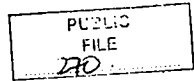


ATTACHMENT A15 (cont.)



## 关于公布《工业行业近期发展导向》的通知

(国经贸行业〔2002〕716号 2002年9月28日)

国家经贸委

为贯彻落实《国民经济和社会发展第十个五年计划纲要》和“十五”工业及行业规划精神，根据广大企业及金融、证券等部门的要求，国家经贸委研究提出了机械、汽车、冶金、有色金属、石油、石化、化工、医药、煤炭、建材、轻工、纺织等行业近期发展方向，旨在加强宏观调控，引导全社会固定资产投资方向，优化资源配置，减少重复建设，促进各行业健康、稳定发展，以提高我国工业整体竞争力。□

近期工业行业发展必须坚持市场导向、突出重点、技术进步、协调发展、可持续发展等五项原则，坚持从市场出发，充分发挥市场机制配置资源的基础性作用。以产品结构、技术结构和企业组织结构调整为切入点，紧紧围绕新产品开发，产品质量改善、技术进步和降低成本，防治污染，加大技术改造力度，提高工艺和技术装备水平，努力形成拥有自主知识产权和关键技术的名牌产品。发挥工业整体优势，优化工业生产力布局和区域经济结构。继续淘汰落后的设备、技术和工艺，压缩部分行业过剩和落后的生产能力，促进产业结构优化升级。

现将《工业行业近期发展导向》印发你们，请遵照执行。

## 工业行业近期发展导向

□□

### 前 言

为贯彻落实《国民经济和社会发展第十个五年计划纲要》精神，《“十五”工业结构调整规划纲要》提出了提高工业整体素质和国际竞争力，增强可持续发展能力的总体发展目标。“十五”期间，要坚持以企业为主体，以市场为导向，以发展为主题，以结构调整为主线，以提高竞争力为目标，合理引导社会资金和外资投向，调整社会投资结构，提高资金使用效率和效益，以促进工业行业结构调整，确保规划目标的实现。这既是促进产业优化升级的要求，也是扩大内需，拉动经济增长的迫切需要。根据“十五”工业及行业规划明确的产业发展方向，提出近期工业行业发展导向，以加强宏观调控，引导市场主体行为，优化资源配置。

近期工业行业发展必须坚持的基本原则：□

一、市场导向原则。20世纪80年代以来，我国经济发展的市场环境由卖方市场转变为买方市场，“供给制约”转变为“需求制约”。买方市场的形成，标志着我国工业经济开始进入一个全面竞争的环境，经济发展过热的阶段。各工业行业必须加强市场环境的分析，预测国内、国际技术经济发展趋势，根据市场需求确定行业发展和结构调整的重点方向。□

二、突出重点原则。加快发展市场需求增长快、对国民经济发展全局有重大影响、目前国内

生产不能满足需要、产业关联度高、带动性强、有可能成为新的经济增长点的产业和产品，并将其作为近期的发展重点。与此同时，要坚决制止不合理的重复建设，通过支持优势企业上规模、上水平、上质量，推进产品结构调整，整顿市场经济秩序，建立健全优胜劣汰机制，加快淘汰浪费资源、污染环境、落后生产能力。□

三、技术进步原则。坚持自主创新与技术引进相结合，硬件改造与软件改造并重，支持工业共性、关键、前瞻性技术的联合开发。加强企业管理信息化、营销网络建设，加快人才队伍培养，增加必要投入，提高企业经营管理水平。要加快用高新技术和先进适用技术改造提升传统产业，加大对具有广阔市场需求的传统产业的改造力度，优化产品和技术结构，提高劳动生产率，发挥规模经济优势，提高工艺和技术装备水平，增强企业快速反应能力。不搞填平补齐和以扩大产量为主要目的的一般性改造。□

四、协调发展原则。注重发挥工业行业整体优势，提高重大装备自主化生产的比重，满足其他制造业降低投资成本、提高技术水平的要求；能源工业、原材料工业的改造、改造必须以提高国际竞争力为目标，为下游产业参与国际竞争创造条件；加大技术攻关和改造力度，注重消除产业链中影响整体竞争力的“瓶颈”约束；切实加强地质勘探工作，搞好矿山建设，充分利用国内外资源，为基础原材料工业和能源工业的持续发展提供保障；充分发挥比较优势，引导东、中、西部工业协调发展，支持老工业基地和西部地区加快工业结构调整和产业升级。□

五、可持续发展原则。要把节约资源和保护环境放在突出的战略位置，全面推进节能环保清洁生产，采用源头控制策略，大幅度降低污染物和有毒物对环境的污染。□

按照上述原则,我们研究提出了机械、汽车、冶金、有色金属、石油及石油化工、化工、医药、煤炭、建材、轻工、纺织行业的近期发展导向,以供各投资主体和金融、证券、社会咨询部门参考。

#### 机械行业近期发展导向

□□

#### 一、重大技术装备□

##### (一)电力设备。□

##### 1、洁净发电设备产业化。□

重点发展 60 万千瓦及以上超临界机组、30 万千瓦循环流化床锅炉和大型燃气轮机产业化项目。重点改造 60700 万千瓦超临界锅炉及配套高压加热器和阀门、大型循环流化床锅炉和蒸汽燃气联合循环热锅炉、燃气轮机的生产工艺条件和工艺检测设备。□

##### 2、完善大型水电设备生产工艺条件。□

依托三峡工程,提高大型水电设备制造能力,年达到 380700 万千瓦大型水电设备(含 4 台三峡工程 70 万千瓦机组),同时开展抽水蓄能机组的对外经济技术合作,改进关键部件制造工艺,

完善大件加工能力。□

### 3. 超高压直流输电设备产业化。□

重点解决换流变压器、平波电抗器和换流阀的国产化，提高大型产品的绝缘加工和洁净装配条件水平；加快直径 125 毫米、8000 伏、3000 安大功率晶闸管元件批量生产并提高可靠性；完善直流系统数字化模拟设计手段，增添大型数字式延时模拟装置；改善试验条件，形成 50 万伏换流阀高电压试验和运行试验的能力。□

### 4. 电力系统自动化和智能型变电设备产业化。□

加快数字式保护系统和设备的软、硬件产业化，尽快消除高压直流换流站和网系统控制、调节技术瓶颈；满足电网改造对户内外紧凑型 and 智能化开关设备的需求；加快改造光纤复合架空地线生产线，大力发展光通信等新型电力系统通信设备；促进一、二次设备生产企业战略重组，提高智能化、系统化和成套设备的市场满足度及服务能力。□

### (二) 重点冶金矿山设备。□

1. 以大型冶金、有色金属、石化、环保、煤炭、建材、汽车、造船等行业技术改造和水利、水电等建设项目为依托，尽快实现一批重大设备本土化生产。□

发展大型磨粉机、多绳提升机、井下矿运机、水泥回料密、大型矿用自卸车等矿山机械并提高

使用寿命,在进一步提高传统冶金设备质量的基础上,大力发展自动化和节能降耗工艺技术装备,提高大型设备的成套能力;加快实现30万吨轿车结构件冲压生产线产业化;发展非金属材料深加工设备、中密度纤维板和定向刨花板等新型人造板设备;提高500-7000吨级加氢反应器、大型起重机械、高速铁路机车车轮整体成型设备、固体废物处理设备的生产能力。

## 2. 大力提高大型铸锻件生产工艺水平。□

发展大型铸锻件真空浇注工艺;提高制造精度和计算机控制水平;提高电炉炼钢和加料的自动化水平;鼓励采用先进的热处理技术工艺和设备。□

## (三)石化化工设备。□

围绕海陆石油天然气开发、西气东输、大型石油化工、电力、冶金、大型水力工程、环保、新闻出版等工业部门的需求,发展一批耐高温、高压、高效和精密设备,提高成套能力。□

以沙漠海洋石油设备、天然气管线集输设备、加氢反应器等为重点,发展高效电驱动钻机和顶部驱动钻井系统;发展深井采油设备、井下油气分离设备和油气管道的集输、成网设备,发展石油、天然气长输管线用阀、大口径球阀、金属密封球阀等;发展千吨级加氢反应器、催化裂化关键设备及其他专用炼油设备。□

重点发展乙烯裂解炉、大型乙烯丙烯球罐等乙烯生产设备及聚合成塔、换热器等化肥工艺设备;继续发展重点工程配套的三大化工配套的工艺压缩机,如新氢压缩机、循环压缩机、丁二烯

螺杆压缩机、二氧化碳压缩机、氟氨气压缩机、煤气压缩机，同时发展石油及天然气压缩机。□

加快高效节能新产品、新技术的开发、应用，提高各类泵、风机、压缩机、阀门、制冷空调设备、空分设备、真空设备、换热设备的使用效率。□

#### (四) 成套环保机械。□

##### 1、新式环保机械。□

大气污染防治设备方面，支持发展大型火电机组除尘和燃煤烟气脱硫设备。水污染防治设备方面，重点发展日处理 20 万立方米城市污水处理设备，提高格栅、曝气、刮泥吸泥、污泥浓缩脱水、污泥沼气发电等设备制造水平；发展适合中小城镇和小区需要的日处理 10 万立方米以下生活污水处理设备，以及高浓度工业废水处理成套设备。固体废物处理设备方面，重点发展生活垃圾焚烧、堆肥等成套设备，有毒有害废物密闭式贮运、专用高温氧化焚烧成套设备，工业废物的收集、分选、清洗、破碎、打包、运输、回收等单体设备或组合设备。

##### 2、国产化示范工程项目。□

支持城市污水处理、高浓度工业废水处理、火电厂烟气脱硫、城市生活垃圾处理等重点领域的国产化示范工程项目。解决防腐、自控、节能和成套等技术，提高单机和系统的可靠性。

#### (五) 大型工程施工机械。□

1、加快发展一批市场需求产品。□

根据“西气东输”、“南水北调”、青藏铁路、城市地铁及城乡基础设施建设工程等的需要，重点发展 4075 吨液压挖掘机、670 吨轮式装载机、320 马以上履带推土机等大型土方工程机械；每小时 100 吨以上路用联合碎石成套设备等高等级公路路面施工养护机械；25 吨以上全路面起重及越野起重机、570 米直径大型盾构机、160 千瓦以上隧道掘进机等隧道开凿机械。□

2、提高关键零部件可靠性。□

大力提高动力换挡变速箱、液力变矩器、湿式制动闭式驱动桥、制动摩擦片的工作效率、可靠性及寿命；提高行星减速机、液压元件控制仪表的技术水平，提高驾驶室舒适性；提高斗齿、混凝土设备中的搅拌叶片、衬板、输送槽、路面机械中的耐磨输送带、凿岩破碎机中的钎杆、钎头等耐磨材料的使用寿命。□

二、农业机械□

(一)重点发展一批市场潜力大、前景好的新产品。□

种植业机械装备领域，重点发展 100 马以上轮式拖拉机及其配套的少耕、免耕、深松作业机，秸秆及根茬粉碎还田机，精量施肥播种联合作业机，水稻、玉米、棉花、油料作物工厂化育秧及栽培成套设备，植保保护机械，联合收割机、采棉机及设施农业成套设备等。□



新型节水灌溉设备领域，重点发展高效喷灌和滴灌成套设备，防沙治沙灌溉设备，干旱、半干旱地区集雨灌溉设备，井灌区群井环网远传自动检测控制系统，节水灌溉设备关键部件和自控系统等。□

农副产品精深加工成套设备领域，重点发展高等级粉、专用粉及淀粉加工成套设备，长绒棉、机采棉加工成套设备，水果蔬菜清洗、分级、灭菌及保鲜、储运成套设备，粮食清洗、分级及烘干成套设备，菜籽、棉籽饼粕脱毒成套设备等。□

