securities trading or on the compensation of any loss as incurred from securities trading, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 50, 000 yuan up to 200, 000 yuan shall be imposed. The relevant business license may be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan. The relevant post-holding qualification or securities practice qualification thereof may be revoked.

Article 213 Where a purchaser fails to perform its obligations of announcing the acquisition of a listed company, issuing a tender offer or submitting an acquisition report of a listed company or unlawfully altering its tender offer, etc. according to the present Law, it shall be ordered to correct, given a warning and be imposed a fine of 100, 000 yuan up to 300, 000 yuan. Before making any correction, for the stocks a purchaser holds individually or with any other person through an agreement or any other arrangement, the voting right thereof shall not be exercised. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 214 Where a purchaser or the controlling shareholder of any purchaser takes advantage of the acquisition of any listed company to injure the legitimate rights and interests of the target company as well as the shareholders thereof, it shall be ordered to correct and be given a warning. Under any serious circumstances, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. Where any loss is incurred to the target company or the shareholders thereof, it shall be subject to the liabilities of compensation according to law. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 215 Where a securities company or any of its practitioners violates the present Law by privately accepting the entrustment of purchasing or selling securities from any client, it shall be ordered to correct and be given a warning. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 300, 000 yuan shall be imposed.

Article 216 Where a securities company violates the relevant provisions by undertaking any trading of unlisted securities without approval, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed.

Article 217 Where a securities company fails to start its business operations 3 months after establishment without any justifiable reason, or suspends its business operations for a consecutive 3 months, the organ in charge of corporation registration shall revoke the business license of the company.

Article 218 Where any securities company violates the provisions of Article 129 of the present Law by unlawfully establishing, purchasing or revoking any branch, or unlawfully going through any merge, split-up, business suspension, dissolution or bankruptcy, or establishing, purchasing a securities operation institution abroad or purchasing the shares of any securities operation institution abroad, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. The person-in-charge and any

other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100,000 yuan.

Where any securities company violates the provisions of Article 129 of the present Law by altering any of the relevant items, it shall be ordered to correct and be imposed a fine of 100,000 yuan up to 300,000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and imposed a fine of no more than 50,000 yuan.

Article 219 Where a securities company violates the present Law by engaging in any securities operation beyond its permitted business scope, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 300,000 yuan, a fine of 300,000 yuan up to 600,000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close down. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100,000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 220 Where a securities company fails to carry out its securities operation of brokerage, underwriting, self-operation or asset management in a separate manner according to law but mixes its own securities operation with other operations, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 300,000 yuan up to 600,000 yuan shall be imposed. Under any serious circumstances, the relevant business license shall be revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100,000 yuan. Under any serious circumstances, the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 221 Where a securities company submits any false document of certification or adopts any other fraudulent means to conceal any major fact so as to cheat for the securities business license or a securities company has any severe irregularity in the securities trading and thus, fails to meet the requirements of business operation any more, the securities regulatory body shall revoke its securities business license.

Article 222 Where a securities company or its shareholder or actual controller violates the relevant provisions by refusing to report or provide information or materials regarding its business and management to the securities regulatory body or in the case of any false record, misleading statement or major omission in the aforesaid information or materials as reported or submitted, it shall be ordered to correct, be given a warning and be fined 30,000 yuan up to 300,000 yuan. The relevant business license of the securities company may be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be fined no more than 30,000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Where a securities company provides financing or guaranty for its shareholder or any person related to its shareholder, it shall be ordered to correct, be given a warning and be imposed a fine of 100,000 yuan up to 300,000. The person-in-charge and any other person as held to be directly responsible shall be imposed a fine of 30,000 yuan up to 100,000 yuan. Where a shareholder has any fault, the securities regulatory authority under the State Council may restrict his shareholders' right before he makes the correction according to the relevant requirements. Where anyone refuses to correct, he may be ordered to transfer the stock right of the securities company he holds.

Article 223 Where a securities trading service institution fails to fulfill its accountability in a diligent and dutiful manner so that any document it formulated or produced has any false record, misleading statement or major omission, it shall be ordered to correct. The proceeds as generated from its business shall be confiscated. Its securities business license shall be suspended or revoked. A fine of 1 up to 5 times its business income shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100,000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 224 Anyone that violates the present Law by issuing or underwriting any corporate bond shall be given a punishment by the department as authorized by the State Council according to the relevant provisions of the present Law.

Article 225 Where a listed company, securities company, stock exchange, securities registration and clearing institution, or securities trading service institution fails to keep the relevant documents and materials according to the relevant provisions, it shall be ordered to correct, be given a warning and be imposed a fine of 30, 000 yuan up to 300, 000 yuan. Where any relevant document or material is concealed, forged, altered or damaged, the violator shall be given a warning and be imposed a fine of 300, 000 yuan up to 600, 000 yuan.

Article 226 Where a securities registration and clearing institution is unlawfully established without approval of the State Council, it shall be cancelled by the securities regulatory body, its illegal proceeds shall be confiscated, and a fine of 1 up to 5 times of the illegal proceeds shall be imposed upon it.

Where an investment consulting institution, financial advising institution, credit rating institution, asset appraisal institution or accounting firm undertakes any securities trading service without the relevant approval, it shall be ordered to correct.

The illegal proceeds shall be confiscated, and a fine of 1 up to 5 times of the illegal proceeds shall be imposed upon it.

Where a securities registration and clearing institution or a securities service trading institution violates the present Law or any operational rules it has formulated according to law, the securities regulatory body shall order it to correct, confiscate the illegal proceeds, and impose upon it a fine of 1 up to 5 times the illegal proceeds. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 300, 000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close down or its securities business license shall be revoked.

Article 227 Where the securities regulatory authority under the State Council or the department as authorized by the State Council is under any of the following circumstances, the person-in-charge and any other person as held to be directly responsible shall be given an administrative sanction according to law:

(1) Verifying or approving an application for issuing securities or for establishing a securities company, which fails to comply with the present Law;

(2) Taking such measures as on-the-spot examination, investigation and evidence collection, consultation, freeze-up or seal-up as in violation of the provisions of Article 180 of the present Law;

(3) Giving any administrative sanction to the relevant institution or personnel as in violation of the relevant provisions; or

(4) Performing any other functions and duties in an unlawful manner.

Article 228 Where any functionary of the securities regulatory body or any member of the issuance examination committee fails to perform the duties and functions as prescribed in the present Law, abuses his power, neglects his duty, takes advantage of his post to seek any unjust interests or divulges any commercial secret of the relevant entity or individual as accessible in his performance, he shall be subject to legal liabilities.

Article 229 Where a stock exchange grants any approval to an application for securities listing that fails to meet the requirements as prescribed in the present Law, it shall be given a warning. Its business income shall be confiscated and a fine of 1 up to 5 times its business income shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be imposed a fine of 30, 000 yuan up to 300, 000 yuan.

Article 230 Where anyone refuses or obstructs the securities regulatory body and its functionary in its or his performance of the functions and duties of supervision, examination and investigation by means of violence or threat, he shall be given an administrative sanction of public security according to law.

Article 231 Anyone who violates the present Law and constitutes a crime shall be subject to criminal liabilities according to law.

Article 232 Where anyone violates the present Law and shall be subject to civil liabilities of compensation and payment of fines and penalties, and if his properties are not sufficient to cover all the payment at the same time, he shall bear civil

liabilities.

Article 233 Where anyone violates the relevant laws and administrative regulations or the relevant provisions of the securities regulatory authority under the State Council and is under any serious circumstances, the securities regulatory authority under the State Council may take measures to prohibit the relevant persons as held to be responsible from entering into the securities market.

The term "prohibition from entering into the securities market" as mentioned in the preceding paragraph refers to a system, whereby a person shall not undertake any securities practice or hold the post of director, supervisor or senior manager of a listed company within a prescribed term or for life.

Article 234 The fines as collected and the illegal proceeds as confiscated shall be all turned over into the State Treasury.

Article 235 Any party concerned that is dissatisfied with a decision of the securities regulatory body or a department as authorized by the State Council on punishment may apply for an administrative review or file a litigation with the people's court.

Chapter XII Supplementary Provisions

Article 236 The securities that have been approved for listed trading in a stock exchange according to the relevant administrative regulations before the present Law comes into force may continue to be traded according to law. The securities operation institutions that have been approved for establishment according to the relevant administrative regulations and the provisions of the administrative department of finance of the State Council before the present Law comes into force but fails to completely comply with the provisions of the present Law shall meet the requirements as prescribed by the present Law within a prescribed term. The specific measures for implementation shall be separately prescribed by the State Council.

Article 237 An issuer that applies for verifying the public issuance of any stocks or corporate bonds shall pay the expenses for examination according to the relevant provisions.

Article 238 Where a domestic enterprise directly or indirectly goes abroad to issue any securities abroad or whose securities are listed abroad for trading, it shall be subject to the approval of the securities regulatory authority under the State Council according to the relevant provisions of the State Council.

Article 239 As to any subscription or trading of stocks of a domestic company in a foreign currency, the specific measures shall be separately formulated by the State Council.

Article 240 The present Measures shall come into force as of January 1, 2006.

中华人民共和国主席令

第 四十三 号

《中华人民共和国证券法》已由中华人民共和国第十届全国人民代表大会常务委员会第十八次会议于 2005 年 10 月 27 日修订通过，现将修订后的《中华人民共和国证券法》公布，自 2006 年 1 月 1 日起施行。

中华人民共和国主席 胡锦涛

2005 年 10 月 27 日

中华人民共和国证券法

（1998 年 12 月 29 日第九届全国人民代表大会常务委员会第六次会议通过 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〈中华人民共和国证券法〉的决定》修正 2005 年 10 月 27 日第十届全国人民代表大会常务委员会第十八次会议修订）

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第一章 总 则

第一条 为了规范证券发行和交易行为，保护投资者的合法权益，维护社会经济秩序和社会公共利益，促进社会主义市场经济的发展，制定本法。

第二条 在中华人民共和国境内，股票、公司债券和国务院依法认定的其他证券的发行和交易，适用本法；本法未规定的，适用《中华人民共和国公司法》和其他法律、行政法规的规定。

政府债券、证券投资基金份额的上市交易，适用本法；其他法律、行政法规另有规定的，适用其规定。

证券衍生品发行、交易的管理办法，由国务院依照本法的原则规定。

第三条 证券的发行、交易活动，必须实行公开、公平、公正的原则。

第四条 证券发行、交易活动的当事人具有平等的法律地位，应当遵守自愿、有偿、诚实信用的原则。

第五条 证券的发行、交易活动，必须遵守法律、行政法规；禁止欺诈、内幕交易和操纵证券市场的行为。

第六条 证券业和银行业、信托业、保险业实行分业经营、分业管理，证券公司与银行、信托、保险业务机构分别设立。国家另有规定的除外。

第七条 国务院证券监督管理机构依法对全国证券市场实行集中统一监督管理。

国务院证券监督管理机构根据需要可以设立派出机构，按照授权履行监督管理职责。

第八条 在国家对证券发行、交易活动实行集中统一监督管理的前提下，依法设立证券业协会，实行自律性管理。

第九条 国家审计机关依法对证券交易所、证券公司、证券登记结算机构、证券监督管理机构进行审计监督。

第二章 证券发行

第十条 公开发行证券，必须符合法律、行政法规规定的条件，并依法报经国务院证券监督管理机构或者国务院授权的部门核准；未经依法核准，任何单位和个人不得公开发行证券。

有下列情形之一的，为公开发行：

- （一）向不特定对象发行证券的；
- （二）向特定对象发行证券累计超过二百人的；
- （三）法律、行政法规规定的其他发行行为。

非公开发行证券，不得采用广告、公开劝诱和变相公开方式。

第十一条 发行人申请公开发行股票、可转换为股票的公司债券，依法采取承销方式的，或者公开发行法律、行政法规规定实行保荐制度的其他证券的，应当聘请具有保荐资格的机构担任保荐人。

保荐人应当遵守业务规则和行业规范，诚实守信，勤勉尽责，对发行人的申请文件和信息披露资料进行审慎核查，督导发行人规范运作。

保荐人的资格及其管理办法由国务院证券监督管理机构规定。

第十二条 设立股份有限公司公开发行股票，应当符合《中华人民共和国公司法》规定的条件和经国务院批准的国务院证券监督管理机构规定的其他条件，向国务院证券监督管理机构报送募股申请和下列文件：

- （一）公司章程；
- （二）发起人协议；

- (三) 发起人姓名或者名称，发起人认购的股份数、出资种类及验资证明；
- (四) 招股说明书；
- (五) 代收股款银行的名称及地址；
- (六) 承销机构名称及有关的协议。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

法律、行政法规规定设立公司必须报经批准的，还应当提交相应的批准文件。

第十三条 公司公开发行新股，应当符合下列条件：

- (一) 具备健全且运行良好的组织机构；
- (二) 具有持续盈利能力，财务状况良好；
- (三) 最近三年财务会计文件无虚假记载，无其他重大违法行为；
- (四) 经国务院批准的国务院证券监督管理机构规定的其他条件。

上市公司非公开发行新股，应当符合经国务院批准的国务院证券监督管理机构规定的条件，并报国务院证券监督管理机构核准。

第十四条 公司公开发行新股，应当向国务院证券监督管理机构报送募股申请和下列文件：

- (一) 公司营业执照；
- (二) 公司章程；
- (三) 股东大会决议；
- (四) 招股说明书；
- (五) 财务会计报告；
- (六) 代收股款银行的名称及地址；
- (七) 承销机构名称及有关的协议。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

第十五条 公司对公开发行股票所募集资金，必须按照招股说明书所列资金用途使用。改变招股说明书所列资金用途，必须经股东大会作出决议。擅自改变用途而未作纠正的，或者未经股东大会认可的，不得公开发行新股。

第十六条 公开发行公司债券，应当符合下列条件：

（一）股份有限公司的净资产不低于人民币三千万元，有限责任公司的净资产不低于人民币六千万元；

（二）累计债券余额不超过公司净资产的百分之四十；

（三）最近三年平均可分配利润足以支付公司债券一年的利息；

（四）筹集的资金投向符合国家产业政策；

（五）债券的利率不超过国务院限定的利率水平；

（六）国务院规定的其他条件。

公开发行公司债券筹集的资金，必须用于核准的用途，不得用于弥补亏损和非生产性支出。

上市公司发行可转换为股票的公司债券，除应当符合第一款规定的条件外，还应当符合本法关于公开发行股票的条件，并报国务院证券监督管理机构核准。

第十七条 申请公开发行公司债券，应当向国务院授权的部门或者国务院证券监督管理机构报送下列文件：

（一）公司营业执照；

（二）公司章程；

（三）公司债券募集办法；

（四）资产评估报告和验资报告；

（五）国务院授权的部门或者国务院证券监督管理机构规定的其他文件。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

第十八条 有下列情形之一的，不得再次公开发行公司债券：

（一）前一次公开发行的公司债券尚未募足；

（二）对已公开发行的公司债券或者其他债务有违约或者延迟支付本息的事实，仍处于继续状态；

（三）违反本法规定，改变公开发行公司债券所募资金的用途。

第十九条 发行人依法申请核准发行证券所报送的申请文件的格式、报送方式，由依法负责核准的机构或者部门规定。

第二十条 发行人向国务院证券监督管理机构或者国务院授权的部门报送的证券发行申请文件，必须真实、准确、完整。

为证券发行出具有关文件的证券服务机构和人员，必须严格履行法定职责，保证其所出具文件的真实性、准确性和完整性。

第二十一条 发行人申请首次公开发行股票，在提交申请文件后，应当按照国务院证券监督管理机构的规定预先披露有关申请文件。

第二十二条 国务院证券监督管理机构设发行审核委员会，依法审核股票发行申请。

发行审核委员会由国务院证券监督管理机构的专业人员和所聘请的该机构外的有关专家组成，以投票方式对股票发行申请进行表决，提出审核意见。

发行审核委员会的具体组成办法、组成人员任期、工作程序，由国务院证券监督管理机构规定。

第二十三条 国务院证券监督管理机构依照法定条件负责核准股票发行申请。核准程序应当公开，依法接受监督。

参与审核和核准股票发行申请的人员，不得与发行人有利害关系，不得直接或者间接接受发行申请人的馈赠，不得持有所核准的发行申请的股票，不得私下与发行人进行接触。

国务院授权的部门对公司债券发行申请的核准，参照前两款的规定执行。

第二十四条 国务院证券监督管理机构或者国务院授权的部门应当自受理证券发行申请文件之日起三个月内，依照法定条件和法定程序作出予以核准或者不予核准的决定，发行人根据要求补充、修改发行申请文件的时间不计算在内；不予核准的，应当说明理由。

第二十五条 证券发行申请经核准，发行人应当依照法律、行政法规的规定，在证券公开发行前，公告公开发行募集文件，并将该文件置备于指定场所供公众查阅。

发行证券的信息依法公开前，任何知情人不得公开或者泄露该信息。

发行人不得在公告公开发行募集文件前发行证券。

第二十六条 国务院证券监督管理机构或者国务院授权的部门对已作出的核准证券发行的决定，发现不符合法定条件或者法定程序，尚未发行证券的，应当予以撤销，停止发行。已经发行尚未上市的，撤销发行核准决定，发行人应当按照发行价并加算银行同期存款利息返还证券持有人；保荐人应

当与发行人承担连带责任，但是能够证明自己没有过错的除外；发行人的控股股东、实际控制人有过错的，应当与发行人承担连带责任。

第二十七条 股票依法发行后，发行人经营与收益的变化，由发行人自行负责；由此变化引致的投资风险，由投资者自行负责。

第二十八条 发行人向不特定对象发行的证券，法律、行政法规规定应当由证券公司承销的，发行人应当同证券公司签订承销协议。证券承销业务采取代销或者包销方式。

证券代销是指证券公司代发行人发售证券，在承销期结束时，将未售出的证券全部退还给发行人的承销方式。

证券包销是指证券公司将发行人的证券按照协议全部购入或者在承销期结束时将售后剩余证券全部自行购入的承销方式。

第二十九条 公开发行证券的发行人有权依法自主选择承销的证券公司。证券公司不得以不正当竞争手段招揽证券承销业务。

第三十条 证券公司承销证券，应当同发行人签订代销或者包销协议，载明下列事项：

- （一）当事人的名称、住所及法定代表人姓名；
- （二）代销、包销证券的种类、数量、金额及发行价格；
- （三）代销、包销的期限及起止日期；
- （四）代销、包销的付款方式及日期；
- （五）代销、包销的费用和结算办法；
- （六）违约责任；
- （七）国务院证券监督管理机构规定的其他事项。

第三十一条 证券公司承销证券，应当对公开发行募集文件的真实性、准确性、完整性进行核查；发现有虚假记载、误导性陈述或者重大遗漏的，不得进行销售活动；已经销售的，必须立即停止销售活动，并采取纠正措施。

第三十二条 向不特定对象发行的证券票面总值超过人民币五千万元的，应当由承销团承销。承销团应当由主承销和参与承销的证券公司组成。

第三十三条 证券的代销、包销期限最长不得超过九十日。

证券公司在代销、包销期内，对所代销、包销的证券应当保证先行出售给认购人，证券公司不得为本公司预留所代销的证券和预先购入并留存所包销的证券。

第三十四条 股票发行采取溢价发行的，其发行价格由发行人与承销的证券公司协商确定。

第三十五条 股票发行采用代销方式，代销期限届满，向投资者出售的股票数量未达到拟公开发行股票数量百分之七十的，为发行失败。发行人应当按照发行价并加算银行同期存款利息退还股票认购人。

第三十六条 公开发行股票，代销、包销期限届满，发行人应当在规定的期限内将股票发行情况报国务院证券监督管理机构备案。

第三章 证券交易

第一节 一般规定

第三十七条 证券交易当事人依法买卖的证券，必须是依法发行并交付的证券。

非依法发行的证券，不得买卖。

第三十八条 依法发行的股票、公司债券及其他证券，法律对其转让期限有限制性规定的，在限定的期限内不得买卖。

第三十九条 依法公开发行的股票、公司债券及其他证券，应当在依法设立的证券交易所上市交易或者在国务院批准的其他证券交易场所转让。

第四十条 证券在证券交易所上市交易，应当采用公开的集中交易方式或者国务院证券监督管理机构批准的其他方式。

第四十一条 证券交易当事人买卖的证券可以采用纸面形式或者国务院证券监督管理机构规定的其他方式。

第四十二条 证券交易以现货和国务院规定的其他方式进行交易。

第四十三条 证券交易所、证券公司和证券登记结算机构的从业人员、证券监督管理机构的工作

人员以及法律、行政法规禁止参与股票交易的其他人员，在任期或者法定限期内，不得直接或者以化名、借他人名义持有、买卖股票，也不得收受他人赠送的股票。

任何人在成为前款所列人员时，其原已持有的股票，必须依法转让。

第四十四条 证券交易所、证券公司、证券登记结算机构必须依法为客户开立的账户保密。

第四十五条 为股票发行出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，在该股票承销期内和期满后六个月内，不得买卖该种股票。

除前款规定外，为上市公司出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，自接受上市公司委托之日起至上述文件公开后五日内，不得买卖该种股票。

第四十六条 证券交易的收费必须合理，并公开收费项目、收费标准和收费办法。

证券交易的收费项目、收费标准和管理办法由国务院有关主管部门统一规定。

第四十七条 上市公司董事、监事、高级管理人员、持有上市公司股份百分之五以上的股东，将其持有的该公司的股票在买入后六个月内卖出，或者在卖出后六个月内又买入，由此所得收益归该公司所有，公司董事会应当收回其所得收益。但是，证券公司因包销购入售后剩余股票而持有百分之五以上股份的，卖出该股票不受六个月时间限制。

公司董事会不按照前款规定执行的，股东有权要求董事会在三十日内执行。公司董事会未在上述期限内执行的，股东有权为了公司的利益以自己的名义直接向人民法院提起诉讼。

公司董事会不按照第一款的规定执行的，负有责任的董事依法承担连带责任。

第二节 证券上市

第四十八条 申请证券上市交易，应当向证券交易所提出申请，由证券交易所依法审核同意，并由双方签订上市协议。

证券交易所根据国务院授权的部门的决定安排政府债券上市交易。

第四十九条 申请股票、可转换为股票的公司债券或者法律、行政法规规定实行保荐制度的其他证券上市交易，应当聘请具有保荐资格的机构担任保荐人。

本法第十一条第二款、第三款的规定适用于上市保荐人。

第五十条 股份有限公司申请股票上市，应当符合下列条件：

- （一）股票经国务院证券监督管理机构核准已公开发行；
- （二）公司股本总额不少于人民币三千万元；
- （三）公开发行的股份达到公司股份总数的百分之二十五以上；公司股本总额超过人民币四亿元的，公开发行股份的比例为百分之十以上；
- （四）公司最近三年无重大违法行为，财务会计报告无虚假记载。

证券交易所可以规定高于前款规定的上市条件，并报国务院证券监督管理机构批准。

第五十一条 国家鼓励符合产业政策并符合上市条件的公司股票上市交易。

第五十二条 申请股票上市交易，应当向证券交易所报送下列文件：

- （一）上市报告书；
- （二）申请股票上市的股东大会决议；
- （三）公司章程；
- （四）公司营业执照；
- （五）依法经会计师事务所审计的公司最近三年的财务会计报告；
- （六）法律意见书和上市保荐书；
- （七）最近一次的招股说明书；
- （八）证券交易所上市规则规定的其他文件。

第五十三条 股票上市交易申请经证券交易所审核同意后，签订上市协议的公司应当在规定的期限内公告股票上市的有关文件，并将该文件置备于指定场所供公众查阅。

第五十四条 签订上市协议的公司除公告前条规定的文件外，还应当公告下列事项：

- （一）股票获准在证券交易所交易的日期；
- （二）持有公司股份最多的前十名股东的名单和持股数额；
- （三）公司的实际控制人；
- （四）董事、监事、高级管理人员的姓名及其持有本公司股票和债券的情况。

第五十五条 上市公司有下列情形之一的，由证券交易所决定暂停其股票上市交易：

- (一) 公司股本总额、股权分布等发生变化不再具备上市条件；
- (二) 公司不按照规定公开其财务状况，或者对财务会计报告作虚假记载，可能误导投资者；
- (三) 公司有重大违法行为；
- (四) 公司最近三年连续亏损；
- (五) 证券交易所上市规则规定的其他情形。

第五十六条 上市公司有下列情形之一的，由证券交易所决定终止其股票上市交易：

- (一) 公司股本总额、股权分布等发生变化不再具备上市条件，在证券交易所规定的期限内仍不能达到上市条件；
- (二) 公司不按照规定公开其财务状况，或者对财务会计报告作虚假记载，且拒绝纠正；
- (三) 公司最近三年连续亏损，在其后一个年度内未能恢复盈利；
- (四) 公司解散或者被宣告破产；
- (五) 证券交易所上市规则规定的其他情形。

第五十七条 公司申请公司债券上市交易，应当符合下列条件：

- (一) 公司债券的期限为一年以上；
- (二) 公司债券实际发行额不少于人民币五千万元；
- (三) 公司申请债券上市时仍符合法定的公司债券发行条件。

第五十八条 申请公司债券上市交易，应当向证券交易所报送下列文件：

- (一) 上市报告书；
- (二) 申请公司债券上市的董事会决议；
- (三) 公司章程；
- (四) 公司营业执照；
- (五) 公司债券募集办法；
- (六) 公司债券的实际发行数额；
- (七) 证券交易所上市规则规定的其他文件。

申请可转换为股票的公司债券上市交易，还应当报送推荐人出具的上市保荐书。

第五十九条 公司债券上市交易申请经证券交易所审核同意后，签订上市协议的公司应当在规定的期限内公告公司债券上市文件及有关文件，并将其申请文件置备于指定场所供公众查阅。

第六十条 公司债券上市交易后，公司有下列情形之一的，由证券交易所决定暂停其公司债券上市交易：

- （一）公司有重大违法行为；
- （二）公司情况发生重大变化不符合公司债券上市条件；
- （三）发行公司债券所募集的资金不按照核准的用途使用；
- （四）未按照公司债券募集办法履行义务；
- （五）公司最近二年连续亏损。

第六十一条 公司有前条第（一）项、第（四）项所列情形之一经查实后果严重的，或者有前条第（二）项、第（三）项、第（五）项所列情形之一，在限期内未能消除的，由证券交易所决定终止其公司债券上市交易。

公司解散或者被宣告破产的，由证券交易所终止其公司债券上市交易。

第六十二条 对证券交易所作出的不予上市、暂停上市、终止上市决定不服的，可以向证券交易所设立的复核机构申请复核。

第三节 持续信息公开

第六十三条 发行人、上市公司依法披露的信息，必须真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏。

第六十四条 经国务院证券监督管理机构核准依法公开发行股票，或者经国务院授权的部门核准依法公开发行公司债券，应当公告招股说明书、公司债券募集办法。依法公开发行新股或者公司债券的，还应当公告财务会计报告。

第六十五条 上市公司和公司债券上市交易的公司，应当在每一会计年度的上半年结束之日起二个月内，向国务院证券监督管理机构和证券交易所报送记载以下内容的中期报告，并予公告：

- （一）公司财务会计报告和经营情况；

- (二) 涉及公司的重大诉讼事项；
- (三) 已发行的股票、公司债券变动情况；
- (四) 提交股东大会审议的重要事项；
- (五) 国务院证券监督管理机构规定的其他事项。

第六十六条 上市公司和公司债券上市交易的公司，应当在每一会计年度结束之日起四个月内，向国务院证券监督管理机构和证券交易所报送记载以下内容的年度报告，并予公告：

- (一) 公司概况；
- (二) 公司财务会计报告和经营情况；
- (三) 董事、监事、高级管理人员简介及其持股情况；
- (四) 已发行的股票、公司债券情况，包括持有公司股份最多的前十名股东的名单和持股数额；
- (五) 公司的实际控制人；
- (六) 国务院证券监督管理机构规定的其他事项。

第六十七条 发生可能对上市公司股票交易价格产生较大影响的重大事件，投资者尚未得知时，上市公司应当立即将有关该重大事件的情况向国务院证券监督管理机构和证券交易所报送临时报告，并予公告，说明事件的起因、目前的状态和可能产生的法律后果。

下列情况为前款所称重大事件：

- (一) 公司的经营方针和经营范围的重大变化；
- (二) 公司的重大投资行为和重大的购置财产的决定；
- (三) 公司订立重要合同，可能对公司的资产、负债、权益和经营成果产生重要影响；
- (四) 公司发生重大债务和未能清偿到期重大债务的违约情况；
- (五) 公司发生重大亏损或者重大损失；
- (六) 公司生产经营的外部条件发生的重大变化；
- (七) 公司的董事、三分之一以上监事或者经理发生变动；
- (八) 持有公司百分之五以上股份的股东或者实际控制人，其持有股份或者控制公司的情况发生较大变化；

(九) 公司减资、合并、分立、解散及申请破产的决定；

(十) 涉及公司的重大诉讼，股东大会、董事会决议被依法撤销或者宣告无效；

(十一) 公司涉嫌犯罪被司法机关立案调查，公司董事、监事、高级管理人员涉嫌犯罪被司法机关采取强制措施；

(十二) 国务院证券监督管理机构规定的其他事项。

第六十八条 上市公司董事、高级管理人员应当对公司定期报告签署书面确认意见。

上市公司监事会应当对董事会编制的公司定期报告进行审核并提出书面审核意见。

上市公司董事、监事、高级管理人员应当保证上市公司所披露的信息真实、准确、完整。

第六十九条 发行人、上市公司公告的招股说明书、公司债券募集办法、财务会计报告、上市报告文件、年度报告、中期报告、临时报告以及其他信息披露资料，有虚假记载、误导性陈述或者重大遗漏，致使投资者在证券交易中遭受损失的，发行人、上市公司应当承担赔偿责任；发行人、上市公司的董事、监事、高级管理人员和其他直接责任人员以及保荐人、承销的证券公司，应当与发行人、上市公司承担连带赔偿责任，但是能够证明自己没有过错的除外；发行人、上市公司的控股股东、实际控制人有过错的，应当与发行人、上市公司承担连带赔偿责任。

第七十条 依法必须披露的信息，应当在国务院证券监督管理机构指定的媒体发布，同时将其置备于公司住所、证券交易所，供社会公众查阅。

第七十一条 国务院证券监督管理机构对上市公司年度报告、中期报告、临时报告以及公告的情况进行监督，对上市公司分派或者配售新股的情况进行监督，对上市公司控股股东和信息披露义务人的行为进行监督。

证券监督管理机构、证券交易所、保荐人、承销的证券公司及有关人员，对公司依照法律、行政法规规定必须作出的公告，在公告前不得泄露其内容。

第七十二条 证券交易所决定暂停或者终止证券上市交易的，应当及时公告，并报国务院证券监督管理机构备案。

第四节 禁止的交易行为

第七十三条 禁止证券交易内幕信息的知情人和非法获取内幕信息的人利用内幕信息从事证券交易活动。

第七十四条 证券交易内幕信息的知情人包括：

- (一) 发行人的董事、监事、高级管理人员；
- (二) 持有公司百分之五以上股份的股东及其董事、监事、高级管理人员，公司的实际控制人及其董事、监事、高级管理人员；
- (三) 发行人控股的公司及其董事、监事、高级管理人员；
- (四) 由于所任公司职务可以获取公司有关内幕信息的人员；
- (五) 证券监督管理机构工作人员以及由于法定职责对证券的发行、交易进行管理的人员；
- (六) 保荐人、承销的证券公司、证券交易所、证券登记结算机构、证券服务机构的有关人员；
- (七) 国务院证券监督管理机构规定的其他人员。

第七十五条 证券交易活动中，涉及公司的经营、财务或者对该公司证券的市场价格有重大影响的尚未公开的信息，为内幕信息。

下列信息皆属内幕信息：

- (一) 本法第六十七条第二款所列重大事件；
- (二) 公司分配股利或者增资的计划；
- (三) 公司股权结构的重大变化；
- (四) 公司债务担保的重大变更；
- (五) 公司营业用主要资产的抵押、出售或者报废一次超过该资产的百分之三十；
- (六) 公司的董事、监事、高级管理人员的行为可能依法承担重大损害赔偿责任；
- (七) 上市公司收购的有关方案；
- (八) 国务院证券监督管理机构认定的对证券交易价格有显著影响的其他重要信息。

第七十六条 证券交易内幕信息的知情人和非法获取内幕信息的人，在内幕信息公开前，不得买卖该公司的证券，或者泄露该信息，或者建议他人买卖该证券。

持有或者通过协议、其他安排与他人共同持有公司百分之五以上股份的自然人、法人、其他组织

收购上市公司的股份，本法另有规定的，适用其规定。

内幕交易行为给投资者造成损失的，行为人应当依法承担赔偿责任。

第七十七条 禁止任何人以下列手段操纵证券市场：

（一）单独或者通过合谋，集中资金优势、持股优势或者利用信息优势联合或者连续买卖，操纵证券交易价格或者证券交易量；

（二）与他人串通，以事先约定的时间、价格和方式相互进行证券交易，影响证券交易价格或者证券交易量；

（三）在自己实际控制的账户之间进行证券交易，影响证券交易价格或者证券交易量；

（四）以其他手段操纵证券市场。

操纵证券市场行为给投资者造成损失的，行为人应当依法承担赔偿责任。

第七十八条 禁止国家工作人员、传播媒介从业人员和有关人员编造、传播虚假信息，扰乱证券市场。

禁止证券交易所、证券公司、证券登记结算机构、证券服务机构及其从业人员，证券业协会、证券监督管理机构及其工作人员，在证券交易活动中作出虚假陈述或者信息误导。

各种传播媒介传播证券市场信息必须真实、客观，禁止误导。

第七十九条 禁止证券公司及其从业人员从事下列损害客户利益的欺诈行为：

（一）违背客户的委托为其买卖证券；

（二）不在规定时间内向客户提供交易的书面确认文件；

（三）挪用客户所委托买卖的证券或者客户账户上的资金；

（四）未经客户的委托，擅自为客户买卖证券，或者假借客户的名义买卖证券；

（五）为牟取佣金收入，诱使客户进行不必要的证券买卖；

（六）利用传播媒介或者通过其他方式提供、传播虚假或者误导投资者的信息；

（七）其他违背客户真实意思表示，损害客户利益的行为。

欺诈客户行为给客户造成损失的，行为人应当依法承担赔偿责任。

第八十条 禁止法人非法利用他人账户从事证券交易；禁止法人出借自己或者他人的证券账户。

第八十一条 依法拓宽资金入市渠道，禁止资金违规流入股市。

第八十二条 禁止任何人挪用公款买卖证券。

第八十三条 国有企业和国有资产控股的企业买卖上市交易的股票，必须遵守国家有关规定。

第八十四条 证券交易所、证券公司、证券登记结算机构、证券服务机构及其从业人员对证券交易中发现的禁止的交易行为，应当及时向证券监督管理机构报告。

第四章 上市公司的收购

第八十五条 投资者可以采取要约收购、协议收购及其他合法方式收购上市公司。

第八十六条 通过证券交易所的证券交易，投资者持有或者通过协议、其他安排与他人共同持有—一个上市公司已发行的股份达到百分之五时，应当在该事实发生之日起三日内，向国务院证券监督管理机构、证券交易所作出书面报告，通知该上市公司，并予公告；在上述期限内，不得再行买卖该上市公司的股票。