集约化养殖及草场、草场建设成套设备领域，重点发展新型规模化猪场、奶牛场饲养与奶制品加工成套设备，大型养殖场粪污有机肥处理成套设备，青贮饲料收获及储运设备，牧草收割、打捆、堆垛、储运成套设备，园林机械等。□

(二)加强企业的技术开发能力建设。□

加强企业技术中心建设，鼓励制造企业与科研院所、大专院校合作，开发具有自主知识产权的产品。提高 80 马力以上拖拉机及配套农机具、水稻育秧、栽培及收获机械、玉米收割机、棉花收获及机采棉加工设备等相关产品的技术水平。□

三、基础机械□

(一)努力提高数控机床产品市场竞争力。□

重点发展普及型数控机床,以普及型数控机床急需的、具有自主知识产权的开放式数控系统为突破口,建立并完善我国开放式数控系统平台及技术规范,为企业网络化、数控机床连续制造创造条件。进一步研究并联合加工技术、集成技术,建设具有批量规模的数控系统产业化基地,同时重点支持关键配套功能部件的发展,提高高速主轴、刀库机械手、数控刀架、动力卡盘、高速滚珠丝杠、高速防护、数控刀具、数控系统及伺服等关键配套功能部件的性能和质量。□

(二)提高机械基础件产品的质量和性能。□

轴承行业重点发展汽车(摩托车)、铁路、大功率农业机械和工程机械、精密设备等配套的高档轴承和特种轴承,同时支持轴承毛坯碳化加工、轴承滚动件等零部件产业化项目。液气密行业重点建立液压系统产品开发基地,发展伺服比例技术、机电液一体化技术、总线控制技术,提高液气气动装置的设计制造水平。通用零部件行业重点支持少数重点企业完善检测条件,提高产品质量,发展一批高速硬齿面齿轮、高强度、异形紧固件等产品。模具行业重点发展塑料、冲压、锻模和建立完善模具开发体系。□

(三)大力振兴仪器仪表制造业。□

围绕国家重点工程和重大技术装备项目,重点支持数字化、网络化、智能化技术产品以及高技术含量和可靠性项目。工业自动化领域重点支持现场总线技术的主控装置和智能化仪表、长寿命技术电能表、电网监控系统等产品。科学测试仪器领域重点发展过程测量分析仪、自动测试系统以及卫星定位系统(GPS)等产品。文化办公机械领域重点发展数码复印机、数码照相机以

及与之配套的冲扩设备等产品。仪表元件材料方面,重点支持新型传感器等仪表元件件和新型复合材料的发展。同时推进研究开发体系的建立。□

(四)为机械、汽车产品更新换代提供动力保证。□

重点发展新型车用低排放、高性能发动机;大型拖拉机、联合收割机、工程机械用高可靠性大中马力柴油机、经济型轿车和微型车用柴油机、新一代农用运输车用环保型柴油机及满足新型柴油机用的油泵油嘴(如分配油泵、电控喷射系统、P型泵等)、联轴副配件、排气后处理等关键零部件。

#### 汽车行业近期发展导向

□□

#### 一、轿车□

重点发展符合国家安全、节能、排放法规及私人用车要求的经济型轿车,提高经济型轿车占汽车总产量的比重。发展绿色环保出租用轿车。“十五”末期,汽油发动机必须达到欧洲第二阶段排放控制水平,中高档产品应达到欧洲第三阶段排放控制水平。□

适度发展轿车柴油发动机、单燃料燃气发动机及混合动力系统。集中支持优势企业,通过与国外合作,形成批量生产能力,产品水平达到欧洲第二阶段、第三阶段排放水平。□

鼓励优势企业通过扩大国际合作实施平台战略，在利用现有产品平台的基础上，以联合开发与自主开发相结合的方式，开发经济型轿车系列产品。利用数控设备、加工中心等柔性、高效制造技术，改造、建设经济型轿车新型发动机生产线。□

## 二、大中型客车□

发展专用大中型客车底盘，加快开发低地板城市客车底盘，重点开发大中客车的桥和悬挂系统、液化石油气(LPG)、压缩天然气(CNG)等气体燃料发动机或复式动力装置系统、大中客车的自动变速系统等高新技术等部件。□

## 三、载货汽车□

### (一)大马力重型载货汽车及牵引车。□

集中支持重型汽车优势企业，利用现有基础，通过合资、合作，调整产品结构，增加大马力重型载货汽车占重型载货汽车的比例，提高现有产品的性能、质量，促使我国重型汽车产品达到或接近国际先进水平。“十五”末期，重型车新产品必须安装制动防抱死装置(ABS)，排故要达到欧洲第三阶段排放标准。重点发展适应高速公路运输条件、功率300马力以上的高档重型载货汽车及牵引车，中高档重型汽车系列化驾驶室、重型专用汽车底盘。推广采用制动防抱死装置(ABS)/防侧滑装置(ASR)、电子控制系统(EBS)、液力减速器等装置，提高产品安全性、舒适性及可靠性。□

## (二)重型汽车发动机。□

推广高速增压、多气门、共轨、增压中冷等技术，重点发展排量9升以上、输出功率300马力以上，达到欧洲第二阶段、欧洲第三阶段排放控制水平的新型发动机系列产品，加快形成批量生产能力。拓展产品系列，适度发展电喷单燃料压缩天然气(CNG)和液化石油气(LPG)发动机。

□

## 四、专用汽车□

汽车产量的比重以及重型专用汽车在专用汽车中的比重，重点发展高技术含量、高附加值的产品，主要有：适于高速公路运输的重型半挂牵引车和专用半挂车；城市环卫车类，如道路清扫车、垃圾运输车、下水道疏通车、吸污车等；施工工程车类，如散装水泥车、混凝土搅拌运输车、混凝土泵车、重型起重汽车及各种工程车等；城市服务车类，如云梯消防车、救护车等；机场专用车类，如重型飞机加油车、机场扫雪车、除冰车等；油田、沙漠专用汽车；多功能道路养护车、抢险救护车等高等级公路管理用车；满足国防现代化要求的各种高水平、高质量的国防专用汽车等。同时，以发展专用底盘和专用装置为突破口，重点发展高性能、高可靠性、系列化的能适合高速公路使用条件的专用汽车底盘。发展应用电子信息技术、传感技术、自动控制技术、机电液一体化技术和智能化技术等高新技术的专用装置。□

## 五、汽车零部件□

提高汽车零部件产品开发、系统配套和模块化供货能力,关键产品性能争取达到或接近国际先进水平,增加出口创汇,提高为国际汽车市场配套的比例。提高汽车产品配套本土化率,实现与主机同步发展。支持和鼓励一批优势企业加强国际合作,利用高新技术提高产品水平与制造水平,进入国际配套体系,重点发展以下三类产品:□

第一类,国内刚刚起步或尚属空白,代表汽车工业技术发展趋势的汽车关键零部件,如制动防抱死装置、安全气囊、电控燃油喷射装置、排气净化装置、自动变速器等。□

第二类,我国已有较大投资,形成了较好的基础,通过努力有可能形成比较优势的汽车关键零部件,如制动系统、转向系统、变速器、离合器、组合仪表、汽车电机等。□

第三类,我国具有比较优势的产品,主要身材料密集型、劳动密集型、不便于长距离运输及其他一些具有比较优势的汽车零部件,如汽车轮胎、电线束、座椅、成型地毯、蓄电池等。

#### 六、摩托车□

重点发展以高可靠性、耐久性、低排放、低油耗为目标,满足大中城市达到绿色环保要求的更新换代摩托车(如带催化转换器的电喷车、双燃料车、电动车等)及新型发动机。发挥比较优势,发展优势产品,扩大出口。□

#### 七、农用运输车□

重点提高农用运输车的安全和环保性能。“十五”末期达到欧洲第一阶段排放控制水平，尽快开发研制符合国家环保标准要求的低排放、低噪声的新型单缸和小缸径多缸柴油机，满足农用运输车配套生产需要，同时进一步改造和完善三轮农用运输车传动系统，促进产品升级换代。□

#### 八、科研开发能力□

重点投资建立并完善国家级汽车、零部件、摩托车产品技术开发中心。鼓励优势企业通过联合开发、引进技术、与国外合作、购买国外专业开发机构等多种方式提高产品开发能力。在产品开发基础上，重点加强底盘匹配技术的研究开发，引导零部件向系统开发的方向发展。推广普及计算机辅助设计(CAD)/计算机辅助制造(CAM)/计算机辅助工程(CAE)/计算机辅助试验(CAT)等技术，加快建立完善数据库，形成网络平台，鼓励国内合资企业加入国际大公司的开发网络，缩短开发周期。鼓励和支持优势企业积极开发汽车产品急需的新技术、新材料、新能源。□

#### 九、采购与销售服务体系□

支持和引导优势企业应用互联网技术，优化采购体系及销售服务体系，逐步与客户、经销商、供应商等建立新型业务关系，合理、有效地利用资源，更好地为消费者提供全方位服务，尽快建立基本与国际接轨的营销体系与采购网络。重点支持优势企业利用社会资源，投资建立具备新车销售、旧车回收、维修服务、零配件供应及信息反馈功能的汽车品牌店；集采购、营销、服务、信息等于一体的用于全行业和骨干企业的电子商务网站；具备中转、运输、管理职能的销售服务体系。

冶金行业近期发展导向

□□

一、产品结构调整□

重点发展冷轧薄板、涂镀层板、冷轧不锈钢薄板、冷轧硅钢片等目前仍大量进口的高附加值产品，对涉及到这些产品的重大国债技术改造项日，积极创造条件按期建成投产。□

支持具备条件的中厚板企业进行系统改造，打通一批专业化中(厚)板生产线，淘汰一批落后的中板轧机，形成集约化、规模化、专业化生产。□

结合特殊钢企业组织结构调整，对轴承钢、齿轮钢、弹簧钢、模具钢、不锈钢长材等产品按专业化分工的原则，瞄准国际名牌产品的实物质量水平，进行工艺技术和装备的配套完善。

支持炭素制品企业对大直径超高功率电极及接头技术改造，压缩普通功率电极产量，增加超高功率电极和特种石墨、微孔炭砖、碳纤维的产量。□

发展我国富资源的铁合金品种及各种合金添加剂、复合铁合金等，增加硅系、锰系铁合金的低硅、低硫、低磷等精品产品，压缩普通铁合金产量。□

发展冶金、有色金属、化工、建材、轻工等行业所需的优质、节能、长期、绿色耐火材料。



目前炼铁、炼钢生产能力已大于需求，普通大、中、小型材，普通线材，热轧带钢，普通焊管及普通无缝钢管的生产能力也大于需求。对上述新建或扩大规模的技术改造项目必须严格按照程序审批，金融机构要按产业政策要求发放贷款。□

## 二、清洁生产□

近期重点搞好清洁生产示范试点企业的系统改造工程。进一步推广普及 40 项先进节能环保技术：厚料层烧结、小球烧结、球团烧结、干燥熟、高炉顶压差发电、高炉长寿、烧结余热回收、炼炉煤气脱硫脱氧、高炉富氧喷煤、激渣炉炉、转炉煤气回收、高效连铸、连铸坯热装热送、一火成材、加热炉蓄热式燃烧、电炉综合节能、冶金过程自动化控制，以及总排水处理、钢铁渣综合利用、低浓度二氧化硫烟气治理等。重视投资不大、效益明显的技术革新，如钢包烘烤器、切分轧制技术等。在统一规划的基础上，全面推进清洁生产。□

## 三、信息化建设□

根据企业的实际情况，强化现有流程过程控制，新生产线要形成计算机统一的二级或二级半过程控制的生产线管理方式。研制和建立钢材性能预报系统，为新产品开发积累数据，减少常规全面检测率，缩短产品开发周期。建立企业信息主干网、局域网和工作站，搭建与国际相接轨的电子商务信息平台。

### 有色金属行业近期发展导向

□□

#### 一、铜工业□

支持铜冶炼企业以环境治理为重点的技术改造,大力推行清洁生产。发展市场前景较好的铜加工产品,如电子工业用铜材、厚度18微米以下及宽度1.2米以上的电解铜箔、变压器用铜带、内螺纹铜管、铜水管等。积极创造条件,开发国内新矿山。鼓励企业通过签订长期购买协议、海外投资办矿等多种方式建立稳定的原料供应基地。对污染严重、金属回收率低的小铜冶炼厂按照国家有关政策、法规予以淘汰。做好铜废杂原料的再生利用工作。□

#### 二、铝工业□

加快铝电解预焙化改造,新建和改造大型预焙铝电解槽必须与淘汰自焙电解槽相结合,争取在2003年淘汰自焙铝电解槽。加快高水平的热连轧铝板带生产线的建设,发展高刚度铝板带、电子铝箔、大型工业型材等品种。制止电解铝重复建设,新建电解铝项目一律要严格按照有关规定办理审批手续。重视铝废杂原料的回收利用工作。□

#### 三、铅锌工业□

支持铅锌冶炼企业围绕节能降耗、污染治理,采用国内外先进的冶炼工艺和低浓度二氧化硫制酸工艺进行技术改造。鼓励冶炼企业投资矿山企业,培育一批采选冶一体化的铅锌工业优秀企

业。支持铅锌再生利用企业做优做强。严格控制铅锌冶炼能力的扩大，加快淘汰落后的铅锌冶炼工艺和设备。□

#### 四、其他有色金属□

鼓励发展钨、锡、锑、铋、锆、铪、铌、钽、稀土等我国具有资源优势、可批量出口的深加工产品，重点发展粉体材料、合金材料、深加工制品、高性能金属等。继续贯彻钨、锡、锑、离子型稀土的保护性开采政策。控制稀土开发总量，加大稀土深加工产品和新材料的开发力度。□

#### 五、西部有色金属资源开发□

开发广西、贵州的铝土矿，扩大氧化铝生产能力；开发建设新疆、青海、西藏、云南、四川等地的大型铝矿，增加有效供给；加快云南、甘肃、四川和内蒙古等地区已探明储量的大型铝、锌矿山的建设；加强金川铜、镍、钴和铂族金属资源综合利用工作；支持青海、西藏盐湖锂、铁资源综合利用技术研究和产业化进程。

#### 石油、石化行业近期发展导向

□□

#### 一、石油行业□

加强国内石油勘探,增加后备储量,实现东部稳产、西部和海域有较快发展,坚持油气并举,扩大对外合作,努力拓展海外油气勘探开发业务。□

(一)原油勘探。□

以寻找优质可动用储量为目标,突出鄂尔多斯、准噶尔、松辽、塔里木和酒泉盆地实现增储上产,加强渤海湾和吐哈盆地滚动勘探实现增储稳产,积极准备柴达木盆地实现新突破。通过完善注采井网,加强三次采油等措施,保持老油田稳产或减增产递减速度,同时抓好制约油气产能发挥、工艺技术落后、能耗高、有重大安全隐患的地面集输系统的改造。积极贯彻实施“走出去”战略,在国外开展风险勘探和合作开发。□

(二)天然气勘探。□

以满足西气东输工程最低资源需求为前提,以鄂尔多斯盆地上古生界、柴达木盆地三湖地区、塔里木盆地库车地区、四川盆地川东和川西地区以及东海西湖凹陷为重点,深入评价四川盆地储量规模以满足两湖地区市场需求,扩展探区范围,以寻找规模控制储量,力争有新的重大发现。

□

(三)原油生产。□

实施原油产量与构成的战略调整,进一步做好东部油田调整挖潜工作,努力减缓产量递减,加快西部和海上油田增储上产,努力弥补老油田产量递减。□

(四)天然气生产。□

根据下游市场情况和管道建设进程，大力强化气田开发前期评价工作，科学安排产能建设计划，避免产能积压和资金占用，提高天然气开发整体效益。□

(五)原油和天然气管道、加气站的建设。□

加快原油管道建设，调整运输布局和运输方式，优化资源配置，降低原油运输成本；重点确保西气东输和忠县至武汉的天然气管道按期开工建设、建成和运营，同时对老管道进行安全性改造，解决管输瓶颈，确保油气田正常生产；改造建设加气站、民用管网等，实现天然气“二次增值”。□

(六)技术发展重点。□

1、油气勘探：建立油气勘探快速评价决策系统，以含油气系统动态模拟技术为主线的海相碳酸盐岩成壤机理、深部油气成壤机理的研究和评价系统；研制开发适用于复杂地质条件的复杂结构井、多分支水平井、大位移井钻井技术；研究成像测井、核磁共振测井技术。□

2、油气田开发：优先发展注水油田高含水后期油藏描述、剩余油监测、稳油控水配套技术，聚合物驱工业化应用技术，低渗透油藏、稠油油藏、凝析气藏提高采收率技术。□

3. 油气储运: 开垦寒冷地区油气集输技术, 天然气高效除砂设备研究, 管道风险管理和管道系统可靠性技术研究, 地下储气库设计建造技术研究。□

4. 完善和提高一批已具备先进水平的技术: 完善和提高以山地、黄土区及深层地震勘探为主镜的高精度地球物理方法技术系列; 全三维地震和四维地震技术以及油藏动态经济评价技术; 海上平台设计技术; 海底管线结构设计、铺设及泄露监测技术; 水下自动生产技术; 海洋环境调查及预报技术; 高含水油田节能降耗系统配套技术; 三次采油油气水处理工艺配套技术; 复杂油田地面工程简化工艺配套技术。□

## 二、石化行业□

### (一)石油炼制与销售。□

按照国家新的汽、柴油质量标准, 突出产品结构调整, 优先安排提高汽、柴油质量的二次加工装置和炼油配套设施建设, 包括以提高汽油辛烷值, 降低汽油中烯烃和硫含量为目的的重整装置、烷基化装置、甲基叔丁基醚装置和加氢装置的改造和建设; 以提高柴油十六烷值和氧化安定性、降低硫含量、提高柴汽比为目的的加氢精制、加氢裂化及延迟焦化装置的改造和建设。加快进口含硫原油加工装置以及千万吨级炼油基地的改造和建设。重点建成镇海、茂名、广州、福建、金山、高桥、金陵、大港、兰州等大型炼油基地。发展成成品油管道运输, 降低运输成本, 增强油品配送零售能力。在国家统一规划下, 建立国家石油储备体系。□

2003年1月1日, 车用汽油质量全部达到国家新标准(GB17930-1999), 硫含量不大于0.08%。

烯烃不大于 35%。□

轻柴油质量全部达到国家新标准(GB252-2000), 硫含量不大于 0.2%, 氧化安定性、总不溶物不大于 2.5 毫克/100 毫升, 十六烷值不小于 45。□

(二) 乙烯及合成树脂、合成橡胶、合纤原料。□

加快现有乙烯的改造和合资乙烯的建设, 配套改造裂解装置, 调整产品结构, 提高合成树脂专用料的比例, 提高聚乙烯、丙烯腈丁二烯苯乙烯三元共聚物的自给率; 发展为合纤配套的原料对二甲苯、精对苯二甲酸和聚酯等。继续完成现有乙烯装置技术改造。结合乙烯改造和合资乙烯项目的建设, 改造和新建大型合成树脂、合成橡胶和合纤原料生产装置。□

(三) 技术发展重点。□

1、炼油技术。□

清洁燃料生产技术: 开发降低催化汽油烯烃含量的催化剂和催化汽油选择性加氢脱硫、催化轻汽油脱硫、固体酸烷基化技术; 生产低硫、低芳烃、高十六烷值柴油的催化剂, 汽油清净剂及柴油添加剂等。□

含硫原油加工和增产柴油技术: 开发含硫原油常减压蒸馏装置大型化、馏分油加氢精制及单段加氢裂化、中压加氢裂化、含硫柴油加氢、大型硫磺回收等技术。□

重油深度加工技术：开发劣质催化原料加氢处理、超短接触催化裂化、延迟焦化新技术以及

新一代重油催化裂化和重油加氢催化剂、渣油加工组合工艺等。□

生产过程优化技术：在未来2-3年内建成完善的企业资源计划系统(ERP)框架，逐步形成支持决策层、利润层和生产成本控制层的信息集成系统，自动处理整个企业有关财务、原料及设备管理、生产计划、销售和分销活动等信息，并提供电子商务平台。□

高档润滑油和高等级沥青生产技术，以及与炼油配套的催化剂、添加剂和助剂的生产技术。

2、乙烯及合成树脂技术。□

先进的分离技术，如高效节能的分馏分离技术、催化精馏加氢技术、混合制冷剂冷技术；超冷蒸气相聚乙烯、环管本体法聚丙烯国产化成套技术；共聚单体、催化剂等配套技术；塑料回收、再利用技术；合成树脂新产品，能力大、选择性高、热效率高、操作周期长的裂解炉。

#### 化工行业近期发展导向

□□

一、农用化学品□



### (一) 氮肥工业。□

继续抓好以油为原料的大中型氮肥装置采用廉价煤和先进气化技术进行原料路线改造，加快解决以无烟块煤为原料的中小氮肥的原料本地化问题。采用粉煤气化技术对现有以无烟块煤为原料的企业进行技术改造。继续抓好引进的粉煤气化技术消化吸收国产化的同时，重点抓好适合我国中小氮肥改造的国产化技术，如恩德粉煤气化、反应浆流化床气化等技术的应用。

采用节能脱碳工艺、变换工艺、合成塔、氨回收工艺，以及尿素节能工艺技术，对现有中小氮肥合成氨、尿素装置进行技术提升，降低能耗，适当提高产量。对条件较好的以天然气为原料的大氮肥企业实施增产 35%~65% 为目标的节能技术改造，使之向接近国际规模的方向发展，提高产品竞争能力。大中型氮肥厂进行以天然气或煤为原料的改造，对条件较好的企业进行增产 50% 的改造。小氮肥要加快原料路线以及产品结构调整，积极推广采用型煤制气等先进可靠技术，节能降耗，降低生产成本，并推进小氮肥企业向化肥二次加工和农化服务方向转变。□

改变我国氮肥企业的品种结构较为单一，复合肥料的产量低、品种少的现状，结合农化服务的要求，适当发展尿基、硝基等复合肥，提高综合经济效益。□

有条件的中小氮肥企业推广热电联产技术，采用新型循环化床，掺烧渣气炉渣，实现能源综合利用，降低生产成本。□

### (二) 磷复肥。□

支持磷矿硫、钾资源丰富地区，以现有企业为基础，高起点建设大型磷复肥基地。□

支持一些可满足区域性市场要求、原料条件基本落实、经济效益尚可、改造后可与国际产品抗衡的中小型磷复肥企业进行技术改造。增加对条件好的磷矿企业的支持力度，加大对磷矿企业增加产量的技术改造的投入。□

重点扶持一批管理好、有技术和资源优势的高浓度磷复肥企业。□

(三)农药。□

发展高毒农药的替代产品和新剂型，支持原有企业转产改造。2003年高毒农药产量由目前占总产量比例30%削减到15%，2005年降到5%以下。滞后剂型农药产量由目前占总量比例75%，2003年削减到60%，2005年减少到50%以下。□