投资者持有或者通过协议、其他安排与他人共同持有—一个上市公司已发行的股份达到百分之五后，其所持该上市公司已发行的股份比例每增加或者减少百分之五，应当依照前款规定进行报告和公告。在报告期限内和作出报告、公告后二日内，不得再行买卖该上市公司的股票。

第八十七条 依照前条规定所作的书面报告和公告，应当包括下列内容：

- （一）持有人的名称、住所；
- （二）持有的股票的名称、数额；
- （三）持股达到法定比例或者持股增减变化达到法定比例的日期。

第八十八条 通过证券交易所的证券交易，投资者持有或者通过协议、其他安排与他人共同持有—一个上市公司已发行的股份达到百分之三十时，继续进行收购的，应当依法向该上市公司所有股东发出收购上市公司全部或者部分股份的要约。

收购上市公司部分股份的要约应当约定，被收购公司股东承诺出售的股份数额超过预定收购的股份数额的，收购人按比例进行收购。

第八十九条 依照前条规定发出收购要约，收购人必须事先向国务院证券监督管理机构报送上市

公司收购报告书，并载明下列事项：

- （一）收购人的名称、住所；
- （二）收购人关于收购的决定；
- （三）被收购的上市公司名称；
- （四）收购目的；
- （五）收购股份的详细名称和预定收购的股份数额；
- （六）收购期限、收购价格；
- （七）收购所需资金额及资金保证；
- （八）报送上市公司收购报告书时持有被收购公司股份数占该公司已发行的股份总数的比例。

收购人还应当将上市公司收购报告书同时提交证券交易所。

第九十条 收购人在依照前条规定报送上市公司收购报告书之日起十五日后，公告其收购要约。

在上述期限内，国务院证券监督管理机构发现上市公司收购报告书不符合法律、行政法规规定的，应当及时告知收购人，收购人不得公告其收购要约。

收购要约约定的收购期限不得少于三十日，并不得超过六十日。

第九十一条 在收购要约确定的承诺期限内，收购人不得撤销其收购要约。收购人需要变更收购要约的，必须事先向国务院证券监督管理机构及证券交易所提出报告，经批准后，予以公告。

第九十二条 收购要约提出的各项收购条件，适用于被收购公司的所有股东。

第九十三条 采取要约收购方式的，收购人在收购期限内，不得卖出被收购公司的股票，也不得采取要约规定以外的形式和超出要约的条件买入被收购公司的股票。

第九十四条 采取协议收购方式的，收购人可以依照法律、行政法规的规定同被收购公司的股东以协议方式进行股份转让。

以协议方式收购上市公司时，达成协议后，收购人必须在三日内将该收购协议向国务院证券监督管理机构及证券交易所作出书面报告，并于公告。

在公告前不得履行收购协议。

第九十五条 采取协议收购方式的，协议双方可以临时委托证券登记结算机构保管协议转让的股

票，并将资金存放于指定的银行。

第九十六条 采取协议收购方式的，收购人收购或者通过协议、其他安排与他人共同收购一个上市公司已发行的股份达到百分之三十时，继续进行收购的，应当向该上市公司所有股东发出收购上市公司全部或者部分股份的要约。但是，经国务院证券监督管理机构免除发出要约的除外。

收购人依照前款规定以要约方式收购上市公司股份，应当遵守本法第八十九条至第九十三条的规定。

第九十七条 收购期限届满，被收购公司股权分布不符合上市条件的，该上市公司的股票应当由证券交易所依法终止上市交易；其余仍持有被收购公司股票的股东，有权向收购人以收购要约的同等条件出售其股票，收购人应当收购。

收购行为完成后，被收购公司不再具备股份有限公司条件的，应当依法变更企业形式。

第九十八条 在上市公司收购中，收购人持有的被收购的上市公司的股票，在收购行为完成后的十二个月内不得转让。

第九十九条 收购行为完成后，收购人与被收购公司合并，并将该公司解散的，被解散公司的原有股票由收购人依法更换。

第一百条 收购行为完成后，收购人应当在十五日内将收购情况报告国务院证券监督管理机构和证券交易所，并予公告。

第一百零一条 收购上市公司中由国家授权投资的机构持有的股份，应当按照国务院的规定，经有关主管部门批准。

国务院证券监督管理机构应当依照本法的原则制定上市公司收购的具体办法。

第五章 证券交易所

第一百零二条 证券交易所是为证券集中交易提供场所和设施，组织和监督证券交易，实行自律管理的法人。

证券交易所的设立和解散，由国务院决定。

第一百零三条 设立证券交易所必须制定章程。

证券交易所章程的制定和修改，必须经国务院证券监督管理机构批准。

第一百零四条 证券交易所必须在其名称中标明证券交易所字样。其他任何单位或者个人不得使用证券交易所或者近似的名称。

第一百零五条 证券交易所可以自行支配的各项费用收入，应当首先用于保证其证券交易场所和设施的正常运行并逐步改善。

实行会员制的证券交易所的财产积累归会员所有，其权益由会员共同享有，在其存续期间，不得将其财产积累分配给会员。

第一百零六条 证券交易所设理事会。

第一百零七条 证券交易所设总经理一人，由国务院证券监督管理机构任免。

第一百零八条 有《中华人民共和国公司法》第一百四十七条规定的情形或者下列情形之一的，不得担任证券交易所的负责人：

（一）因违法行为或者违纪行为被解除职务的证券交易所、证券登记结算机构的负责人或者证券公司的董事、监事、高级管理人员，自被解除职务之日起未逾五年；

（二）因违法行为或者违纪行为被撤销资格的律师、注册会计师或者投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、验证机构的专业人员，自被撤销资格之日起未逾五年。

第一百零九条 因违法行为或者违纪行为被开除的证券交易所、证券登记结算机构、证券服务机构、证券公司的从业人员和被开除的国家机关工作人员，不得招聘为证券交易所的从业人员。

第一百一十条 进入证券交易所参与集中交易的，必须是证券交易所的会员。

第一百一十一条 投资者应当与证券公司签订证券交易委托协议，并在证券公司开立证券交易账户，以书面、电话以及其他方式，委托该证券公司代其买卖证券。

第一百一十二条 证券公司根据投资者的委托，按照证券交易规则提出交易申报，参与证券交易所内的集中交易，并根据成交结果承担相应的清算交收责任；证券登记结算机构根据成交结果，按照清算交收规则，与证券公司进行证券和资金的清算交收，并为证券公司客户办理证券的登记过户手续。

第一百一十三条 证券交易所应当为组织公平的集中交易提供保障，公布证券交易即时行情，并

按交易日制作证券市场行情表，予以公布。

未经证券交易所许可，任何单位和个人不得发布证券交易即时行情。

第一百一十四条 因突发性事件而影响证券交易的正常进行时，证券交易所可以采取技术性停牌的措施；因不可抗力的突发性事件或者为维护证券交易的正常秩序，证券交易所可以决定临时停市。

证券交易所采取技术性停牌或者决定临时停市，必须及时报告国务院证券监督管理机构。

第一百一十五条 证券交易所对证券交易实行实时监控，并按照国务院证券监督管理机构的要求，对异常的交易情况提出报告。

证券交易所应当对上市公司及相关信息披露义务人披露信息进行监督，督促其依法及时、准确地披露信息。

证券交易所根据需要，可以对出现重大异常交易情况的证券账户限制交易，并报国务院证券监督管理机构备案。

第一百一十六条 证券交易所应当从其收取的交易费用和会员费、席位费中提取一定比例的金額设立风险基金。风险基金由证券交易所理事会管理。

风险基金提取的具体比例和使用办法，由国务院证券监督管理机构会同国务院财政部门规定。

第一百一十七条 证券交易所应当将收存的风险基金存入开户银行专门账户，不得擅自使用。

第一百一十八条 证券交易所依照证券法律、行政法规制定上市规则、交易规则、会员管理规则和其他有关规则，并报国务院证券监督管理机构批准。

第一百一十九条 证券交易所的负责人和其他从业人员在执行与证券交易有关的职务时，与其本人或者其亲属有利害关系的，应当回避。

第一百二十条 按照依法制定的交易规则进行的交易，不得改变其交易结果。对交易中违规交易者应负的民事责任不得免除；在违规交易中所获利益，依照有关规定处理。

第一百二十一条 在证券交易所内从事证券交易的人员，违反证券交易所有关交易规则的，由证券交易所给予纪律处分；对情节严重的，撤销其资格，禁止其入场进行证券交易。

第六章 证券公司

第一百二十二条 设立证券公司，必须经国务院证券监督管理机构审查批准。未经国务院证券监督管理机构批准，任何单位和个人不得经营证券业务。

第一百二十三条 本法所称证券公司是指依照《中华人民共和国公司法》和本法规定设立的经营证券业务的有限责任公司或者股份有限公司。

第一百二十四条 设立证券公司，应当具备下列条件：

- (一) 有符合法律、行政法规规定的公司章程；
- (二) 主要股东具有持续盈利能力，信誉良好，最近三年无重大违法违规记录，净资产不低于人民币二亿元；
- (三) 有符合本法规定的注册资本；
- (四) 董事、监事、高级管理人员具备任职资格，从业人员具有证券从业资格；
- (五) 有完善的风险管理与内部控制制度；
- (六) 有合格的经营场所和业务设施；
- (七) 法律、行政法规规定的和经国务院批准的国务院证券监督管理机构规定的其他条件。

第一百二十五条 经国务院证券监督管理机构批准，证券公司可以经营下列部分或者全部业务：

- (一) 证券经纪；
- (二) 证券投资咨询；
- (三) 与证券交易、证券投资活动有关的财务顾问；
- (四) 证券承销与保荐；
- (五) 证券自营；
- (六) 证券资产管理；
- (七) 其他证券业务。

第一百二十六条 证券公司必须在其名称中标明证券有限责任公司或者证券股份有限公司字样。

第一百二十七条 证券公司经营本法第一百二十五条第（一）项至第（三）项业务的，注册资本最低限额为人民币五千万元；经营第（四）项至第（七）项业务之一的，注册资本最低限额为人民币一亿元；经营第（四）项至第（七）项业务中两项以上的，注册资本最低限额为人民币五亿元。证券

公司的注册资本应当是实缴资本。

国务院证券监督管理机构根据审慎监管原则和各项业务的风险程度，可以调整注册资本最低限额，但不得少于前款规定的限额。

第一百二十八条 国务院证券监督管理机构应当自受理证券公司设立申请之日起六个月内，依照法定条件和法定程序并根据审慎监管原则进行审查，作出批准或者不予批准的决定，并通知申请人；不予批准的，应当说明理由。

证券公司设立申请获得批准的，申请人应当在规定的期限内向公司登记机关申请设立登记，领取营业执照。

证券公司应当自领取营业执照之日起十五日内，向国务院证券监督管理机构申请经营证券业务许可证。未取得经营证券业务许可证，证券公司不得经营证券业务。

第一百二十九条 证券公司设立、收购或者撤销分支机构，变更业务范围或者注册资本，变更持有百分之五以上股权的股东、实际控制人，变更公司章程中的重要条款，合并、分立、变更公司形式、停业、解散、破产，必须经国务院证券监督管理机构批准。

证券公司在境外设立、收购或者参股证券经营机构，必须经国务院证券监督管理机构批准。

第一百三十条 国务院证券监督管理机构应当对证券公司的净资本，净资本与负债的比例，净资本与净资产的比例，净资本与自营、承销、资产管理等业务规模的比例，负债与净资产的比例，以及流动资产与流动负债的比例等风险控制指标作出规定。

证券公司不得为其股东或者股东的关联人提供融资或者担保。

第一百三十一条 证券公司的董事、监事、高级管理人员，应当正直诚实，品行良好，熟悉证券法律、行政法规，具有履行职责所需的经营管理能力，并在任职前取得国务院证券监督管理机构核准的任职资格。

有《中华人民共和国公司法》第一百四十七条规定的情形或者下列情形之一的，不得担任证券公司的董事、监事、高级管理人员：

（一）因违法行为或者违纪行为被解除职务的证券交易所、证券登记结算机构的负责人或者证券公司的董事、监事、高级管理人员，自被解除职务之日起未逾五年；

(二) 因违法行为或者违纪行为被撤销资格的律师、注册会计师或者投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、验证机构的专业人员，自被撤销资格之日起未逾五年。

第一百三十二条 因违法行为或者违纪行为被开除的证券交易所、证券登记结算机构、证券服务机构、证券公司的从业人员和被开除的国家机关工作人员，不得招聘为证券公司的从业人员。

第一百三十三条 国家机关工作人员和法律、行政法规规定的禁止在公司中兼职的其他人员，不得在证券公司中兼任职务。

第一百三十四条 国家设立证券投资者保护基金。证券投资者保护基金由证券公司缴纳的资金及其他依法筹集的资金组成，其筹集、管理和使用的具体办法由国务院规定。

第一百三十五条 证券公司从每年的税后利润中提取交易风险准备金，用于弥补证券交易的损失，其提取的具体比例由国务院证券监督管理机构规定。

第一百三十六条 证券公司应当建立健全内部控制制度，采取有效隔离措施，防范公司与客户之间、不同客户之间的利益冲突。

证券公司必须将其证券经纪业务、证券承销业务、证券自营业务和证券资产管理业务分开办理，不得混合操作。

第一百三十七条 证券公司的自营业务必须以自己的名义进行，不得假借他人名义或者以个人名义进行。

证券公司的自营业务必须使用自有资金和依法筹集的资金。

证券公司不得将其自营账户借给他人使用。

第一百三十八条 证券公司依法享有自主经营的权利，其合法经营不受干涉。

第一百三十九条 证券公司客户的交易结算资金应当存放在商业银行，以每个客户的名义单独开立账户管理。具体办法和实施步骤由国务院规定。

证券公司不得将客户的交易结算资金和证券归入其自有财产。禁止任何单位或者个人以任何形式挪用客户的交易结算资金和证券。证券公司破产或者清算时，客户的交易结算资金和证券不属于其破产财产或者清算财产。非因客户本身的债务或者法律规定的其他情形，不得查封、冻结、扣划或者强制执行客户的交易结算资金和证券。

第一百四十条 证券公司办理经纪业务，应当置备统一制定的证券买卖委托书，供委托人使用。采取其他委托方式的，必须作出委托记录。

客户的证券买卖委托，不论是否成交，其委托记录应当按照规定的期限，保存于证券公司。

第一百四十一条 证券公司接受证券买卖的委托，应当根据委托书载明的证券名称、买卖数量、出价方式、价格幅度等，按照交易规则代理买卖证券，如实进行交易记录；买卖成交后，应当按照规定制作买卖成交报告单交付客户。

证券交易中确认交易行为及其交易结果的对账单必须真实，并由交易经办人员以外的审核人员逐笔审核，保证账面证券余额与实际持有的证券相一致。

第一百四十二条 证券公司为客户买卖证券提供融资融券服务，应当按照国务院的规定并经国务院证券监督管理机构批准。

第一百四十三条 证券公司办理经纪业务，不得接受客户的全权委托而决定证券买卖、选择证券种类、决定买卖数量或者买卖价格。

第一百四十四条 证券公司不得以任何方式对客户证券买卖的收益或者赔偿证券买卖的损失作出承诺。

第一百四十五条 证券公司及其从业人员不得未经过其依法设立的营业场所私下接受客户委托买卖证券。

第一百四十六条 证券公司的从业人员在证券交易活动中，执行所属的证券公司的指令或者利用职务违反交易规则的，由所属的证券公司承担全部责任。

第一百四十七条 证券公司应当妥善保存客户开户资料、委托记录、交易记录和与内部管理、业务经营有关的各项资料，任何人不得隐匿、伪造、篡改或者毁损。上述资料的保存期限不得少于二十年。

第一百四十八条 证券公司应当按照规定向国务院证券监督管理机构报送业务、财务等经营管理信息和资料。国务院证券监督管理机构有权要求证券公司及其股东、实际控制人在指定的期限内提供有关信息、资料。

证券公司及其股东、实际控制人向国务院证券监督管理机构报送或者提供的信息、资料，必须真

实、准确、完整。

第一百四十九条 国务院证券监督管理机构认为有必要时，可以委托会计师事务所、资产评估机构对证券公司的财务状况、内部控制状况、资产价值进行审计或者评估。具体办法由国务院证券监督管理机构会同有关主管部门制定。

第一百五十条 证券公司的净资本或者其他风险控制指标不符合规定的，国务院证券监督管理机构应当责令其限期改正；逾期未改正，或者其行为严重危及该证券公司的稳健运行、损害客户合法权益的，国务院证券监督管理机构可以区别情形，对其采取下列措施：

- （一）限制业务活动，责令暂停部分业务，停止批准新业务；
- （二）停止批准增设、收购营业性分支机构；
- （三）限制分配红利，限制向董事、监事、高级管理人员支付报酬、提供福利；
- （四）限制转让财产或者在财产上设定其他权利；
- （五）责令更换董事、监事、高级管理人员或者限制其权利；
- （六）责令控股股东转让股权或者限制有关股东行使股东权利；
- （七）撤销有关业务许可。

证券公司整改后，应当向国务院证券监督管理机构提交报告。国务院证券监督管理机构经验收，符合有关风险控制指标的，应当自验收完毕之日起三日内解除对其采取的前款规定的有关措施。

第一百五十一条 证券公司的股东有虚假出资、抽逃出资行为的，国务院证券监督管理机构应当责令其限期改正，并可责令其转让所持证券公司的股权。

在前款规定的股东按照要求改正违法行为、转让所持证券公司的股权前，国务院证券监督管理机构可以限制其股东权利。

第一百五十二条 证券公司的董事、监事、高级管理人员未能勤勉尽责，致使证券公司存在重大违法违规行为或者重大风险的，国务院证券监督管理机构可以撤销其任职资格，并责令公司予以更换。

第一百五十三条 证券公司违法经营或者出现重大风险，严重危害证券市场秩序、损害投资者利益的，国务院证券监督管理机构可以对该证券公司采取责令停业整顿、指定其他机构托管、接管或者撤销等监管措施。

第一百五十四条 在证券公司被责令停业整顿、被依法指定托管、接管或者清算期间，或者出现重大风险时，经国务院证券监督管理机构批准，可以对该证券公司直接负责的董事、监事、高级管理人员和其他直接责任人员采取以下措施：

- （一）通知出境管理机关依法阻止其出境；
- （二）申请司法机关禁止其转移、转让或者以其他方式处分财产，或者在财产上设定其他权利。

第七章 证券登记结算机构

第一百五十五条 证券登记结算机构是为证券交易提供集中登记、存管与结算服务，不以营利为目的的法人。

设立证券登记结算机构必须经国务院证券监督管理机构批准。

第一百五十六条 设立证券登记结算机构，应当具备下列条件：

- （一）自有资金不少于人民币二亿元；
- （二）具有证券登记、存管和结算服务所必须的场所和设施；
- （三）主要管理人员和从业人员必须具有证券从业资格；
- （四）国务院证券监督管理机构规定的其他条件。

证券登记结算机构的名称中应当标明证券登记结算字样。

第一百五十七条 证券登记结算机构履行下列职能：

- （一）证券账户、结算账户的设立；
- （二）证券的存管和过户；
- （三）证券持有人名册登记；
- （四）证券交易所上市证券交易的清算和交收；
- （五）受发行人的委托派发证券权益；
- （六）办理与上述业务有关的查询；
- （七）国务院证券监督管理机构批准的其他业务。

第一百五十八条 证券登记结算采取全国集中统一的运营方式。

证券登记结算机构章程、业务规则应当依法制定，并经国务院证券监督管理机构批准。

第一百五十九条 证券持有人持有的证券，在上市交易时，应当全部存管在证券登记结算机构。

证券登记结算机构不得挪用客户的证券。

第一百六十条 证券登记结算机构应当向证券发行人提供证券持有人名册及其有关资料。

证券登记结算机构应当根据证券登记结算的结果，确认证券持有人持有证券的事实，提供证券持有人登记资料。

证券登记结算机构应当保证证券持有人名册和登记过户记录真实、准确、完整，不得隐匿、伪造、篡改或者毁损。

第一百六十一条 证券登记结算机构应当采取下列措施保证业务的正常进行：

- (一) 具有必备的服务设备和完善的数据安全保护措施；
- (二) 建立完善的业务、财务和安全防范等管理制度；
- (三) 建立完善的风险管理系统。

第一百六十二条 证券登记结算机构应当妥善保存登记、存管和结算的原始凭证及有关文件和资料。其保存期限不得少于二十年。

第一百六十三条 证券登记结算机构应当设立证券结算风险基金，用于垫付或者弥补因违约交收、技术故障、操作失误、不可抗力造成的证券登记结算机构的损失。

证券结算风险基金从证券登记结算机构的业务收入和收益中提取，并可以由结算参与人按照证券交易业务量的一定比例缴纳。

证券结算风险基金的筹集、管理办法，由国务院证券监督管理机构会同国务院财政部门规定。

第一百六十四条 证券结算风险基金应当存入指定银行的专门账户，实行专项管理。

证券登记结算机构以证券结算风险基金赔偿后，应当向有关责任人追偿。

第一百六十五条 证券登记结算机构申请解散，应当经国务院证券监督管理机构批准。

第一百六十六条 投资者委托证券公司进行证券交易，应当申请开立证券账户。证券登记结算机构应当按照规定以投资者本人的名义为投资者开立证券账户。

投资者申请开立账户，必须持有证明中国公民身份或者中国法人资格的合法证件。国家另有规定

的除外。

第一百六十七条 证券登记结算机构为证券交易提供净额结算服务时，应当要求结算参与人按照货银对付的原则，足额交付证券和资金，并提供交收担保。

在交收完成之前，任何人不得动用用于交收的证券、资金和担保物。

结算参与人未按时履行交收义务的，证券登记结算机构有权按照业务规则处理前款所述财产。

第一百六十八条 证券登记结算机构按照业务规则收取的各类结算资金和证券，必须存放于专门的清算交收账户，只能按业务规则用于已成交的证券交易的清算交收，不得被强制执行。

第八章 证券服务机构

第一百六十九条 投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务，必须经国务院证券监督管理机构和有关主管部门批准。

投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务的审批管理办法，由国务院证券监督管理机构和有关主管部门制定。

第一百七十条 投资咨询机构、财务顾问机构、资信评级机构从事证券服务业务的人员，必须具备证券专业知识和从事证券业务或者证券服务业务二年以上经验。认定其证券从业资格的标准和管理办法，由国务院证券监督管理机构制定。

第一百七十一条 投资咨询机构及其从业人员从事证券服务业务不得有下列行为：

- （一）代理委托人从事证券投资；
- （二）与委托人约定分享证券投资收益或者分担证券投资损失；
- （三）买卖本咨询机构提供服务的上市公司股票；
- （四）利用传播媒介或者通过其他方式提供、传播虚假或者误导投资者的信息；
- （五）法律、行政法规禁止的其他行为。

有前款所列行为之一，给投资者造成损失的，依法承担赔偿责任。

第一百七十二条 从事证券服务业务的投资咨询机构和资信评级机构，应当按照国务院有关主管部门规定的标准或者收费办法收取服务费用。

第一百七十三条 证券服务机构为证券的发行、上市、交易等证券业务活动制作、出具审计报告、资产评估报告、财务顾问报告、资信评级报告或者法律意见书等文件，应当勤勉尽责，对所依据的文件资料内容的真实性、准确性、完整性进行核查和验证。其制作、出具的文件有虚假记载、误导性陈述或者重大遗漏，给他人造成损失的，应当与发行人、上市公司承担连带赔偿责任，但是能够证明自己没有过错的除外。

第九章 证券业协会

第一百七十四条 证券业协会是证券业的自律性组织，是社会团体法人。

证券公司应当加入证券业协会。

证券业协会的权力机构为全体会员组成的会员大会。

第一百七十五条 证券业协会章程由会员大会制定，并报国务院证券监督管理机构备案。

第一百七十六条 证券业协会履行下列职责：

- (一) 教育和组织会员遵守证券法律、行政法规；
- (二) 依法维护会员的合法权益，向证券监督管理机构反映会员的建议和要求；
- (三) 收集整理证券信息，为会员提供服务；
- (四) 制定会员应遵守的规则，组织会员单位的从业人员的业务培训，开展会员间的业务交流；
- (五) 对会员之间、会员与客户之间发生的证券业务纠纷进行调解；
- (六) 组织会员就证券业的发展、运作及有关内容进行研究；
- (七) 监督、检查会员行为，对违反法律、行政法规或者协会章程的，按照规定给予纪律处分；
- (八) 证券业协会章程规定的其他职责。

第一百七十七条 证券业协会设理事会。理事会成员依章程的规定由选举产生。

第十章 证券监督管理机构

第一百七十八条 国务院证券监督管理机构依法对证券市场实行监督管理，维护证券市场秩序，保障其合法运行。

第一百七十九条 国务院证券监督管理机构在对证券市场实施监督管理中履行下列职责：

- （一）依法制定有关证券市场监督管理的规章、规则，并依法行使审批或者核准权；
- （二）依法对证券的发行、上市、交易、登记、存管、结算，进行监督管理；
- （三）依法对证券发行人、上市公司、证券公司、证券投资基金管理公司、证券服务机构、证券交易所、证券登记结算机构的证券业务活动，进行监督管理；
- （四）依法制定从事证券业务人员的资格标准和行为准则，并监督实施；
- （五）依法监督检查证券发行、上市和交易的信息公开情况；
- （六）依法对证券业协会的活动进行指导和监督；
- （七）依法对违反证券市场监督管理法律、行政法规的行为进行查处；
- （八）法律、行政法规规定的其他职责。

国务院证券监督管理机构可以和其他国家或者地区的证券监督管理机构建立监督管理合作机制，实施跨境监督管理。

第一百八十条 国务院证券监督管理机构依法履行职责，有权采取下列措施：

- （一）对证券发行人、上市公司、证券公司、证券投资基金管理公司、证券服务机构、证券交易所、证券登记结算机构进行现场检查；
- （二）进入涉嫌违法行为发生场所调查取证；
- （三）询问当事人和与被调查事件有关的单位和个人，要求其对与被调查事件有关的事项作出说明；
- （四）查阅、复制与被调查事件有关的财产权登记、通讯记录等资料；
- （五）查阅、复制当事人和与被调查事件有关的单位和个人的证券交易记录、登记过户记录、财务会计资料及其他相关文件和资料；对可能被转移、隐匿或者毁损的文件和资料，可以予以封存；
- （六）查询当事人和与被调查事件有关的单位和个人的资金账户、证券账户和银行账户；对有证据证明已经或者可能转移或者隐匿违法资金、证券等涉案财产或者隐匿、伪造、毁损重要证据的，经国务院证券监督管理机构主要负责人批准，可以冻结或者查封；
- （七）在调查操纵证券市场、内幕交易等重大证券违法行为时，经国务院证券监督管理机构主要

负责人批准，可以限制被调查事件当事人的证券买卖，但限制的期限不得超过十五个交易日；案情复杂的，可以延长十五个交易日。

第一百八十一条 国务院证券监督管理机构依法履行职责，进行监督检查或者调查，其监督检查、调查的人员不得少于二人，并应当出示合法证件和监督检查、调查通知书。监督检查、调查的人员少于二人或者未出示合法证件和监督检查、调查通知书的，被检查、调查的单位有权拒绝。

第一百八十二条 国务院证券监督管理机构工作人员必须忠于职守，依法办事，公正廉洁，不得利用职务便利牟取不正当利益，不得泄露所知悉的有关单位和个人的商业秘密。

第一百八十三条 国务院证券监督管理机构依法履行职责，被检查、调查的单位和个人应当配合，如实提供有关文件和资料，不得拒绝、阻碍和隐瞒。

第一百八十四条 国务院证券监督管理机构依法制定的规章、规则和监督管理工作制度应当公开。

国务院证券监督管理机构依据调查结果，对证券违法行为作出的处罚决定，应当公开。

第一百八十五条 国务院证券监督管理机构应当与国务院其他金融监督管理机构建立监督管理信息共享机制。

国务院证券监督管理机构依法履行职责，进行监督检查或者调查时，有关部门应当予以配合。

第一百八十六条 国务院证券监督管理机构依法履行职责，发现证券违法行为涉嫌犯罪的，应当将案件移送司法机关处理。

第一百八十七条 国务院证券监督管理机构的人员不得在被监管的机构中任职。

第十一章 法律责任

第一百八十八条 未经法定机关核准，擅自公开或者变相公开发行证券的，责令停止发行，退还所募资金并加算银行同期存款利息，处以非法所募资金金额百分之一以上百分之五以下的罚款；对擅自公开或者变相公开发行证券设立的公司，由依法履行监督管理职责的机构或者部门会同县级以上地方人民政府予以取缔。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百八十九条 发行人不符合发行条件，以欺骗手段骗取发行核准，尚未发行证券的，处以三十万元以上六十万元以下的罚款；已经发行证券的，处以非法所募资金金额百分之一以上百分之五以下的罚款。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。

发行人的控股股东、实际控制人指使从事前款违法行为的，依照前款的规定处罚。

第一百九十条 证券公司承销或者代理买卖未经核准擅自公开发行的证券的，责令停止承销或者代理买卖，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款。给投资者造成损失的，应当与发行人承担连带赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第一百九十一条 证券公司承销证券，有下列行为之一的，责令改正，给予警告，没收违法所得，可以并处三十万元以上六十万元以下的罚款；情节严重的，暂停或者撤销相关业务许可。给其他证券承销机构或者投资者造成损失的，依法承担赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，可以并处三万元以上三十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格：

- （一）进行虚假的或者误导投资者的广告或者其他宣传推介活动；
- （二）以不正当竞争手段招揽承销业务；
- （三）其他违反证券承销业务规定的行为。

第一百九十二条 保荐人出具有虚假记载、误导性陈述或者重大遗漏的保荐书，或者不履行其他法定职责的，责令改正，给予警告，没收业务收入，并处以业务收入一倍以上五倍以下的罚款；情节严重的，暂停或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格。

第一百九十三条 发行人、上市公司或者其他信息披露义务人未按照规定披露信息，或者所披露的信息有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司或者其他信息披露义务人未按照规定报送有关报告，或者报送的报告有虚假记载

载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。
对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司或者其他信息披露义务人的控股股东、实际控制人指使从事前两款违法行为的，依照前两款的规定处罚。

第一百九十四条 发行人、上市公司擅自改变公开发行证券所募集资金的用途的，责令改正，对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司的控股股东、实际控制人指使从事前款违法行为的，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员依照前款的规定处罚。

第一百九十五条 上市公司的董事、监事、高级管理人员、持有上市公司股份百分之五以上的股东，违反本法第四十七条的规定买卖本公司股票的，给予警告，可以并处三万元以上十万元以下的罚款。

第一百九十六条 非法开设证券交易场所的，由县级以上人民政府予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上五十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百九十七条 未经批准，擅自设立证券公司或者非法经营证券业务的，由证券监督管理机构予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百九十八条 违反本法规定，聘任不具有任职资格、证券从业资格的人员的，由证券监督管理机构责令改正，给予警告，可以并处十万元以上三十万元以下的罚款；对直接负责的主管人员给予警告，可以并处三万元以上十万元以下的罚款。

第一百九十九条 法律、行政法规规定禁止参与股票交易的人员，直接或者以化名、借他人名义持有、买卖股票的，责令依法处理非法持有的股票，没收违法所得，并处以买卖股票等值以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百条 证券交易所、证券公司、证券登记结算机构、证券服务机构的从业人员或者证券业协会的工作人员，故意提供虚假资料，隐匿、伪造、篡改或者毁损交易记录，诱骗投资者买卖证券的，撤销证券从业资格，并处以三万元以上十万元以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百零一条 为股票的发行、上市、交易出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，违反本法第四十五条的规定买卖股票的，责令依法处理非法持有的股票，没收违法所得，并处以买卖股票等值以下的罚款。

第二百零二条 证券交易内幕信息的知情人或者非法获取内幕信息的人，在涉及证券的发行、交易或者其他对证券的价格有重大影响的信息公开前，买卖该证券，或者泄露该信息，或者建议他人买卖该证券的，责令依法处理非法持有的证券，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三万元的，处以三万元以上六十万元以下的罚款。单位从事内幕交易的，还应当对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。证券监督管理机构工作人员进行内幕交易的，从重处罚。

第二百零三条 违反本法规定，操纵证券市场的，责令依法处理非法持有的证券，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上三百万元以下的罚款。单位操纵证券市场的，还应当对直接负责的主管人员和其他直接责任人员给予警告，并处以十万元以上六十万元以下的罚款。

第二百零四条 违反法律规定，在限制转让期限内买卖证券的，责令改正，给予警告，并处以买卖证券等值以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百零五条 证券公司违反本法规定，为客户买卖证券提供融资融券的，没收违法所得，暂停或者撤销相关业务许可，并处以非法融资融券等值以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第二百零六条 违反本法第七十八条第一款、第三款的规定，扰乱证券市场的，由证券监督管理机构责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所

得不足三万元的，处以三万元以上二十万元以下的罚款。

第二百零七条 违反本法第七十八条第二款的规定，在证券交易活动中作出虚假陈述或者信息误导的，责令改正，处以三万元以上二十万元以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百零八条 违反本法规定，法人以他人名义设立账户或者利用他人账户买卖证券的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三万元的，处以三万元以上三十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款。

证券公司为前款规定的违法行为提供自己或者他人的证券交易账户的，除依照前款的规定处罚外，还应当撤销直接负责的主管人员和其他直接责任人员的任职资格或者证券从业资格。

第二百零九条 证券公司违反本法规定，假借他人名义或者以个人名义从事证券自营业务的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款；情节严重的，暂停或者撤销证券自营业务许可。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上十万元以下的罚款。

第二百一十条 证券公司违背客户的委托买卖证券、办理交易事项，或者违背客户真实意思表示，办理交易以外的其他事项的，责令改正，处以一万元以上十万元以下的罚款。给客户造成损失的，依法承担赔偿责任。

第二百一十一条 证券公司、证券登记结算机构挪用客户的资金或者证券，或者未经客户的委托，擅自为客户买卖证券的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上六十万元以下的罚款；情节严重的，责令关闭或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第二百一十二条 证券公司办理经纪业务，接受客户的全权委托买卖证券的，或者证券公司对客户买卖证券的收益或者赔偿证券买卖的损失作出承诺的，责令改正，没收违法所得，并处以五万元以

上二十万元以下的罚款，可以暂停或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款，可以撤销任职资格或者证券从业资格。

第二百一十三条 收购人未按照本法规定履行上市公司收购的公告、发出收购要约、报送上市公司收购报告书等义务或者擅自变更收购要约的，责令改正，给予警告，并处以十万元以上三十万元以下的罚款；在改正前，收购人对其收购或者通过协议、其他安排与他人共同收购的股份不得行使表决权。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百一十四条 收购人或者收购人的控股股东，利用上市公司收购，损害被收购公司及其股东的合法权益的，责令改正，给予警告；情节严重的，并处以十万元以上六十万元以下的罚款。给被收购公司及其股东造成损失的，依法承担赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百一十五条 证券公司及其从业人员违反本法规定，私下接受客户委托买卖证券的，责令改正，给予警告，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上三十万元以下的罚款。

第二百一十六条 证券公司违反规定，未经批准经营非上市证券的交易，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

第二百一十七条 证券公司成立后，无正当理由超过三个月未开始营业的，或者开业后自行停业连续三个月以上的，由公司登记机关吊销其公司营业执照。

第二百一十八条 证券公司违反本法第一百二十九条的规定，擅自设立、收购、撤销分支机构，或者合并、分立、停业、解散、破产，或者在境外设立、收购、参股证券经营机构的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上六十万元以下的罚款。对直接负责的主管人员给予警告，并处以三万元以上十万元以下的罚款。

证券公司违反本法第一百二十九条的规定，擅自变更有关事项的，责令改正，并处以十万元以上三十万元以下的罚款。对直接负责的主管人员给予警告，并处以五万元以下的罚款。

第二百一十九条 证券公司违反本法规定，超出业务许可范围经营证券业务的，责令改正，没收

违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下罚款；情节严重的，责令关闭。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上十万元以下的罚款。

第二百二十条 证券公司对其证券经纪业务、证券承销业务、证券自营业务、证券资产管理业务，不依法分开办理，混合操作的，责令改正，没收违法所得，并处以三十万元以上六十万元以下的罚款；情节严重的，撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格。

第二百二十一条 提交虚假证明文件或者采取其他欺诈手段隐瞒重要事实骗取证券业务许可的，或者证券公司在证券交易中有严重违法行为，不再具备经营资格的，由证券监督管理机构撤销证券业务许可。

第二百二十二条 证券公司或者其股东、实际控制人违反规定，拒不向证券监督管理机构报送或者提供经营管理信息和资料，或者报送、提供的经营管理信息和资料有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三万元以上三十万元以下的罚款，可以暂停或者撤销证券公司相关业务许可。对直接负责的主管人员和其他直接责任人员，给予警告，并处以三万元以下的罚款，可以撤销任职资格或者证券从业资格。

证券公司为其股东或者股东的关联人提供融资或者担保的，责令改正，给予警告，并处以十万元以上三十万元以下的罚款。对直接负责的主管人员和其他直接责任人员，处以三万元以上十万元以下的罚款。股东有过错的，在按照要求改正前，国务院证券监督管理机构可以限制其股东权利；拒不改正的，可以责令其转让所持证券公司股权。

第二百二十三条 证券服务机构未勤勉尽责，所制作、出具的文件有虚假记载、误导性陈述或者重大遗漏的，责令改正，没收业务收入，暂停或者撤销证券服务业务许可，并处以业务收入一倍以上五倍以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，撤销证券从业资格，并处以三万元以上十万元以下的罚款。

第二百二十四条 违反本法规定，发行、承销公司债券的，由国务院授权的部门依照本法有关规定予以处罚。

第二百二十五条 上市公司、证券公司、证券交易所、证券登记结算机构、证券服务机构，未按照有关规定保存有关文件和资料的，责令改正，给予警告，并处以三万元以上三十万元以下的罚款；隐匿、伪造、篡改或者毁损有关文件和资料的，给予警告，并处以三十万元以上六十万元以下的罚款。

第二百二十六条 未经国务院证券监督管理机构批准，擅自设立证券登记结算机构的，由证券监督管理机构予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所未经批准，擅自从事证券服务业务的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

证券登记结算机构、证券服务机构违反本法规定或者依法制定的业务规则的，由证券监督管理机构责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上三十万元以下的罚款；情节严重的，责令关闭或者撤销证券服务业务许可。

第二百二十七条 国务院证券监督管理机构或者国务院授权的部门有下列情形之一的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分：

- （一）对不符合本法规定的发行证券、设立证券公司等申请予以核准、批准的；
- （二）违反规定采取本法第一百八十条规定的现场检查、调查取证、查询、冻结或者查封等措施的；
- （三）违反规定对有关机构和人员实施行政处罚的；
- （四）其他不依法履行职责的行为。

第二百二十八条 证券监督管理机构的工作人员和发行审核委员会的组成人员，不履行本法规定的职责，滥用职权、玩忽职守，利用职务便利牟取不正当利益，或者泄露所知悉的有关单位和个人的商业秘密的，依法追究法律责任。

第二百二十九条 证券交易所对不符合本法规定条件的证券上市申请予以审核同意的，给予警告，没收业务收入，并处以业务收入一倍以上五倍以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百三十条 拒绝、阻碍证券监督管理机构及其工作人员依法行使监督检查、调查职权未使用

暴力、威胁方法的，依法给予治安管理处罚。

第二百三十一条 违反本法规定，构成犯罪的，依法追究刑事责任。

第二百三十二条 违反本法规定，应当承担民事赔偿责任和缴纳罚款、罚金，其财产不足以同时支付时，先承担民事赔偿责任。

第二百三十三条 违反法律、行政法规或者国务院证券监督管理机构的有关规定，情节严重的，国务院证券监督管理机构可以对有关责任人员采取证券市场禁入的措施。

前款所称证券市场禁入，是指在一定期限内直至终身不得从事证券业务或者不得担任上市公司董事、监事、高级管理人员的制度。

第二百三十四条 依照本法收缴的罚款和没收的违法所得，全部上缴国库。

第二百三十五条 当事人对证券监督管理机构或者国务院授权的部门的处罚决定不服的，可以依法申请行政复议，或者依法直接向人民法院提起诉讼。

第十二章 附 则

第二百三十六条 本法施行前依照行政法规已批准在证券交易所上市交易的证券继续依法进行交易。

本法施行前依照行政法规和国务院金融行政管理部门的规定经批准设立的证券经营机构，不完全符合本法规定的，应当在规定的限期内达到本法规定的要求。具体实施办法，由国务院另行规定。

第二百三十七条 发行人申请核准公开发行股票、公司债券，应当按照规定缴纳审核费用。

第二百三十八条 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，必须经国务院证券监督管理机构依照国务院的规定批准。

第二百三十九条 境内公司股票以外币认购和交易的，具体办法由国务院另行规定。

第二百四十条 本法自 2006 年 1 月 1 日起施行。

Law of the People's Republic of China on the State-Owned Assets of Enterprises

Order of the President of the People's Republic of China

(No. 5)

The Law of the People's Republic of China on the State-Owned Assets of Enterprises, which was adopted at the 5th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on October 28, 2008, is hereby promulgated and shall come into force on May 1, 2009.

President of the People's Republic of China: Hu Jintao

October 28, 2008

Law of the People's Republic of China on the State-Owned Assets of Enterprises

(Adopted at the 5th session of the Standing Committee of the 11th National People's Congress on October 28, 2008)

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Chapter I General Provisions

Article 1 This law is formulated for the purposes of safeguarding the basic economic system of China, consolidating and developing the state-owned economy, strengthening the protection of state-owned assets, giving play to the leading role of the state-owned economy in the national economy, and promoting the development of the socialist market economy.

Article 2 The term "state-owned assets of enterprises" (hereinafter referred to as the "state-owned assets") as mentioned in this Law refers to the rights and interests formed by the various forms of investment of the state in enterprises.

Article 3 The state-owned assets shall be owned by the state, i.e. owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership of state-owned assets.

Article 4 The State Council and the local people's governments shall, in accordance with laws and administrative regulations, perform respectively the contributor's functions for state-invested enterprises and enjoy the contributor's rights and interests on behalf of the state.

The State Council shall, on behalf of the state, perform the contributor's functions for the large-sized state-invested

enterprises that have bearings on the national economic lifeline and state security determined by the State Council and the state-invested enterprises in such fields as important infrastructures and natural resources. The local people's governments shall, on behalf of the state, perform the contributor's functions for other state-invested enterprises.

Article 5 The term "state-invested enterprise" as mentioned in this Law refers to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling.

Article 6 The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Article 7 The state shall take measures to promote the centralization of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the control force and influence of the state-owned economy.

Article 8 The state shall establish and improve the state-owned assets administration and supervision system meeting the requirements of the development of the socialist market economy, establish and improve the evaluation and accountability system of value maintenance and increment of state-owned assets, and ensure the performance of responsibilities for the value maintenance and increment of state-owned assets.

Article 9 The state shall establish and improve the basic management system of state-owned assets. The specific measures shall be formulated according to the provisions of the State Council.

Article 10 State-owned assets shall be protected by law, and no entities and individuals shall infringe upon them.

Chapter II Bodies Performing the Contributor's Functions

Article 11 The state-owned assets supervision and administration body under the State Council and the state-owned assets supervision and administration bodies established by the local people's governments according to the provisions of the State Council shall perform the contributor's functions for state-invested enterprises on behalf of and upon the authorization of the corresponding people's government.

The State Council and the local people's governments may, when necessary, authorize other departments or bodies to perform the contributor's functions for state-invested enterprises on behalf of the corresponding people's government. The bodies and departments that perform the contributor's functions on behalf of the corresponding people's government shall be together referred to as the "bodies performing the contributor's functions" hereinafter.

Article 12 A body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law.

A body performing the contributor's functions shall formulate or participate in the formulation of the bylaws of state-invested enterprises according to the provisions of laws and administrative regulations.

For the major matters on the performance of the contributor's functions that are subject to the approval of the corresponding people's government as prescribed by laws, administrative regulations and the corresponding people's government, a body performing the contributor's functions shall report such matters to the corresponding people's government for approval.

Article 13 When attending the shareholders' meeting or general assembly of shareholders convoked by a company in which the state has a stake, whether controlling or non-controlling, the shareholder representative(s) appointed by a body

performing the contributor's functions shall put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and report the performance of his duties and results thereof to the appointing body in good time.

Article 14 Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

Article 15 A body performing the contributor's functions shall be responsible to the corresponding people's government, report its performance of the contributor's functions to the corresponding people's government, accept the supervision and assessment by the corresponding people's government, and be responsible for the value maintenance and increment of state-owned assets.

A body performing the contributor's functions shall, according to the relevant state provisions, report regularly the summary analyses concerning the total volume, structure and changes of, return on, etc. of the state-owned assets to the corresponding people's government.

Chapter III State-invested Enterprises

Article 16 The state-invested enterprises shall enjoy the rights to possess, use, profit from and dispose of their movables, immovables and other property according to laws, administrative regulations and enterprise bylaws.

The operation autonomy as well as other lawful rights and interests legally enjoyed by the state-invested enterprises shall be protected by law.

Article 17 The state-invested enterprises engaged in business activities shall observe laws and administrative regulations, strengthen business management, enhance economic benefits, accept the administration and supervision legally implemented by the people's governments and their relevant departments and bodies, accept the supervision of the general public, assume social responsibilities, and be responsible to the contributor.

The state-invested enterprises shall establish and improve the legal person governance structure according to law, as well as the internal supervisory management and risk control systems.

Article 18 The state-invested enterprises shall establish and improve the finance and accounting system, maintain account books and conduct accounting according to the provisions of laws, administrative regulations and the public finance department of the State Council, and provide the contributor with true and complete financial and accounting information according to laws, administrative regulations and enterprise bylaws.

The state-invested enterprises shall distribute profits to the contributor according to laws, administrative regulations and enterprise bylaws.

Article 19 A wholly state-owned company or a company in which the state has a stake, whether controlling or non-controlling, shall set up a board of supervisors in accordance with the Company Law of the People's Republic of China. For a wholly state-owned enterprise, its board of supervisors shall be composed of the supervisors appointed by the body performing the contributor's functions according to the provisions of the State Council.

The board of supervisors of a state-invested enterprise shall, according to laws, administrative regulations and enterprise bylaws, supervise the performance of duties of the directors and senior managers, and supervise and inspect the financial status of the enterprise.

Article 20 A state-invested enterprise shall apply the democratic management through the assembly of employee representatives or other channels according to law.

Article 21 A state-invested enterprise shall legally enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to an enterprise in which it invests.

For the enterprise in which it invests, the state-invested enterprise shall, according to laws and administrative regulations, safeguard its rights and interests as a contributor by formulating or participating in the formulation of the bylaws of the enterprise in which it invests and establishing the internal enterprise supervisory management and risk control systems with definite rights and responsibilities and effective check and balance.

Chapter IV Selection and Evaluation of State-invested Enterprise Managers

Article 22 A body performing the contributor's functions shall, according to laws, administrative regulations and enterprise bylaws, appoint or remove, or suggest the appointment or removal of the following personnel of a state-invested enterprise:

1. Appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise;
2. Appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company; and
3. Proposing the director and supervisor candidates to the shareholders' meeting or general assembly of shareholders of a company in which the state has a stake, whether controlling or non-controlling.

The directors and supervisors of a state-invested enterprise who shall be employee representatives shall be elected democratically by employees according to the relevant laws and administrative regulations.

Article 23 Any of the directors, supervisors and senior managers appointed or proposed for appointment by a body performing the contributor's functions shall meet the following requirements:

1. Having good moral characters;
2. Having the expertise and working capability as required by the position;
3. Being in a health condition enabling him to normally perform his duties; and
4. Meeting other requirements of laws and administrative regulations.

Where any director, supervisor or senior manager, during his term of office, does not satisfy any of the aforesaid requirements any more or becomes prohibited from being a director, supervisor or senior manager of a company as prescribed by the Company Law of the People's Republic of China, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 24 A body performing the contributor's functions shall, according to the prescribed conditions and procedures, assess the candidates for directors, supervisors and senior managers to be appointed or proposed for appointment. If such candidates pass the assessment, it shall appoint or propose the appointment of them according to the prescribed authority and procedures.

Article 25 Without the approval of the body performing the contributor's functions, no director or senior manager of a wholly state-owned enterprise or wholly state-owned company shall hold a position concurrently in any other enterprise. Without the approval of the shareholders' meeting or the general assembly of shareholders, no director or senior manager of a company in which the state has a stake, whether controlling or non-controlling, shall hold a position concurrently in any other enterprise operating the similar business.

Without the approval of the body performing the contributor's functions, the chairman of the board of directors of a wholly state-owned company shall not be the president concurrently. Without the approval of the shareholders' meeting or the general assembly of shareholders, the chairman of the board of directors of a company in which the state has a controlling stake shall not be the president concurrently.

No director or senior manager shall concurrently serve as a supervisor.

Article 26 The directors, supervisors and senior managers of a state-invested enterprise shall comply with laws,

administrative regulations and enterprise bylaws, and bear the obligations of fidelity and diligence to the enterprise; shall not take bribes or acquire other illegal gains or improper benefits by taking advantage of their positions; shall not encroach on or embezzle the enterprise property; shall not decide major enterprise matters ultra vires or in violation of procedures; and shall not otherwise damage the rights and interests of the state-owned assets contributor.

Article 27 The state shall establish the assessment system of business management performance of the managers of state-invested enterprises. A body performing the contributor's functions shall conduct annual and office term assessments of the enterprise managers appointed by it, and decide the rewards and punishments to the enterprise managers according to the assessment results.

A body performing the contributor's functions shall, pursuant to the relevant state provisions, determine the standards of remuneration for the managers of state-invested enterprise appointed by it.

Article 28 The principal persons in charge of a wholly state-owned enterprise, a wholly state-owned company or a company in which the state has a controlling stake shall accept the office term economic accountability audit conducted according to law.

Article 29 For the enterprise managers as provided for in subparagraphs 1 and 2 of paragraph 1 of Article 22 of this Law, if they shall be appointed or removed by the corresponding people's government as provided for by the State Council and the local people's governments, such provisions shall prevail. A body performing the contributor's functions shall assess, reward or punish the aforesaid enterprise managers, and decide the standards of remuneration for them, in accordance with the provisions of this Chapter.

Chapter V Major Matters concerning the Rights and Interests of the State-owned Assets Contributor

Section 1 Common Provisions

Article 30 The state-invested enterprises shall comply with laws, administrative regulations and enterprise bylaws in such major matters as merger, splitting, restructuring, listing, increase or reduction of registered capital, issuance of bonds, major investment, provision of large-sum security for others, transfer of major property, large-sum donation, distribution of profits, dissolution, and petition for bankruptcy, without prejudice to the rights and interests of the contributor and creditors.

Article 31 The merger, splitting, increase or reduction of registered capital, issuance of bonds, distribution of profits, dissolution and petition for bankruptcy of a wholly state-owned enterprise or a wholly state-owned company shall be decided by the body performing the contributor's functions.

Article 32 The matters listed in Article 30 of this Law of a wholly state-owned enterprise or a wholly state-owned company, other than those that shall be decided by the body performing the contributor's functions according to Article 31 of this Law and the relevant laws, administrative regulations and enterprise bylaws, shall be decided by the persons in charge of the wholly state-owned enterprise through collective discussion or decided by the board of directors of the wholly state-owned company.

Article 33 The matters listed in Article 30 of this Law of a company in which the state has a stake, whether controlling or non-controlling, shall be decided by the shareholders' meeting, general assembly of shareholders or the board of directors of the company according to laws, administrative regulations and company bylaws. If the matters are decided by the shareholders' meeting or general assembly of shareholders, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

Article 34 For the merger, splitting, dissolution or petition for bankruptcy of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake or any other major matter which shall be reported by the body performing the contributor's functions to the corresponding people's government for approval as prescribed by laws, administrative regulations and the corresponding people's government, the body performing the

contributor's functions shall, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, report such a matter to the corresponding people's government for approval.

The "important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake" as mentioned in this Law shall be determined in accordance with the provisions of the State Council.

Article 35 If a relevant law or administrative regulation provides that such matters as issuance of bonds and investment of state-invested enterprises shall be reported to the people's governments or the relevant departments or bodies of the people's governments for examination and approval, verification and approval or archival purposes, such provisions shall prevail.

Article 36 A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

Article 37 In such major matters as merger, splitting, restructuring, dissolution and petition for bankruptcy of a state-invested enterprise, the opinions of the trade union of the enterprise shall be heeded, and the opinions and suggestions of the employees shall be heeded through the assembly of employee representatives or other channels.

Article 38 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall perform the contributor's functions in the major matters of an enterprise in which it invests under the provisions of this Chapter by analogy. The specific measures shall be stipulated by the State Council.

Section 2 Enterprise Restructuring

Article 39 The term "enterprise restructuring" as mentioned this Law refers to:

1. Restructuring a wholly state-owned enterprise into a wholly state-owned company;
2. Restructuring a wholly state-owned enterprise or wholly state-owned company into a company in which the state has or does not have a controlling stake; and
3. Restructuring a company in which the state has a controlling stake into a company in which the state does not have a controlling stake.

Article 40 The enterprise restructuring shall be decided by the body performing the contributor's functions or the shareholders' meeting or general assembly of shareholders of a company under legal proceedings.

For the restructuring of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, the body performing the contributor's functions shall report the restructuring scheme to the corresponding people's government for approval, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake.

Article 41 A restructuring scheme shall be worked out for the enterprise restructuring, which shall indicate the enterprise organizational form after the restructuring, plan on the disposition of enterprise assets, debts and claims, plan on equity changes, operating procedures for restructuring, selection and engagement of such intermediaries as assets appraisal and financial audit, etc.

If the enterprise restructuring involves the resettlement of enterprise employees, an employee resettlement plan shall be also formulated and adopted at the assembly of employee representatives or the employees' assembly upon deliberation.

Article 42 In the enterprise restructuring, the assets and capital verification, financial auditing and assets appraisal shall be conducted according to the relevant provisions to accurately define and verify assets and objectively and fairly determine the value of assets.

If the enterprise restructuring involves the conversion of such non-monetary property of the enterprise as property in kind, intellectual property rights and land use rights into the contribution of state-owned capital or into the state-owned shares, the converted property shall be appraised according to the relevant provisions, and the amount of the state-owned capital contribution or the amount of state-owned shares shall be determined on the basis of the price confirmed by appraisal. No property shall be converted into shares at a low price, and any other acts prejudicial to the contributor's rights and interests shall be banned.

Section 3 Transactions with an Affiliated Party

Article 43 An affiliated party of a state-invested enterprise shall not seek any improper benefits and damage the interests of the state-invested enterprise by taking advantage of any transaction with the state-invested enterprise.

The term "affiliated party" as mentioned in this Law refers to a director, supervisor or senior manager of an enterprise or a close relative thereof, or an enterprise owned or actually controlled by such a person.

Article 44 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall not gratuitously provide an affiliated party with capital, commodities, services or other assets, and shall not conduct a transaction with an affiliated party at an unfair price.

Article 45 Without the approval of the body performing the contributor's functions, a wholly state-owned enterprise or wholly state-owned company shall not commit any of the following acts:

1. Entering into an agreement on property transfer or loan with an affiliated party;
2. Providing a security for an affiliated party; or
3. Making joint investment with an affiliated party to form an enterprise, or making investment in an enterprise owned or actually controlled by a director, supervisor or senior manager or a close relative thereof.

Article 46 A transaction between a company in which the state has a stake, whether controlling or non-controlling, and an affiliated party shall be decided by the shareholders' meeting, general assembly of shareholders or board of directors of the company according to the Company Law of the People's Republic of China, relevant administrative regulations and company bylaws. If the transaction is decided by the shareholders' meeting or general assembly of shareholders of the company, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

When the board of directors of the company makes a resolution on a transaction with an affiliated party, the director involved in the transaction shall neither exercise his voting right nor exercise the voting right on behalf of any other director.

Section 4 Assets Appraisal

Article 47 For the merger, splitting, restructuring, transfer of major property, investment of non-monetary property or liquidation of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, or any other matter in which the assets appraisal shall be conducted according to a law or administrative regulation or the enterprise bylaws, the appraisal of the relevant assets shall be conducted according to the relevant provisions.

Article 48 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall entrust a legally established and qualified assets appraisal agency with the assets appraisal; and if any matter that shall be reported to the body performing the contributor's functions for decision is involved, the information on entrusting the assets appraisal agency shall be reported to the body performing the contributor's functions.

Article 49 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake and its directors, supervisors and senior managers shall faithfully provide the relevant information and materials for

the assets appraisal agency, and shall not collude with the assets appraisal agency in the appraisal.

Article 50 The assets appraisal agency and its staff entrusted with the appraisal of the relevant assets shall comply with laws, administrative regulations and appraisal practice guidelines to appraise the assets independently, objectively and fairly. The assets appraisal agency shall be responsible for the appraisal report produced by it.

Section 5 Transfer of State-owned Assets

Article 51 The term "transfer of state-owned assets" as mentioned in this Law refers to the legal transfer of the rights and interests formed by the state's contribution to an enterprise to any other entity or individual, other than the gratuitous transfer of state-owned assets according to the state provisions.

Article 52 The transfer of state-owned assets shall be favorable to the strategic adjustment of the layout and structure of the state-owned economy, the loss of state-owned assets shall be prevented, and the legal rights and interests of all the parties to the transaction shall not be damaged.

Article 53 The transfer of state-owned assets shall be decided by the body performing the contributor's functions. If a body performing the contributor's functions decides to transfer the whole state-owned assets or transfer the partial state-owned assets which will cause the state to lose the controlling position over the enterprise, it shall report such a decision to the corresponding people's government for approval.

Article 54 The transfer of state-owned assets shall follow the principles of valuable consideration, openness, fairness and equity.

Except the state-owned assets that may be directly transferred by agreement in accordance with the state provisions, the transfer of state-owned assets shall be openly conducted at a legally established property right exchange. The transferor shall faithfully disclose the relevant information to invite a transferee; if the invitation leads to two or more prospective transferees, open bidding shall be adopted for the transfer.

The transfer of shares traded on an exchange shall be carried out according to the Securities Law of the People's Republic of China.

Article 55 For the transfer of state-owned assets, a minimum transfer price shall be reasonably determined on the basis of the price which is legally appraised and confirmed by the body performing the contributor's functions or approved by the corresponding people's government after being reported thereto by the body performing the contributor's functions.

Article 56 During the transfer of the state-owned assets which may be transferred to the directors, supervisors and senior managers of the enterprise and their close relatives or the enterprises owned or actually controlled by these persons as prescribed by the laws and administrative regulations or the state-owned assets supervision and administration body under the State Council, the aforesaid persons or enterprises, if participating in the transfer, shall equally compete for the transferred assets with other participants; the transferor shall truthfully disclose the relevant information according to the relevant state provisions; and the relevant directors, supervisors and senior managers shall not take part in the various work on the formulation and organization of implementation of the transfer plan.

Article 57 If the state-owned assets are transferred to any overseas investor, the relevant state provisions shall be observed, and the national security and public interest shall not be compromised.

Chapter VI State-owned Capital Operating Budget

Article 58 The state shall establish and improve the state-owned capital operating budget system to carry out budget administration of the state-owned capital income obtained and expenditures therefrom.

Article 59 For the following state-owned capital income obtained by the state and the expenditures from the following income, a state-owned capital operating budget shall be formulated:

1. The profits distributed to the state by the state-invested enterprises;
2. Income from the transfer of state-owned assets;
3. Liquidation income from the state-invested enterprises; and
4. Other state-owned capital income.

Article 60 The state-owned capital operating budget shall be compiled annually and separately, brought into the budget of the corresponding people's government, and submitted to the corresponding people's congress for approval.

The expenditures in the state-owned capital operating budget shall be arranged according to the scale of income in the budget of the year, and no deficit shall be listed.

Article 61 The public finance departments of the State Council and the relevant local people's governments shall be responsible for compiling the draft state-owned capital operating budgets, and the bodies performing the contributor's functions shall propose to the public finance departments the draft state-owned capital operating budgets for which they perform the contributor's functions.

Article 62 The specific measures and implementing procedures for the administration of state-owned capital operating budgets shall be stipulated by the State Council and filed with the Standing Committee of the National People's Congress for archival purposes.

Chapter VII State-owned Assets Supervision

Article 63 The standing committee of the people's congress at every level shall legally exercise the powers of supervision, through hearing and deliberating the specialized work reports on the performance of the contributor's functions by the corresponding people's government and on the supervision and administration of state-owned assets, organizing the law enforcement inspection on the implementation of this Law, etc.

Article 64 The State Council and the local people's governments shall conduct supervision over the performance of functions by the bodies empowered by them to perform the contributor's functions.

Article 65 The audit organs of the State Council and the local people's governments shall, according to the Audit Law of the People's Republic of China, conduct audit supervision over the implementation of the state-owned capital operating budgets and the state-invested enterprises falling within the subjects of the audit supervision.

Article 66 The State Council and the local people's governments shall make available to the public the status of state-owned assets and the information on the state-owned assets supervision and administration, and accept the supervision of the general public, according to law.

Entities and individuals shall have the right to report and file accusations of acts causing losses of state-owned assets.

Article 67 A body performing the contributor's functions may, when necessary, entrust an accounting firm to audit the annual financial report of a wholly state-owned enterprise or wholly state-owned company, or through a resolution of the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, cause the company to engage an accounting firm to audit the annual financial report of the company, so as to protect the rights and interests of the contributor.

Chapter VIII Legal Liabilities

Article 68 Where a body performing the contributor's functions commits any of the following acts, the directly liable person in charge and other directly liable persons of the body shall be subject to sanctions according to law:

1. Appointing or proposing the appointment of managers of a state-invested enterprise in violation of the statutory qualifications for office;
2. Encroaching upon, illegally withholding or embezzling the funds of a state-invested enterprise or the state-owned capital

income to be turned in;

3. Making a decision on a major matter of a state-invested enterprise in violation of the legal authority or procedures, which has caused losses of state-owned assets; or
4. Other wise failing to perform the contributor's functions according to law, which has caused losses of the state-owned assets.

Article 69 Where any staff member of a body performing the contributor's functions neglects his duties, abuses his powers or engages in malpractice for personal gains, which does not constitute a crime, he shall be subject to a sanction according to law.

Article 70 Where any shareholder representative appointed by a body performing the contributor's functions fails to perform his functions according to the instructions of the appointing body, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law.

Article 71 Where any director, supervisor or senior manager of a state-invested enterprise commits any of the following acts, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law:

1. Taking bribes or obtaining other illegal income or improper benefits by taking advantage of his position;
2. Encroaching on or embezzling enterprise assets;
3. During the enterprise restructuring, property transfer, etc., transferring the enterprise property or converting the enterprise property into shares at a low price, in violation of laws, administrative regulations and the rule of fair trade;
4. Transacting with the enterprise in violation of the provisions of this Law;
5. Unfaithfully providing an assets appraisal agency or accounting firm with the relevant information or materials, or colluding with an assets appraisal agency or accounting firm in issuing a false assets appraisal report or audit report;
6. Making a decision on a major matter of the enterprise in violation of the procedures for decision-making as prescribed by laws, administrative regulations and enterprise bylaws; or
7. Otherwise performing his duties in violation of laws, administrative regulations and enterprise bylaws.

The income obtained from any of the acts listed in the preceding paragraph by a director, supervisor or senior manager of a state-invested enterprise shall be recovered according to law or be owned by the state-invested enterprise.

Where a director, supervisor or senior manager appointed or proposed for appointment by a body performing the contributor's functions commits any of the acts listed in paragraph 1 of this Article, which has caused gross losses of state-owned assets, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 72 During such transactions as one involving an affiliated party and the transfer of state-owned assets, if the parties maliciously collude to damage the rights and interests of state-owned assets, such transactions shall be void.

Article 73 Where any director, supervisor or senior manager of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake is removed from office for a violation of this Law which has caused gross losses of state-owned assets, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake within 5 years from the day of removal; if the violation has caused especially gross losses of state-owned assets or he has been subject to a criminal punishment for corruption, bribery, encroachment upon property, embezzlement of property or undermining of the socialist market economic order, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake for life.

Article 74 Where an assets appraisal agency or an accounting firm which is entrusted with the assets appraisal or financial auditing of a state-invested enterprise produces a false assets appraisal report or audit report in violation of laws,

administrative regulations and practice guidelines, it shall be subject to legal liabilities according to laws and administrative regulations.

Article 75 Whoever violates this Law shall be subject to the criminal liability if the violation constitutes a crime.

Chapter IX Supplementary Provisions

Article 76 If any law or administrative regulation provides otherwise for the administration and supervision of state-owned assets of financial enterprises, such provisions shall prevail.

Article 77 This Law shall come into force on May 1, 2009.