支持重点骨干企业进行以提高技术装备水平、发展规模经济、提高研发能力为目标的综合性改造，尽快形成一批能够参与国际竞争的农药生产骨干企业。□

二、化工新材料□

(一)有机硅。□

支持有一定技术基础和生产规模的有机硅生产企业采用新技术的技术改造，进一步降低生产

成本,扩大生产规模,加强综合利用和后加工应用。□

支持有条件的企业通过合资、合作等方式,新建大型先进的有机硅生产装置。□

(二)有机氟。□

重点发展含氟聚合物:氟橡胶、全氟乙丙共聚物、聚偏二氟乙烯和高规格的聚四氟乙烯。根据“淘汰破坏臭氧层物质的国家方案”,国内需要重点发展四氟乙烷(HFC-134a)和七氟丙烷(HFC-227),以及为电子工业配套的高纯氢氟酸等。□

(三)纳米材料。□

大力推动超重力技术在纳米材料制备领域的应用,在继续完善纳米碳酸钙工业化生产的同时,加快超重力技术在纳米氢氧化铝、纳米氢氧化镁、纳米二氧化硅、纳米硫酸钡等产品上的应用,使我国在这些产品上成为世界生产大国和强国。□

加强纳米材料的应用开发,扩大国内纳米材料的应用领域和应用水平。□

(四)其他化工新材料。□

加快发展聚甲醛和聚对苯二甲酸 1,4\_丁二醇酯,特种工程塑料领域的聚苯砜醚、聚醚砜、聚醚酮和聚醚亚胺等国内技术已有突破的产品,以及替代传统阴离子表面活性剂的新型环保型产品

聚天冬氨酸和符合环保要求的低甲醛释放量脲醛胶等产品。□

### 三、精细化工□

饲料添加剂：发展蛋氨酸、赖氨酸、维生素 D3、维生素 H、泛酸钙和饲用酶剂及抗生素替代品等。□

食品添加剂：发展大豆蛋白、大豆异黄酮、丙酸盐、脂肪酰单甘酯、卵磷脂、茶多酚、氨基酸类、天然色素、β-胡萝卜素、曲酸及核糖类产品。□

造纸化学品：发展松香系和变性淀粉系产品，发展废纸回收利用所需的各类化学品。□

油田化学品：发展高档钻井泥浆和水基外加剂方面的化学品，发展油田用聚丙烯酰胺，同时发展油田废水处理所需的化学助剂。□

合成胶粘剂：发展环保型胶粘剂产品，如低甲醛释放量热熔胶以及建筑、汽车、制鞋等大宗市场所需的胶粘剂。□

工业表面活性剂：改造、完善现有装置，充分发挥生产潜能，加强复配应用技术开发，强化应用技术服务。□

生物化工：加强生物反应器、生物传感器和后提取技术的工业性开发与应用，使生物法聚丙烯

烯酰胺、L-乳酸、微生物多糖、透明质酸和酶制剂等形成规模生产，成为拳头产品。□

染料：发展新型环保染料；提高染料和有机颜料商品化加工技术，提高产品附加值；发展各种复杂环化合物和中间体。□

涂料：发展各类环保型(水性、高固体、粉末、辐射固化)涂料；发展内外墙建筑涂料；以铁罐替代铁矿改变硫酸法钛白粉生产原料路线；积极推进氧化法钛白粉生产的发展。□

#### 四、子午线轮胎□

加快轮胎企业产品结构调整，继续发展子午线轮胎。加快新品种的开发，重点发展 65、60、55、50 系列，轮辋直径为 15-17 英寸，高速宽级系列轿车子午胎和低断面、无内胎轻量化子午胎；加大少数重点企业的技术改造，形成 2-3 个年生产能力达到 500-800 万条级(年生胶耗量 4 万吨以上)的大型轮胎企业集团。适当对中西部地区骨干轮胎企业进行扶持，使子午胎生产区域布局更加合理。

### 医药行业近期发展导向

□□

#### 一、优势原料药□

加快实现具有我国自主知识产权及国内首次开发药物的产业化。□

重点发展临床需要且具有独特疗效的急救药物、心血管药物、糖尿病药物、抗肿瘤药物、抗  
病毒及提高机体免疫功能药物。□

采用酶法生产 7-氨基头孢烷酸、发酵法生产 7-氨基-3-去乙酰氧头孢烷酸、“一步发酵法”生  
产维生素 C 等新工艺，改造提升现有抗生素及维生素等传统出口优势品种。□

推进基因工程技术、细胞工程技术、发酵工程技术、膜工程技术及现代制药工业的分离、提  
取、结晶和手性合成技术等高新技术在医药产品生产中的应用，进一步优化工艺、提高产品质量  
和技术经济指标。□

实现解热镇痛天然药物的人工合成技术及其产业化。□

推进浙东南化学原料药出口基地的建设以及石家庄、沈阳、淄博、哈尔滨等老医药工业基地  
的技术改造。□

## 二、生物技术领域□

加快实现具有我国自主知识产权的生物工程药物产业化。□

加快生物工程技术在维生素、抗生素、氨基酸等方面的应用。□

加快计划免疫产品的 GMP(药品生产质量管理规范)改造,如百日咳疫苗、乙脑疫苗、麻疹疫苗等。□

发展具有较好市场前景的新型疫苗,如适用于全人群的流感病毒疫苗、多价肺炎球菌多糖疫苗、轮状病毒疫苗、痢疾疫苗、肿瘤疫苗、爱滋病疫苗等。□

加快发展诊断用生物芯片。□

### 三、中药现代化□

支持中药材的规范化与标准化种植。□

加快实现中药提取物及中药饮片浓缩颗粒的产业化。□

推广指纹图谱等多成分定量指标控制技术在中药生产中的应用。□

推进现代先进技术 in 中药生产中的应用,如超临界二氧化碳提取、动态提取、大孔树脂吸附、膜技术、喷雾干燥、冷冻干燥、超微粉碎等技术。□

推进先进制剂技术与辅料在中药生产中的应用。□

发展高效、速效、长效和剂量小、毒性小、副作用小及使用方便的新型中药。□

加快名优产品的技术创新与技术改造。□

四、新型制剂□

发展市场前景较好的新产品和名牌产品；□

我国不能生产、需要进口的产品；□

缓释、控释、速释制剂、靶向制剂、定量吸入剂、鼻腔给药制剂、膜剂等新型剂型；□

优质、新型制剂辅料，如新型粘合剂、崩解剂、包衣材料、助悬剂、表面活性剂等；□

微囊技术、包合物技术、渗透泵技术、脂质体技术等先进技术制剂中的应用；□

能满足品种多样化、规格系列化、操作密闭化、机电一体化、符合 GMP 要求的制药装备，如  
超微粉碎设备、动态提取设备、新型生物反应器等。

煤炭行业近期发展导向

□□



## 一、煤炭开采口

加快大中型在建煤矿建设,建成一批现代化煤矿;按照西部地区煤电同步建设、“三西”(山西、陕西、内蒙古西部)地区调节全国供需平衡、东部地区稳定生产规模的煤炭开发布局原则,建设一批大中型煤矿;对现有大中型煤矿进行技术改造,实现煤生产、管理现代化;对合法小煤矿进行集中化改造,减少生产矿井数,扩大单井生产规模,改进采煤方法和回采工艺,改善技术装备条件,提高矿井回采率,促进安全生产;鼓励大中型煤炭企业,以资产为纽带,把一些资源可靠的合法小煤矿改造成现代化矿井;支持大中型煤炭企业,实施煤矿通风、瓦斯治理、防尘、防火和防治水等安全设施及设备升级改造,配套安全信息管理系统。

## 二、煤炭加工及利用口

### (一)煤炭洗选。□

用先进技术和设备改造现有选煤生产工艺,提高设备可靠性、自动化程度及工艺灵活性,增加产品品种,提高产品质量,充分发挥选煤厂生产能力,更好地满足市场需要;在主要产煤省(区)建设一批先进选煤厂的同时,在中小型煤矿较集中的地区,建设群矿选煤厂,提高原煤入选比重及商品煤质量。□

### (二)动力脱煤。□

支持煤炭中转港口和集散地建设配煤厂，支持现有配煤厂扩建和技术改造；在有条件的选煤厂，尤其是洗选后煤炭成分仍较高的选煤厂配套建设配煤厂。□

(三)水煤浆代油。□

鼓励燃料油消费量大的地区建设水煤浆代油项目，支持水煤浆厂配套输送设施建设；支持水煤浆生产和应用大型化过程中的关键技术与设备的开发。□

(四)煤层气开发利用。□

重点在山西沁水煤田、河东煤田、安徽省两淮煤田、江中地区(包括铁法、阜新、抚顺、红阳矿区)、贵州六盘水地区等择优建设煤层气开发利用示范工程。□

三、煤炭企业集中化发展□

支持大型煤炭企业通过兼并或资产重组组建大型企业集团；支持大型煤炭企业的大中型矿井建设、技术改造工程和跨地、跨国开办煤矿；鼓励大型煤炭企业通过兼并、收购、联合等形式对小煤矿进行技术改造，提高小煤矿生产规模和技术装备水平；支持大型煤炭企业煤电、煤焦化、煤化工、煤运材项目建设；支持煤、电、路、港、航企业联合重组为特大型企业集团。□

四、煤电一体化联营□

支持成立煤电公司，对煤矿与坑口电厂统一开发建设，在煤炭资源丰富地区建设大型火电基地；支持煤炭企业与电力企业之间通过资产重组，实现煤电一体化经营。

#### 建材行业近期发展导向

□□

##### 一、新型干法水泥、散装水泥□

以企业技术改造为基本途径，发展日产 2000 吨熟料及以上规模的新型干法预分解窑水泥生产线，鼓励企业发展日产 4000 吨以上新型干法水泥生产线；在石灰石资源富集地区建设大型熟料基地，靠近市场发展大型现代化水泥粉磨站；发展散装水泥和商品混凝土搅拌站。□

##### 二、新型墙体材料□

发展单班年产 5 万立方米以上规模的混凝土砌块生产线，推广固定成型、变式养护工艺；发展年产 10?0 万立方米规模加气混凝土砌块生产线，推广发泡成型技术和大型机械化切割机；采用隧道窑，推广高掺量粉煤灰。全煤矸石烧结空心砖新工艺，发展年产 1500 万块以上规模的烧结制品生产线，其中煤矸石、粉煤灰、页岩等废渣烧结制品单线年生产能力在 3000 万块以上；发展承重轻板和集装饰于一体的轻板及复合板材，年产 15 万平方米以上的轻质板材生产线，开发采用农作物秸秆为主要原料生产环保型轻质板材的新技术、新工艺。□

### 三、无机非金属材料口

发展年产 3 万吨以上大型池窑拉丝生产线，采用 4000 孔高效率纤维成型技术、1600 孔四分拉技术、直落浴法、干法短切原丝等技术，提高装备水平和产品质量，增加品种。□

发展玻纤无纺制品的大幅宽、大规格生产技术，在交通运输、电子、能源与建筑等应用领域取得重大突破；发展玻璃纤维生物及医用过滤材料、工业过滤材料及制品，满足日益增长的生物净化和工业除尘的市场需求；发展各种高性能、多功能玻璃纤维制品，包括优质增强型玻璃纤维纱、毡和代石棉制品，满足汽车及城市轨道交通工具对各种复合材料的需求；发展各种玻纤织物包括土工织物(土工格栅、土工布等)，为治沙固土及高速公路、桥梁、码头等永久性建筑提供优质复合材料；开发玻璃纤维代钢筋材料，可以抵抗海水及含盐潮湿空气的侵蚀；发展多轴向纤维织物，用于舰艇制造及风力发电叶片生产；建筑业的发展对玻璃纤维的需求也在日益增长，如玻纤屋面防水材料、墙体用玻纤织物(网布、墙布)、单纱涂复玻纤窗纱等。□

鼓励企业采用玻璃钢机械化成型技术进行规模化生产，整体技术水平接近或达到 20 世纪 90 年代中期国际先进水平；大力发展玻璃纤维增强材料，重点发展热塑性玻璃钢(FRTP)，积极发展玻璃钢建筑模板和拉挤门窗、高压管道、夹砂管道、玻璃钢容器和高压气瓶等产品。发展两面复合成高品质人造金刚石、特种光电晶体、特种玻璃和高性能陶瓷新材料，改善产品质量，促进产业化发展。□