中华人民共和国企业国有资产法

中华人民共和国主席令

(第五号)

《中华人民共和国企业国有资产法》已由中华人民共和国第十一届全国人民代表大会常务委员会第五次会议于 2008 年 10 月 28 日通过，现予公布，自 2009 年 5 月 1 日起施行。

中华人民共和国主席 胡锦涛

2008 年 10 月 28 日

中华人民共和国企业国有资产法

(2008 年 10 月 28 日第十一届全国人民代表大会常务委员会第五次会议通过)

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第一章 总 则

第一条 为了维护国家基本经济制度，巩固和发展国有经济，加强对国有资产的保护，发挥国有经济在国民经济中的主导作用，促进社会主义市场经济发展，制定本法。

第二条 本法所称企业国有资产（以下称国有资产），是指国家对企业各种形式的出资所形成的权益。

第三条 国有资产属于国家所有即全民所有。国务院代表国家行使国有资产所有权。

第四条 国务院和地方人民政府依照法律、行政法规的规定，分别代表国家对国家出资企业履行出资人职责，享有出资人权益。

国务院确定的关系国民经济命脉和国家安全的大型国家出资企业，重要基础设施和重要自然资源等领域的国家出资企业，由国务院代表国家履行出资人职责。其他的国家出资企业，由地方人民政府代表国家履行出资人职责。

第五条 本法所称国家出资企业，是指国家出资的国有独资企业、国有独资公司，以及国有资本控股公司、国有资本参股公司。

第六条 国务院和地方人民政府应当按照政企分开、社会公共管理职能与国有资产出资人职能分开、不干预企业依法自主经营的原则，依法履行出资人职责。

第七条 国家采取措施，推动国有资本向关系国民经济命脉和国家安全的重要行业和关键领域集中，优化国有经济布局 and 结构，推进国有企业的改革和发展，提高国有经济的整体素质，增强国有经济的控制力、影响力。

第八条 国家建立健全与社会主义市场经济发展要求相适应的国有资产管理与监督体制，建立健全国有资产保值增值考核和责任追究制度，落实国有资产保值增值责任。

第九条 国家建立健全国有资产基础管理制度。具体办法按照国务院的规定制定。

第十条 国有资产受法律保护，任何单位和个人不得侵害。

第二章 履行出资人职责的机构

第十一条 国务院国有资产监督管理机构和地方人民政府按照国务院的规定设立的国有资产监督管理机构，根据本级人民政府的授权，代表本级人民政府对国家出资企业履行出资人职责。

国务院和地方人民政府根据需要，可以授权其他部门、机构代表本级人民政府对国家出资企业履行出资人职责。

代表本级人民政府履行出资人职责的机构、部门，以下统称履行出资人职责的机构。

第十二条 履行出资人职责的机构代表本级人民政府对国家出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

履行出资人职责的机构依照法律、行政法规的规定，制定或者参与制定国家出资企业的章程。

履行出资人职责的机构对法律、行政法规和本级人民政府规定须经本级人民政府批准的履行出资人职责的重大事项，应当报请本级人民政府批准。

第十三条 履行出资人职责的机构委派的股东代表参加国有资本控股公司、国有资本参股公司召开的股东会会议、股东大会会议，应当按照委派机构的指示提出提案、发表意见、行使表决权，并将其履行职责的情况和结果及时报告委派机构。

第十四条 履行出资人职责的机构应当依照法律、行政法规以及企业章程履行出资人职责，保障出资人权益，防止国有资产损失。

履行出资人职责的机构应当维护企业作为市场主体依法享有的权利，除依法履行出资人职责外，不得干预企业经营活动。

第十五条 履行出资人职责的机构对本级人民政府负责，向本级人民政府报告履行出资人职责的情况，接受本级人民政府的监督和考核，对国有资产的保值增值负责。

履行出资人职责的机构应当按照国家有关规定，定期向本级人民政府报告有关国有资产总量、结构、变动、收益等汇总分析的情况。

第三章 国家出资企业

第十六条 国家出资企业对其动产、不动产和其他财产依照法律、行政法规以及企业章程享有占有、使用、收益和处分的权利。

国家出资企业依法享有的经营自主权和其他合法权益受法律保护。

第十七条 国家出资企业从事经营活动，应当遵守法律、行政法规，加强经营管理，提高经济效益，接受人民政府及其有关部门、机构依法实施的管理和监督，接受社会公众的监督，承担社会责任，对出资人负责。

国家出资企业应当依法建立和完善法人治理结构，建立健全内部监督管理和风险控制制度。

第十八条 国家出资企业应当依照法律、行政法规和国务院财政部门的规定，建立健全财务、会计制度，设置会计账簿，进行会计核算，依照法律、行政法规以及企业章程的规定向出资人提供真实、完整的财务、会计信息。

国家出资企业应当依照法律、行政法规以及企业章程的规定，向出资人分配利润。

第十九条 国有独资公司、国有资本控股公司和国有资本参股公司依照《中华人民共和国公司法》的规定设立监事会。国有独资企业由履行出资人职责的机构按照国务院的规定委派监事组成监事会。

国家出资企业的监事会依照法律、行政法规以及企业章程的规定，对董事、高级管理人员执行职务的行为进行监督，对企业财务进行监督检查。

第二十条 国家出资企业依照法律规定，通过职工代表大会或者其他形式，实行民主管理。

第二十一条 国家出资企业对其所出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

国家出资企业对其所出资企业，应当依照法律、行政法规的规定，通过制定或者参与制定所出资企业的章程，建立权责明确、有效制衡的企业内部监督管理和风险控制制度，维护其出资人权益。

第四章 国家出资企业管理者的选择与考核

第二十二条 履行出资人职责的机构依照法律、行政法规以及企业章程的规定，任免或者建议任免国家出资企业的下列人员：

- （一）任免国有独资企业的经理、副经理、财务负责人和其他高级管理人员；
- （二）任免国有独资公司的董事长、副董事长、董事、监事会主席和监事；
- （三）向国有资本控股公司、国有资本参股公司的股东会、股东大会提出董事、监事人选。

国家出资企业中应当由职工代表出任的董事、监事，依照有关法律、行政法规的规定由职工民主选举产生。

第二十三条 履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员，应当具备下列条件：

- （一）有良好的品行；
- （二）有符合职位要求的专业知识和工作能力；

(三) 有能够正常履行职责的身体条件;

(四) 法律、行政法规规定的其他条件。

董事、监事、高级管理人员在任职期间出现不符合前款规定情形或者出现《中华人民共和国公司法》规定的不得担任公司董事、监事、高级管理人员情形的,履行出资人职责的机构应当依法予以免职或者提出免职建议。

第二十四条 履行出资人职责的机构对拟任命或者建议任命的董事、监事、高级管理人员的人选,应当按照规定的条件和程序进行考察。考察合格的,按照规定的权限和程序任命或者建议任命。

第二十五条 未经履行出资人职责的机构同意,国有独资企业、国有独资公司的董事、高级管理人员不得在其他企业兼职。未经股东会、股东大会同意,国有资本控股公司、国有资本参股公司的董事、高级管理人员不得在经营同类业务的其他企业兼职。

未经履行出资人职责的机构同意,国有独资公司的董事长不得兼任经理。未经股东会、股东大会同意,国有资本控股公司的董事长不得兼任经理。

董事、高级管理人员不得兼任监事。

第二十六条 国家出资企业的董事、监事、高级管理人员,应当遵守法律、行政法规以及企业章程,对企业负有忠实义务和勤勉义务,不得利用职权收受贿赂或者取得其他非法收入和不当利益,不得侵占、挪用企业资产,不得超越职权或者违反程序决定企业重大事项,不得有其他侵害国有资产出资人权益的行为。

第二十七条 国家建立国家出资企业管理者经营业绩考核制度。履行出资人职责的机构应当对其任命的企业管理者进行年度和任期考核,并依据考核结果决定对企业管理者的奖惩。

履行出资人职责的机构应当按照国家有关规定,确定其任命的国家出资企业管理者的薪酬标准。

第二十八条 国有独资企业、国有独资公司和国有资本控股公司的主要负责人，应当接受依法进行的任期经济责任审计。

第二十九条 本法第二十二条第一款第一项、第二项规定的企业管理者，国务院和地方人民政府规定由本级人民政府任免的，依照其规定。履行出资人职责的机构依照本章规定对上述企业管理者进行考核、奖惩并确定其薪酬标准。

第五章 关系国有资产出资人权益的重大事项

第一节 一般规定

第三十条 国家出资企业合并、分立、改制、上市，增加或者减少注册资本，发行债券，进行重大投资，为他人提供大额担保，转让重大财产，进行大额捐赠，分配利润，以及解散、申请破产等重大事项，应当遵守法律、行政法规以及企业章程的规定，不得损害出资人和债权人的权益。

第三十一条 国有独资企业、国有独资公司合并、分立，增加或者减少注册资本，发行债券，分配利润，以及解散、申请破产，由履行出资人职责的机构决定。

第三十二条 国有独资企业、国有独资公司有本法第三十条所列事项的，除依照本法第三十一条和有关法律、行政法规以及企业章程的规定，由履行出资人职责的机构决定的以外，国有独资企业由企业负责人集体讨论决定，国有独资公司由董事会决定。

第三十三条 国有资本控股公司、国有资本参股公司有本法第三十条所列事项的，依照法律、行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由股东会、股东大会决定的，履行出资人职责的机构委派的股东代表应当依照本法第十三条的规定行使权利。

第三十四条 重要的国有独资企业、国有独资公司、国有资本控股公司的合并、分立、解散、申请破产以及法律、行政法规和本级人民政府规定应当由履行出资人职责的机构报经本级人民政府批准的重大事项，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当报请本级人民政府批准。

本法所称的重要的国有独资企业、国有独资公司和国有资本控股公司，按照国务院的规定确定。

第三十五条 国家出资企业发行债券、投资等事项，有关法律、行政法规规定应当报经人民政府或者人民政府有关部门、机构批准、核准或者备案的，依照其规定。

第三十六条 国家出资企业投资应当符合国家产业政策，并按照国家规定进行可行性研究；与他人交易应当公平、有偿，取得合理对价。

第三十七条 国家出资企业的合并、分立、改制、解散、申请破产等重大事项，应当听取企业工会的意见，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。

第三十八条 国有独资企业、国有独资公司、国有资本控股公司对其所出资企业的重大事项参照本章规定履行出资人职责。具体办法由国务院规定。

第二节 企业改制

第三十九条 本法所称企业改制是指：

- （一）国有独资企业改为国有独资公司；
- （二）国有独资企业、国有独资公司改为国有资本控股公司或者非国有资本控股公司；
- （三）国有资本控股公司改为非国有资本控股公司。

第四十条 企业改制应当依照法定程序，由履行出资人职责的机构决定或者由公司股东会、股东大会决定。

重要的国有独资企业、国有独资公司、国有资本控股公司的改制，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当将改制方案报请本级人民政府批准。

第四十一条 企业改制应当制定改制方案，载明改制后的企业组织形式、企业资产和债权债务处理方案、股权变动方案、改制的操作程序、资产评估和财务审计等中介机构的选聘等事项。

企业改制涉及重新安置企业职工，还应当制定职工安置方案，并经职工代表大会或者职工大会审议通过。

第四十二条 企业改制应当按照规定进行清产核资、财务审计、资产评估，准确界定和核实资产，客观、公正地确定资产的价值。

企业改制涉及以企业的实物、知识产权、土地使用权等非货币财产折算为国有资本出资或者股份的，应当按照规定对折价财产进行评估，以评估确认价格作为确定国有资本出资额或者股份数额的依据。不得将财产低价折股或者有其他损害出资人权益的行为。

第三节 与关联方的交易

第四十三条 国家出资企业的关联方不得利用与国家出资企业之间的交易，谋取不当利益，损害国家出资企业利益。

本法所称关联方，是指本企业的董事、监事、高级管理人员及其近亲属，以及这些人员所有或者实际控制的企业。

第四十四条 国有独资企业、国有独资公司、国有资本控股公司不得无偿向关联方提供资金、商品、服务或者其他资产，不得以不公平的价格与关联方进行交易。

第四十五条 未经履行出资人职责的机构同意，国有独资企业、国有独资公司不得有下列行为：

（一）与关联方订立财产转让、借款的协议；

（二）为关联方提供担保；

(三) 与关联方共同出资设立企业，或者向董事、监事、高级管理人员或者其近亲属所有或者实际控制的企业投资。

第四十六条 国有资本控股公司、国有资本参股公司与关联方的交易，依照《中华人民共和国公司法》和有关行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由公司股东会、股东大会决定的，履行出资人职责的机构委派的股东代表，应当依照本法第十三条的规定行使权利。

公司董事会对公司与关联方的交易作出决议时，该交易涉及的董事不得行使表决权，也不得代理其他董事行使表决权。

第四节 资产评估

第四十七条 国有独资企业、国有独资公司和国有资本控股公司合并、分立、改制，转让重大财产，以非货币财产对外投资，清算或者有法律、行政法规以及企业章程规定应当进行资产评估的其他情形的，应当按照规定对有关资产进行评估。

第四十八条 国有独资企业、国有独资公司和国有资本控股公司应当委托依法设立的符合条件的资产评估机构进行资产评估；涉及应当报经履行出资人职责的机构决定的事项的，应当将委托资产评估机构的情况向履行出资人职责的机构报告。

第四十九条 国有独资企业、国有独资公司、国有资本控股公司及其董事、监事、高级管理人员应当向资产评估机构如实提供有关情况和资料，不得与资产评估机构串通评估作价。

第五十条 资产评估机构及其工作人员受托评估有关资产，应当遵守法律、行政法规以及评估执业准则，独立、客观、公正地对受托评估的资产进行评估。资产评估机构应当对其出具的评估报告负责。

第五节 国有资产转让

第五十一条 本法所称国有资产转让，是指依法将国家对企业的出资所形成的权益转移给其他单位或者个人的行为；按照国家规定无偿划转国有资产的除外。

第五十二条 国有资产转让应当有利于国有经济布局和结构的战略性调整，防止国有资产损失，不得损害交易各方的合法权益。

第五十三条 国有资产转让由履行出资人职责的机构决定。履行出资人职责的机构决定转让全部国有资产的，或者转让部分国有资产致使国家对该企业不再具有控股地位的，应当报请本级人民政府批准。

第五十四条 国有资产转让应当遵循等价有偿和公开、公平、公正的原则。

除按照国家规定可以直接协议转让的以外，国有资产转让应当在依法设立的产权交易场所公开进行。转让方应当如实披露有关信息，征集受让方；征集产生的受让方为两个以上的，转让应当采用公开竞价的交易方式。

转让上市交易的股份依照《中华人民共和国证券法》的规定进行。

第五十五条 国有资产转让应当以依法评估的、经履行出资人职责的机构认可或者由履行出资人职责的机构报经本级人民政府核准的价格为依据，合理确定最低转让价格。

第五十六条 法律、行政法规或者国务院国有资产监督管理机构规定可以向本企业的董事、监事、高级管理人员或者其近亲属，或者这些人员所有或者实际控制的企业转让的国有资产，在转让时，上述人员或者企业参与受让的，应当与其他受让参与者平等竞买；转让方应当按照国家有关规定，如实披露有关信息；相关的董事、监事和高级管理人员不得参与转让方案的制定和组织实施的各项工作。

第五十七条 国有资产向境外投资者转让的，应当遵守国家有关规定，不得危害国家安全和公共利益。

第六章 国有资本经营预算

第五十八条 国家建立健全国有资本经营预算制度，对取得的国有资本收入及其支出实行预算管理。

第五十九条 国家取得的下列国有资本收入，以及下列收入的支出，应当编制国有资本经营预算：

- （一）从国家出资企业分得的利润；
- （二）国有资产转让收入；
- （三）从国家出资企业取得的清算收入；
- （四）其他国有资本收入。

第六十条 国有资本经营预算按年度单独编制，纳入本级人民政府预算，报本级人民代表大会批准。

国有资本经营预算支出按照当年预算收入规模安排，不列赤字。

第六十一条 国务院和有关地方人民政府财政部门负责国有资本经营预算草案的编制工作，履行出资人职责的机构向财政部门提出由其履行出资人职责的国有资本经营预算建议草案。

第六十二条 国有资本经营预算管理的具体办法和实施步骤，由国务院规定，报全国人民代表大会常务委员会备案。

第七章 国有资产监督

第六十三条 各级人民代表大会常务委员会通过听取和审议本级人民政府履行出资人职责的情况和国有资产监督管理情况的专项工作报告，组织对本法实施情况的执法检查等，依法行使监督职权。

第六十四条 国务院和地方人民政府应当对其授权履行出资人职责的机构履行职责的情况进行监督。

第六十五条 国务院和地方人民政府审计机关依照《中华人民共和国审计法》的规定，对国有资本经营预算的执行情况和属于审计监督对象的国家出资企业进行审计监督。

第六十六条 国务院和地方人民政府应当依法向社会公布国有资产状况和国有资产监督管理工作情况，接受社会公众的监督。

任何单位和个人有权对造成国有资产损失的行为进行检举和控告。

第六十七条 履行出资人职责的机构根据需要，可以委托会计师事务所对国有独资企业、国有独资公司的年度财务会计报告进行审计，或者通过国有资本控股公司的股东会、股东大会决议，由国有资本控股公司聘请会计师事务所对公司的年度财务会计报告进行审计，维护出资人权益。

第八章 法律责任

第六十八条 履行出资人职责的机构有下列行为之一的，对其直接负责的主管人员和其他直接责任人员依法给予处分：

- （一）不按照法定的任职条件，任命或者建议任命国家出资企业管理者的；
- （二）侵占、截留、挪用国家出资企业的资金或者应当上缴的国有资本收入的；
- （三）违反法定的权限、程序，决定国家出资企业重大事项，造成国有资产损失的；
- （四）有其他不依法履行出资人职责的行为，造成国有资产损失的。

第六十九条 履行出资人职责的机构的工作人员玩忽职守、滥用职权、徇私舞弊，尚不构成犯罪的，依法给予处分。

第七十条 履行出资人职责的机构委派的股东代表未按照委派机构的指示履行职责，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分。

第七十一条 国家出资企业的董事、监事、高级管理人员有下列行为之一，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分：

（一）利用职权收受贿赂或者取得其他非法收入和不当利益的；

（二）侵占、挪用企业资产的；

（三）在企业改制、财产转让等过程中，违反法律、行政法规和公平交易规则，将企业财产低价转让、低价折股的；

（四）违反本法规定与本企业进行交易的；

（五）不如实向资产评估机构、会计师事务所提供有关情况和资料，或者与资产评估机构、会计师事务所串通出具虚假资产评估报告、审计报告的；

（六）违反法律、行政法规和企业章程规定的决策程序，决定企业重大事项的；

（七）有其他违反法律、行政法规和企业章程执行职务行为的。

国家出资企业的董事、监事、高级管理人员因前款所列行为取得的收入，依法予以追缴或者归国家出资企业所有。

履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员有本条第一款所列行为之一，造成国有资产重大损失的，由履行出资人职责的机构依法予以免职或者提出免职建议。

第七十二条 在涉及关联方交易、国有资产转让等交易活动中，当事人恶意串通，损害国有产权益的，该交易行为无效。

第七十三条 国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员违反本法规定，造成国有资产重大损失，被免职的，自免职之日起五年内不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员；造成国有资产特别重大损失，或者因贪污、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的，终身不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员。

第七十四条 接受委托对国家出资企业进行资产评估、财务审计的资产评估机构、会计师事务所违反法律、行政法规的规定和执业准则，出具虚假的资产评估报告或者审计报告的，依照有关法律、行政法规的规定追究法律责任。

第七十五条 违反本法规定，构成犯罪的，依法追究刑事责任。

第九章 附 则

第七十六条 金融企业国有资产的管理与监督，法律、行政法规另有规定的，依照其规定。

第七十七条 本法自 2009 年 5 月 1 日起施行。

Guarantee Law of the People's Republic of China

(Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress
on June 30, 1995, and effective as of October 1, 1995) { 1 }

Chapter I - General Provisions { 2 }

Article 1

{ 3 }

This Law is enacted for purposes of promoting capital accommodation and commodity circulation, ensuring the realization of creditors' rights and developing socialist market economy.

{ 4 }

Article 2

{ 5 }

In such economic activities as debit and credit, buying and selling, carriage of goods and contracting for processing, a creditor who needs to ensure the realization of his rights in the form of guarantee, may establish guarantee subject to the provisions of this Law. The forms of guarantee provided in this law include guarantee, mortgage, pledge, lien and earnest. { 6 }

Article 3

{ 7 }

Guarantee activities shall be in conformity to the principle of equality, voluntariness, fairness, honesty and trustworthiness. This law also applies to counter*-guarantee. { 8 }

Article 4

{ 9 }

A third person, at the time of tendering guarantee to a creditor for a debtor, may require the debtor to tender counter guarantee. { 10 }

Article 5

{ 11 }

A guarantee contract is an accessory contract to a principal contract. If the principal contract is invalid, the guarantee contract shall be invalid. Where the guarantee contract stipulates otherwise, such stipulations shall apply. Where a guarantee contract is confirmed as invalid and void, the debtor, the guarantor or the creditor, who commits some mistake, shall, based on his respective mistake, bear corresponding civil liability. { 12 }

Chapter II - Guarantee { 13 }

Section 1 - Guarantee and Guarantor { 14 }

Article 6

{ 15 }

"Guarantee" as the term is used in this Law means an act under which, according to an

agreement between a guarantor and a creditor, the guarantor shall perform a debt* or bear responsibility as contracted if the debtor fails to pay the debt. { 16 }

Article 7

{ 17 }

A legal person, any other organization or a citizen, that has the ability of discharge of a debt may act as a guarantor. { 18 }

Article 8

{ 19 }

Any state organ may not act as a guarantor, however, upon approval by the State Council, those which conduct subloans* for the purpose of using loans from foreign governments or international economic organizations shall be excluded. { 20 }

Article 9

{ 21 }

Any institution or social organization of public interests, such as schools, kindergartens and hospitals, may not act as a guarantor. { 22 }

Article 10

{ 23 }

Any branch or functionary department of an enterprise as legal person may not act as a guarantor. A branch of an enterprise as legal person, which has the power of attorney in writing from the legal person, may tender guarantee within the authorized limits. { 24 }

Article 11

{ 25 }

No unit or individual may force financial institutions such as banks or enterprises to tender guarantee for others. Financial institutions such as banks or enterprises have the right to refuse any acts forcing them to tender guarantee for others. { 26 }

Article 12

{ 27 }

In the case of two or more guarantors to a debt, each guarantor shall bear guarantee responsibility in proportion to his proper share of the guarantee as contracted. If no share of guarantee is agreed upon, the guarantor shall bear joint and several liability; the creditor may require any of the guarantors to bear full guarantee responsibility, and each guarantor shall be liable to guarantee the full realization of creditor's rights. The guarantor who has already borne guarantee responsibility shall have the right to recover compensation from the debtor, or require other guarantors who bear joint and several liability to pay the shares they ought to bear. { 28 }

Section 2 - Guarantee Contract and Guarantee Mode { 29 }

Article 13

{ 30 }

A guarantor and a creditor shall conclude a guarantee contract in the form of writing.
{ 31 }

Article 14
{ 32 }

A guarantor and a creditor may conclude a separate guarantee contract relating to a specific principal contract, and also may, within the maximum amount of claim and through negotiation, conclude one guarantee contract relating to loan contracts or trade contracts of a particular commodity, which occur consecutively in a certain period of time. { 33 }

Article 15
{ 34 }

A guarantee contract shall include the following particulars:

1. the category and amount of the principal creditor's right to be guaranteed; { 36 }
2. time limit for the debtor to perform his debt; { 37 }
3. mode of guarantee; { 38 }
4. scope of guarantee; { 39 }
5. duration of guarantee; and { 40 }
6. other matters deemed as necessary to be agreed upon by both parties. { 41 }

A guarantee contract which does not completely include the particulars provided in the preceding paragraph, may be added and amended. { 42 }

Article 16
{ 43 }

The modes of guarantee include: { 44 }

1. general guarantee; and { 45 }
2. joint and several liability guarantee. { 46 }

Article 17
{ 47 }

A general guarantee means that, as agreed upon in guarantee contract by the parties concerned, the guarantor shall bear guarantee responsibility if the debtor fails to perform his debt. The guarantor of a general guarantee may, prior to court proceedings or arbitration over a dispute concerning the principal contract and a failure again to pay a debt after a compulsory enforcement over the debtor's property according to law, refuse to bear guarantee responsibility to a creditor. A guarantor may not execute the right provided in the preceding paragraph under any of the following circumstances: { 48 }

1. in a case of which the change of debtor's address has caused serious difficulty to the creditor in requiring the debtor to pay his debt; { 49 }

2. in a case of which a people's court accepts the debtor's bankruptcy case and the execution procedures are abated; or { 50 }

3. in a case of which the guarantor waives, in written form, his right provided in the preceding paragraph. { 51 }

Article 18

{ 52 }

A joint and several liability guarantee means that, as agreed upon in a guarantee contract by the parties concerned, the guarantor and the debtor shall bear joint and several liability over a debt. If the debtor of a joint and several liability guarantee fails to pay his debt at the expiry of term for execution as stipulated by the principal contract, the creditor may require the debtor to pay his debt and also may require the guarantor to bear guarantee responsibility within the limit of his guarantee. { 53 }

Article 19

{ 54 }

The parties concerned who make no agreement on the mode of guarantee or make an ambiguous agreement thereon shall bear guarantee responsibility in accordance with the mode of a joint and several liability guarantee. { 55 }

Article 20

{ 56 }

Guarantors of general guarantee or joint and several liability guarantee enjoy the right of demur of the debtors. If a debtor waives his right of demur over a debt, the guarantor still has the right to demur. The right of demur means such right under which the debtor may, according to legal causes, challenge the claim by the creditor when the creditor executes his rights. { 57 }

Section 3 - Guarantee Responsibility { 58 }

Article 21

{ 59 }

The scope of guarantee includes the principal creditor's right as well as interests, fines for breach of agreement, compensation for loss and damage and expenses for the realization of creditor's rights. Where a guarantee contract has otherwise stipulations, such stipulations shall apply. If the parties make no agreement on the scope of guarantee or make an ambiguous agreement thereon, the guarantor shall bear responsibility for all the debts. { 60 }

Article 22

{ 61 }

If, within the duration of guarantee, a creditor transfers his principal right to third person according to law, the guarantor shall continue to bear guarantee responsibility within the original scope of guarantee. Where a guarantee contract has otherwise stipulations, such stipulations shall apply. { 62 }

Article 23

{ 63 }

If, within the duration of guarantee, a creditor allows his debtor to transfer his debt, the guarantor's consent in writing shall be obtained, and the guarantor will no longer bear the guarantee responsibility over those debts transferred without his consent. { 64 }

Article 24

{ 65 }

A creditor and debtor who agree to modify a principal contract shall obtain the guarantor's consent in writing. Without his consent in writing, the guarantor will no longer bear the guarantee responsibility. If the guarantee contract has otherwise stipulations, such stipulations shall apply.

{ 66 }

Article 25

{ 67 }

In case the guarantor and the creditor of a general guarantee fails to stipulate the duration of guarantee, the duration of guarantee shall be six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not initiate legal proceedings against the debtor or apply for arbitration, the guarantor shall be exemption from his guarantee responsibility; if the creditor has initiated legal proceedings or applied for arbitration, the provisions concerning the discontinuance of the limitation of action shall apply to the duration of guarantee. { 68 }

Article 26

{ 69 }

In case the guarantor and the creditor of a joint and several liability guarantee fails to stipulate the duration of guarantee, the creditor shall have the right to require the guarantor to bear guarantee responsibility within six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not require the guarantor to bear guarantee responsibility, the guarantor shall be exemption from his guarantee responsibility.

{ 70 }

Article 27

{ 71 }

In the absence of the duration of guarantee, a guarantor who, subject to the provisions of Article 14 of this Law, tenders guarantee over creditor's rights occurring consecutively may, at any time, notify in writing the creditor to terminate the guarantee contract, however, the guarantor shall bear guarantee responsibility over those rights occurred prior to the time at which the notification in writing is delivered to the creditor. { 72 }

Article 28

{ 73 }

Where there are both guarantee and things guaranteed over one creditor's right, the guarantor shall bear guarantee responsibility over those rights beyond the things guaranteed. If the creditor surrenders the guarantee by things, the guarantor shall be exemption from his guarantee responsibility within the scope of the creditor's surrender. { 74 }

Article 29

{ 75 }

Where, without authorization in writing by the legal person or beyond the authorized scope, a branch of an enterprise as legal person concludes a guarantee contract with a creditor, such a contract shall not be binding or that part beyond the authorized scope shall not be binding, if the creditor and the enterprise as legal person have some mistake, they shall bear their corresponding civil liability according to their respective mistake; if the creditor has no mistake, the enterprise as legal person shall bear civil liability. { 76 }

Article 30

{ 77 }

Under one of the following circumstances, the guarantor shall not bear civil liability: 1. in a case of which the parties to a principal contract maliciously collude so as to cheat the guarantor to tender guarantee; or 2. in a case of which the creditor of a principal contract resorts to such means as deceit and compulsion in making the guarantor to tender guarantee under the condition against his true intention. { 78 }

Article 31

{ 79 }

A guarantor, after bearing his guarantee responsibility, shall have the right to recover compensation from the debtor. { 80 }

Article 32

{ 81 }

If, after a people's court takes cognizance of a bankruptcy case filed by a debtor, a creditor fails to declare his rights, the guarantor may participate the distribution of bankruptcy property and execute the right of recourse in priority. { 82 }

Chapter III - Mortgage { 83 }

Section 1 - Mortgage and Things Mortgaged { 84 }

Article 33

{ 85 }

"Mortgage" as the term is used in this Law means guarantee under which a debtor or a third person, without transferring the possession over the property listed in Article 34 { 86 }

of this Law, places such property as creditor's rights. When the debtor fails to pay his debt, the creditor shall have the right, in accordance with the provisions of this law, to get in priority compensation from the money received from converting or auctioning and selling of the property. In the preceding paragraph, the debtor or the third person is the mortgagor, the creditor is the mortgagee and the property served as guarantee is the things mortgaged. { 87 }

Article 34

{ 88 }

The following property may be mortgaged: { 89 }

1. buildings and other objects fixed on land, which are owned by the mortgagor; { 90 }
2. machines, means of transport and other property, which are owned by the mortgagor;

{ 91 }

3. use-right of state -owned land, buildings and other objects fixed on land, which the mortgagor has the right to dispose according to law; { 92 }

4. state-owned machines, means of transport and other property, which the mortgagor has the right to dispose according to law; { 93 }

5. the landuse*-rights of barren mountains, barren valleys, waste hills and waste sands, which the mortgagor has contracted according to law and the contract offering party agrees on the mortgage; { 94 }

6. other property which may be mortgaged according to law. { 95 }

A mortgagor may mortgage the properties listed in the preceding paragraph concurrently. { 96 }

Article 35

{ 97 }

The creditor's rights guaranteed by a mortgagor may not exceed the value of the things mortgaged. If the value of a piece of property, after being mortgaged, is higher than the creditor's rights guaranteed, the remaining part may be mortgaged again, however, the remaining part may not be exceeded. { 98 }

Article 36

{ 99 }

If a building on the state-owned land acquired according to law is mortgaged, the use-right of the state-owned land occupied by the said building shall be mortgaged together. If the use-right of the state-owned land acquired in the form of leasing is mortgaged, the buildings on the said state-owned land shall be mortgaged together. The Land-use right of town (township) and village enterprises may not be mortgaged individually. If the construction structures such as workshops of town (township) and village enterprises are mortgaged, the use-right for the land occupied by such structures shall be mortgaged together. { 100 }

Article 37

{ 101 }

The following property may not be mortgaged; { 102 }

1. land ownership; { 103 }

2. use-rights of such collectively-owned land as farmland, homestead, land allotted for personal needs and hilly land allotted for private use, however, those provided in Item 5 of Article 34 and Paragraph 3 of Article 36 of this Law shall be excluded; { 104 }

3. education facilities, medical and public health facilities and other facilities for public interests of such institutions and social organizations as schools, kindergartens and hospitals; { 105 }

4. property with unclear ownership and use-right or dispute; { 106 }

5. property which is attached, arrested or supervised and controlled according to law; or { 107 }

6. other property which may not be mortgaged according to law. { 108 }

Section 2 - Mortgage Contract and Registration of Things Mortgaged { 109 }

Article 38

{ 110 }

A mortgagor and a mortgagee shall conclude a mortgage contract in the form of writing.

{ 111 }

Article 39

{ 112 }

A mortgage contract shall include the following particulars: { 113 }

1. the category and amount of the principal creditor's right to be guaranteed; { 114 }

2. the term for the debtor to pay his debt; { 115 }

3. designation, amount, quality condition, location, status of ownership and status of use-rights of the things mortgaged; { 116 }

4. scope of guarantee; and { 117 }

5. other matters and items which the parties deem as necessary to be included. { 118 }

A mortgage contract which fails to include completely the particulars provided in the preceding paragraph may be added and amended. { 119 }

Article 40

{ 120 }

In making a mortgage contract, the mortgagee and mortgagor may not stipulate in the contract that the ownership over the things mortgaged would be transferred to be owned by the creditor if the mortgagee was not paid after the expiry of the term for performance of the debt.

{ 121 }

Article 41

{ 122 }

A party which uses the property listed in Article 42 of this Law as mortgage shall complete registration of things mortgaged, the mortgage contract shall enter into force from the date of registration. { 123 }

Article 42

{ 124 }

The departments which handle registration of things mortgaged are as follows: { 125 }

1. where the use-right of land on which there is no immovable object is mortgaged, it is the land administration department which issues the land use-right certificate; { 126 }

2. where urban real estate or construction structures such as workshops of town (township) and village enterprises are mortgaged, it is the department designated by the local people's government at or above the county level; { 127 }

3. where forest and trees are mortgaged, it is the competent forestry administrative department at or above the county level; { 128 }

4. where aircraft, ship or transport vehicle is mortgaged, it is the registration department of such means of transport; and { 129 }

5. where equipment or other movables* of enterprises is mortgaged, it is the administrative

department for industry and commerce in the place where such property is located. { 130 }

Article 43

{ 131 }

Where the parties concerned use other property as mortgage, registration of things mortgaged may voluntarily be completed, and in this case, the mortgage contract shall come into force on the date of signing. Parties concerned who fail to complete registration of things mortgaged may not challenge the third person. Where the parties apply for registration of things mortgaged, the registration department is the notary department in the place where the mortgagor is located.