### 四、非金属矿及其深加工口

鼓励高起点建设大型矿物加工基地，开发高质量非金属矿深加工产品，参与国际市场竞争；  
开发超细粉碎、精细提纯、表面改性技术，发展石墨的高纯微粉、低硫可膨胀石墨、石墨乳、石  
墨吸附材料，以及滑石、碳酸钙、高岭土等矿物功能填料产品、粘土矿物环保材料制品和非金属  
矿物纳米材料。

#### 轻工业近期发展导向

□□

##### 一、制浆造纸□

以造纸原料结构调整为重点，提高木纤维原料和废纸的比重。在造纸原料结构上确立以林木  
为主要纤维的生产体系。□

大力发展人工速生造纸工业林基地，用现代技术改造传统林业，选择和培育速生、丰产、周  
期短、抗性好、木浆得率高、自然白度高、纤维长度适中的林木良种。结合退耕还林，加快林纸  
一体化建设，提高林地生产效率。□

采用高得率制浆技术，规模发展预热木片磨木浆(TMP)、化学机械浆(CMP)、预热木片化机浆  
(CTMP)、碱性过氧化氢化学机械浆(APMP)等。□

在调整现有木材资源消费结构的基础上，支持现有木浆企业通过改造增加木片的使用，引导

限制国内木片出口，充分利用林区采伐加工剩余物，次、小、薪材和中幼林抚育间伐材，扩大木浆生产。□

采用国外先进的碎浆、筛选、净化、除渣、洗涤、浓缩、热分胶、提纯、浮选、脱墨、漂白技术和设备，扩大废纸资源的开发利用。□

## 二、农产品加工□

通过对农产品加工业的结构调整，加快农业产业化进程。以食品骨干企业为龙头，应用高新技术和现代生物技术，在引进、选育和推广优良品种的基础上，提高大宗粮食作物如大豆、玉米、马铃薯、小麦、稻谷的加工深度和广度，提高产品附加值及综合利用水平。□

发展豆奶、豆粕粉、分离蛋白、浓缩蛋白、组织蛋白等新兴大豆食品；加快传统大豆食品的工业化进程。□

大力推广玉米干法脱胚制玉米粉技术，用作淀粉糖和发酵制品的生产原料；积极采用玉米脱胚技术，开发玉米油系列产品。重点扶持年加工玉米 30 万吨规模以上的生产企业，开展综合利用，降低生产成本。□

重点发展马铃薯淀粉、专用淀粉和变性淀粉，开发马铃薯全粉和马铃薯各类食品。□

开发强力粉、中力粉、薄力粉等多品种面粉和传统食品专用粉，加强小麦综合利用。□

推广大米配质、调质技术,开发糯米加工新产品,发展免淘米、营养强化米的生产,扩大优质米出口。合理利用米糠资源,发展米糠油和米糠综合利用新技术。□

对重点产区加大结构调整力度,促进糖厂的规模化生产,提高综合利用水平。□

开发高蛋白、低脂肪、无公害、环保型的肉类、水产品、果蔬、乳品等绿色食品饮料。□

开发农产品加工、储藏、运输技术。加强食品安全、质量标准 and 检测检验设施建设。□

### 三、轻工机械□

以制浆造纸、塑料、食品与包装机械为重点,结合关键技术设备的引进,依靠技术创新,提高装备光机电一体化水平,推进生产过程自动化。□

制浆造纸机械:重点发展适应以杨木、桉木、桉木等速生材为原料的规模以上化学浆、化学机械浆成套设备;节能型快速置换间歇蒸煮成套设备;重点发展适应以废箱纸板、废新闻纸、废杂志纸为原料的规模以上废纸处理设备(日处理400吨不脱墨废纸处理系统和日处理250吨脱墨废纸处理系统);适应造纸机向大型、高速、宽幅、低耗及自动化方向发展的要求,开发幅宽在5.5米左右,车速在每分钟800?200米的中高造纸机和纸板机,提高相应配套的供浆、打浆系统、白水回收设备和涂布机、复卷、软压光、可控中高辊等设备的国产化水平。

食品与包装机械：重点发展大宗农副产品加工机械，如玉米燃料酒精加工设备、年产10万吨淀粉生产及设备配套(含分离机械)等；发展无菌冷灌装技术、无菌灌装生产线(瓶、罐)、无菌软包装生产线和配套的无菌系统工程，高分子材料制瓶灌装一体化技术，乳品包装等大型机械自动化生产线；发展一次性绿色环保餐具的制造，包括添加剂生产、设备制造、制品生产，替代聚苯乙烯塑料发泡餐具；开发全自动连续蜂窝复合板生产技术和设备，中、高温瓦楞纸板生产设备。

塑料机械：重点发展农业、包装、建材、汽车等行业应用塑料加工的新装备，开发制造可控制功能薄膜、新型节水灌溉器材机械、新型耐热管材、复合管材、异型材和结构发泡材料机械设备；开发高阻湿性容器、包装材料，多功能薄膜、水溶性薄膜和可降解性材料的工艺和设备；开发气体辅助注射成型技术、热流道技术和塑料制品回收与再生利用技术。

#### 纺织行业近期发展导向

□□

##### 一、化纤及化纤原料□

加大现有优势企业的改造力度，提高生产水平和集中度，形成若干大型化纤和化纤原料基地。重点推进对苯二甲酸或混对苯二甲酸(或中纯度对苯二甲酸)成套装置的国产化，进一步提高和完善国产化聚酯装置的水平，发展大容量熔体直接纺技术，开发5万吨及以上涤纶短纤维成套技术装备，细旦涤纶长丝熔体直接纺设备，降低投资成本，形成原料、聚合及纺丝配套发展。



□

提高差别化率，重点发展高仿真纤维、细旦及超细旦纤维、功能性纤维和复合型纤维等。主要有：以涤纶长丝为主体的细旦、超细旦纤维、四异纤维(异纤度、异截面、异材质、异收缩)和多功能的长丝混纤以及海岛型复合纤维；防静电、高吸湿；抗起毛起球、阻燃等功能性纤维；高湿模量、高卷曲、中空粘胶短纤维和细旦、异形、多功能(阻燃、抗西等)粘胶长丝等。□

拓展化纤使用领域，为相关产业配套开发各类高技术、高性能纤维。如聚苯并双噁唑纤维、芳纶、碳纤维、超高强高模聚乙烯纤维等，加快研究及开发，使其产业化、市场化，以尽快满足产业用纺织品发展的需要。□

开发和推广化纤新品种、新技术。如对苯二甲酸丙二酯酯、熔黏法聚酯弹性纤维、聚苯二甲酸乙二酯纤维、聚乳酸纤维、溶剂法纤维素纤维、醋酸长丝、大豆蛋白质纤维、甲壳质纤维等新型纤维。□

推进环保技术的推广应用，加强环保治理。落实“粘胶三废处理”和“聚酰胺废水处理”等环保措施，鼓励采用纺织清洁生产的新工艺、新技术。□

## 二、棉纺织□

根据出口服装的需求，围绕面料开发，搞好上下游产业链的有机结合，形成纺织、服装的配套改造。继续淘汰落后生产能力，加快技术改造。发展清梳联合机、自动络筒机、无梭织机、有

条件的企业可采用细络联的工艺配置,有计划地发展紧密纺、喷气纺、转杯纺等新型纺纱技术。  
开发多种纤维不同混比的混纺面料、交织面料、提花面料等,合理配置高速电子多臂和高速电子  
挑花等装置。□

### 三、高档面料□

采用新型的印染后整理技术和设备,开发天然纤维的抗皱免烫面料、纯棉超柔软面料、高支  
轻漂毛纺面料、高档亚麻、亚麻面料、高档丝绸面料、舒适性针织面料等。研究合成纤维印染后  
整理加工的工艺、技术设备,开发各类不同风格的化纤面料、多纤维混纺交织面料、高档针织面  
料。采用超临界二氧化碳介质染色技术、等离子体技术、棉织物冷轧处理和生物酶技术。逐步  
实现清洁生产,使印染加工符合绿色环保要求。开发适用“小批量、多品种、快交货”要求的印染  
后整理技术设备,如电脑测色配色、电脑分色制版、激光制版、无制版印花、染化料的自动计量  
供应系统、自动控温系统。□

开发各种装饰面料、功能性整理助剂。主要采用阻燃、抑烟、抗静电、抗污、透气、透湿、  
抗紫外线等整理技术设备,进一步拓展面料的使用领域。□

### 四、服装□

提高服装的设计开发水平。推广采用计算机辅助设计系统,大力培育设计人才,创国际知名  
品牌。采用服装面料自动监测评价系统、自动裁缝机、电脑平缝机、服装虚拟图形系统、电脑控  
制多种形式的传输系统、立体整烫机、产品自动立体仓储系统、产品配送中心等先进服装加工设

备和技术。开发生态、环保服装,各种功能性服装。开发服装集成自动化系统、服装结构数字化系统、企业资源计划系统,提高服装行业的设计、生产、营销、管理水平。

#### 五、产业用纺织品□

发展以纺粘法为主的非织造布。发展篷盖材料、建筑防水材料、骨架材料、医疗卫生用材料、汽车内饰材料、膜结构建筑材料。开发玻纤织物涂聚四氟乙烯产品;提高高强度纶丝涂聚苯乙烯(PVC)产品的质量;进一步完善后整理技术,发展超细纤维合成革基布。发展农用纺织品,特别是每平方米重量为1570克的、能经受紫外线辐射的薄型纺粘法非织造布。□

#### 六、纺织机械□

开发大型化、连续化和自动化的粘胶纤维、腈纶和涤纶成套设备以及生产特种纤维的成套设备。开发新一代高效、自动化的精纺成套设备和机电一体化化的织造设备。开发新一代高效、短流程、环保、节能、细密度高和机电一体化的前处理、印染、后整理工艺技术装备。

开发产量大、效率高的机电一体化的经编机、纬编机、袜机和其他编织机械。提高纺织工业技术装备的通用件、基础件开发水平,加强关键附件、关键技术攻关。

Circular of the General Office of the  
State Council on Liquidating Fixed Asset  
Investment Projects

Guo Ban Fa (2004) No. 38

People's Governments in all provinces, autonomous regions, municipalities under direct control of the Central Government, all Ministries and Commissions under the State Council, and Organizations directly under the State Council:

At present, China's economy maintains a steady and rapid development, accompanied with a further-enhanced economic effectiveness and a good overall economic performance. However, some salient contradictions and problems during the economic development remain ineffectively relieved, some of which are still growing unchecked, mainly in the overheated and oversized investment in fixed assets, and the salient tension between demand and supply in coal, electricity, petroleum, transportation and important raw materials.

At present, efforts shall be put forth in solving the problem of overheated investment so as to promote the steady and rapid development of economy and to avoid large economic fluctuations. In order to further strengthen the macroeconomic regulation, the State decides to liquidate the fixed asset projects.

1. Guiding Thought and Principle

1. The liquidation work shall carry out the scientific development concept, and all are required to unify their thoughts to the decision of arrangement of the Central Government, fully aware of the problem of overheated investment and its harmful influences. All the regions and all the authorities are shall, though this liquidation, replace their attentions to the enhancement of the quality and benefit of the economic growth, and firmly surmount the phenomena of blind competition with each other, rash launching of projects and rash putting up establishments.

2. The liquidation shall be conducted in accordance with the current laws, administrative regulations and state policies, and mainly with the national industrial policies and industrial program, the laws and regulations governing land administration, environmental protection, bank loaning, project examination and approval etc., and the circulars of the State on controlling the construction of steel, electrolytic aluminum, cement, the office buildings training centers of the Party and government authorities, city express track transportation facilities, golf course etc. Measures shall be adopted towards a project that fails to be in line with these requirements, such a project as should be discontinued shall be discontinued, and such a project as should be redressed within a time limit shall be redressed within the time limit.

3. The liquidation work shall be subject to the principle of giving prominence to key points, providing guidance tailored to the situation, and handling each case on its own merits. Importance shall be attached to the structural readjustment while curbing the overheated investment. Such projects as have low technological contents, exceed the demand of market, and fail to be in line with the requirements of structural readjustment, and especially those highly energy-consuming, water-consuming, material-consuming, environment-polluting projects of haphazard investment and low-level redundant construction shall be firmly contracted. The liquidation of the project promoted by governmental activities shall be strengthened, and the project that has a high technological content and is in line with the requirements of structural readjustment, and supports shall

continually be granted to agriculture, forestry, water conservancy, ecological construction environmental infrastructure, social programs and other projects in weaker fields that need to be strengthened.

4. The liquidation work shall be carried out in accordance with the affiliation of the project. The National Development and Reform Commission shall be responsible for the organization work of the liquidation, and shall, together with the Ministry of Supervision, the Ministry of Land and Resources, the Ministry of Construction, the People's Bank of China, the National Audit Office, the State Environmental Protection Administration, the China Banking Regulatory Commission etc., strengthen the supervision and examination of the liquidation in accordance with their own division of work.

#### II. Liquidation Scope

All regions, all authorities and all related authorities shall conduct a comprehensive examination and liquidation of all the projects under construction and projects to be constructed. The "project under construction" as mentioned above refers to such a project as is already started, and the "project to be constructed" as mentioned above refers to such a project as is already applied for by a project unit, as is under the handling of the governmental authorities and as is not started yet.

The key areas subject to liquidation: 1 projects of steel, electrolyte aluminum, cement, office building and training centers of the Party and government authorities, city express track transportation facilities, golf course, exhibition center, logistics park, and large-sized shopping center etc.; 2 all the projects that has been newly started since 2004.

Projects of agriculture, forestry, water conservancy (including six small rural projects (water-efficient irrigation, potable water supplies, road building, methane production facilities, hydroelectric plants, and pasture enclosure)), ecological construction, education (excluding university city), public health, and science (excluding scientific and technological park) shall be beyond the liquidation scope.

#### III. Content of Liquidation

The projects under construction and to be constructed shall be examined one by one in liquidation, which shall include:

1. Whether being in line with the national industrial policies and programs; and
2. Whether being in line with the general program of land utilization and integrated into the annual program of land utilization; and
3. Whether being in line with the national provisions concerning environmental protection and passing the environmental impact assessment; and
4. Whether being in line with the general planning of a city; and
5. Whether being in line with the procedures governing project examination and approval and other constructions; and
6. Whether being in line with the credit policies and the relevant provisions governing fixed asset investment; and
7. Whether being in line with the provisions in Circular of the General Office of the State Council on Transmitting and Issuing Several Opinions of the National Development and Reform Commission and Other Authorities on Curbing Irrational Investment in Steel, Electrolytic Aluminum and Cement Industries (Guo Ban Fa [2003] No. 103), Circular of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Continually Tightening the Control the Construction of the Office Building and Training Center Project of the Party and Government Authorities (Zhong Ban Fa [2003] No. 3), Circular of the General Office of the State Council on

Strengthening the Administration of the Construction of the City Express Track Transportation Facilities (Guo Ban Fa [2003] No.81) and Circular of the General Office of the State Council on Suspending the New Construction of Golf Courses (Guo Ban Fa [2004] No.1).

8. Whether falling within the items stipulated in Circular of the General Office of the State Council on Strictly Prohibiting the Illegal Construction of the Thermal Power Generating Units of Equivalent to or Less than 1.35 Million Kilowatts (Guo Ban Fa Ming Dian [2002] No.6), and the Catalogue of Outdated Production Capacities, Techniques and Products to Be Eliminated (Batch I, Batch II and Batch III) (Decree of the State Economic and Trade Commission No.6, No.16, and No.32) promulgated by the former State Economic and Trade Commission.

9. Whether being in line with other laws, administrative regulations and State policies governing the project construction.

#### IV. Post-liquidation Treatment

1. Such a project under construction as is prohibited by explicit State orders, and as fails to be in line with the Land Administration Law and other laws, administrative regulations and State policies shall be discontinued.

2. Such a project under construction as fails to be in line with the provisions for environmental protection, the city planning, project examination and approval, and other construction procedures and with the credit policies and other requirements shall be suspended, and be ordered to redress within a time limit.

3. With regard to such a project under construction as is in line with the provisions in laws, administrative regulations and State policies, the construction scheduling shall be reasonably arranged upon the base of carrying out the construction conditions of the project hereof.

4. Such a project to be constructed as fails to be in line with laws, administrative regulations and State policies shall be prohibited from initialization and from an unauthorized starting.

5. A new project of steel, electrolytic aluminum and cement shall in principle not be launched in this year. And some particular major projects of structure readjustment and optimization, of which a starting is truly needed in this year, shall obtain an approval of the State.

#### V. Work Style

1. The provincial people's government shall be responsible for the liquidation of the local projects, the relevant authorities under the State Council and shall be responsible for the liquidation of projects subject to the Central Authorities, with regard to the project co-funded by the Central Authorities and the local authorities, the relevant authorities under the State Council shall be responsible for the liquidation of the one that has more funds from the Central Authorities, and the provincial people's government shall be responsible for the liquidation of the one that has more funds from the local authorities.

2. The National Development and Reform Commission shall be concretely responsible organizing and urging the carrying-out of liquidation, and conduct supervisions and selective inspections on the liquidation work from the perspectives of the national industrial policies, industrial programs, and the procedure governing the project examination and approval etc.

3. The Ministry of Land and Resources, the Ministry of Construction and the State Environmental Protection Administration shall conduct supervisions and selective inspections from the perspectives of land administration, city planning and environmental protection etc., the China Banking Regulatory Commission shall conduct supervisions and selective inspections from the perspectives of the credit policies and the provisions governing the fixed asset loaning, and shall

be responsible for conducting selective inspections on the loans for the packed projects of city construction.

4. A leading group led by the National Development and Reform Commission and composed of the Ministry of Supervision, the Ministry of Land and Resources, the Ministry of Construction, the People's Bank of China, the National Audit Office, the State Environmental Protection Administration, the China Banking Regulatory Commission and other authorities shall be concretely responsible for the liquidation work.

#### VI. Work Schedule

1. Great importance shall be attached to by all the regions and all the authorities, and the leadership shall be strengthened; the major persons in charge shall themselves assume leadership, transfer personnel to constitute interim agencies, clearly define the duties, formulate well-conceived work programs, and organize and carry out the liquidation work as soon as possible.

2. The liquidation work of all the regions and all the authorities shall be finished within one and half months as the date of the promulgation of this Circular, and report their liquidation results and treatment measures to the National Development and Reform Commission.

(1) The liquidation results and treatment measures for all the projects under construction and to be constructed within the liquidation scope; and

(2) The per-project treatment opinions of construction discontinuance, construction suspension for redressment within a time limit, abolition of project initialization and being in line with the requirements for a project with a gross investment of equivalent to or more than RMB 10 million Yuan in the key liquidation area, and for a project with a gross investment of equivalent to or more than RMB 30 million Yuan in other liquidation areas.

3. After all the regions and all the authorities finish their liquidation works, the National Development and Reform Commission, the Ministry of Supervision, the Ministry of Land and Resources, the Ministry of Construction, the People's Bank of China, the National Audit Office, the State Environmental Protection Administration, and the China Banking Regulatory Commission shall conduct selective inspections on the liquidation results. And after finishing the aforesaid selective inspections, the National Development and Reform Commission shall, together the relevant authorities, formulate liquidation reports and submit them to the State Council.

4. All the regions and all the authorities shall keep the big pictures in mind, truly do well the liquidation work, submit the liquidation results according to fact, and avoid the occurrences of local and industrial protectionisms. And a special attention shall be paid to the problems arising possibly from the discontinuance or suspension of project construction, and preprograms shall be formulated to do well the post-liquidation work. Once those acts are found true that practicing fraudulences and intentional concealments, and new undesirable aftermaths arising after the discontinuance or suspension of project construction due to the work, the related leaders shall be investigated for liabilities.

5. The liquidation of fixed asset investment projects has wide implications and involves policy considerations. All the authorities under the State Council shall earnestly fulfill their duties, cooperate closely and strengthen intercommunications, and timely detect and solve cooperatively the salient problems arising from the liquidation work. And major problems shall be reported to the State Council.

The General Office of the State Council  
April 27, 2004

## 国务院办公厅关于清理固定资产投资项目的通知

国办发〔2004〕38号

2004-12-7

各省、自治区、直辖市人民政府，国务院各部委，各直属机构：

当前，我国经济持续较快发展，经济效益进一步提高，经济形势总体上是好的。但是，经济发展中存在的一些突出矛盾和问题没有得到有效缓解，有的还在进一步发展。

集中表现在固定资产投资增长过快、规模过大，同时煤、电、油、运和重要原材料供求紧张的矛盾突出。当前，要着力解决投资膨胀问题，促进经济平稳较快发展，防止出现大的起落。

为了进一步加强宏观调控，国务院决定开展固定资产投资项目清理工作。

### 一、清理工作的指导思想和原则

(一)清理工作要贯彻落实科学发展观，各方面要把思想统一到中央的决策和部署上来，充分认识当前经济发展中存在的投资膨胀问题，以及由此带来的不利影响。通过此次清理，各地区、各部门要把工作的着力点切实转到提高经济增长的质量和效益上来，坚决克服相互攀比、盲目上项目、铺摊子的现象。

(二)清理工作依据现行的法律、行政法规和国家政策进行。主要按照国家产业政策和行业规划、土地管理、环境保护、银行信贷、项目审批等方面的法规和政策，国务院关于控制钢铁、电解铝、水泥以及党政机关办公楼和培训中心、城市快速轨道交通、高尔夫球场建设等通知的要求进行清理。对不符合要求的项目要采取措施，该停止建设的要停止建设，该限期整改的要限期整改。

(三)清理工作坚持突出重点，分类指导，区别对待。在遏制投资过快增长势头的同时，注重结构调整。对技术含量低、明显超出市场需求、不符合结构调整要求的项目，特别是盲目投资和低水平重复建设的高耗能、高耗水、高物耗、污染严重的项目，要坚决压下来。对其中政府



行为推动的建设项目，要加大清理力度。对技术含量高、符合结构调整要求的项目，需要加强的农林水利、生态建设、环境基础设施、社会事业等薄弱领域的项目，要继续给予支持。

(四)清理工作要按照项目隶属关系进行。发展改革委负责清理的组织工作，并与监察部、国土资源部、建设部、人民银行、审计署、环保总局、银监会等部门按照各自职责分工，加强对清理工作的指导和检查。

## 二、清理的范围

各地区、各部门和各有关单位要对所有在建、拟建项目进行一次全面清理、审核。在建项目是指已开工建设的项目；拟建项目是指项目单位已提出申请，政府部门正在受理且尚未开工的项目。

要重点清理：(1)钢铁、电解铝、水泥以及党政机关办公楼和培训中心、城市快速轨道交通、高尔夫球场、会展中心、物流园区、大型购物中心等项目；(2)2004年以来新开工的所有项目。