{ 132 }

Article 44

{ 133 }

At the time of applying for registration of things mortgaged, the following documents or their photocopies shall be submitted to the registration department; { 134 }

1. The principal contract and mortgage contract; and { 135 }
2. certificate of ownership or use-right over the things to be mortgaged. { 136 }

Article 45

{ 137 }

The materials registered by the registration departments shall be allowed to be consulted, taken note of or photocopied. { 138 }

Section 3 - The Effect of Mortgage { 139 }

Article 46

{ 140 }

The scope of a guarantee by mortgage includes the principal creditor's right as well as interests, fines for breach of agreement, compensations for loss and damage and expenses for the realization of mortgage. Where a mortgage contract has otherwise stipulations, such stipulations shall apply. { 141 }

Article 47

{ 142 }

Where, upon the expiration of the term for performance of the debt, the things mortgaged are arrested by a people's court according to law due to the failure of the debtor in performing his debt, the mortgagee shall have the right, from the date of arrest, to collect naturally accrued yields arising from the things mortgaged as well as the statutory accrued interests which the mortgagor may collect from the things mortgaged. If the mortgagee fails to notify the genuine facts of arresting the things mortgaged to the liable person who shall pay the statutory accrued interests, the force of mortgage shall not be extended to such naturally accrued yields. The naturally accrued yields mentioned in the preceding paragraph shall be used to write off the expenses for collecting such naturally accrued yields in priority. { 143 }

Article 48

{ 144 }

A mortgagor who gives his property already leased out as mortgages shall advise the leasee* thereof in writing, and the original leasing contract shall continue to be valid. { 145 }

Article 49

{ 146 }

A mortgagor who, in the course of mortgage, assigns the things mortgaged which are registered shall advise the mortgagee and inform the assignee on the condition that the assigned things have already been mortgaged; if the mortgagor fails to advise the mortgagee or fails to inform the assignee, the act of assignment shall be invalid and void. Where the price money of things mortgaged assigned is apparently lower than their value, the mortgagee may require the mortgagor to tender corresponding guarantee; If the mortgagor fails to tender, the things mortgaged may not be assigned. The money received by the mortgagor from assignment of the things mortgaged shall compensate in priority the creditor's rights guaranteed to the mortgagee or be deposited at the third person agreed with the mortgagee, that part in excess of the creditor's rights is owned by the mortgagor, and the part in shortage shall be paid by the debtor. { 147 }

Article 50

{ 148 }

A mortgage may not be separated from the creditor's rights and transferred individually, or act as guarantee for other creditor's rights. { 149 }

Article 51

{ 150 }

Where the act of a mortgagor is sufficient to make the value of the things mortgaged decrease, the mortgagee has the right to require the mortgagor to stop his act. When the value of things mortgaged decreases, the mortgagee has the right to require the mortgagor to restore the value of the things mortgaged, or to tender guarantee which matches the decreased value. If the mortgagor is not to blame for the value decrease of things mortgaged, the mortgagee could require the mortgagor to tender guarantee only within the scope of the compensation obtained for loss and damage. The part of value not decreased shall continue to act as the guarantee for the creditor's rights. { 151 }

Article 52

{ 152 }

A mortgage exists concurrently with the creditor's rights so guaranteed, and if the creditor's rights cease to exist, so cease to exist the mortgage. { 153 }

Section 4 - Realization of Mortgage { 154 }

Article 53

{ 155 }

A mortgagee who is not compensated upon the expiration of the term for performance of the debt may, through agreement with the mortgagor, be compensated from the money received from converting the things mortgaged into cash or from auctioning and selling of the things mortgaged,

and if no agreement is reached, the mortgagee may file a suit in a people's court. After the things mortgaged are converted into cash or auctioned or sold the money in excess of the amount of creditor's rights shall be owned by the mortgagor, and the part in shortage shall be paid by the debtor. { 156 }

Article 54

{ 157 }

Where one piece of property is mortgaged to two or more creditors, the money received from auction or sale of the things mortgaged shall be used for compensation according to the following provisions: { 158 }

1. where the mortgage contracts come into force through registration, it shall be distributed according to the registration order of the things mortgaged; if the order is the same, it shall be distributed according to the percentage of creditor's rights; and { 159 }

2. where the mortgage contracts come into force on the date of signing, if the things mortgaged have been registered, it shall be distributed according to the provisions of Item 1 of this Article; if such things are not registered, it shall be distributed according to the time order of the entry into force of these contracts, if the order is the same, it shall be distributed according to the percentage of creditor's rights. Those that the things mortgaged are already registered shall have the priority in getting compensation than those not registered. { 160 }

Article 55

{ 161 }

After a mortgage contract of urban real estate is signed, the newly constructed buildings on this land do not fall within the things mortgaged. When the mortgaged real estate needs to be auctioned, such newly constructed buildings may be auctioned together with the things mortgaged, however, the mortgagee shall not have the priority in getting compensation from the money received from auction of such newly constructed buildings. If the use-right of a contracted waste land is mortgaged according to the provisions of this Law or the use-right of the land occupied by construction structures such as workshops of town (township) and village enterprises are mortgaged, after the realization of mortgage, the collective ownership and usage purpose of the land may not be changed without going through legal procedures. { 162 }

Article 56

{ 163 }

The mortgagee shall have the right of priority for compensation from the money received from auctioning of the use-right of allotted state-owned land after payment equivalent to the amount payable as the transfer of land use-right according to law. { 164 }

Article 57

{ 165 }

A third person who guarantees by mortgage for a debtor shall have the right over the debtor for compensation after the realization of mortgage. { 166 }

Article 58

{ 167 }

A mortgage shall cease to exist with the disappearance of the things mortgaged, however, compensation received from the disappearance thereof shall be served as mortgaged property.

{ 168 }

Section 5 - Mortgage of Maximum Amount { 169 }

Article 59

{ 170 }

Mortgage of maximum amount" as the term is used in this Law means that, as agreed upon by a mortgagor and a mortgagee and within the maximum amount of creditor's rights, the things mortgaged are served as guarantee to creditor's rights occurring consecutively within a certain period of time. { 171 }

Article 60

{ 172 }

A borrowing contract may be accompanied by a mortgage contract of maximum amount. A contract signed by a creditor and a debtor on a particular commodity occurring transactions consecutively in a certain period of time may be accompanied by a mortgage contract of maximum amount. { 173 }

Article 61

{ 174 }

Creditor's rights of a principal contract with mortgage of maximum amount may not be transferred. { 175 }

Article 62

{ 176 }

Apart from the provisions of this section, other provisions of this Chapter shall also apply to mortgage of maximum amount. { 177 }

Chapter IV - Pledge { 178 }

Section 1 - Pledge of Movables* { 179 }

Article 63

{ 180 }

Pledge of movables" as the term is used in this Law means guarantee under which the debtor or a third person transfers his movables to be possessed by the creditor, and uses such movables as creditor's rights. If the debtor fails to pay the debt, the creditor has the right, in accordance with the provisions of this Law, to get compensation in priority from the money received from converting such movables into cash or from auctioning and selling such movables. Subject to the provisions in the preceding paragraph, the debtor or the third person is a pledger, the creditor is a pledgee, and the movables so transferred are the things pledged. { 181 }

Article 64

{ 182 }

A pledger and a pledgee shall conclude a pledge contract in a written form. A pledge contract shall enter into force from the time when the things pledged are transferred to be possessed by the pledgee. { 183 }

Article 65

{ 184 }

A pledge contract shall include the following particulars: { 185 }

1. category and amount of the principal creditor's right to be guaranteed; { 186 }
2. time limit for the debtor to pay his debt; { 187 }
3. name, quantity, quality and descriptions of the things pledged; { 188 }
4. scope of the guarantee; { 189 }
5. time for the transfer and delivery of the things pledged; and { 190 }
6. other matters and items deemed by the parties as necessary to be included. { 191 }

A pledge contract which fails to completely include the particulars provided in the preceding paragraph may be added and amended. { 192 }

Article 66

{ 193 }

A pledger and a pledgee may not stipulate in their contract that the ownership over the things pledged would be transferred to the pledgee if the pledgee is not fully compensated and paid upon the expiration of the term for performance of the debt. { 194 }

Article 67

{ 195 }

The scope of guarantee by pledge includes the principal creditor's right as well as interests, fine for breach of agreement, compensation for loss and damage, maintenance costs of the things pledged and expenses for the realization of the pledge. Where a pledge contract has otherwise stipulations, such stipulations shall apply. { 196 }

Article 68

{ 197 }

A pledgee has the right to collect the derivatives of the hypothecated assets. Should there be other arrangements in the hypothecation contract, those arrangements shall be followed instead. The derivative referred to in the preceding paragraph shall first be used to write off the expenses for collecting the derivatives. { 198 }

Article 69

{ 199 }

A pledgee shall be liable to properly keep and maintain the things pledged. If the things pledged are lost or damaged due to improper maintenance, the pledgee shall bear civil liability. If a pledgee can not properly keep and maintain the things pledged, which might cause disappearance of or damage to them, the pledger may require the pledgee to deposit the things pledged, or require to clear off the creditor's rights in advance and to return the things pledged.

{ 200 }

Article 70

{ 201 }

Where the things pledged exist the probability of loss, damage or apparent decrease in value, which is sufficient to harm the rights of the pledgee, the pledgee may require the pledger to tender corresponding guarantee. If the pledger fails to tender, the pledgee may auction or sell the things pledged, and make a agreement with the pledger that the money received from auction or sale shall be used to pay in advance the creditor's rights so guarantee or deposit at the third person agreed upon with the pledger. { 202 }

Article 71

{ 203 }

Where the debtor performs his debt at the expiration of the term for performance of the debt or the pledger pays in advance the creditor's rights so guaranteed, the pledgee, shall return the things pledged. A pledgee who is not paid at the expiration of the term for performance of the debt may, by agreement with the pledger, convert the things pledged into cash or auction or sell the things pledged. After the things pledged are converted into cash or auctioned off or sold, the proportion of the money in excess of the amount of creditor's rights shall be owned by the pledger, and the proportion in shortage shall be paid by the debtor. { 204 }

Article 72

{ 205 }

A third person who tenders guarantee by pledge for the debtor shall, after the pledgee has realized his rights of pledge, have the right to get compensation from the debtor. { 206 }

Article 73

{ 207 }

A pledge shall cease to exist along with the disappearance of the things pledged. The compensation received from such disappearance shall be served as pledged property. { 208 }

Article 74

{ 209 }

A pledge exists together with creditor's rights guaranteed. At the time the creditor's rights cease to exist, the pledge shall also cease to exist. { 210 }

Section 2 - Pledge of Rights { 211 }

Article 75

{ 212 }

The following rights may be pledged: { 213 }

1. draft, cheque, promissory notes, bonds, deposit certificates, warehouse receipt and bills of lading; { 214 }

2. shares and stocks, which are duly transferable according to law; { 215 }

3. property rights in the exclusive use right of trademark, patent right and the copyrights, which are transferable according to law; and { 216 }

4. other rights which may be pledged according to law. { 217 }

Article 76

{ 218 }

Where drafts, cheques, promissory notes, bonds, deposit certificates, warehouse receipts or bills of lading are used as pledge, the certificates of right shall be delivered to the pledgee within the time limit as contracted. The pledge contract shall come into force on the date of delivery of such certificates. { 219 }

Article 77

{ 220 }

Where drafts, promissory notes, cheques bonds, deposit certificates, warehouse receipts or bills of lading, on which the date of cashing or taking delivery of goods is marked, are used as pledge, and if such date of cashing or taking delivery of goods of such drafts, promissory notes, cheques, bonds, deposit certificates, warehouse receipts or bills of lading is earlier than the time limit for performance of the debt, the pledgee may cash or taking delivery of goods prior to the expiration of the time limit for performance of the debt, and by agreement with the pledger, use the amount so cashed or goods taken delivery of to pay in advance the creditor's rights guaranteed or deposit at the third person agreed upon with the pledger. { 221 }

Article 78

{ 222 }

Where stocks which are transferable according to law are used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with the securities registration organization. A pledge contract shall come into force on the date of registration. Stocks, once used as pledge, may not be transferred, however, those consented through negotiation by the pledger and the pledgee may be transferred, the money received from such transfer by the pledger shall be used to pay in priority the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee. Where shares of limited liability companies are used as pledge, the relevant provisions concerning shares transfer of the Company Law shall apply thereto. The pledge contract shall come into force from the date on which the shares pledge is recorded in the name list of shareholders. { 223 }

Article 79

{ 224 }

Where the property right in the exclusive use rights of trademarks, the patent rights or the copyrights, which is transferable according to law, is used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with their respective administrative department. The pledge contract shall come into force on the date of registration. { 225 }

Article 80

{ 226 }

After the right provided in Article 79 of this Law is used as pledge, the pledger may not

transfer or license others to use them, however, those consented through negotiation by the pledger and the pledgee may transferred or licensed to others for use. The transfer remuneration and royalties received by the pledger shall be used to pay in advance the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee.

{ 227 }

Article 81

{ 228 }

Apart from the provisions of this Section, the provisions of Section 1 of this Chapter shall apply to the pledge of rights. { 229 }

Chapter V - Lien { 230 }

Article 82

{ 231 }

Lien" as the term is used in this Law means that, subject to the provisions of Article 84 of this law, a creditor possesses the movables of the debtor as contracted, and if the debtor fails to pay his debt within the term as contracted, the creditor shall have the right to keep lien of such property in accordance with the provisions of this Law, and take the priority in compensation from the money received from converting such property into cash or from auctioning off and selling such property.

{ 232 }

Article 83

{ 233 }

The scope of guarantee by lien covers the principal creditor's right, as well as interests, fines for breach of agreement, compensation for loss and damage, maintenance costs of things under lien and expenses for the realization of the lien. { 234 }

Article 84

{ 235 }

With respect to the creditor's rights arising from maintenance contract, transport contract, processing and consignment contract, if the debtor fails to pay his debt, the creditor shall have the right of lien. The provisions of the preceding paragraph shall apply to other contracts which are subject to liens as provided by law. The parties may stipulate in the contract the things which may not be under lien. { 236 }

Article 85

{ 237 }

If a piece of property under lien is divisible thing, the value of the thing under lien shall be equivalent to the amount of a debt. { 238 }

Article 86

{ 239 }

The lienor* shall be liable to properly maintain and keep the things under lien. If the loss of

or damage to the things under lien is caused due to improper maintenance and storage, the lienor shall bear civil liability. { 240 }

Article 87

{ 241 }

A creditor and a debtor shall stipulate in a contract that, after the creditor takes lien of property, the debtor shall perform his debt within a term not less than two months. If the creditor and the debtor fail to make such stipulations in the contract, the creditor shall, after taking lien of the debtor's property, determine a term longer than two months and notify the debtor to perform his debt in that term. { 242 }

If the debtor fails to perform his debt as scheduled, the creditor may, by agreement with the debtor, convert the things under lien into cash or auction off and sell the things under lien. { 243 }

After the conversion into cash of the things under lien or auction and sale of such things, the proportion of money in excess of the creditor's right shall be owned by the debtor, the proportion in shortage shall be paid by the debtor. { 244 }

Article 88

{ 245 }

A right of lien ceases to exist under the following reasons: { 246 }

1. where the creditor's right ceases to exist; or { 247 }
 2. where the debtor tenders separate guarantee which is accepted by the creditor. { 248 }
- Chapter VI - Earnest { 249 }

Article 89

{ 250 }

The parties concerned may stipulate that one party pays earnest as a guarantee for the creditor's rights to the other party. After the debtor pays his debt, such earnest shall be converted as the amount of price or be returned. The party which pays such earnest shall, if failing to perform his debt as contracted, have no right to require for the return of the earnest; and the party which accepts earnest shall, if failing to perform his debt as contracted, return two times of the earnest. { 251 }

Article 90

{ 252 }

Earnest shall be stipulated in a written form. The parties concerned shall also stipulate in the earnest contract the term for payment of earnest. An earnest contract shall come into force from the date on which the earnest is actually paid. { 253 }

Article 91

{ 254 }

The amount of earnest shall be stipulated by the parties, but may not exceed 20 percent of the amount of the subject-matter of the principal contract. { 255 }

Chapter VII - Supplementary Provisions { 256 }

Article 92

{ 257 }

Immovables"* as the term is used in this Law means land as well as the things fixed on the land such as buildings and forest and trees. { 258 }

Movables" as the term is used in this Law means the things other than the immovables.
{ 259 }

Article 93

{ 260 }

For the purpose of this Law, guarantee contract, mortgage contract, pledge contract or earnest contract" may be a written contract which is separately concluded, including letters and mail and facsimiles of guarantee nature among the parties concerned, and also may be the guarantee clauses in the principal contract. { 261 }

Article 94

{ 262 }

To convert into cash or sell the things mortgaged, things pledged or things under lien, the market price shall be taken as a reference. { 263 }

Article 95

{ 264 }

This Law shall enter into force on October 1, 1995. { 265 }

中华人民共和国担保法

(1 9 9 5 年 6 月 3 0 日第八届全国人民代表大会常务委员会第十四次会议通过 1 9 9 5 年 6 月 3 0 日中华人民共和国主席令第五十号公布 自 1 9 9 5 年 1 0 月 1 日起施行)

第一章 总则

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第一节 保证和保证人

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第一节 动产质押

第二节 权利质押

第五章 留置

第六章 定金

第七章 附则

第一章 总则

第一条 为促进资金融通和商品流通，保障债权的实现，发展社会主义市场经济，制定本法。

第二条 在借贷、买卖、货物运输、加工承揽等经济活动中，债权人需要以担保方式保障其债权实现的，可以依照本法规定设定担保。

本法规定的担保方式为保证、抵押、质押、留置和定金。

第三条 担保活动应当遵循平等、自愿、公平、诚实信用的原则。

第四条 第三人为债务人向债权人提供担保时，可以要求债务人提供反担保。

反担保适用本法担保的规定。

第五条 担保合同是主合同的从合同，主合同无效，担保合同无效。担保合同另有约定的，按照约定。

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

第二章 保证

第一节 保证和保证人

第六条 本法所称保证，是指保证人和债权人约定，当债务人不履行债务时，保证人按照约定履行债务或者承担责任的行为。

第七条 具有代为清偿债务能力的法人、其他组织或者公民，可以作保证人。

第八条 国家机关不得为保证人，但经国务院批准为使用外国政府或者国际经济组织贷款进行转贷的除外。

第九条 学校、幼儿园、医院等以公益为目的的事业单位、社会团体不得为保证人。

第十条 企业法人的分支机构、职能部门不得为保证人。

企业法人的分支机构有法人书面授权的，可以在授权范围内提供保证。

第十一条 任何单位和个人不得强令银行等金融机构或者企业为他人提供保证；银行等金融机构或者企业对强令其为他人提供保证的行为，有权拒绝。

第十二条 同一债务有两个以上保证人的，保证人应当按照保证合同约定的保证份额，承担保证责任。没有约定保证份额的，保证人承担连带责任，债权人可以要求任何一个保证人承担全部保证责任，保证人都负有担保全部债权实现的义务。已经承担保证责任的保证人，有权向债务人追偿，或者要求承担连带责任的其他保证人清偿其应当承担的份额。

第二节 保证合同和保证方式

第十三条 保证人与债权人应当以书面形式订立保证合同。

第十四条 保证人与债权人可以就单个主合同分别订立保证合同，也可以协议在最高债权额限度内就一定期间连续发生的借款合同或者某项商品交易合同订立一个保证合同。

第十五条 保证合同应当包括以下内容：

(一) 被保证的主债权种类、数额；

-
- (二) 债务人履行债务的期限；
 - (三) 保证的方式；
 - (四) 保证担保的范围；
 - (五) 保证的期间；
 - (六) 双方认为需要约定的其他事项。

保证合同不完全具备前款规定内容的，可以补正。

第十六条 保证的方式有：

- (一) 一般保证；
- (二) 连带责任保证。

第十七条 当事人在保证合同中约定，债务人不能履行债务时，由保证人承担保证责任的，为一般保证。

一般保证的保证人在主合同纠纷未经审判或者仲裁，并就债务人财产依法强制执行仍不能履行债务前，对债权人可以拒绝承担保证责任。

有下列情形之一的，保证人不得行使前款规定的权利：

- (一) 债务人住所变更，致使债权人要求其履行债务发生重大困难的；
- (二) 人民法院受理债务人破产案件，中止执行程序的；
- (三) 保证人以书面形式放弃前款规定的权利的。

第十八条 当事人在保证合同中约定保证人与债务人对债务承担连带责任的，为连带责任保证。

连带责任保证的债务人在主合同规定的债务履行期届满没有履行债务的，债权人可以要求债务人履行债务，也可以要求保证人在其保证范围内承担保证责任。

第十九条 当事人对保证方式没有约定或者约定不明确的，按照连带责任保证承担保证责任。

第二十条 一般保证和连带责任保证的保证人享有债务人的抗辩权。债务人放弃对债务的抗辩权的，保证人仍有权抗辩。

抗辩权是指债权人行使债权时，债务人根据法定事由，对抗债权人行使请求权的权利。

第三节 保证责任

第二十一条 保证担保的范围包括主债权及利息、违约金、损害赔偿金和实现债权的费用。保证合同另有约定的，按照约定。

当事人对保证担保的范围没有约定或者约定不明确的，保证人应当对全部债务承担责任。

第二十二条 保证期间，债权人依法将主债权转让给第三人的，保证人在原保证担保的范围内继续承担保证责任。保证合同另有约定的，按照约定。

第二十三条 保证期间，债权人许可债务人转让债务的，应当取得保证人书面同意，保证人对未经其同意转让的债务，不再承担保证责任。

第二十四条 债权人与债务人协议变更主合同的，应当取得保证人书面同意，未经保证人书面同意的，保证人不再承担保证责任。保证合同另有约定的，按照约定。

第二十五条 一般保证的保证人与债权人未约定保证期间的，保证期间为主债务履行期届满之日起六个月。

在合同约定的保证期间和前款规定的保证期间，债权人未对债务人提起诉讼或者申请仲裁的，保证人免除保证责任；债权人已提起诉讼或者申请仲裁的，保证期间适用诉讼时效中断的规定。

第二十六条 连带责任保证的保证人与债权人未约定保证期间的，债权人有权自主债务履行期届满之日起六个月内要求保证人承担保证责任。

在合同约定的保证期间和前款规定的保证期间，债权人未要求保证人承担保证责任的，保证人免除保证责任。

第二十七条 保证人依照本法第十四条规定就连续发生的债权作保证，未约定保证期间的，保证人可以随时书面通知债权人终止保证合同，但保证人对于通知到债权人前所发生的债权，承担保证责任。

第二十八条 同一债权既有保证又有物的担保的，保证人对物的担保以外的债权承担保证责任。

债权人放弃物的担保的，保证人在债权人放弃权利的范围内免除保证责任。

第二十九条 企业法人的分支机构未经法人书面授权或者超出授权范围与债权人订立保证合同的，该合同无效或者超出授权范围的部分无效，债权人和企业法人有过错的，应当根据其过错各自承担相应的民事责任；债权人无过错的，由企业法人承担民事责任。

第三十条 有下列情形之一的，保证人不承担民事责任：

（一）主合同当事人双方串通，骗取保证人提供保证的；

（二）主合同债权人采取欺诈、胁迫等手段，使保证人在违背真实意思的情况下提供保证的。

第三十一条 保证人承担保证责任后，有权向债务人追偿。

第三十二条 人民法院受理债务人破产案件后，债权人未申报债权的，保证人可以参加破产财产分配，预先行使追偿权。

第三章 抵押

第一节 抵押和抵押物

第三十三条 本法所称抵押，是指债务人或者第三人不转移对本法第三十四条所列财产的占有，将该财产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押物。

第三十四条 下列财产可以抵押：

（一）抵押人所有的房屋和其他地上定着物；

（二）抵押人所有的机器、交通运输工具和其他财产；

（三）抵押人依法有权处分的国有的土地使用权、房屋和其他地上定着物；

（四）抵押人依法有权处分的国有的机器、交通运输工具和其他财产；

（五）抵押人依法承包并经发包方同意抵押的荒山、荒沟、荒丘、荒滩等荒地的土地使用权；

（六）依法可以抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

第三十五条 抵押人所担保的债权不得超出其抵押物的价值。

财产抵押后，该财产的价值大于所担保债权的余额部分，可以再次抵押，但不得超出其余额部分。

第三十六条 以依法取得的国有土地上的房屋抵押的，该房屋占用范围内的国有土地使用权同时抵押。

以出让方式取得的国有土地使用权抵押的，应当将抵押时该国有土地上的房屋同时抵

押。

乡(镇)村企业的土地使用权不得单独抵押。以乡(镇)村企业的厂房等建筑物抵押的,其占用范围内的土地使用权同时抵押。

第三十七条 下列财产不得抵押:

- (一) 土地所有权;
- (二) 耕地、宅基地、自留地、自留山等集体所有的土地使用权,但本法第三十四条第(五)项、第三十六条第三款规定的除外;
- (三) 学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施;
- (四) 所有权、使用权不明或者有争议的财产;
- (五) 依法被查封、扣押、监管的财产;
- (六) 依法不得抵押的其他财产。

第二节 抵押合同和抵押物登记

第三十八条 抵押人和抵押权人应当以书面形式订立抵押合同。

第三十九条 抵押合同应当包括以下内容:

- (一) 被担保的主债权种类、数额;
- (二) 债务人履行债务的期限;
- (三) 抵押物的名称、数量、质量、状况、所在地、所有权权属或者使用权权属;
- (四) 抵押担保的范围;
- (五) 当事人认为需要约定的其他事项。

抵押合同不完全具备前款规定内容的,可以补正。

第四十条 订立抵押合同时,抵押权人和抵押人在合同中不得约定在债务履行期届满抵押权人未受清偿时,抵押物的所有权转移为债权人所有。

第四十一条 当事人以本法第四十二条规定的财产抵押的,应当办理抵押物登记,抵押合同自登记之日起生效。

第四十二条 办理抵押物登记的部门如下:

- (一) 以无地上定着物的土地使用权抵押的,为核发土地使用权证书的土地管理部门;
- (二) 以城市房地产或者乡(镇)村企业的厂房等建筑物抵押的,为县级以上地方人民政府规定的部门;
- (三) 以林木抵押的,为县级以上林木主管部门;
- (四) 以航空器、船舶、车辆抵押的,为运输工具的登记部门;
- (五) 以企业的设备和其他动产抵押的,为财产所在地的工商行政管理部门。

第四十三条 当事人以其他财产抵押的,可以自愿办理抵押物登记,抵押合同自签订之日起生效。

当事人未办理抵押物登记的,不得对抗第三人。当事人办理抵押物登记的,登记部门为抵押人所在地的公证部门。

第四十四条 办理抵押物登记,应当向登记部门提供下列文件或者其复印件:

- (一) 主合同和抵押合同;
- (二) 抵押物的所有权或者使用权证书。

第四十五条 登记部门登记的资料,应当允许查阅、抄录或者复印。

第三节 抵押的效力

第四十六条 抵押担保的范围包括主债权及利息、违约金、损害赔偿金和实现抵押权的费用。抵押合同另有约定的，按照约定。

第四十七条 债务履行期届满，债务人不履行债务致使抵押物被人民法院依法扣押的，自扣押之日起抵押权人有权收取由抵押物分离的天然孳息以及抵押人就抵押物可以收取的法定孳息。抵押权人未将扣押抵押物的事实通知应当清偿法定孳息的义务人的，抵押权的效力不及于该孳息。

前款孳息应当先充抵收取孳息的费用。

第四十八条 抵押人将已出租的财产抵押的，应当书面告知承租人，原租赁合同继续有效。

第四十九条 抵押期间，抵押人转让已办理登记的抵押物的，应当通知抵押权人并告知受让人转让物已经抵押的情况；抵押人未通知抵押权人或者未告知受让人的，转让行为无效。

转让抵押物的价款明显低于其价值的，抵押权人可以要求抵押人提供相应的担保；抵押人不提供的，不得转让抵押物。

抵押人转让抵押物所得的价款，应当向抵押权人提前清偿所担保的债权或者向与抵押权人约定的第三人提存。超过债权数额的部分，归抵押人所有，不足部分由债务人清偿。

第五十条 抵押权不得与债权分离而单独转让或者作为其他债权的担保。

第五十一条 抵押人的行为足以使抵押物价值减少的，抵押权人有权要求抵押人停止其行为。抵押物价值减少时，抵押权人有权要求抵押人恢复抵押物的价值，或者提供与减少的价值相当的担保。

抵押人对抵押物价值减少无过错的，抵押权人只能在抵押人因损害而得到的赔偿范围内要求提供担保。抵押物价值未减少的部分，仍作为债权的担保。

第五十二条 抵押权与其担保的债权同时存在，债权消灭的，抵押权也消灭。

第四节 抵押权的实现

第五十三条 债务履行期届满抵押权人未受清偿的，可以与抵押人协议以抵押物折价或者以拍卖、变卖该抵押物所得的价款受偿；协议不成的，抵押权人可以向人民法院提起诉讼。

抵押物折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

第五十四条 同一财产向两个以上债权人抵押的，拍卖、变卖抵押物所得的价款按照以下规定清偿：

（一）抵押合同以登记生效的，按照抵押物登记的先后顺序清偿；顺序相同的，按照债权比例清偿；

（二）抵押合同自签订之日起生效的，该抵押物已登记的，按照本条第（一）项规定清偿；未登记的，按照合同生效时间的先后顺序清偿，顺序相同的，按照债权比例清偿。抵押物已登记的先于未登记的受偿。

第五十五条 城市房地产抵押合同签订后，土地上新增的房屋不属于抵押物。需要拍卖该抵押的房地产时，可以依法将该土地上新增的房屋与抵押物一同拍卖，但对拍卖新增房屋所得，抵押权人无权优先受偿。

依照本法规定以承包的荒地的土地使用权抵押的，或者以乡（镇）村企业的厂房等建筑物占用范围内的土地使用权抵押的，在实现抵押权后，未经法定程序不得改变土地集体所有和土地用途。

第五十六条 拍卖划拨的国有土地使用权所得的价款，在依法缴纳相当于应缴纳的土地

使用权出让金的款额后，抵押权人有优先受偿权。

第五十七条 为债务人抵押担保的第三人，在抵押权人实现抵押权后，有权向债务人追偿。

第五十八条 抵押权因抵押物灭失而消灭。因灭失所得的赔偿金，应当作为抵押财产。

第五节 最高额抵押

第五十九条 本法所称最高额抵押，是指抵押人与抵押权人协议，在最高债权额限度内，以抵押物对一定期间内连续发生的债权作担保。

第六十条 借款合同可以附最高额抵押合同。

债权人与债务人就某项商品在一定期间内连续发生交易而签订的合同，可以附最高额抵押合同。

第六十一条 最高额抵押的主合同债权不得转让。

第六十二条 最高额抵押除适用本节规定外，适用本章其他规定。

第四章 质押

第一节 动产质押

第六十三条 本法所称动产质押，是指债务人或者第三人将其动产移交债权人占有，将该动产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该动产折价或者以拍卖、变卖该动产的价款优先受偿。

前款规定的债务人或者第三人为出质人，债权人为质权人，移交的动产为质物。

第六十四条 出质人和质权人应当以书面形式订立质押合同。

质押合同自质物移交于质权人占有时生效。

第六十五条 质押合同应当包括以下内容：

- (一)被担保的主债权种类、数额；
- (二)债务人履行债务的期限；
- (三)质物的名称、数量、质量、状况；
- (四)质押担保的范围；
- (五)质物移交的时间；
- (六)当事人认为需要约定的其他事项。

质押合同不完全具备前款规定内容的，可以补正。

第六十六条 出质人和质权人在合同中不得约定在债务履行期届满质权人未受清偿时，质物的所有权转移为质权人所有。

第六十七条 质押担保的范围包括主债权及利息、违约金、损害赔偿金、质物保管费用和实现质权的费用。质押合同另有约定的，按照约定。

第六十八条 质权人有权收取质物所生的孳息。质押合同另有约定的，按照约定。

前款孳息应当先充抵收取孳息的费用。

第六十九条 质权人负有妥善保管质物的义务。因保管不善致使质物灭失或者毁损的，质权人应当承担民事责任。

质权人不能妥善保管质物可能致使其灭失或者毁损的，出质人可以要求质权人将质物提存，或者要求提前清偿债权而返还质物。

第七十条 质物有损坏或者价值明显减少的可能，足以危害质权人权利的，质权人可以

要求出质人提供相应的担保。出质人不提供的，质权人可以拍卖或者变卖质物，并与出质人协议将拍卖或者变卖所得的价款用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十一条 债务履行期届满债务人履行债务的，或者出质人提前清偿所担保的债权的，质权人应当返还质物。

债务履行期届满质权人未受清偿的，可以与出质人协议以质物折价，也可以依法拍卖、变卖质物。

质物折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

第七十二条 为债务人质押担保的第三人，在质权人实现质权后，有权向债务人追偿。

第七十三条 质权因质物灭失而消灭。因灭失所得的赔偿金，应当作为出质财产。

第七十四条 质权与其担保的债权同时存在，债权消灭的，质权也消灭。

第二节 权利质押

第七十五条 下列权利可以质押：

- (一) 汇票、支票、本票、债券、存款单、仓单、提单；
- (二) 依法可以转让的股份、股票；
- (三) 依法可以转让的商标专用权，专利权、著作权中的财产权；
- (四) 依法可以质押的其他权利。

第七十六条 以汇票、支票、本票、债券、存款单、仓单、提单出质的，应当在合同约定的期限内将权利凭证交付质权人。质押合同自权利凭证交付之日起生效。

第七十七条 以载明兑现或者提货日期的汇票、支票、本票、债券、存款单、仓单、提单出质的，汇票、支票、本票、债券、存款单、仓单、提单兑现或者提货日期先于债务履行期的，质权人可以在债务履行期届满前兑现或者提货，并与出质人协议将兑现的价款或者提取的货物用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十八条 以依法可以转让的股票出质的，出质人与质权人应当订立书面合同，并向证券登记机构办理出质登记。质押合同自登记之日起生效。

股票出质后，不得转让，但经出质人与质权人协商同意的可以转让。出质人转让股票所得的价款应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

以有限责任公司的股份出质的，适用公司法股份转让的有关规定。质押合同自股份出质记载于股东名册之日起生效。

第七十九条 以依法可以转让的商标专用权，专利权、著作权中的财产权出质的，出质人与质权人应当订立书面合同，并向其管理部门办理出质登记。质押合同自登记之日起生效。

第八十条 本法第七十九条规定的权利出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的可以转让或者许可他人使用。出质人所得的转让费、许可费应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

第八十一条 权利质押除适用本节规定外，适用本章第一节的规定。

第五章 留置

第八十二条 本法所称留置，是指依照本法第八十四条的规定，债权人按照合同约定占有债务人的动产，债务人不按照合同约定的期限履行债务的，债权人有权依照本法规定留置该财产，以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

第八十三条 留置担保的范围包括主债权及利息、违约金、损害赔偿金、留置物保管费用和实现留置权的费用。

第八十四条 因保管合同、运输合同、加工承揽合同发生的债权，债务人不履行债务的，债权人有权留置。

法律规定可以留置的其他合同，适用前款规定。

当事人可以在合同中约定不得留置的物。

第八十五条 留置的财产为可分物的，留置物的价值应当相当于债务的金额。

第八十六条 留置权人负有妥善保管留置物的义务。因保管不善致使留置物灭失或者毁损的，留置权人应当承担民事责任。

第八十七条 债权人与债务人应当在合同中约定，债权人留置财产后，债务人应当在不少于两个月的期限内履行债务。债权人与债务人在合同中未约定的，债权人留置债务人财产后，应当确定两个月以上的期限，通知债务人在该期限内履行债务。

债务人逾期仍不履行的，债权人可以与债务人协议以留置物折价，也可以依法拍卖、变卖留置物。

留置物折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

第八十八条 留置权因下列原因消灭：

(一) 债权消灭的；

(二) 债务人另行提供担保并被债权人接受的。

第六章 定金

第八十九条 当事人可以约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

第九十条 定金应当以书面形式约定。当事人在定金合同中应当约定交付定金的期限。定金合同从实际交付定金之日起生效。

第九十一条 定金的数额由当事人约定，但不得超过主合同标的额的百分之二十。

第七章 附则

第九十二条 本法所称不动产是指土地以及房屋、林木等地上定着物。

本法所称动产是指不动产以外的物。

第九十三条 本法所称保证合同、抵押合同、质押合同、定金合同可以是单独订立的书面合同，包括当事人之间的具有担保性质的信函、传真等，也可以是主合同中的担保条款。

第九十四条 抵押物、质物、留置物折价或者变卖，应当参照市场价格。

第九十五条 海商法等法律对担保有特别规定的，依照其规定。

第九十六条 本法自1995年10月1日起施行

Standard Conditions of Production and Operation of the Iron and Steel Industry

(2012 Amendment- Publication version)

Publicizing version

I. General Provisions

These standard conditions are formulated in accordance with the Several Opinions of the General Office of the State Council for Further Increasing the Energy-saving Emission Reduction Efforts and Accelerating the restructuring of Steel Industry (Guobanfa [2010] No.34) , the 12th Five-year Plan for Steel Industry and the relevant laws and regulations for strengthening the administration for steel industry and regulating the production and operation order for the existing steel enterprises.

These standard conditions are applicable for all the existing steel combined and smelting enterprises within the territory of the P.R.C (Except for Hong Kong, Macau and Taiwan)..

This Standard Conditions are the basic conditions for production and operation of existing iron and steel industry, and it is the standards which are in line with current development level of the steel enterprises. And it will constantly enhance in accordance with the overall level of the steel industry in China.

II. Standard Conditions

A. Product Quality

1. Iron and steel enterprise shall have complete quality management system and maintain a sound record for the quality credit of products...
2. The product quality of steel enterprises shall be in accordance with the relevant State and Industry Standard, the production of the Grade I twisted rebar , the Grade II

twisted rebar and the hot-rolled silicon sheet which prescribed in the Guiding Catalogue for Some Industries to Eliminate Backward Production Processes and Equipment and Products (2010 version) shall be prohibited.、

B. Environment Protection

1. The enterprise shall have a sound management system for environmental protection, and shall have a complete supporting monitor and curb equipment for pollutant emission...
2. The steel enterprise shall have permission for pollution discharge. The emission for water pollutant and atmospheric pollution shall in accordance with the state standards and the local standards, for example, the Emission Standard for Water Pollutant of Steel Industry (GB13456).
3. The tobacco dust emission of steel industry shall not exceed 1.19kt. The total emission shall not exceed the gross control indicators approved by the environment authority.

C. Energy Consumption and Comprehensive Utilization of Resources

1. Iron and steel enterprise must have sound energy management system and be equipped with energy measuring instruments. The enterprises, able to establish energy management center, shall establish it.
2. Iron and steel enterprise's energy consumption indicators for main production processes must conform to "Energy Consumption Limit for Unit Product in Crude Steel Production Main Process" (GB21256) and "Energy Consumption limit for Unit Product of Coke" (GB21342).
3. The steel enterprise shall pay attention to the comprehensive utilization for resources, enhance the cyclic utilization rate for various resources...

D. Workmanship and Equipment

1. Valid volume of blast furnace shall be more than 400m³, normal capacity of converter shall be more than 30 T, normal capacity of electric furnace shall be more than 30 T, the area for Sintering machine shall be more than 90 m², the height of Coke oven chamber shall be more than 4.3m, and all of the above mentioned items shall not included in the eliminated workmanships and equipments stipulated in Guiding Catalogue for Some Industries to Eliminate Backward Production Processes and Equipment and Products (2010 version).

2. The main process of steel enterprises shall be supported by the equipment for energy conservation and emission reduction...

3. Iron and steel enterprises shall eliminate backward production facilities within the stipulated time-limit in accordance with “Guiding Catalogue for Some Industries to Eliminate Backward Production Processes and Equipment and Products and the requirements stipulated in other laws and regulations.

E. Production Scale

Crude steel production of common steel enterprises: 1,000,000 ton or more, crude steel production of special steel enterprises: 300,000 ton or more, and the proportion of alloy steel shall be more than 60% (Specialization enterprise, such as tool and mould steel and high-speed steel of 100% percent alloy steel shall not be included.).

F. Safety, Sanitation and Social Responsibility

1. Iron and steel enterprises shall be supported by complete management system for safety and occupational health...and there is no major safety accidents within two years.

2. Iron and steel enterprises shall not delay the payment of tax and duties, and wages

of workers, and shall pay all kinds of society insurance premiums in accordance with relevant provisions of the state.

III. Management Measures

A. The application, approval and announcement for steel enterprises which conform to the standard conditions for production and operation.

Ministry of Industry and Information Technology is responsible for accepting the application for steel enterprises which conform to the standard conditions for production and operation. The local enterprises shall apply through the local industry competent authorities. The central enterprises shall apply to MIIT directly.

All the industry competent authorities at various local levels shall be responsible for accepting the applications made by the steel enterprises in its region and responsible for the preliminary review. The central enterprises shall review by themselves....

The MIIT shall be responsible for the inspection for the applicants...

B. MIIT shall dynamically administrate the list of announced enterprises. And all the industry competent authorities at various levels shall supervise and examine the implementation of the enterprises in their own regions....

The qualification for announcement shall be revoke under any of the following circumstances:

1. Provide false materials in the application
2. Refuse the supervision and inspection;
3. Unable to maintain the standard conditions;
-

C. The enterprise which has been completed the material joint restructure and the

enterprise which has been implemented the elimination of backward well shall be give a priority for bringing into the standard management...

D. The list of enterprises which conform to standard conditions for production and operation by the announcement shall be the basis for policy support...

IV. Supplementary Provisions

1. If the policies, regulations or standards concerned in these Standard Conditions are revised, the revised version will prevail.

2. The MIIT shall be responsible for the explanation for the Standard Conditions and make any timely revision in accordance with the development situation for the industry.

3. This Standard Conditions will come into force as of the date of promulgation. The Standard Conditions for Production and Operation of Steel Industry issued by MIIT in June 21th of 2010 shall be abolished at the same time.

附件：

钢铁行业生产经营规范条件（2012年修订—公示版）

一、总则

（一）为进一步加强钢铁行业管理，规范现有钢铁企业生产经营秩序，根据《国务院办公厅关于进一步加大节能减排力度加快钢铁工业结构调整的若干意见》（国办发[2010]34号）、《钢铁工业“十二五”发展规划》及相关法律法规，制定本规范条件。

（二）本规范条件适用于中华人民共和国境内（港澳台地区除外）的现有钢铁联合、冶炼企业。

（三）本规范条件是现有钢铁行业生产经营的基本条件，是适应钢铁企业目前发展水平的标准，随着我国钢铁工业总体水平的提升将不断提高。

二、规范条件

（一）产品质量

1.钢铁企业须具备完备的产品质量管理体系，保持良好

的产品质量信用记录，近两年内未发生重大产品质量问题。

2.钢铁企业产品质量须符合国家和行业有关标准，严禁生产I级螺纹钢、II级螺纹钢（2013年后）、热轧硅钢片等《部分工业行业淘汰落后生产工艺装备和产品指导目录（2010年本）》（工产业[2010]第122号）中需淘汰的钢材产品。

（二）环境保护

1.企业须具备健全的环境保护管理体系，配套完备的污染物排放监测和治理设施，按照规定安装自动监控系统并与当地环保部门联网，近两年内未发生重大环境污染事故或重大生态破坏事件。

2.钢铁企业排污须持有排污许可证，达标排放，其中水和大气污染物排放须符合《钢铁工业水污染物排放标准》（GB13456）、《钢铁工业大气污染物排放标准》等国家和地方标准。

3.钢铁企业吨钢烟（粉）尘排放量不超过1.19千克，吨钢二氧化硫排放量不超过1.63千克。企业污染物排放总量不

超过环保部门核定的总量控制指标。有单项污染物减排任务的企业，须落实减排措施，满足减排指标要求。

(三) 能源消耗和资源综合利用

1. 钢铁企业须具备健全的能源管理体系，配备必要的能源（水）计量器具。有条件的企业应建立能源管理中心。

2. 钢铁企业主要生产工序能源消耗指标须符合《粗钢生产主要工序单位产品能源消耗限额》（GB21256）和《焦炭单位产品能源消耗限额》（GB21342）等国家和地方标准，其中焦化工序不超过 155 千克标煤、烧结工序不超过 56 千克标煤、高炉工序不超过 446 千克标煤、转炉工序实现负能炼钢、普钢电炉工序不超过 92 千克标煤、特钢电炉工序不超过 171 千克标煤。

3. 钢铁企业须注重资源综合利用，提高各种资源的循环利用率。吨钢新水消耗不超过 4.1 立方米，固体废弃物综合利用率不低于 94%。

(四) 工艺与装备

1. 高炉有效容积 400 立方米以上，转炉公称容量 30 吨

以上，电炉公称容量 30 吨以上（变压器容量 15000 千伏安以上），高合金钢电炉公称容量 10 吨以上（变压器容量 5000 千伏安以上），球团竖炉 8 平方米以上，烧结机有效烧结面积 90 平方米以上，常规机焦炉炭化室高度 4.3 米（捣固焦炉 3.8 米）及以上，以及不属于《部分工业行业淘汰落后生产工艺装备和产品指导目录（2010 年本）》中需淘汰的落后工艺装备。

2.钢铁企业主体工序须配备节能减排设备，其中高炉应配套煤粉喷吹和余压发电装置，高炉、转炉应配套煤气回收装置。焦炉应配套除尘、脱硫、污水生化处理、煤气回收利用（不得放散）以及干熄焦装置。烧结机应配套烟气余热回收及脱硫装置。

3.钢铁企业须按照适时修订的《部分工业行业淘汰落后生产工艺装备和产品指导目录》以及其他法律法规的要求，在规定的时限内淘汰落后的工艺装备。有淘汰落后产能任务的企业，须完成国家下达的年度淘汰落后产能目标任务。

（五）生产规模

2010 年普钢企业粗钢年产量 100 万吨及以上，特钢企业 30 万吨及以上，且合金钢比大于 60%（不含合金钢比 100%的高速钢、工模具钢等专业化企业）。

（六）安全、卫生和社会责任

1.钢铁企业须具备健全的安全生产和职业卫生管理体系，焦化、氧气及相关气体制备、煤气生产（不包括回收）等危险化学品生产单位须取得危险化学品生产企业安全生产许可证，近两年内未发生重大安全责任事故。

2.钢铁企业须依法依规缴纳税收，不得拖欠职工工资，并须按国家有关规定交纳各项社会保险费。

三、管理办法

（一）钢铁企业符合生产经营规范条件的申请、审核及公告：

1.工业和信息化部定期受理钢铁企业符合生产经营规范条件的申请。申请符合生产经营规范条件的企业须编制《钢铁行业生产经营规范申请报告》并按附件要求提供相关材料。地方企业通过本地区工业主管部门向工业和信息化部申

请，中央企业直接向工业和信息化部申请，并抄送省级工业主管部门。

2.各省、自治区、直辖市、计划单列市工业主管部门负责接收本地区钢铁企业符合生产经营规范条件申请和初审，中央企业自审。初审或自审须按规范条件要求对企业的相关情况进行核实，提出初审或自审意见，附企业申请材料报送工业和信息化部。

3.工业和信息化部对申请企业进行核查，符合规范条件的进行公示，无异议后予以公告。

(二)工业和信息化部对公告企业名单进行动态管理。

地方各级工业主管部门每年要对本地区企业执行规范条件的情况进行监督检查。工业和信息化部对公告企业进行抽查。鼓励社会各界对公告企业生产经营规范情况进行监督。

公告企业有下列情况的将撤销其公告资格：

- 1.填报相关资料有弄虚作假行为的；
- 2.拒绝接受监督检查的；
- 3.不能保持规范条件的；

4.未按要求淘汰落后产能的；

5.发生重大责任事故、造成严重社会影响的。

(三)对已完成实质性联合重组和淘汰落后完成较好的企业，优先纳入规范管理。不具备规范条件的企业应按照国家规范要求积极进行整改，整改期后仍达不到要求的企业应逐步退出钢铁生产行业。

(四)公告符合生产经营规范的企业名单，作为相关政策支持的基础性依据。对未列入公告名单的企业，不予相关政策支持。

四、附则

(一)本规范条件所涉及的政策、法规和标准若进行修订，则按修订后内容执行。

(二)本规范条件由工业和信息化部负责解释，并根据行业发展情况适时进行修订。

(三)本规范条件自发布之日起实施。2010年6月21日工业和信息化部发布的《钢铁行业生产经营规范条件》同时废止。

Admittance Conditions for Coking Industry

(2008 Amendment)

General Principles

The admittance conditions are formulated in accordance with the relevant state laws and regulations, the requirement of industrial policies and the principle of sustainable development to promote the optimization and upgrading of industrial structure of coking industry, regulate the market competition order.

The admittance conditions are applicable for the manufacturers of conventional machine coke oven, semi-coking oven and the current heat recovery coke oven and the processing and production enterprises for by-products of coking coal chemical industry.

The conventional machine coke oven means ...

The semi-coking oven means...

The heat recovery coke oven means...

I. The Layout of Manufacturers

1. The location of factories of newly-established and reconstruction and expansion coke manufacture enterprises shall near the consumers or the raw material bases of coking coal...

2. Within 2 kilometers of the boundary of the designated urban areas (except for city residents' gas supply project and the supporting projects inside the mills of the current steel manufacturers), the both sides of the main rivers.....shall not establish any coking manufacturer. The manufacturer has been operated in the above-mentioned areas shall gradually drop out in the way of relocation or change the line of production within a specific time limit in accordance with the regional planning requirements.

II. Techniques and Equipments

Newly-established and expanded coking manufacturers shall meet the requirements of energy conservation, environmental protection and resources comprehensive utilization and realize the reasonable economies of scale.

1. Coke oven

Conventional machine coke oven: the height of coking chamber of new-built top loading coke oven shall be more than 6m; the volume shall be more than 38.5m³

Coking furnace of semi-coking:

Heat recovery coke oven:

The new coke oven of the steel manufacturers shall build the dry quenching devices and the relevant dust collectors.

2. Gas purification and recycle of chemical products

Omitted.

3. The processing and manufacturing of chemical products

Omitted.

4. Environment protection, accident prevention and safety

Omitted.

III. Quality of main products

1. Coke

Metallurgical coke shall meet the standards prescribed in GB/T1996—2003;

Foundry Coke shall meet the standards prescribed in GB/T8729—1988;

Semi-coking shall refer to YB/T034-92.

2. Coke oven gas

Gas for urban residents shall meet the standards prescribed in GB13612-92;

The content of H₂S for the gas for industrialization or others use shall no more than 250mg/m³.

3. chemical products

- 1) Ammonium sulfur: GB535—1995
- 2) Crude tar oil: YB/T5075-1993
- 3) Crude benzene: YB/T5022-1993

.....

IV. Resources and energy consumption and the comprehensive utilization of by-products

1. Resources and energy consumption

The coking manufacturers shall meet the standard prescribed in the Consumption of Unit Product of Coking, i.e. GB21342-2008 and the following index.....

2. Comprehensive utilization of by-products

Omitted.

V. Environment Protection

1. The pollution emissions

Omitted.

2. The emission standards for the gas and water pollution

Omitted.

3. Solid and liquid waste

Omitted.

VI. Technical Progress

Encourage the coking manufacturers to adopt the advanced applicable technology such as coal moisture control, tamping coking...

VII. Supervision and management

1. The investment management, land supply, environmental evaluation approval, energy assessment, credit financing shall be in accordance with these admittance conditions...
2. Prior to newly built and expanded manufactured equipments enter into productions, a joint examination team shall supervise and examine in accordance with the Article 1 and Article 2 of these admittance conditions...
3. The coking construction projects shall meet the requirement prescribed in Article 4 and Article 5 of these admittance conditions within six months after put into production...
4. The various provincial competent departments and the environment protection departments shall joint supervise and examine the implementation of these admittance conditions in their regions...
5. The China Coking Industry Association shall enhance the analysis and research for the domestic and foreign market...
6. MIIT shall announce the list of coking manufacturing enterprises that meet the requirements in these admittance conditions regularly...
7. For the new or expanded coking construction projects do not meet these admittance conditions, the environment protection administrative departments shall not approve the relevant review formalities...

Supplementary Provisions

These admittance conditions are applicable for the manufacturing enterprises of coking industry within the territory of the People's Republic of China (Except for Taiwan, Hong Kong and Macau).

Where the state standards or the industry standard involved in these admittance conditions amend, the new standards shall be implemented.

These admittance conditions shall take effect from January 1st of 2009; the Admittance Conditions for Coking Industry (Notice No. 76 of 2004 of NDRC) shall be repealed at the same time.

The MIIT shall be responsible for these admittance conditions and make any revise in accordance with the development situation of the industry and the requirements of macro-control.

附件：

焦化行业准入条件 (2008年修订)

总 则

为促进焦化行业产业结构优化升级，规范市场竞争秩序，依据国家有关法律法规和产业政策要求，按照“总量控制、调整结构、节约能（资）源、保护环境、合理布局”的可持续发展原则，特制定本准入条件。

本准入条件适用于常规机焦炉、半焦（兰炭）焦炉和现有热回收焦炉生产企业及炼焦煤化工副产品加工生产企业。

常规机焦炉系指炭化室、燃烧室分设，炼焦煤隔绝空气间接加热干馏成焦炭，并设有煤气净化、化学产品回收利用的生产装置。装煤方式分顶装和捣固侧装。

半焦（兰炭）炭化炉是以不粘煤、弱粘煤、长焰煤等为原料，在炭化温度750℃以下进行中低温干馏，以生产半焦（兰炭）为主的生产装置。加热方式分内热式和外热式。

热回收焦炉系指焦炉炭化室微负压操作、机械化捣固、装煤、出焦、回收利用炼焦燃烧废气余热的焦炭生产装置。以生产铸造焦为主。

一、生产企业布局

新建和改扩建焦化生产企业厂址应靠近用户或炼焦煤原料基地。必须符合各省（自治区、直辖市）地区焦化行业发展规划、城

市建设发展规划、土地利用规划、环境保护和污染防治规划、矿产资源规划和国家焦化行业结构调整规划要求。

在城市规划区边界外 2 公里（城市居民供气项目、现有钢铁生产企业厂区内配套项目除外）以内，主要河流两岸、公路干道两旁和其他严防污染的食品、药品等企业周边 1 公里以内，居民聚集区《焦化厂卫生防护距离标准》（GB11661—89）范围内，依法设立的自然保护区、风景名胜区、文化遗产保护区、世界文化自然遗产和森林公园、地质公园、湿地公园等保护地以及饮用水水源保护区内，不得建设焦化生产企业。已在上述区域内投产运营的焦化生产企业要根据该区域规划要求，在一定期限内，通过“搬迁、转产”等方式逐步退出。

二、工艺与装备

新建和改扩建焦化生产企业应满足节能、环保和资源综合利用的要求，实现合理规模经济。

1. 焦炉

常规机焦炉：新建顶装焦炉炭化室高度必须 ≥ 6.0 米、容积 $\geq 38.5\text{m}^3$ ；新建捣固焦炉炭化室高度必须 ≥ 5.5 米、捣固煤饼体积 $\geq 35\text{m}^3$ ，企业生产能力 100 万吨/年及以上。

半焦（兰炭）炭化炉：新建直立炭化炉单炉生产能力 ≥ 7.5 万吨/年，每组生产能力 ≥ 30 万吨/年，企业生产能力 60 万吨/年及以上。

热回收焦炉：企业生产能力 40 万吨/年及以上。应继续提升热回收炼焦技术。禁止新建热回收焦炉项目。

钢铁企业新建焦炉要同步配套建设干熄焦装置并配套建设相应除尘装置。

2. 煤气净化和化学产品回收

焦化生产企业应同步配套建设煤气净化（含脱硫、脱氰、脱氨工艺）、化学产品回收装置与煤气利用设施。

热回收焦炉应同步配套建设热能回收和烟气脱硫、除尘装置。

3. 化学产品加工与生产

新建煤焦油单套加工装置应达到处理无水煤焦油 15 万吨/年及以上；新建的粗（轻）苯精制装置应采用苯加氢等先进生产工艺，单套装置要达到 5 万吨/年及以上；已有的单套加工规模 10 万吨/年以下的煤焦油加工装置、酸洗法粗（轻）苯精制装置应逐步淘汰。

新建焦炉煤气制甲醇单套装置应达到 10 万吨/年及以上。

4. 环境保护、事故防范与安全

焦化企业应严格执行国家环境保护、节能减排、劳动安全、职业卫生、消防等相关法律法规。应同步建设煤场、粉碎、装煤、推焦、熄焦、筛运焦等抑尘、除尘设施，以及熄焦水闭路循环、废气脱硫除尘及污水处理装置，并正常运行。具体有：

（1）常规机焦炉企业应按照设计规范配套建设含酚氰生产污水二级生化处理设施、回用系统及生产污水事故储槽（池）。

（2）半焦（兰炭）生产的企业氨水循环水池、焦油分离池应建在地面以上。生产污水应配套建设污水焚烧处理或蒸氨、脱酚、脱氰生化等有效处理设施，并按照设计规范配套建设生产污水事故储槽（池），生产废水严禁外排。

(3) 热回收焦炉企业应配置烟气脱硫、除尘设施和二氧化硫在线监测、监控装置。

(4) 焦化生产企业应采用可靠的双回路供电；焦炉煤气事故放散应设有自动点火装置。

(5) 焦化生产企业的化学产品生产装置区及储存罐区和生产污水槽池等应做规范的防渗漏处理，油库区四周设置围堰，杜绝外溢和渗漏。

(6) 规范排污口的建设，焦炉烟囱、地面除尘站排气烟囱和废水总排口安装连续自动监测和自动监控系统，并与环保部门联网。

(7) 焦化生产企业应建设足够容积事故水池、消防事故水池。

三、主要产品质量

1. 焦炭

冶金焦应达到 GB/T1996—2003 标准；

铸造焦应达到 GB/T8729—1988 标准；

半焦（兰炭）应参照 YB/T034—92 标准。

2. 焦炉煤气

城市民用煤气应达到 GB13612—92 标准；

工业或其它用煤气 H_2S 含量应 $\leq 250\text{mg}/\text{m}^3$ 。

3. 化学工业产品

硫酸铵符合 GB535—1995 标准（一级品）；

粗焦油符合 YB/T5075—1993 标准（半焦所产焦油应参照执行）；

粗苯符合 YB/T5022—1993 标准；

甲醇、焦油和苯加工等及其他化工产品应达到国标或相关行业产品标准。

四、资（能）源消耗和副产品综合利用

1. 资（能）源消耗

焦化生产企业应达到《焦炭单位产品能耗》标准（GB21342-2008）和以下指标：

项目	常规焦炉	热回收焦炉	半焦（兰炭）炉
综合能耗(kgce/t 焦)	≤165* ¹	≤165* ¹	≤260* ¹ （内热） ≤230* ¹ （外热）
煤耗（干基）t/t 焦	1.33* ²	1.33	1.65
吨焦耗新水m ³ /t焦	2.5	1.2	2.5
焦炉煤气利用率	≥98	-	≥98
水循环利用率%	≥95	≥95	≥95
炼焦煤烧损率%		≤1.5	

注：*1 综合能耗引用《焦炭单位产品能耗》标准（GB21342-2008）当电力折标系数为 0.404kgce/KWH 等价值时的现值标准，如采用电力折标系数为 0.1229kgce/KWH 的当量值时，应为 155kgce/t 焦；半焦（兰炭）炉的综合能耗标准相应调整，≤250（内热）、≤220（外热）。

*2 适于装炉煤挥发份 Vd=24~27%。若装炉煤挥发份超出此范围时，当予以折算。

热回收焦炉吨焦余热发电量：入炉煤干基挥发分为 17%时，吨焦发电量≥350KWh；入炉煤干基挥发分为 23%时，吨焦发电量≥430KWh。

2. 焦化副产品综合利用

焦化生产企业生产的焦炉煤气应全部回收利用，不得放散；煤焦油及苯类化学工业产品必须回收，并鼓励集中深加工。

五、环境保护

1. 污染物排放量

焦化生产企业主要污染物排放量不得突破环保部门分配给其排污总量指标。

2. 气、水污染物排放标准

焦炉无组织污染物排放执行《炼焦炉大气污染物排放标准》（GB16171—1996），其它有组织废气执行《大气污染物综合排放标准》（GB16297—1996），NH₃、H₂S执行《恶臭污染物排放标准》（GB14554—1996）。

酚氰废水处理合格后要循环使用，不得外排。外排废水应执行《污水综合排放标准》（GB8978-1996）。排入污水处理厂的达到二级，排入环境的达到一级标准。

3. 固（液）体废弃物

备配煤、推焦、装煤、熄焦及筛焦工段除尘器回收的煤（焦）尘、焦油渣、粗苯蒸馏再生器残渣、苯精制酸焦油渣、脱硫废渣（液）以及生化剩余污泥等一切焦化生产的固（液）体废弃物，应按照相关法规要求处理和利用，不得对外排放。

六、技术进步

鼓励焦化生产企业采用煤调湿、风选调湿、捣固炼焦、配型煤炼焦、粉煤制半焦、干法熄焦、低水分熄焦、热管换热、导热油换热、焦炉烟尘治理、焦化废水深度处理回用、焦炉煤气制甲醇、焦

炉煤气制合成氨、苯加氢精制、煤沥青制针状焦、焦油加氢处理、煤焦油产品深加工等先进适用技术。

七、监督与管理

1. 焦化生产企业建设项目的投资管理、土地供应、环评审批、能源评价、信贷融资等必须依据本准入条件。环境影响评价报告应由省级行业主管部门提出预审意见后，报省级及以上环境保护行政主管部门审批。

2. 焦化生产企业生产装置建成投产前，应经省级及以上焦化行业、环境保护等行政主管部门组织联合检查组，按照本准入条件中第一、二款要求进行监督检查。经检查未达到准入条件要求的，环境保护行政主管部门不颁发其排污许可证，行业主管部门应责令限期完成符合准入条件的有关建设内容。仍达不到要求的，环境保护行政主管部门依照有关法律法规要求吊销其排污许可证，水电供应部门报请同级行政主管部门批准后，将依法停止供电、供水。

3. 焦化建设项目应在投产 6 个月内达到本准入条件第四、五款中规定的资（能）源消耗、副产品综合利用和环境保护指标。逾期者除按正常规定缴纳相关费用外，环境保护行政主管部门要根据国家有关法律、法规的要求责令限期整改或停产。

4. 各省级焦化行业主管部门会同环境保护行政主管部门应对本地区执行焦化行业准入条件情况进行监督检查，工业和信息化部应组织国家有关部门进行不定期抽查和检查。

5. 中国炼焦行业协会要加强对国内外焦炭市场、焦化工艺技术发展等情况进行分析研究，推广焦化行业环保、节能和资源综合利用新技术；建立符合准入条件的评估体系，科学公正提出评估意见；

研究建立清洁生产评价指标体系，在行业内积极推广清洁生产；协助政府有关部门做好监督和管理工作的。

6. 工业和信息化部定期公告符合准入条件的焦化生产企业名单。符合准入条件的焦化生产企业可享受政府的相关扶持政策，可按有关程序规定取得焦炭产品出口资格。

7. 对不符合准入条件的新建或改扩建焦化建设项目，环境保护行政主管部门不得办理环保审批手续，金融机构不得提供信贷，电力供应部门依法停止供电。地方人民政府或相关主管部门依法决定撤销或责令关闭的企业，有关管理部门应依法撤销相关许可证件，工商行政管理部门依法责令其办理变更登记或注销登记。

附则

本准入条件适用于中华人民共和国境内（台湾、香港、澳门特殊地区除外）焦化行业生产企业。

本准入条件中涉及的国家 and 行业标准若进行了修订，则按修订后的新标准执行。

本准入条件自 2009 年 1 月 1 日起实施，国家发展改革委 2004 年第 76 号公告《焦化行业准入条件》同时废止。

本准入条件由工业和信息化部负责解释，并根据行业发展情况和宏观调控要求进行修订。

**Decision of the State Council on the Fifth Batch of Items Subject to
Administrative Examination and Approval at the Management Level to Be
Cancelled or Delegated to Lower Level
(No. 21 [2010] of the State Council)**

The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government, all ministries and commissions of and departments directly under the State Council:

Pursuant to the unified deployment of the State Council and the requirements of the reform of the administrative examination and approval system, the ministerial joint meeting on the reform of the administrative examination and approval system has in accordance with the Administrative Permission Law and other laws and regulations organized and conducted a new-round collective clear-up on the items subject to administrative examination and approval by the departments under the State Council since 2009. Through strict examination and approval and demonstration, the State Council shall confirm the fifth batch of 184 items subject to administrative examination and approval at the management level to be cancelled or delegated to lower level, of which there are 113 items subject to administrative examination and approval to be cancelled and 71 ones at the management level to be delegated to lower level.

All parts and departments across the country shall carefully handle well the implementation and connection of cancelling or delegating to the lower level the items subject to administrative examination and approval at the management level to practically strength follow-up supervision and management, and also in accordance with the requirements of deepening the reform of the administrative system and transforming governmental functions continuously deepen the reform of the administrative examination and approval system to further reduce the administrative examination and approval items, regulate the procedures of examination and approval, innovate the examination and approval pattern, perfect the administrative examination and approval binding mechanism and strength the supervision over the administrative examination and approval rights.

Annex: 1. Catalogue for Items Subject to Administrative Examination and Approval to Be Cancelled by the State Council (113 Items) (Omitted)

国务院关于第五批取消和下放管理层级行政审批项目 目的决定

国发〔2010〕21号

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

2009年以来，按照国务院的统一部署和行政审批制度改革的要求，行政审批制度改革工作部际联席会议依据行政许可法等法律法规的规定，组织对国务院部门的行政审批项目进行了新一轮集中清理。经严格审核论证，国务院决定第五批取消和下放管理层级行政审批项目184项。其中，取消的行政审批项目113项，下放管理层级的行政审批项目71项。

各地区、各部门要认真做好取消和下放管理层级行政审批项目的落实和衔接工作，切实加强后续监管。要按照深化行政管理体制改革、转变政府职能的要求，继续深化行政审批制度改革，进一步减少行政审批项目，规范审批流程，创新审批方式，健全行政审批制约监督机制，加强对行政审批权运行的监督。

附件：1. 国务院决定取消的行政审批项目目录（113项）

2. 国务院决定下放管理层级的行政审批项目目录（71项）

国务院

二〇一〇年七月四日

附件1：

国务院决定取消的行政审批项目目录（113项）

部门	序号	项目名称	设定依据
国家 发展 改革 委	1	电力建设基金投资项目审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
	2	总投资5000万元以上及中央企业国家鼓励的内资项目进口设备免税审批	《国务院关于调整进口设备税收政策的通知》（国发〔1997〕37号）

科技部	3	国家大学科技园符合税收减免条件审核确认	《财政部、国家税务总局关于国家大学科技园有关税收政策问题的通知》（财税〔2007〕120号）
	4	科技企业孵化器符合税收减免条件审核确认	《财政部、国家税务总局关于科技企业孵化器有关税收政策问题的通知》（财税〔2007〕121号）
工业和信息化部	5	采购通信系统设备（自动进口许可类产品）国际招标审核	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
	6	退出电信业务市场审批	《中华人民共和国电信条例》（国务院令 第291号）
	7	互联网电子公告服务专项审批（备案）	《互联网信息服务管理办法》（国务院令 第292号）
国家民委	8	国家民委所属高校设立硕士学位授予点资格审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
	9	国家民委所属高校设立博士学位授予点资格审批	《国务院关于发布〈高等教育管理职责暂行规定〉的通知》（国发〔1986〕32号）
	10	国家民委所属高校年度招生、成人高等教育年度招生计划审核	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
	11	中央民族大学附属中学面向全国招生计划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
	12	河北大厂高级实验中学面向西部民族地区招生计划审批	《教育部办公厅关于同意河北省大厂回族自治县高级实验中学西部民族班学生在河北参加高考和录取的函》（教民厅函〔2007〕1号）
	13	全国少数民族传统体育运动会竞赛项目立项审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
	14	少数民族创制和改进文字方案审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
公安部	15	剧毒化学品准购证核发	《危险化学品安全管理条例》（国务院令 第344号）
	16	邮政局（所）安全防范设施设计审核及工程验收	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
	17	机动车延缓报废审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
	18	设立临时停车场审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
民政部	19	利用外资建设殡葬设施审批	《殡葬管理条例》（国务院令 第225号）
	20	与境外合资、合作举办社会福利机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）
人	21	社会保障卡专用 COS（卡内操作系统）核准	《国务院对确需保留的行政审批项目设定行政许可的

力 资 源 社 会 保 障 部			决定》（国务院令 第 412 号）
	22	劳动就业服务企业设立审批	《劳动就业服务企业管理规定》（国务院令 第 66 号）
国 土 资 源 部	23	国有划拨土地使用权抵押审批	《中华人民共和国城镇国有土地使用权出让和转让暂行条例》（国务院令 第 55 号）
环 境 保 护 部	24	环境影响评价工程师职业资格登记	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
住 房 城 乡 建 设 部	25	风景名胜区建设项目选址审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	26	影响古树名木的建设工程避让和保护措施审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
铁 道 部	27	铁路专用计量器具新产品技术认证	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
水 利 部	28	护堤护岸林木采伐许可	《中华人民共和国防洪法》（中华人民共和国主席令〔1997〕第 88 号）
农 业 部	29	农民养殖、种植转基因动植物审批	《农业转基因生物安全管理条例》（国务院令 第 304 号）
	30	部级质检机构认可	《中华人民共和国标准化法实施条例》（国务院令 第 53 号）

商务部	31	无专项规定要求的外商投资企业设立境内分公司审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)
	32	外商投资企业进口作为出资的设备清单审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)
	33	外商投资企业名称变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)
	34	外商投资企业投资者名称变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)
	35	外商投资企业法定地址变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)
文化部	36	香港、澳门演出经纪机构在内地设立分支机构审批	《营业性演出管理条例》(国务院令第 528 号)
卫生	37	设立骨髓移植医院审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)

部			
国家人口计生委	38	涉及计划生育技术的广告审查	《计划生育技术服务管理条例》（国务院令第 428 号）
海关总署	39	高新技术企业适用海关便捷通关措施审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	40	海关派员驻厂监管的保税工厂资格审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	41	制造、改装、维修集装箱、集装箱式货车车厢的工厂核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
税务总局	42	纳税人按规定支付给总机构的与生产、经营有关的管理费税前扣除审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
	43	外商投资企业在优惠期内因不可抗力提前解散免于补税审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
工商总局	44	商品展销会登记	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	45	无烟草广告城市认定	《卫生部、工商总局关于印发全国无烟草广告城市认定实施办法的通知》（卫基妇发〔2003〕45 号）
质检总局	46	进出口化妆品生产、加工单位卫生注册登记	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	47	农业转基因生物过境转移审批	《农业转基因生物安全管理条例》（国务院令第 304 号）
	48	建筑外窗生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）
	49	工业用香精香料生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）
	50	场（厂）内机动车辆安装许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
广电总局	51	国产电视剧题材规划立项审查	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
新	52	音像制品出租单位变更名称审批	《音像制品管理条例》（国务院令第 341 号）