农林水利(含农村“六小”工程)、生态建设、教育(不含大学城)、卫生、科学(不含科技园区)项目不在清理范围内。

## 三、清理的内容

清理中要对在建、拟建项目逐个进行审核，清理的内容是：

- (一)是否符合国家产业政策和行业规划。
- (二)是否符合土地利用总体规划并纳入土地利用年度计划。
- (三)是否符合国家环境保护的有关规定并通过环境影响评价。
- (四)是否符合城市总体规划。
- (五)是否符合项目审批等各项建设程序。
- (六)是否符合信贷政策和固定资产贷款的有关规定。
- (七)是否符合《国务院办公厅转发发展改革委等部门关于制止钢铁电解铝水泥行业盲目投资

若干意见的通知》(国办发〔2003〕103号)、《中共中央办公厅、国务院办公厅关于继续从严控制党政机关办公楼和培训中心项目建设的通知》(中办发〔2003〕3号)、《国务院办公厅关于加强城市快速轨道交通建设管理的通知》(国办发〔2003〕81号)、《国务院办公厅关于暂停新建高尔夫球场的通知》(国办发〔2004〕1号)的要求。

(八)是否属于《国务院办公厅关于严格禁止违规建设13.5万千瓦及以下火发电机组的通知》(国办发明电〔2002〕6号)、原国家经贸委《淘汰落后生产能力、工艺和产品的目录(第一、二、三批)》(国家经贸委令第6号、16号、32号)规定范围内的项目。

(九)是否符合与项目建设有关的其他法律、行政法规和国家政策。

#### 四、清理后的处理

(一)对国家明令禁止建设的、违反土地管理法等有关法律、行政法规和国家政策的在建项目，要停止建设。

(二)对不符合环保规定、城市规划、项目审批等建设程序以及信贷政策等要求的在建项目，要暂停建设，限期整改。

(三)对符合法律、行政法规和国家政策要求的在建项目，要在落实好项目建设条件的基础上，合理安排建设进度。

(四)对不符合法律、行政法规和国家政策要求的拟建项目，一律取消立项，严禁擅自开工建设。

(五)对钢铁、电解铝、水泥项目，年内原则上不再开工新项目。个别调整优化结构的重大项目，确需今年开工的，须报国家批准。

#### 五、工作方式

(一)地方项目由省级人民政府负责清理；中央项目由国务院有关部门和有关单位负责清理；中央和地方共同出资的建设项目，中央投资为主的由国务院有关部门和有关单位负责清理，地

方投资为主的由省级人民政府负责清理。

(二)发展改革委负责具体组织和督促落实清理工作，并从国家产业政策、行业规划、项目审批程序等方面对清理工作进行督导和抽查。

(三)国土资源部、建设部、环保总局分别从土地管理、城市规划、环境保护等方面进行督导和抽查；银监会从信贷政策和固定资产贷款规定方面进行督导和抽查，并负责落实对城市建设打捆项目贷款的抽查。

(四)由发展改革委牵头，监察部、国土资源部、建设部、人民银行、审计署、环保总局、银监会等部门参加，组成工作班子，负责具体落实清理工作。

#### 六、工作进度

(一)各地区、各部门和各有关单位要高度重视，加强领导，主要负责同志要亲自主帅，抽调人员组成临时机构，明确责任，制定周密工作方案，迅速组织开展项目清理工作。

(二)各地区、各部门和各有关单位的清理工作要在发出通知之日起1个半月内完成，并将清理结果和处理措施报发展改革委。(1)清理范围内所有在建、拟建项目的清理结果和处理措施；(2)对重点清理的项目中总投资1000万元及以上的项目，以及清理的其他项目中总投资3000万元及以上的项目，按项目提出停止建设、暂停建设限期整改、取消立项和符合要求的处理意见。

(三)各地区、各部门和各有关单位的清理工作结束后，发展改革委、监察部、国土资源部、建设部、人民银行、审计署、环保总局、银监会要对清理情况进行抽查。抽查工作结束后，发展改革委会同有关部门，形成清理报告上报国务院。

(四)各地区、各部门和各有关单位要从大局出发，切实做好清理工作，如实上报清理结果，防止出现地方、行业保护主义。特别要妥善处理好项目停止或暂停建设后可能出现的问题，制定预案，做好善后工作。对弄虚作假、有意隐瞒不报的，对因工作原因造成停止或暂停建设后出现新的不良后果的，一经查实，要追究有关领导的责任。

(五)清理固定资产投资项目，政策性强，涉及面广，国务院各部门要认真履行职责，密切配合，加强沟通，及时发现并协调解决清理工作中的突出问题。重大问题要向国务院报告。

中华人民共和国国务院办公厅

二〇〇四年四月二十七日

Circular of the State Council on Adjusting the Proportions of Registered Capital in Fixed Asset Investment Projects of Some Industries

(April 26, 2004 No. 13(2004) of the State Council Enforcement as of the day of promulgation)

Since this year, the national economy has continued to maintain a favorable momentum, the reform and opening has been further carried forward in a stable manner and the social undertakings have been developed in an all-around way. At the same time, those outstanding conflicts that exist in the economic operation have become increasingly apparent, which are embodied in such aspects as the over-increase in investment, too many newly started projects, the under-construction scale being too large, and the irrational investment structure. There exists blind investment in industries of steel, electrolytic aluminum and cement, there is serious phenomenon of low-quality repeated construction, the increase rate of real estate development and investment is too high, and the development capital is excessively dependent on bank loans. In order to intensify the macro regulation, adjust and optimize the economic structure and promote a sound development of the aforesaid industries, the State Council has decided to adjust the proportions of capital money of construction projects in industries of steel, electrolytic aluminum, cement and real estate development as prescribed in the Circular of the State Council on Piloting the System of Registered Capital on Fixed Asset Investment Projects (No. 35 (1996) of the State Council): (1) The proportion of capital money of steel projects is raised from 25% or more to 40% or more; (2) The proportion of registered capital of projects of cement, electrolytic aluminum and real estate development (excluding projects of economically affordable houses) shall be raised from 20% or more to 35% or more.

The relevant provisions of this Circular shall come into force as of the day of promulgation.

## 国务院关于调整部分行业固定资产投资项目资本金比例的通知

国发[2004]13号

各省、自治区、直辖市人民政府，国务院各部委，各直属机构：

今年以来，国民经济继续保持良好势头，改革开放稳步推进，社会事业全面发展。同时，经济运行中的突出矛盾进一步显现，集中表现在投资增长过快、新开工项目过多、在建规模过大，投资结构不合理，钢铁、电解铝、水泥行业盲目投资、低水平重复建设现象严重，房地产开发投资增幅过高，开发资金过多依赖银行贷款。为加强宏观调控，调整和优化经济结构，促进上述行业的健康发展，国务院决定对《国务院关于固定资产投资项目试行资本金制度的通知》（国发〔1996〕35号）有关钢铁、电解铝、水泥、房地产开发行业建设项目资本金比例进行调整：（1）钢铁项目资本金比例由25%及以上提高到40%及以上；（2）水泥、电解铝、房地产开发项目（不含经济适用房项目）资本金比例由20%及以上提高到35%及以上。

本通知的有关规定自发布之日起执行。

国务院

二〇〇四年四月二十六日

Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy

(No. 11 (2006) of the State Council)

The people's governments of all provinces, autonomous regions and municipalities directly under the Central Government as well as all the ministries and commissions of the State Council and the institutions directly under the State Council:

It is a major and difficult task in the "11th Five-Year Plan" period to promote the strategic restructuring of the economy as well as to elevate the international competitiveness of all sectors. At the present time, some sectors make such blind investment and inefficient expansion that they have incurred production capacity redundancy, which has turned into a predominant problem in the economy. If not solved in a timely manner, the problem may further aggravate the conflict lying in the irrational industrial structure and thus impede a sustainable, fast, balanced and sound development of the economy. In order to accelerate the restructuring in those sectors with production capacity redundancy, we hereby notify the relevant issues as follows:

I. The Importance and Urgency of Accelerating the Restructuring of the Sectors with Production Capacity Redundancy

In recent years, the incessant upgrading of the consumption structure as well as the acceleration of the industrialization and urbanization process have motivated a fast growth of such sectors as iron & steel, cement, electrolytic aluminum and automobiles. Due to the extensive growth pattern of our economy, imperfect institution and mechanism, such problems as blind investment and low-quality expansion have arisen in the fast development of the foregoing sectors. In 2004, the state adopted, in a timely manner, a series of macro control measures so that the blind expansion in some sectors has been preliminarily cracked down upon, the over-increase of investment has shrunk and the relevant goals regarding the acquisition, restructuring, close-down and bankruptcy of enterprises as well as the elimination of outdated production capacities thereof have been fulfilled.

However, in view of the whole situation, the problem of production capacity redundancy in some sectors as incurred from an over-investment has not been solved in the root. There is an obvious redundancy in the production capacity of such sectors as iron & steel, electrolytic aluminum, calcium carbide, ferroalloy, coke and automobiles. As to such sectors as cement, coal, power and textile, although their production and demand could, for the time being, strike a balance, their ongoing construction scale is so large that a problem of production capacity redundancy potentially lies ahead. Under such circumstances, some regions and

enterprises still keep on initiating new projects in the foregoing sectors, which will definitely further aggravate the conflict of the production capacity overwhelming the demand. Furthermore, except for the gross redundancy in such sectors, there exist other serious problems regarding irrational enterprise organizational structure, industrial technical structure and product structure. At the present time, the unfavorable aftermaths, as incurred from the production capacity redundancy of some sectors, have visualized in such forms as down-fall of product prices, increase of inventory, decrease of enterprise profit margin and increase of losses. If such situation is let go at random, the conflict rooting in the binding force of resource scarcity will pop up further, the issue of structural imbalance will be worsen off, there will witness an obvious increase in enterprise bankruptcy as well as in unemployment. So we should resolutely make efforts to solve all the problems. We should hold an overall picture that, to accelerate the restructuring of those sectors with production capacity redundancy, is not only an objective requirement to consolidate and advance the achievement in macro control but also an important and difficult task in this regard as well as is not only an urgent requirement to effectively direct the economic and societal development onto a track of scientific development but also an important measure to maintain a favorable current momentum of stable and comparatively fast economic growth on a continual basis.

Though the production capacity redundancy in some sectors has incurred a negative impact on the economic and social development, it, at the same time, provides an opportunity to promote the restructuring. Only under such condition that the market supply overwhelms the market demand, and that the market competition is consequently heated may the enterprises be willing to or rather be compelled to adjust their structure and eliminate their outdated production capacity. The state has, in the process of carrying out the macro control, accumulated the relevant experience to coordinate the industrial policies with other economic policies so as to form comparatively standardized rules for market access, which provide definite institutional standards and means to promote the industrial restructuring and eliminate the outdated production capacity. All regions and relevant departments shall further build up and carry into effect the scientific development concept, further advance their understanding in the necessity and urgency of an overall and sound development as well as transition of economic growth pattern, intensify their prospective insight, avoid any blindness, elevate their initiation and self-consciousness, exploit a given situation for all possible favorable factors for development and turn harm to good so as to accelerate the restructuring of the sectors with production capacity redundancy.

## II. Overall Requirements and Principles to Promote the Restructuring of the Sectors with Production Capacity Redundancy

The overall requirements to accelerate the restructuring of the sectors with



production capacity redundancy are: We should, under the guidance of the scientific development concept and on the basis of the market mechanism, exploit a given situation for all possible favorable factors for development, control the increased capacity, optimize the structure, give treatment on a case-by-case basis, support the superior and eliminate the inferior so as to step forward substantially in the current year and achieve effective outcomes though years of efforts. The following principles shall be upheld in the specific work:

(1) We should give full play to the fundamental role of the market in allocating resources. We should, based on the market orientation, utilize the restrictions on the market and resources to intensify the reversed transmission of the pressure for easing monetary condition so as to promote the gross balance and structural optimism. We should adjust and rationalize the prices of resource products so as to better exert the function of the price leverage in adjustment and thus promote enterprises' independent innovation and structural adjustment.