新闻出版总署	53	音像制品出租单位变更业务范围审批	《音像制品管理条例》（国务院令第 341 号）
	54	音像制品出租单位兼并审批	《音像制品管理条例》（国务院令第 341 号）
	55	音像制品出租单位合并审批	《音像制品管理条例》（国务院令第 341 号）
	56	音像制品出租单位分立审批	《音像制品管理条例》（国务院令第 341 号）
	57	从事音像制品出租业务审批	《音像制品管理条例》（国务院令第 341 号）
	58	全国性音像制品连锁经营单位设立审批	《音像制品管理条例》（国务院令第 341 号）
	59	音像非卖品复制审批	《音像制品管理条例》（国务院令第 341 号）
体育总局	60	开办武术学校审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	61	开办少年儿童体育学校审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
国家林业局	62	在林业系统国家级自然保护区实验区开展生态旅游方案审批	《中华人民共和国自然保护区条例》（国务院令第 167 号）
	63	在林业系统地方级自然保护区实验区开展生态旅游方案审批	《中华人民共和国自然保护区条例》（国务院令第 167 号）
	64	科研、教学单位对国家一级保护陆生野生动物进行野外考察、科学研究审批	《国务院关于〈中华人民共和国陆生野生动物保护实施条例〉的批复》（国函〔1992〕13 号） 《林业部关于发布〈中华人民共和国陆生野生动物保护实施条例〉的通知》（林策通字〔1992〕29 号）
	65	科研、教学单位对国家二级保护陆生野生动物进行野外考察、科学研究审批	《国务院关于〈中华人民共和国陆生野生动物保护实施条例〉的批复》（国函〔1992〕13 号） 《林业部关于发布〈中华人民共和国陆生野生动物保护实施条例〉的通知》（林策通字〔1992〕29 号）
	66	非国家重点保护陆生野生动物或其产品年度经营利用限额核准	《国务院关于〈中华人民共和国陆生野生动物保护实施条例〉的批复》（国函〔1992〕13 号） 《林业部关于发布〈中华人民共和国陆生野生动物保护实施条例〉的通知》（林策通字〔1992〕29 号）
	67	森林采伐更新验收合格证核发	《中华人民共和国森林法实施条例》（国务院令第 278 号） 《国务院关于〈森林采伐更新管理办法〉的批复》（国函〔1987〕151 号） 《林业部关于发布〈森林采伐更新管理办法〉的通知》（林工字〔1987〕338 号）
	68	林业行业标准项目年度计划审批	《林业标准化管理办法》（国家林业局令第 9 号）
69	陆生野生动物资源普查方案审批	《国务院关于〈中华人民共和国陆生野生动物保护实施条例〉的批复》（国函〔1992〕13 号） 《林业部关于发布〈中华人民共和国陆生野生动物保	

			护实施条例》的通知》（林策通字〔1992〕29号）
	70	建立鸟类环志站审批	《国家林业局关于印发〈鸟类环志管理办法（试行）〉和〈鸟类环志技术规程（试行）〉的通知》（林护发〔2002〕33号）
国家知识产权局	71	专利代理人执业证核发	《专利代理条例》（国务院令 第76号） 《专利代理管理办法》（国家知识产权局令 第30号）
	72	专利代理人执业证变更审批	《专利代理条例》（国务院令 第76号） 《专利代理管理办法》（国家知识产权局令 第30号）
	73	专利代理人执业证注销审批	《专利代理条例》（国务院令 第76号） 《专利代理管理办法》（国家知识产权局令 第30号）
国家旅游局	74	外国旅行社在中国设立常驻机构审批	《国务院关于发布〈中华人民共和国国务院关于管理外国企业常驻代表机构的暂行规定〉的通知》（国发〔1980〕272号）
国家宗教局	75	在宗教活动场所内设立商业服务网点审批	《宗教事务条例》（国务院令 第426号）
	76	在宗教活动场所内举办陈列展览审批	《宗教事务条例》（国务院令 第426号）
	77	在宗教活动场所内拍摄电影电视片审批	《宗教事务条例》（国务院令 第426号）
中国气象局	78	人工影响天气作业单位之间转让作业设备审批	《人工影响天气管理条例》（国务院令 第348号）
银监会	79	境外非银行金融机构驻华代表处设立审批	《中华人民共和国银行业监督管理法》（中华人民共和国主席令〔2006〕第58号）
	80	境外非银行金融机构驻华代表处变更审批	《中华人民共和国银行业监督管理法》（中华人民共和国主席令〔2006〕第58号）
	81	境外非银行金融机构驻华代表处终止审批	《中华人民共和国银行业监督管理法》（中华人民共和国主席令〔2006〕第58号）
	82	境外非银行金融机构驻华代表处首席代表任职资格核准	《中华人民共和国银行业监督管理法》（中华人民共和国主席令〔2006〕第58号）
证监会	83	证券公司证券业务资格审批	《中华人民共和国证券法》（中华人民共和国主席令〔2005〕第43号）
	84	外国证券类机构驻华代表机构地址变更审批	《国务院关于发布〈中华人民共和国国务院关于管理外国企业常驻代表机构的暂行规定〉的通知》（国发〔1980〕272号）

保监会	85	保险代理机构重大事项变更审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	86	保险公估机构重大事项变更审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	87	保险经纪公司重大事项变更审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	88	保险公司制定地方保险费率核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	89	保险公司分支机构重大事项变更审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
电监会	90	供用电监督资格证核发	《电力供应与使用条例》（国务院令 第 196 号） 《国务院关于第三批取消和调整行政审批项目的决定》（国发〔2004〕16 号）
国家档案局	91	政府部门或单位与外国团体和组织签订含有利用档案内容的协定备案	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
	92	中央专业主管部门成立档案馆审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
国家粮食局	93	陈化粮购买资格认定	《粮食流通管理条例》（国务院令 第 407 号）
	94	陈化粮销售计划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
国防科工局	95	军工电子产品出口立项审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	96	军工电子装备科研生产许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
国家烟草局	97	烟草专用机械大修理许可证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）
	98	烟草系统企业多元化经营投资项目审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）
国家海洋局	99	海洋工程污染物排放种类核定	《防治海洋工程建设项目污染损害海洋环境管理条例》（国务院令 第 475 号）
	100	海洋工程污染物排放数量核定	《防治海洋工程建设项目污染损害海洋环境管理条例》（国务院令 第 475 号）
中	101	民用机场专用设备使用许可	《国务院对确需保留的行政审批项目设定行政许可的

国民航局			决定》（国务院令第 412 号）
国家邮政局	102	邮政企业及其分支机构的设置审批	《中华人民共和国邮政法实施细则》（国务院令第 65 号）
国家文物局	103	拍摄易损的一般文物审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	104	拓印内容涉及我国疆域、外交、民族关系的古代石刻审批	《国务院关于第三批取消和调整行政审批项目的决定》（国发〔2004〕16 号）
国家食品药品监督管理局	105	药品招标代理机构资格认定	《国务院办公厅转发国务院体改办等部门关于城镇医药卫生体制改革指导意见的通知》（国办发〔2000〕16 号）
国家中医药局	106	医疗机构开展医疗气功活动审批和从事医疗气功人员资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
国家外汇局	107	出口单位出口收汇差额核销、核销备查核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	108	企业租赁期不满一年、租赁贸易、租赁（照章征税）购付汇核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	109	出口单位收汇分类核销核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	110	金融机构大额结汇、售汇交易入市安排审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）
	111	出口单位补办出口收汇核销专用联和出口收汇核销单退税专用联审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）

112	出口单位远期出口收汇备案	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）
113	外商投资企业或中资企业适用跨国公司非贸易售付汇管理政策审核	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）

附件 2:

国务院决定下放管理层级的行政审批项目目录（71 项）

部门	序号	项目名称	设定依据	下放管理实施机关
商务部	1	对外劳务合作经营资格核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	省级商务主管部门
	2	境外就业职业介绍机构资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	省级商务主管部门
	3	外国非企业经济组织在华设立常驻代表机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	省级商务主管部门 （含广州市、沈阳市）
	4	外商投资非融资租赁的租赁业企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令 第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995年第6号） 《中华人民共和国外资企业法实施细则》（国务院令 第301号）	省级商务主管部门
	5	原国务院有关部门批准设立的外商投资企业的变更事项审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令 第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法	省级商务主管部门

		实施细则》（对外贸易经济合作部令1995年第6号） 《中华人民共和国外资企业法实施细则》（国务院令第301号）	
6	外商投资国际货物运输代理企业（不含涉及国际快递业务的外商投资国际货物运输代理企业）设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令1995年第6号） 《中华人民共和国外资企业法实施细则》（国务院令第301号）	省级商务主管部门
7	直销企业产品说明重大变更审批	《直销管理条例》（国务院令第443号）	省级商务主管部门
8	外商投资股份公司（不包括上市公司）的变更事项（不包括公司为上市进行的变更）审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令1995年第6号） 《中华人民共和国外资企业法实施细则》（国务院令第301号）	省级及省级以下商务主管部门
9	外商投资企业（专项规定的除外）不涉及批准证书记载变化的变更事项审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令1995年第6号） 《中华人民共和国外资企业法实施细则》（国务院令第301号）	省级商务主管部门
10	商务部批准设立的限额以下外商投资企业（专项规定的除外）的变更事项审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令	省级商务主管部门

		1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	
11	外商投资企业(专项规定的除外)的非实质性变更事项审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	省级商务主管部门
12	限额以上外商投资企业(专项规定的除外)不超过限额的增资事项审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	省级商务主管部门
13	限额以下外商投资股份公司的设立及变更事项审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	省级商务主管部门, 副省级城市商务主管部门
14	限额以下外商投资城市规划服务企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76 号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令 1995 年第 6 号) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	省级商务主管部门

		则》（国务院令第 301 号）	
15	限额以下外商投资进出口商品检验鉴定机构设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号） 《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	省级商务主管部门
16	限额以下外商投资国际船舶运输企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号） 《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	省级商务主管部门
17	限额以下外商投资国际船舶代理企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号） 《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	省级商务主管部门
18	限额以下外商投资光盘复制生产企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号） 《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号） 《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	省级商务主管部门
19	限额以下外商投资认证培训和认证咨询	《中华人民共和国中外合资经营企业法	省级商务主管部门

	企业设立及变更审批	<p>实施条例》（国务院令 第 311 号）</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令 第 301 号）</p>	
20	限额以下涉及国际快递业务的外商投资国际货物运输代理企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令 第 311 号）</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令 第 301 号）</p>	省级商务主管部门
21	限额以下外商投资融资租赁企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令 第 311 号）</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令 第 301 号）</p>	省级商务主管部门
22	限额以下外商投资营业性演出经纪企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令 第 311 号）</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》（国函〔1995〕76 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（对外贸易经济合作部令 1995 年第 6 号）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令 第 301 号）</p>	省级商务主管部门
23	限额以下外商投资保险经纪企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令 第 311 号）</p> <p>《国务院关于〈中华人民共和国中外合</p>	省级商务主管部门

		作经营企业法实施细则)的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	
24	限额以下外商独资船务公司设立及变更审批	《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门
25	原在商务部审核权限内的鼓励类产业且不需要国家综合平衡的外商投资企业(专项规定的除外)设立及变更事项审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门,副省级城市商务主管部门
26	外商投资企业(专项规定的除外)的重大变更事项(国家发展改革委核准的限额以上增资事项和控股权向外方转移的转股事项除外)审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门
27	外商投资企业设立境外分支机构审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级及省级以下商务主管部门
28	交易额在限额以下的外资并购事项审批(专项规定的外商投资企业除外)	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合	省级商务主管部门

		<p>作经营企业法实施细则)的批复》(国函〔1995〕76号)</p> <p>《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号)</p> <p>《中华人民共和国外资企业法实施细则》(国务院令第301号)</p>	
29	<p>限额以下外商投资创业投资和创业投资管理企业设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号)</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号)</p> <p>《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号)</p> <p>《中华人民共和国外资企业法实施细则》(国务院令第301号)</p>	<p>省级商务主管部门</p>
30	<p>外商投资注册资本1亿美元及以下投资性公司的设立及变更事项(含原商务部批准设立的投资性公司后续变更事项)审批(单次增资超过1亿美元除外)</p>	<p>《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号)</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号)</p> <p>《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号)</p> <p>《中华人民共和国外资企业法实施细则》(国务院令第301号)</p>	<p>省级商务主管部门</p>
31	<p>限额以下中外合资、合作医疗机构设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号)</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号)</p> <p>《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号)</p>	<p>省级商务主管部门</p>
32	<p>限额以下外商投资拍卖企业设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号)</p> <p>《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号)</p> <p>《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令</p>	<p>省级商务主管部门</p>

		1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	
33	限额以下外商投资图书、报纸、期刊分销企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门
34	限额以下中外合作音像制品批发企业设立及变更审批	《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号)	省级商务主管部门
35	限额以下外商投资非油气矿产勘查企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门
36	限额以下外商投资非油气采矿企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第311号) 《国务院关于〈中华人民共和国中外合作经营企业法实施细则〉的批复》(国函〔1995〕76号) 《中华人民共和国中外合作经营企业法实施细则》(对外贸易经济合作部令1995年第6号) 《中华人民共和国外资企业法实施细则》(国务院令第301号)	省级商务主管部门
文化 部	37 设立经营性互联网文化单位审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第412号)	省级人民政府文化行政主管部门

	38	设置社会艺术水平考级机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府文化行政主管部门
质检总局	39	电线电缆生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	40	危险化学品包装物、容器生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	41	泵生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	42	电焊条生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	43	建筑钢管脚手架扣件生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	44	建筑防水卷材生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	45	汽车制动液生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	46	电热毯生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	47	化肥生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	48	人造板生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	49	特种劳动防护用品生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	50	危险化学品生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	51	冶炼用耐火材料生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	52	橡胶制品生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	53	助力车生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	54	摩托车头盔生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门
	55	混凝土输水管生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号）	省级质量技术监督部门

		管理条例》（国务院令 第 440 号）	部门
	56	水文仪器生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号） 省级质量技术监督部门
	57	岩土工程仪器生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第 440 号） 省级质量技术监督部门
	58	机动车安全技术检验机构资格审批	《中华人民共和国道路交通安全法实施条例》（国务院令 第 405 号） 省级质量技术监督部门
	59	设立认证咨询机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级质量技术监督部门
新闻出版总署	60	期刊出版增刊审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级人民政府出版行政主管部门
	61	改变连续型电子出版物刊期审批	《出版管理条例》（国务院令 第 343 号） 省级人民政府出版行政主管部门
体育总局	62	设立健身气功活动站点审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 县级人民政府体育行政主管部门
安全监管总局	63	三级矿山救护队资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级安全监管部门和省级煤矿安全监察机构
	64	四级矿山救护队资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级安全监管部门和省级煤矿安全监察机构
国家外专局	65	国务院履行出资人职责企业以外的企业聘请外国专家资格认可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级人民政府外国专家归口管理部门
	66	中等以下教育机构聘请外国专家资格认可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 省级人民政府外国专家归口管理部门
国家文物局	67	拍摄市级文物保护单位审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 设区的市级人民政府文物行政主管部门
	68	拍摄县级文物保护单位审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号） 县级人民政府文物行政主管部门

国家 食品 药品 监管 局	69	医疗用毒性药品收购企业批准	《医疗用毒性药品管理办法》（国务院令 第 23 号）	省级人民政府药品监督管理部门
	70	医疗用毒性药品批发企业批准	《医疗用毒性药品管理办法》（国务院令 第 23 号）	省级人民政府药品监督管理部门
	71	医疗用毒性药品零售企业批准	《医疗用毒性药品管理办法》（国务院令 第 23 号）	设区的市级人民政府药品监督管理部门

**Decision of the State Council on the Sixth Batch of Items Subject to
Administrative Examination and Approval to Be Cancelled or Adjusted
(No. 21 [2010] of the State Council)**

The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government, all ministries and commissions of and departments directly under the State Council:

Pursuant to the deployment of the videophone conference for further boosting the reform of administrative examination and approval system and the requirements of the reforms of administrative examination and approval system, the ministerial joint meeting on the reform of the administrative examination and approval system has in accordance with the Administrative Permission Law and other laws and regulations conducted a sixth-round collective clear-up on the items subject to administrative examination and approval by the departments under the State Council since 2011. Through strict examination and approval and demonstration, the State Council decides to cancel and adjust 314 items which was subject to administrative examination and approval as the sixth batch. All the regions and all the departments shall strengthen the organization and leadership, explicitly divide their roles and responsibilities, do a good job of supervision and examination, perfect the rules and regulations and ensure the implementation for the cancelation and adjustment of administrative examination and approval items. In the meantime, they shall strengthen the follow-up supervision, identify the responsibilities, formulate the supervision measures, and cooperate with the relevant departments to avoid a vacuum for supervision.

Deepen the reform of administrative examination and approval system is a long-term task. All the regions and departments shall be in accordance with the deployment and requirement of the State Council and the Party Central Committee, on the basis of their current work, positively meet the needs for economic and social development, further promote the reform of administrative examination and approval system.

- I. Further cancel and adjust the administrative examination and approval items. The government shall withdraw the examination and approval concerning all the items that can be independently decided by the citizens, legal-persons or other organizations can be effectively regulated by the market competitive mechanisms or can be self-discipline managed by trade organizations or intermediary. All the items that can be post-supervision and indirect administration shall not be established any pre-approval. The administrative permissions in the forms of departmental rules and documents that violate the provisions stipulated by the Administrative Permission Law shall be corrected within a time limit. And a dynamic system for the clean-up items of examination and approval shall be established.
- II. Positively enhance the normalization construction of administrative examination and approval. The new-established examination and approval shall be in accordance with laws ...
- III. Accelerate the reform of public institutions and social organizations. The public institutions and social organizations shall undertake the suitable routine work and management service items in the way of entrustment, bidding, contract outsourcing
- IV. Further complete the service system of administrative examination and approval. Keep on promoting the establishment of Government Affairs Centers and to perfect the system of government affairs services in all the provinces, cities, counties and towns' level and extend to the villages and communities' levels...
- V. Further prevent the corruption in the field of administrative examination and approval...
- VI. Closely integrate the reform of administrative examination and approval, the reform of investment system, the reform of finance and taxation system, the reform of social system and the reform of public administration system...

Annex: 1. Catalogue for Items Subject to Administrative Examination and Approval

to Be Cancelled by the State Council (171 Items) (Omitted)

Annex: 2. Catalogue for Items Subject to Administrative Examination and Approval

to Be Adjusted by the State Council (143 Items) (Omitted)

The State Council

Sep.23th, 2012

国务院关于第六批取消和调整行政审批项目的决定

国发〔2012〕52号

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

2011年以来，按照深入推进行政审批制度改革工作电视电话会议的部署和行政审批制度改革的要求，行政审批制度改革工作部际联席会议依据行政许可法等法律法规的规定，对国务院部门的行政审批项目进行了第六轮集中清理。经严格审核论证，国务院决定第六批取消和调整314项行政审批项目。各地区、各部门要加强组织领导，明确工作分工，抓好监督检查，完善规章制度，确保行政审批项目的取消和调整及时落实到位。同时，要强化后续监管，明确监管责任，制定监管措施，做好工作衔接，避免出现监管真空。

深化行政审批制度改革是一项长期任务。各地区、各部门要按照党中央、国务院的部署和要求，在现有工作基础上，积极适应经济社会发展需要，坚定不移地深入推进行政审批制度改革。

一、进一步取消和调整行政审批项目。凡公民、法人或者其他组织能够自主决定，市场竞争机制能够有效调节，行业组织或者中介机构能够自律管理的事项，政府都要退出。凡可以采用事后监管和间接管理方式的事项，一律不设前置审批。以部门规章、文件等形式违反行政许可法规定设定的行政许可，要限期改正。探索建立审批项目动态清理工作机制。

二、积极推进行政审批规范化建设。新设审批项目必须于法有据，并严格按照法定程序进行合法性、必要性、合理性审查论证。没有法律法规依据，任何地方和部门不得以规章、文件等形式设定或变相设定行政审批项目。研究制定非行政许可审批项目设定和管理办法。

三、加快推进事业单位改革和社会组织管理改革。把适合事业单位和社会组织承担的事务性工作和管理服务事项，通过委托、招标、合同外包等方式交给事业单位或社会组织承担。抓紧培育相关行业组织，推动行业组织规范、公开、高效、廉洁办事。

四、进一步健全行政审批服务体系。继续推进政务中心建设，健全

省市县乡四级联动的政务服务体系，并逐步向村和社区延伸。加强行政审批绩效管理，推行网上审批、并联审批和服务质量公开承诺等做法，不断提高行政审批服务水平。审批项目较多的部门要建立政务大厅或服务窗口。

五、深入推进行政审批领域防治腐败工作。深化审批公开，推行“阳光审批”。加快推广行政审批电子监察系统。严肃查处利用审批权违纪违法案件。

六、把行政审批制度改革与投资体制、财税金融体制、社会体制和行政管理体制改革紧密结合起来。进一步理顺和规范政府与企业、政府与社会的关系，规范上下级政府的关系。进一步优化政府机构设置和职能配置，提高行政效能和公共管理服务质量。

- 附件：1. 国务院决定取消的行政审批项目目录（171 项）
2. 国务院决定调整的行政审批项目目录（143 项）

国务院

2012 年 9 月 23 日

附件 1

国务院决定取消的行政审批项目目录（171 项）

项目名称	设定依据	实施机关	
咨询工程师（投资）资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家发展改革委	
粮基地水利工程投资计划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）	国家发展改革委、水利部、农业部	
学校设立、撤销、研究生院审批	《国务院关于发布〈高等教育管理职责暂行规定〉的通知》（国发〔1986〕32 号）	教育部	
学国家课程教材核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	教育部	
国际教育展览审	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	教育部、省级人民政府教育行	实备

			政部门	
6	氰化钠生产定点审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工业和信息化部	取消此项审批后，相关事项通过危险化学品相关审批实施管理
7	税控收款机生产企业资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工业和信息化部、税务总局	
8	电信设备抗震性能检测合格证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工业和信息化部	
9	通信建设项目自行招标机构资质认定	《中华人民共和国招标投标法》	工业和信息化部	
10	经营性互联网信息服务提供者境内上市前置审查	《互联网信息服务管理办法》（国务院令 第 292 号）	工业和信息化部	证监会审批时征求工业和信息化部意见
11	主导电信企业规划备案	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）	工业和信息化部、省级电信管理机构	
12	通信电子计量校准规范审批	《中华人民共和国计量法》	工业和信息化部	
13	安全技术防范产品销售审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府公安机关	
14	机械防盗锁生产登记批准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府公安机关	
15	汽车防盗报警系统生产许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府公安机关	
16	出海船舶边防登记簿核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	沿海县以上公安边防部门	
17	合资船船员登陆证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	沿海县公安边防部门	
18	航行港澳小型船舶查验簿核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	公安机关出入境边防检查站	
19	中央与地方年终结算事项审批	《中华人民共和国预算法实施条例》（国务院令 第 186 号）	财政部	
20	经国务院批准列入计	《国务院办公厅关于保留部分非行政许可审批	县级以上人民	

	划的国有企业关闭破产项目费用预案审批	项目的通知》（国办发〔2004〕62号）	政府财政部门	
21	国债承销团成员资格审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	财政部、人民银行、证监会	
22	省级基本医疗保险乙类药品目录调整审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	人力资源社会保障部	
23	留学回国人员科研经费择优资助项目审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	人力资源社会保障部	
24	因科学研究需要进入环境保护部门管理的国家级自然保护区核心区从事科学研究观测、调查活动审批	《中华人民共和国自然保护区条例》（国务院令 第167号）	省级人民政府环境保护部门	
25	外国人进入环境保护部门管理的国家级自然保护区的审批	《中华人民共和国自然保护区条例》（国务院令 第167号）	省级人民政府环境保护部门	
26	为保证管线的安全使用需要修剪城市树木审批	《城市绿化条例》（国务院令 第100号）	所在城市的市人民政府园林绿化行政部门	
27	城市新建燃气企业审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	所在城市的市人民政府建设行政主管部门	取消此项审批后，相关事项通过燃气经营许可管理
28	房产测绘单位资格初审	《中华人民共和国测绘法》《房产测绘管理办法》（中华人民共和国建设部令 第83号）	住房城乡建设部、省级人民政府房地产行政主管部门	
29	重要地块城市修建性详细规划审批	《中华人民共和国城乡规划法》	城市、县人民政府或城市、县人民政府城乡规划部门	
30	外国国际道路运输经营者在中国境内设立常驻代表机构审批	《中华人民共和国道路运输条例》（国务院令 第406号）	交通运输部	
31	外国船舶检验机构在中国境内设立常驻代表机构审批	《国务院关于发布〈中华人民共和国国务院关于管理外国企业常驻代表机构的暂行规定〉的通知》（国发〔1980〕272号）	交通运输部	
32	国内水运货运代理、船	《中华人民共和国水路运输管理条例》（国务	交通运输部	

	船舶代理审批	院令第 544 号)		
33	铁道自轮运转特种设备准入许可	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	铁道部	取消此项审批后,相关事项通过铁路机车车辆设计生产维修进口许可管理
34	铁路工业产品制造许可证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	铁道部	
35	铁道计算机联锁设备制造特许证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	铁道部	取消此项审批后,相关事项通过铁路运输安全设备生产企业认定管理
36	铁路货物装载加固方案审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	铁道部	
37	铁路基建大中型项目工程施工、监理、物资采购评标结果审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	铁道部	
38	铁路运输管理信息系统认定	《铁路运输安全保护条例》(国务院令 第 430 号)	铁道部	
39	水利水电建设工程蓄水安全鉴定单位资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	水利部	
40	农村人畜饮水工程建设项目年度计划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	水利部	
41	组建公益性水利工程建设项目法人审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	县级以上人民政府水行政主管部门	
42	农村水电电气化县规划审批及验收	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	水利部	
43	开发建设项目水土保持方案备案	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	县级以上人民政府水行政主管部门	按《中华人民共和国水土保持法》有关规定办理
44	学生饮用奶定点生产企业资格认定	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62 号)	省级以下人民政府农业、教	

			育、质量监督行政 部门	
45	外国人进入渔业部门管理的 地方级自然保护区审批	《中华人民共和国自然保护区条例》（国务院令 第 167 号）	省级人民政府 渔业行政部门	
46	因科学研究需要进入 渔业部门管理的 地方级自然保护区核心区 从事科学研究观测、 调查活动审批	《中华人民共和国自然保护区条例》（国务院 令第 167 号）	省级人民政府 渔业行政部门 或其授权的单 位	
47	乡村集体企业设立、分 立、合并、迁移、停业、 终止以及改变名称、经 营范围审批	《中华人民共和国乡村集体所有制企业条例》 （国务院令第 59 号）	县级人民政府 乡镇企业主管 部门	
48	因教学、科研需要在非 疫区进行农业部或省、 自治区、直辖市规定的 植物检疫对象研究审 批	《植物检疫条例》（国务院令第 98 号）	农业部或省级 人民政府农业 行政部门	禁止在非疫 区进行植物 检疫对象研 究
49	机动渔船底拖网禁渔 区线外侧人工鱼礁建 造许可	《中华人民共和国渔业法实施细则》（1987 年 10 月 14 日国务院批准，1987 年 10 月 20 日农 牧渔业部发布）	农业部	
50	部分税号铜、钢材自动 进口许可	《中华人民共和国货物进出口管理条例》（国 务院令第 332 号）	商务部	
51	外国、港澳台地区企业 承包经营中外合营企 业、受托经营管理合营 企业审批	《国务院对确需保留的行政审批项目设定行政 许可的决定》（国务院令第 412 号）	商务部	
52	全国缫丝绢纺企业生 产经营资格核准	《国务院对确需保留的行政审批项目设定行政 许可的决定》（国务院令第 412 号） 《国务院关于第四批取消和调整行政审批项目 的决定》（国发〔2007〕33 号）	省级人民政府 商务行政部门	
53	外商投资项目的产品 涉及出口配额、许可证 的审批	《中华人民共和国外资企业法实施细则》（国 务院令第 301 号） 《指导外商投资方向规定》（国务院令第 346 号）	商务部或省级 人民政府商务 行政部门	
54	母婴保健技术服务机 构开展新生儿疾病筛 查许可	《中华人民共和国母婴保健法实施办法》（国 务院令第 308 号）	县级以上地方 人民政府卫生 行政部门	

55	水处理材料中的无烟煤、骨炭、二氧化钛、聚丙烯、聚氯乙烯、碘树脂、电解槽、电极产品卫生许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	卫生部、省级人民政府卫生行政部门	
56	化学处理剂中的水解苯丙酰胺、聚二甲基二烯丙基氯化铵、硫酸铝铵（铵明矾）、PH 调节剂、灭藻剂、次氯酸钙（漂白粉）、二氯异氰尿酸钠、三氯异氰尿酸产品卫生许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	卫生部、省级人民政府卫生行政部门	
57	水质处理器中的陶瓷净水器，饮用水 pH 调节器，氧化电位水发生器，除氟、除砷净水器产品卫生许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	卫生部、省级人民政府卫生行政部门	
58	公园、体育场馆、公共交通工具卫生许可	《国务院关于发布〈公共场所卫生管理条例〉的通知》（国发〔1987〕24 号）	县级以上地方人民政府卫生行政部门	
59	设立造血干细胞资料库组织配型实验室审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府卫生行政部门	
60	银行票据、清算凭证印制企业资格审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	人民银行	指定由中国人民银行下属的中国印钞造币总公司组织印制
61	外国在华常驻机构和常驻人员免税进境机动车辆出售、转让、出租或移作他用审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	海关总署各直属海关	
62	报关员注册登记	《中华人民共和国海关法》	海关总署或各直属海关	
63	进出境运输工具改、兼营境内运输审批	《中华人民共和国海关法》	海关总署或各直属海关	
64	对停业和复业办理税务登记的核准	《中华人民共和国税收征收管理法实施细则》（国务院令 第 362 号）	税务机关	

65	企业集中提取技术开发费审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	税务总局或其授权的省级税务机关 省、自治区、直辖市和计划单列市税务机关	
66	外方以优惠利率贷款给我方取得利息免征预提所得税审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	税务机关	
67	公路货运业代开票纳税人认定	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	主管地方税务局	
68	经国务院批准成立的企业集团合并缴纳企业所得税审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	税务总局	
69	外国政府、非营利机构等在我国设立代表机构给予免税待遇审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号） 《国务院关于第四批取消和调整行政审批项目的决定》（国发〔2007〕33号）	省、自治区、直辖市国家税务局	
70	企业在缴纳所得税税前扣除财产损失审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	纳税人所在地主管税务机关的上一级税务机关	
71	国家银行和金融机构在境外发行债券所得利息符合优惠利率标准免征所得税审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号） 《国务院关于第四批取消和调整行政审批项目的决定》（国发〔2007〕33号）	省、自治区、直辖市国家税务局	
72	电焊条生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第440号）	质检总局或省级质量技术监督局	
73	验配眼镜生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令 第440号）	质检总局或省级质量技术监督局	
74	设立认证培训机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	国家认监委	
75	设立认证咨询机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号） 《国务院关于第五批取消和下放管理层级行政审批项目的决定》（国发〔2010〕21号）	省级质量技术监督部门	
76	进口可用作原料的固	《中华人民共和国进出口商品检验法实施条	质检总局	

	体废物、进口旧机电产品装运前检验机构指定	例》（国务院令第 447 号）		
77	认可证书格式和认可标志式样审批	《中华人民共和国认证认可条例》（国务院令第 390 号）	国家认监委	
78	认证标志备案	《中华人民共和国认证认可条例》（国务院令第 390 号）	国家认监委	
79	进出口商品检验鉴定机构从业人员资格认定	《中华人民共和国进出口商品检验法实施条例》（国务院令第 447 号）	质检总局	
80	广播电视新闻采编人员资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	广电总局	
81	期刊出版增刊审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	新闻出版总署、省级人民政府出版行政部门	按期刊出版管理有关规定办理
82	被查缴非法光盘生产线处理审批	《国务院关于第三批取消和调整行政审批项目的决定》（国发〔2004〕16 号）	省级人民政府出版行政部门	
83	电子出版物制作单位接受境外委托制作电子出版物审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	省级人民政府出版行政部门	
84	设立专门从事名片印刷的企业审批	《印刷业管理条例》（国务院令第 315 号）	县级人民政府出版行政部门	
85	第四级安全培训机构资格认可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	省级安全生产监管部门	
86	除东北、内蒙古重点国有林区外的地区木材生产限额年度计划审批	《国务院关于第四批取消和调整行政审批项目的决定》（国发〔2007〕33 号）	国家林业局	
87	特殊情况临时增加森林采伐限额和木材生产计划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）	国家林业局	
88	处理非正常来源的国家重点保护陆生野生动物及其产品审批	《中华人民共和国陆生野生动物保护实施条例》（1992 年 2 月 12 日国务院批准，1992 年 3 月 1 日林业部发布） 《林业部关于妥善处理非正常来源陆生野生动物及其产品的通知》（林护通字〔1992〕118 号）	省级以上林业部门	
89	三北防护林体系建设	《国务院办公厅关于保留部分非行政许可审批	国家林业局	

	四期工程省级规划审批	项目的通知》（国办发〔2004〕62号）		
90	天然林保护工程省级实施方案审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	国家林业局	
91	国家级森林公园合并审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	国家林业局	
92	外国人来我国从事非国家重点保护陆生野生动物狩猎、采集标本等活动审批	《中华人民共和国野生动物保护法》 《林业部关于实行〈特许猎捕证〉有关问题的通知》（林护发〔1989〕353号）	省级林业部门	取消此项审批后，相关事项通过狩猎证管理
93	跨省级区域旅游发展规划审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号） 《旅游发展规划管理办法》（国家旅游局令 第12号）	国家旅游局	
94	宗教院校聘用外籍专业人员计划审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第412号）	国家宗教局	
95	中央国家机关部分职业技能鉴定：收银员、电梯安装与维修工、计算机文字录入员、半导体原料制备工、美容师、美发师、调酒师、线务员、仪器仪表检验工、水工检验工、植物组织培养工、磨片工、玻璃加工工、金属轧制工、木工（手工木工）、瓦工、热力司炉工（锅炉操作工）、建筑油漆工、印刷机械维修工、铣工、家用电子产品维修工、水质检验工（化学检验工）、物资进货员、眼镜验光员、洗衣师、烫衣师	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	国管局	
96	人工影响天气作业人员资格认可	《人工影响天气管理条例》（国务院令 第348号）	省级气象机构	
97	中资银行业金融机构分支机构变更营运资金审批	《中华人民共和国银行业监督管理法》 《中华人民共和国商业银行法》	银监会	

98	中资银行业金融机构分支机构变更营业场所审批	《中华人民共和国银行业监督管理法》 《中华人民共和国商业银行法》	银监会	
99	非银行金融机构分支机构变更营运资金审批	《中华人民共和国银行业监督管理法》 《中华人民共和国商业银行法》	银监会	
100	非银行金融机构分支机构变更营业场所审批	《中华人民共和国银行业监督管理法》 《中华人民共和国商业银行法》	银监会	
101	外资银行营业性机构的分支机构变更营运资金审批	《中华人民共和国外资银行管理条例》（国务院令 第 478 号）	银监会	
102	外资银行营业性机构及其分支机构变更营业场所审批	《中华人民共和国外资银行管理条例》（国务院令 第 478 号）	银监会	
103	中资商业银行、农村中小金融机构、城市信用社、外国银行分行、外资独资银行、中外合资银行等设立自助银行审批	《中华人民共和国银行业监督管理法》	银监会	
104	保荐代表人注册	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	证监会	
105	证券公司变更境内分支机构营业场所审批	《证券公司监督管理条例》（国务院令 第 522 号）	证监会派出机构	
106	证券公司设立集合资产管理计划审批	《证券公司监督管理条例》（国务院令 第 522 号）	证监会	
107	要约收购义务豁免核准四种情形之一：在一个上市公司中拥有权益的股份达到或者超过该公司已发行股份的 30%的，自上述事实发生之日起一年后，每 12 个月内增加其在该公司中拥有权益的股份不超过该公司已发行股份的 2%	《中华人民共和国证券法》	证监会	
108	要约收购义务豁免核	《中华人民共和国证券法》	证监会	

	准四种情形之二：在一个上市公司中拥有权益的股份达到或者超过该公司已发行股份的 50%，继续增加其在该公司拥有的权益不影响该公司的上市地位			
109	要约收购义务豁免核准四种情形之三：因继承导致在一个上市公司中拥有权益的股份超过该公司已发行股份的 30%	《中华人民共和国证券法》	证监会	
110	要约收购义务豁免核准四种情形之四：经上市公司股东大会非关联股东批准，收购人取得上市公司向其发行的新股，导致其在该公司拥有权益的股份超过该公司已发行股份的 30%，收购人承诺 3 年内不转让其拥有权益的股份，公司股东大会同意收购人免于发出要约，且该收购人在新股发行前已经拥有该上市公司控制权的	《中华人民共和国证券法》	证监会	
111	上市公司回购股份核准	《股票发行与交易管理暂行条例》（国务院令第 112 号）	证监会	
112	基金管理公司副总经理选任或者改任审核	《中华人民共和国证券投资基金法》	证监会	
113	金融期货交易所结算会员结算业务资格核准	《期货交易管理条例》（国务院令第 489 号）	证监会	
114	证券公司为期货公司提供中间介绍业务资格审批	《期货交易管理条例》（国务院令第 489 号）	证监会	
115	期货公司变更公司形式的审批	《期货交易管理条例》（国务院令第 489 号）	证监会	

116	期货公司变更注册资本部分事项审批：同比例增减资审批	《期货交易管理条例》（国务院令 第 489 号）	证监会	
117	期货公司变更 5%以上股权部分事项审批：不涉及新增持有 5%以上股权的股东且控股股东、第一大股东未发生变化的变更的审批	《期货交易管理条例》（国务院令 第 489 号）	证监会	
118	期货公司变更境内分支机构营业场所审批	《期货交易管理条例》（国务院令 第 489 号）	证监会	
119	期货公司变更境内分支机构负责人审批	《期货交易管理条例》（国务院令 第 489 号）	证监会	
120	银行业金融机构从事期货结算业务资格核准	《期货交易管理条例》（国务院令 第 489 号）	证监会、银监会	
121	外国证券类机构驻华代表机构总代表资格核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	证监会	
122	银行业金融机构从事期货保证金存管资格认定	《期货交易管理条例》（国务院令 第 489 号）	证监会、银监会	
123	境内非保险机构在境外设立（投资入股、收购）保险机构（含保险公司分支机构）审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	
124	境内非保险机构在境外设立的保险机构股份转让审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	
125	保险公估机构动用营业保证金审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	
126	保险公司总公司精算部门、财务会计部门、资金运用部门主要负责人任职资格核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	
127	保险公司解散或撤销时资产协议转让方案审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	
128	保险公司依法解散或	《国务院对确需保留的行政审批项目设定行政	保监会	

	被宣告破产时保险合同转让方案审批	许可的决定》（国务院令第 412 号）		
129	保险公司法律责任人资格核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	保监会	
130	节能发电调度经济补偿审核	《国务院办公厅关于转发发展改革委等部门节能发电调度办法(试行)的通知》(国办发(2007)53 号)	电监会	
131	对集体所有、个人所有以及其他不属于国家所有的对国家和社会具有保存价值的档案向各级国家档案馆以外的任何单位或者个人赠送（赠送外国人除外）的审批	《中华人民共和国档案法实施办法》（1999 年 5 月 5 日国务院批准，1999 年 6 月 7 日国家档案局发布）	县级以上人民政府档案行政管理部门	
132	省、自治区、直辖市以及计划单列市、大城市设置专门档案馆备案	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发（2004）62 号）	国家档案局	
133	不属于国家所有的档案具体范围审批	《中华人民共和国档案法实施办法》（1999 年 5 月 5 日国务院批准，1999 年 6 月 7 日国家档案局发布）	国家档案局	
134	烟草企业非烟草专卖品中外合作事项审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发（2004）62 号）	国家烟草局、省级人民政府烟草行政部门	
135	组织派遣团组和人员赴境外培训的机构资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	国家外专局	
136	海洋石油勘探开发化学消油剂牌号、成分核准	《中华人民共和国海洋石油勘探开发环境保护管理条例》（1983 年 12 月 29 日国务院发布）	国家海洋局及其派出机构	取消此项审批后，相关事项通过公布海洋石油勘探开发化学消油剂牌号、成分名录管理
137	设立测绘行业特有工种职业技能鉴定站审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	国家测绘地理信息局	
138	民用机场命名（更名）	《国务院关于发布〈地名管理条例〉的通知》	中国民航局	

	审批	(国发〔1986〕11号)		
139	民用航空器维修管理人员资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局、民航地区管理局、中国民航局授权的机构	
140	民用航空器适航委任代表和适航委任单位代表认可	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局	
141	航空气象环境探测审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局	自 2012 年 12 月 31 日取消
142	民航企业及机场参股审核	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局	
143	机场飞行程序和运行最低标准审批	《中华人民共和国飞行基本规则》(国务院令 第 509 号) 《民用机场管理条例》(国务院令 第 553 号)	民航地区管理局	取消此项审批后,相关事项通过机场使用许可管理
144	飞机一发失效应急程序审批	《中华人民共和国飞行基本规则》(国务院令 第 509 号) 《民用机场管理条例》(国务院令 第 553 号)	民航地区管理局	取消此项审批后,相关事项通过机场使用许可和航空公司运行许可管理
145	民用航空器飞行教员执照核发	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局、民航地区管理局	
146	民用航空器领航员、飞行机械员、飞行通信员教员合格证核发	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	中国民航局、民航地区管理局	
147	没收、追缴文物中一般文物投入流通审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》(国办发〔2004〕62号)	国家文物局	没收、追缴文物除交还失主外应移交文物行政部门
148	新药试行标准转正审批	《中华人民共和国药品管理法实施条例》(国务院令 第 360 号)	国家食品药品监管局	已不再受理新的新药试行标准转正审批申请
149	第二类医疗器械临床试用、临床验证审批	《医疗器械监督管理条例》(国务院令 第 276 号)	省级人民政府食品药品监督	

			管理部门	
150	第三类医疗器械中非高风险医疗器械临床试用、临床验证审批	《医疗器械监督管理条例》（国务院令第 276 号）	国家食品药品监管局	
151	蛋白同化制剂、肽类激素境外委托生产备案	《反兴奋剂条例》（国务院令第 398 号）	省级人民政府食品药品监督管理部门	
152	化妆品卫生监督检验机构认定	《化妆品卫生监督条例》（1989 年 9 月 26 日国务院批准，1989 年 11 月 13 日卫生部发布）	国家食品药品监管局	
153	老中医药专家学术经验继承工作指导老师和继承人资格认定	《中华人民共和国中医药条例》（国务院令第 374 号）	国家中医药局	
154	信用证、托收、预付货款项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
155	保税仓库项下寄售、代销、买断方式项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
156	报关单上经营单位与付汇单位不一致项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
157	退汇项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
158	转口贸易项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
159	异地付汇项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
160	深加工结转项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
161	境外工程使用物资项下进口付汇核销	《中华人民共和国外汇管理条例》（国务院令第 532 号）	国家外汇局分支局	
162	异地付汇项下进口付汇备案核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	国家外汇局分支局	
163	出口单位领取出口收汇核销单核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	国家外汇局及其分支局	
164	出口单位出口退赔外汇核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	国家外汇局及其分支局	
165	特殊经济区域内机构	《国务院对确需保留的行政审批项目设定行政	国家外汇局分	

	外汇登记变更、注销核准	许可的决定》（国务院令 第 412 号）	支局	
166	境外投资外汇资金（资产）来源审核	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家外汇局及其分支局	
167	企业进口预付货款退汇核准	《中华人民共和国外汇管理条例》（国务院令 第 532 号）	国家外汇局及其分支局	
168	减持境外上市公司国有股份所得外汇资金划转全国社保基金备案	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家外汇局分支局	
169	外资银行、有外资投资入股的中资银行外汇净利润汇出或者人民币净利润购汇汇出核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家外汇局分支局	
170	商用密码产品维修指定	《商用密码管理条例》（国务院令 第 273 号）	国家密码局	
171	新建民用建筑项目减免防空地下室易地建设费审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）	国家人防办	按照人民防空工作的有关规定办理

附件 2

国务院决定调整的行政审批项目目录（143 项）

（一）下放管理层级的行政审批项目（117 项）

项目名称	设定依据	实施机关	下放后： 施机关
级价格评估机构资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家发展改革委、省级人民政府发展改革（物价主管）部门	省级人民政府发展改革（物价主管）部门
建机场：总投资 10 亿元至亿元的项目核准	《国务院关于投资体制改革的决定》（国发〔2004〕20 号）	国家发展改革委	国务院相关行业主管部门或省级人民

				政府投资 主管部门	
3	在沿海新建年吞吐能力 200 万吨至 500 万吨煤炭、铁矿石、原油专用泊位项目核准	《国务院关于投资体制改革的决定》（国发〔2004〕20 号）	国家发展改革委	省级人民政府投资 主管部门	
4	自费出国留学中介服务机构资格认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	教育部	省级人民政府教育 行政部门	
5	开办外籍人员子女学校审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	教育部	省级人民政府教育 行政部门	
6	高等学校副教授评审权审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	教育部	省级人民政府教育 行政部门	
7	食盐准运许可	《食盐专营办法》（国务院令 第 197 号）	国务院盐业主管机构或者其授权的省级人民政府盐业主管机构	省级人民政府盐业 主管机构	
8	通信建设监理企业乙、丙级资质认证	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工业和信息化部	省级通信 管理部门	
9	因私出入境中介服务机构资格认定（境外就业、留学除外）	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	公安部	省级人民政府公安 机关	
10	基层法律服务工作者执业核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级或其授权的下一级 人民政府司法行政部门	设区的市 级人民政府司法 行政部门	
11	设立技工学校审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	人力资源社会保障部、省 级人民政府人力资 源社会保障部门	设立普通 技工学校、高级 技工学校由省级 人民政府人力资 源社会保障部	

				门审批， 设立技师 学院由省 级人民政 府审批	
12	台港澳人员在内地就业许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	省级人民政府人力资源 社会保障部门及其授权 的地（市）级人民政府人 力资源社会保障部门	设区的市 级人民政 府人力资 源社会保 障部门	
13	市县级人民政府地质矿产主 管部门审批的采矿权的转让 审批	《探矿权采矿权转让管 理办法》（国务院令 第 242 号）	省级人民政府地质矿产 主管部门	设区的市 级、县级 人民政府 地质矿产 主管部门	
14	矿山闭坑地质报告审批	《中华人民共和国矿产 资源法》 《中华人民共和国矿产 资源法实施细则》（国 务院令 第 152 号）	国土资源部或省级人民 政府国土资源部门	省级人民 政府国土 资源部门	
15	不跨省（区、市）的 330 千伏、 500 千伏交流项目环境影响评 价文件审批	《中华人民共和国环境 影响评价法》	环境保护部	省级人民 政府环境 保护部门	
16	国内干线传输网（含广播电视 网）、国际电信传输电路、国 际关口站、专用电信网的国际 通信设施及其他涉及信息安 全的电信基础设施项目环境 影响评价文件审批	《中华人民共和国环境 影响评价法》	环境保护部	省级人民 政府环境 保护部门	
17	国际关口站及其他涉及信息 安全的邮政基础设施项目环 境影响评价文件审批	《中华人民共和国环境 影响评价法》	环境保护部	省级人民 政府环境 保护部门	
18	卫星电视接收机及关键件等 生产项目环境影响评价	《中华人民共和国环境 影响评价法》	环境保护部	省级人民 政府环境 保护部门	
19	环境保护（污染治理）设施运 营单位乙级、临时资质认定	《国务院对确需保留的 行政审批项目设定行政 许可的决定》（国务院 令 第 412 号）	环境保护部	省级人民 政府环境 保护部门	
20	商品房预售许可	《中华人民共和国城市	县级以上地方人民政府	设区的市	

		《房地产管理法》	房地产管理部门	级、县级人民政府 房地产管理部门	
21	燃气经营者改动市政燃气设施审批	《城镇燃气管理条例》 (国务院令 第 583 号)	县级以上地方人民政府 燃气管理部门	设区的市级、县级人民政府 燃气管理部门	
22	地方人民政府审批或核准的港口设施和航道及其设施建设项目竣工验收	《中华人民共和国港口法》 《中华人民共和国航道管理条例》(国务院令 第 545 号)	交通运输部	地方人民政府 交通运输行政部门	
23	长江、珠江干线水路运输经营审批	《中华人民共和国水路运输管理条例》(国务院令 第 544 号)	交通运输部	流域管理机构	
24	在渔业部门管理的国家级自然保护区的实验区开展参观、旅游活动审批	《中华人民共和国自然保护区条例》(国务院令 第 167 号)	农业部	省级人民政府 渔业行政部门	
25	农药广告审批	《中华人民共和国广告法》	农业部或省级人民政府 农业行政部门	省级人民政府 农业行政部门	
26	外国人进入渔业部门管理的国家级自然保护区审批	《中华人民共和国自然保护区条例》(国务院令 第 167 号)	农业部	省级人民政府 渔业行政部门	
27	渔业船员二级、三级培训机构资格认定	《中华人民共和国船员条例》(国务院令 第 494 号)	农业部	省级人民政府 渔业行政部门	
28	设立典当行及分支机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	商务部	省级人民政府 商务行政部门	
29	设立旧机动车鉴定评估机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号) 《国务院关于第四批取消和调整行政审批项目的决定》(国发〔2007〕	省级人民政府 商务行政部门	设区的市级人民政府 商务行政部门	

		33号)			
30	外商投资道路旅客运输企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部		省级人民政府商务行政部门
31	外商投资城市规划服务企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部		省级人民政府商务行政部门
32	外商投资进出口商品检验鉴定机构设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部		省级人民政府商务行政部门
33	外商投资国际船舶运输企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条	商务部		省级人民政府商务

		<p>例》（国务院令第 311 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第 301 号）</p>		<p>行政部门</p>	
34	<p>外商投资国际船舶代理企业设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第 301 号）</p>	<p>商务部</p>	<p>省级人民政府商务行政部门</p>	
35	<p>外商投资光盘复制生产企业设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第 301 号）</p>	<p>商务部</p>	<p>省级人民政府商务行政部门</p>	
36	<p>外商投资认证培训和认证咨询企业设立及变更审批</p>	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号）</p> <p>《中华人民共和国中外</p>	<p>商务部</p>	<p>省级人民政府商务行政部门</p>	

		<p>合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>			
37	涉及国际快递业务的外商投资国际货物运输代理企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部	省级人民政府商务行政部门	
38	外商投资营业性演出经纪企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部	省级人民政府商务行政部门	
39	外商投资保险经纪企业设立及变更审批	<p>《中华人民共和国中外合资经营企业法实施条例》（国务院令第311号）</p> <p>《中华人民共和国中外合作经营企业法实施细则》（1995年8月7日国务院批准，1995年9月4日对外贸易经济合作部发布）</p> <p>《中华人民共和国外资企业法实施细则》（国务院令第301号）</p>	商务部	省级人民政府商务行政部门	

		月 4 日对外贸易经济合作部发布) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)			
40	外商投资拍卖企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《中华人民共和国中外合作经营企业法实施细则》(1995 年 8 月 7 日国务院批准, 1995 年 9 月 4 日对外贸易经济合作部发布) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	商务部	省级人民政府商务行政部门	
41	外商投资图书、报纸、期刊分销企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《中华人民共和国中外合作经营企业法实施细则》(1995 年 8 月 7 日国务院批准, 1995 年 9 月 4 日对外贸易经济合作部发布) 《中华人民共和国外资企业法实施细则》(国务院令第 301 号)	商务部	省级人民政府商务行政部门	
42	专门从事网上销售的外商投资企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》(国务院令第 311 号) 《中华人民共和国中外合作经营企业法实施细则》(1995 年 8 月 7 日国务院批准, 1995 年 9 月 4 日对外贸易经济合作部发布) 《中华人民共和国外资	商务部	省级人民政府商务行政部门	

		《企业法实施细则》（国务院令第 301 号）			
43	以自动售货机方式销售商品的外商投资企业设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布） 《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	商务部	省级人民政府商务行政部门	
44	中外合资、合作医疗机构设立及变更审批	《中华人民共和国中外合资经营企业法实施条例》（国务院令第 311 号） 《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布）	商务部	省级人民政府商务行政部门	
45	中外合作音像制品批发企业设立及变更审批	《中华人民共和国中外合作经营企业法实施细则》（1995 年 8 月 7 日国务院批准，1995 年 9 月 4 日对外贸易经济合作部发布）	商务部	省级人民政府商务行政部门	
46	外商独资船务公司设立及变更审批	《中华人民共和国外资企业法实施细则》（国务院令第 301 号）	商务部	省级人民政府商务行政部门	
47	外商投资旅行社（出境游除外）设立审批	《旅行社条例》（国务院令第 550 号）	商务部	省级人民政府商务行政部门	
48	饮用水供水单位卫生许可	《中华人民共和国传染病防治法》 《国务院对确需保留的行政审批项目设定行政	县级以上地方人民政府卫生行政部门	设区的市级、县级人民政府卫生行政	

		许可的决定》（国务院令 第 412 号）		部门	
49	公共场所改、扩建卫生许可	《国务院关于发布〈公共场所卫生管理条例〉的通知》（国发〔1987〕24 号）	县级以上地方人民政府卫生行政部门	设区的市级、县级人民政府卫生行政部门	
50	计划生育技术服务机构设立许可	《计划生育技术服务管理条例》（国务院令 第 428 号）	设区的市级以上地方人民政府人口计生行政部门	县级以上地方人民政府人口计生行政部门	
51	增值税专用发票（增值税税控系统）最高开票限额审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	县以上税务机关	区县级税务机关	
52	烟草广告审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工商总局、省级人民政府广告监管机关或其授权的省辖市人民政府广告监管机关	省、自治区、直辖市工商行政管理部门或其授权的省辖市工商行政管理部门	
53	固定形式印刷品广告登记	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工商总局省、自治区、直辖市及计划单列市人民政府工商行政管理部门	省、自治区、直辖市及计划单列市人民政府工商行政管理部门	
54	外商投资广告企业设立分支机构审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工商总局及其授权的地方工商行政管理部门	省、自治区、直辖市工商行政管理部门及符合规定的有外商投资企业核准登记权的	

				工商行政 管理部门	
55	外商投资广告企业项目审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	工商总局及其授权的 地方工商行政管理部门	省、自治 区、直辖 市工商行 政管理部 门及符合 规定的有 外商投资 企业核准 登记权的 工商行政 管理部门	
56	户外广告登记	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	县级以上地方人民政府 工商行政管理部门	县级工商 行政管理 部门及地 级以上的 市工商行 政管理部 门	
57	设备监理单位乙级资格证书 核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	质检总局	省级人民 政府质量 技术监督 部门	待设 备监 理立 法完 成后, 依照 法规 对下 放到 省级 质监 部门 的相 应审 批权 进行 规范
58	气瓶检测机构核准	《特种设备安全监察条 例》（国务院令 第 549 号）	质检总局	省级人民 政府质量 技术监督 部门	
59	除氧舱维护管理人员、客运索	《特种设备安全监察条	质检总局	省级人民	

	道作业人员、大型游乐设施管理安装人员以外的特种设备作业人员资格许可	例》（国务院令第 549 号）		政府质量技术监督部门	
60	电力整流器生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）	质检总局	省级人民政府质量技术监督部门	
61	电力调度通讯设备生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）	质检总局	省级人民政府质量技术监督部门	
62	化妆品生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）	质检总局	省级人民政府质量技术监督部门	
63	直接接触食品的材料等食品相关产品生产许可证核发	《中华人民共和国工业产品生产许可证管理条例》（国务院令第 440 号）	质检总局	省级人民政府质量技术监督部门	
64	电影制片单位以外的单位独立从事电影摄制业务审批	《电影管理条例》（国务院令第 342 号）	广电总局	省级人民政府广播电视行政部门	
65	电影放映单位设立、变更业务范围或者兼并、合并、分立审批	《电影管理条例》（国务院令第 342 号）	县或者设区的市人民政府广播电视行政部门	县级人民政府广播电视行政部门	
66	小功率的无线广播电视发射设备订购证明核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	广电总局	省级人民政府广播电视行政部门	
67	省级行政区域内经营广播电视节目传送业务审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	广电总局	省级人民政府广播电视行政部门	
68	建立城市社区有线电视系统审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令第 412 号）	地（市）级人民政府广播电视行政部门	县级人民政府广播电视行政部门	

69	设立从事包装装潢印刷品和其他印刷品印刷经营活动的企业审批	《印刷业管理条例》(国务院令第 315 号)	省级人民政府出版行政部门	设区的市级人民政府出版行政部门	
70	印刷业经营者兼营包装装潢和其他印刷品印刷经营活动审批	《印刷业管理条例》(国务院令第 315 号)	省级人民政府出版行政部门	设区的市级人民政府出版行政部门	
71	从事包装装潢印刷品和其他印刷品印刷经营活动的企业变更印刷经营活动审批(不含出版物印刷)	《印刷业管理条例》(国务院令第 315 号)	省级人民政府出版行政部门	设区的市级人民政府出版行政部门	
72	印刷业经营者兼并其他印刷业经营者(不含出版物印刷企业)审批	《印刷业管理条例》(国务院令第 315 号)	省级人民政府出版行政部门	设区的市级人民政府出版行政部门	
73	印刷业经营者因合并、分立而设立新的印刷业经营者(不含出版物印刷企业)审批	《印刷业管理条例》(国务院令第 315 号)	省级人民政府出版行政部门	设区的市级人民政府出版行政部门	
74	第二级安全培训机构资格认可	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	安全监管总局	省级安全监管部门	
75	烟花爆竹批发许可	《烟花爆竹安全管理条例》(国务院令第 455 号)	省级安全监管部门或者其委托的设区的市级安全监管部门	设区的市级安全监管部门	
76	猎捕非国家重点保护陆生野生动物狩猎证核发	《中华人民共和国野生动物保护法》 《中华人民共和国陆生野生动物保护实施条例》(1992 年 2 月 12 日国务院批准, 1992 年 3 月 1 日林业部发布, 根据 2011 年 1 月 8 日《国务院关于废止和修改部分行政法规的决定》修改)	县级以上地方人民政府林业部门或其授权的单位	县级人民政府林业部门或其授权的单位	
77	地方性宗教团体、宗教活动场所接受国(境)外捐赠宗教书	《国务院办公厅关于保留部分非行政许可审批	国家宗教局	省级人民政府宗教	

	刊、音像制品审批	项目的通知》（国办发〔2004〕62号）		事务部门	
78	地方性宗教团体、宗教活动场所接受国（境）外捐款审批	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62号）	省级人民政府	省级人民政府宗教事务部门	
79	升放无人驾驶自由气球或者系留气球活动审批	《通用航空飞行管制条例》（国务院、中央军委令 第 371 号）	设区的市级以上气象主管机构	县级以上气象主管部门	
80	大气环境影响评价使用非气象主管部门提供的气象资料审查	《中华人民共和国气象法》	县级以上气象主管机构	设区的市、县气象主管部门	
81	证券公司设立、收购或者撤销分支机构审批	《中华人民共和国证券法》	证监会	证监会派出机构	
82	证券公司变更部分业务范围审批：增加或者减少证券经纪，证券投资咨询，与证券交易、证券投资活动有关的财务顾问，证券自营，证券资产管理，证券承销的审批	《中华人民共和国证券法》	证监会	证监会派出机构	
83	证券公司变更注册资本部分事项审批：非上市证券公司涉及股东、实际控制人资格审核的增资，非上市证券公司涉及证券公司实际控制人、控股股东或者第一大股东发生变化的增资，非上市证券公司减资的审批	《中华人民共和国证券法》	证监会	证监会派出机构	
84	证券公司变更章程重要条款审批	《中华人民共和国证券法》	证监会	证监会派出机构	
85	非上市证券公司变更持有 5% 以上股权的股东、实际控制人审批	《中华人民共和国证券法》	证监会	证监会派出机构	
86	境外证券经营机构从事境内上市外资股业务核准	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	证监会	证监会派出机构	
87	基金代销业务资格核准	《中华人民共和国证券	证监会	证监会派	

		《投资基金法》		出机构	
88	期货投资咨询业务许可	《期货交易管理条例》 (国务院令第 489 号)	证监会	证监会派出机构	
89	期货公司变更持有 5%以上股权部分情形审批: 涉及新增持有 5%以上股权的股东但控股股东、第一大股东未发生变化的审批	《期货交易管理条例》 (国务院令第 489 号)	证监会	证监会派出机构	
90	期货公司董事、监事和高级管理人员任职资格核准	《期货交易管理条例》 (国务院令第 489 号)	证监会及其派出机构	证监会派出机构	
91	保险从业人员资格核准	《中华人民共和国保险法》 《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	
92	保险公估从业人员资格核准	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	
93	保险代理从业人员资格核准	《中华人民共和国保险法》 《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	
94	保险代理机构动用营业保证金审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	
95	保险经纪从业人员资格核准	《中华人民共和国保险法》 《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	
96	保险经纪机构动用营业保证金审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令第 412 号)	保监会	保监会派出机构	

97	保险专业代理机构解散退出审批	《中华人民共和国保险法》	保监会	保监会派出机构	
98	保险经纪机构解散退出审批	《中华人民共和国保险法》	保监会	保监会派出机构	
99	保险公司分支机构变更营业场所审批	《中华人民共和国保险法》	保监会	保监会派出机构	
100	经营区域仅限于注册所在省（自治区、直辖市）的保险代理机构的设立审批	《中华人民共和国保险法》 《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	保监会	保监会派出机构	
101	三级国防计量技术机构设置审批	《国防计量监督管理条例》（国务院、中央军委令 第 54 号）	国防科工局	省级国防科技工业管理部门	
102	专科学校聘请外国专家单位资格认可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家外专局	省级人民政府外国专家归口管理部门	
103	因科学研究需要进入国家级海洋自然保护区核心区从事科学研究观测、调查活动审批	《中华人民共和国自然保护区条例》（国务院令 第 167 号）	国家海洋局	省级海洋行政部门	
104	测绘计量检定人员资格认定	《中华人民共和国计量法实施细则》（1987 年 1 月 19 日国务院批准，1987 年 2 月 1 日国家计量局公布）	国家测绘地理信息局及省级人民政府测绘行政部门	省级人民政府测绘行政部门	
105	通用航空企业经营许可	《中华人民共和国民用航空法》	中国民航局	民航地区管理局	
106	非经营性通用航空活动登记	《中华人民共和国民用航空法》	中国民航局	民航地区管理局	
107	民用航空器地面教员执照核发	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	中国民航局、民航地区管理局	民航地区管理局	
108	民用航空油料企业安全运营许可	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	中国民航局	民航地区管理局	

109	境外机构和团体拍摄二级、三级文物审批	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家文物局	省级人民政府文物行政部门	
110	为制作出版物、音像制品拍摄馆藏三级文物审批	《中华人民共和国文物保护法实施条例》（国务院令 第 377 号）	省级人民政府文物行政部门	设区的市级人民政府文物行政部门	
111	第二、三类医疗器械经营许可证	《医疗器械监督管理条例》（国务院令 第 276 号）	省级人民政府食品药品监督管理部门	设区的市级人民政府食品药品监督管理部门	
112	药品零售企业经营质量管理规范（GSP）认证	《中华人民共和国药品管理法》 《中华人民共和国药品管理法实施条例》（国务院令 第 360 号）	省级人民政府食品药品监督管理部门	设区的市级人民政府食品药品监督管理部门	
113	麻醉药品和第一类精神药品运输证明核发	《麻醉药品和精神药品管理条例》（国务院令 第 442 号）	省级人民政府食品药品监督管理部门	设区的市级人民政府食品药品监督管理部门	
114	麻醉药品和精神药品邮寄证明核发	《麻醉药品和精神药品管理条例》（国务院令 第 442 号）	省级人民政府食品药品监督管理部门	设区的市级人民政府食品药品监督管理部门	
115	人民防空工程设计乙级以下资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家人防办	省级人防办	
116	人民防空工程监理乙级以下资质认定	《国务院对确需保留的行政审批项目设定行政许可的决定》（国务院令 第 412 号）	国家人防办	省级人防办	
117	开办盲人保健按摩机构资格认定	《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办发〔2004〕62 号）	地方残联	县级残联	

(二) 减少审批部门的行政审批项目 (9 项)

项目名称	设定依据	原审批部门	调整后审批部
粮库划转中央直属 储备库(站)审批	《国务院办公厅关于保留部分 非行政许可审批项目的通知》 (国办发〔2004〕62号)	国家发展改革 委、国家粮食局、 财政部、农业部	国家发展改革 委、国家粮食局
“千万人才工程”人 批	《国务院办公厅关于保留部分 非行政许可审批项目的通知》 (国办发〔2004〕62号)	人力资源社会保 障部、科技部、 教育部、财政部	人力资源社会保 障部
人类遗传资源的国 作项目审批	《国务院对确需保留的行政审 批项目设定行政许可的决定》 (国务院令 第 412 号)	科技部、卫生部	科技部
集中支付代理银行 认定	《国务院对确需保留的行政审 批项目设定行政许可的决定》 (国务院令 第 412 号)	人民银行、财政 部	人民银行
资产管理公司债权 方案和协议审核	《金融资产管理公司条例》(国 务院令 第 297 号)	财政部、国资委、 人民银行	财政部、国资委
资产管理公司及其 机构设立和终止 、破产和分支机 销)审批	《国务院对确需保留的行政审 批项目设定行政许可的决定》 (国务院令 第 412 号)	保监会(会同证 监会)	保监会
资产管理公司重大 变更审批	《国务院对确需保留的行政审 批项目设定行政许可的决定》	保监会(会同证 监会)	保监会

		(国务院令 第 412 号)			
8	电力行业标准审核	《国务院办公厅关于印发国家电力监管委员会职能配置内设机构和人员编制规定的通知》(国办发〔2003〕7号)	国家发展改革委、电监会	国家能源局	
9	放射性药品经营审批	《放射性药品管理办法》(国务院令 第 25 号)	国家食品药品监督管理局、国防科工局	国家食品药品监督管理局	国家食品药品监督管理局审批时征求国防科工局的意见

(三) 合并的行政审批项目 (17 项)

项目名称	设定依据	实施机关	合并后项目名称
亏损补贴事项审批	《中华人民共和国预算法》	财政部、县级以上地方人民政府财政部门	并入“财政补贴事项审批”
水工程建设项目防洪规划审核	《中华人民共和国防洪法》	流域管理机构、县级以上地方人民政府水行政部门	水工程建设规划同意书审查
水工程建设项目流域综合规划审批	《中华人民共和国水法》	流域管理机构、县级以上地方人民政府水行政部门	
因施工作业需要搬迁、拆除渔业航标审批	《中华人民共和国航标条例》(国务院令 第 187 号)	县级以上地方各级渔政渔港监督管理机关	并入“渔业航标设置、撤除、移动和其他状况改变审批”
保税区内生产、加工的黄金制品内销审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	人民银行	并入“黄金及制品进出口审批”
在宗教活动场所外建造露天佛像审批	《国务院对确需保留的行政审批项目设定行政许可的决定》(国务院令 第 412 号)	国家宗教局	并入“在宗教活动场所外修建露天宗教造像审批”

7	进口药品注册证书核发	《中华人民共和国药品管理法》	国家食品药品监督管理局	进口药品注册	
8	进口药品再注册	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		
9	变更进口药品已获证明文件及附件中载明事项补充申请审批	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		
10	药物临床试验审批	《中华人民共和国药品管理法》	国家食品药品监督管理局	国产药品注册	
11	新药证书核发	《中华人民共和国药品管理法》	国家食品药品监督管理局		
12	新药或者已有国家标准的药品生产审批	《中华人民共和国药品管理法》	国家食品药品监督管理局		
13	国产药品再注册	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		
14	变更研制新药、生产药品已获证明文件及附件中载明事项补充申请审批	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		
15	港澳台医药产品注册	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局	港澳台医药产品注册	
16	港澳台医药产品再注册	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		
17	变更港澳台医药产品已获证明文件及附件中载明事项补充申请审批	《中华人民共和国药品管理法实施条例》（国务院令第360号）	国家食品药品监督管理局		