(2) We should employ the economic and legal means as well as necessary administrative means in a comprehensive manner. We should intensify the guidance by industrial policies, support by credit policies, adjustment by the policies for finance and taxes so as to promote the industrial restructuring. We should elevate and strictly implement the relevant standards for market access regarding environmental protection, security, techniques, land and comprehensive utilization of resources so as to direct the orientation of market investment. We should improve and strictly implement the relevant laws and regulations and regulate the acts of both enterprises and the government.

(3) We should insist on giving treatment on a case-by-case basis and promote the support for the superior and elimination of the inferior. We should, according to the specific situation in an industry, region or enterprise, offer classified guidance as well as relevant protection and restriction. We should insist on the combination of supporting the superior and eliminating the inferior, the combination of upgrading and restructuring and eliminating the fall-behind as well as the combination of acquisition and reorganization and close-down and bankruptcy. We should utilize and digest the present production capacity in a reasonable manner and further optimize the structure and allocation of enterprises.

(4) We should improve institution safeguard that ensures a continuous restructuring. We should combine the current issues with long-term issues, accelerate the progress of reform, eliminate the obstacles in institution or mechanism on the way of restructuring, and promote the restructuring in the sectors with production capacity redundancy in an orderly manner so as to promote a continuous, fast and sound development of the economy.

### III. Key Measures for Promoting the Restructuring in the Sectors of Production Capacity Redundancy

The key to promote the restructuring in the sectors with production capacity redundancy is to give full play to the fundamental role of the market in allocating resources and fully exert the market strength to promote the competition as well as the survival of the fittest. The people's governments at all levels shall, in the process of restructuring, play the role of not only regulating the market order by way of further promoting the reform so as to create the relevant conditions to exert the function of the market mechanism but also employing the relevant economic, legal and necessary administrative means in a comprehensive manner to intensify the guidance and make positive promotion. In 2006, we should, by means of restructuring, reform and elimination through selection, accelerate the restructuring progress in the sectors with production capacity redundancy.

(1) We should effectively prevent any rebound of the fixed-asset investment, which is a key prerequisite to promote smoothly the restructuring in the sector with production capacity redundancy. In case the investment is inflated again, the fall-behind production capacity will be like dying embers that flare up. And consequently the conflict as incurred by the gross redundancy and unreasonable structure will be more and more thorny rather than be solved. We should continue carrying into effect the policies of the Central Government for macro control and strictly keeping watch on the strobes of land and credit, strictly control the investment scale of fixed assets so as to create the necessary prerequisites of and a favorable environment for the restructuring in the sectors with production capacity redundancy.

(2) We should strictly control those newly initiated projects. We should, according to the relevant laws and regulations, formulate more strict standards regarding environment, security, energy consumption, water consumption, comprehensive utilization of resources as well as quality, techniques and scale and elevate the threshold for access. We should give different treatments to projects under construction and those under the planning of construction and continue the relevant straightening-out and rectification. As to any project that fails to meet the relevant requirements of the state for market access regarding the relevant planning, industrial policies, policies for land supply, environmental production and work safety, the construction thereof shall be stopped according to law. In the case of refusal to implement any relevant order, we should employ the relevant economic, legal means as well as necessary administrative means to settle it and investigate the liabilities of relevant personnel. As is the general principle, we should not grant any approval for the establishment of a new steel plant and shall carry out strict examination and approval on a project involving the relocation of a steel plant or involving the elimination through selection on

outdated production capacity of a steel plant. We should elevate the standards for well-sizes in coal exploration and clarify the resource recovery rate as well as the requirements for work safety. As for a newly established automobiles & complete vehicle production enterprise as well as any investment project involving the production of trans-category products by a current enterprise, both the requirements of the industrial policies and the requirements for independent brand and independent development of products shall be satisfied. Where any current enterprise establishes a factory in a different place, its production and sales volume shall be over 80% of the approved production capacity, as is a requirement. We should elevate our efficiency in utilizing foreign investment and prohibit the access of any foreign investment with poor techniques and security, high energy-consumption and heavy pollution.

(3) We should eliminate the outdated production capacity through selection. We should, according to law, close down those small-sized enterprises that destroy resources, pollute the environment and fail to meet the relevant requirements for work safety, eliminate through selection the outdated production capacity by stages and batches and dispose of the outdated production equipments by way of destruction. We should, in a step-by-step manner, eliminate through selection the outdated production capacity of cement such as vertical kiln, close or eliminate small open furnaces of calcium carbide or those with a production capacity of lower than 10, 000 tons; eliminate, as soon as possible, ferroalloy submerged arc furnaces with a power of lower than 5, 000 kilovolt/ampere (except special ferroalloy), ferroalloy blast furnaces with a volume of less than 100 cubic meters; iron-smelting blast furnaces with a volume of less than 300 cubic meters and steel-smelting converters and electric furnaces with a production capacity of lower than 20 tons. We should eliminate thoroughly the facilities as involved in indigenuous coking and improved coking; stop the use of mini petrol engines and condensing coal-fired mini-set of 50, 000 kilowatts and eliminate those small coal mines that fail to meet the requirements for scale as prescribed in the industrial policies and standards for work safety.

(4) We should promote the technical innovation. We should support large-sized enterprises' projects involving technique innovation compatible with the relevant industrial policies, of high technical level and conducive to industrial upgrading. We should, putting the focus on elevating the technical level, improving the varieties, protecting the environment, ensuring the security, debasing the consumption and elevating comprehensive utilization, carry out reforms and innovation in the traditional sectors. We should promote the project of replacing small thermal power generators with large ones and applying coal instead of petrol as well as any other project alike. We should support automobile enterprises in their building a research and development system and develop, on the basis of assimilating the relevant techniques as introduced, those techniques with independent intellectual property right. We should support the development of

key textile techniques, research and development of the whole-set equipments and the public innovation platform of clustered industries as well as independent costume brands. We should support the major technical innovation of large-sized iron & steel conglomerates as well as their new product projects, accelerate the development of grain-oriented cold rolled silicon steel sheets, elevate the production of automobile sheets, and promote the domestic production of large-sized cold/hot continuous rolling sets. We should also support the construction of coal mines with high yielding and efficiency as well as the technical innovation regarding the security of coal mines.

(5) We should promote the merger and restructuring. We should, according to the market principles, encourage those large-size enterprise conglomerates with competitive strength to carry out trans-regional and trans-industrial merger and restructuring by employing their assets, resources, brands as well as the market mechanism and promote the centralization of industry and develop them into those of large scale and of large bases. We should promote the joint restructuring between a predominant large-sized iron & steel enterprise and other iron & steel enterprises in the same region so as to form several iron & steel enterprise conglomerates with an annual production capacity of more than 30 million tons. We should encourage large-sized cement enterprise conglomerates to implement acquisition, restructuring and unification over middle/small-sized cement plants so as to intensify its influence on the regional market. We should break through the production and business allocation of current carbonization enterprises, carry out merger and unification between carbonization enterprises and iron & steel enterprises and chemical industrial enterprises and therefore develop them towards those featured by integration of production and application, on-scale business operation, diversification of products and comprehensive application of resources. We should support large-sized coal enterprise to acquire, merge, reform and re-construct a batch of small coal mines so as to realize the integration of resources, elevate the mining recovery rate and work safety level.

(6) We should intensify the coordination between the policies for credit, land, construction, environmental protection and security and the relevant industrial policies. We should earnestly implement the Decision of the State Council on Promulgating and Implementing the Interim Provisions on Promoting the Industrial Restructuring (No. 40 (2005) of the State Council) and make efforts to detail the measures formulated to implement all the policies. As to the relevant development planning of as well as industrial policies for such industries as iron & steel, electrolytic aluminum and automobiles, we should intensify the implementation of these policies, strengthen the examination thereover and improve them in practice as well. As to any industrial development planning or industrial policy that has not been promulgated, we should make efforts to formulate and perfect it for the earliest promulgation. Such departments as

financial institutions and state land resources, environmental protection and security supervision shall, in strict accordance with the requirements of the state's macro control as well as the relevant industrial policies, optimize the credit system and the structure of land supply, support those projects and enterprises, which meet the relevant state industrial policies and requirements for market access in the supply of land and loans, and shall, at the same time, prevent any major up-and-down in the credit sector and positively support any merger or restructuring carrying favorable market prospects, producing good benefits and conducive to the formation of a scale economy. As to any project or enterprise that fails to meet the relevant state industrial policies, land supply policies and requirements for market access or which has been clearly eliminated by a state order, no loan or land shall be supplied thereto and the departments in charge of urban planning, construction, environmental protection and security supervision shall not handle the relevant formalities therefor. We should firmly crack down on any act of canvassing investment by unlawfully lowering the land price or debasing the standards for environmental protection or security, or any act of blindly inflating a project. We should improve the relevant policies and measures for restricting the export of those products of high energy-consumption, heavy pollution or resource products.

(7) We should further carry out the reform in such aspects as the administrative administration, investment system, pricing mechanism and market exit mechanism. We should, according to the requirements for building a socialist market economic system, further promote the reform in the administrative administration and investment system, carry into effect the implementation of separating government function from enterprise management, improve and strictly carry out the system regarding the verification and archival filing of enterprise investment so as to achieve the goal of enterprises making their own decisions about investment, bearing by themselves the relevant risks and banks carrying out independent credit assessment. We should promote the price reform for resource products in an active and stable manner, improve the pricing mechanism that reflects the market demand and supply as well as the scarcity of resources and establish and improve an ecological compensation mechanism. We should establish and improve an enterprise exit mechanism and formulate as well as promulgate the relevant policies for reform regarding personnel arrangement, land use, asset disposal and guaranty for the employees' rights and interests, which will be conducive to promoting the merger and restructuring of enterprises and to enterprises' exiting out of the market and conducive to safeguarding employees' legitimate rights and interests. We should accelerate the establishment and improvement of the relevant legal bylaws that preserve a fair market competition and break the regional blockade as well as regional protection.

(8) We should improve the industrial information disclosure system. The relevant

departments shall improve the relevant statistical and supervising system and do a good job in the follow-up analysis on the dynamic operation of those sectors with production capacity redundancy. We should establish, as soon as possible, the relevant indicators to measure the production capacity redundancy as well as the data collection system and establish, in a well-planned and step-by-step manner, an information disclosure system on a regular basis so as to offer guidance for investment prediction in the market. We should intensify the guidance for information regarding the industrial development and bring into fully play the function of the industrial associations, do a good job in the market research and disclose, at a proper time, the information on the supply and demand of products, current production capacity, ongoing construction scale, development tendency, raw material supply and price fluctuation. At the same time, we should attach close attention to the production and investment of other related industries and the development of their market supply and demand so as to find and solve any up-coming problem and prevent the emergence of heavy production capacity redundancy in any other sector.

The task of accelerating the restructuring in the sectors with production capacity redundancy involves many aspects, carries strong policy orientation, and is difficult and complicated. All regions and relevant departments shall intensify the concept of the overall situation, intensify the organization and leadership, carry out close coordination and do a good job in an active and orderly manner. They should correctly handle the relation between reform, development and stability and, based on the real situation of a specific region or entity, improve the supporting measures, earnestly solve any difficulty or problem arising from any merger, bankruptcy or restructuring of enterprises, do a good job in the personnel arrangement and asset preservation, control the losses to the minimum extent so as to avoid any societal instability. All regions and relevant departments shall report, in a timely manner, the implementation of the present Circular to the State Council. The National Development and Reform Commission shall, in collaboration with the relevant departments, make efforts to formulate the specific policies and measures and do a good job in the relevant implementation.

The State Council

March 12, 2006

## 国务院关于加快推进产能过剩行业结构调整的通知

国发〔2006〕11号

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

推进经济结构战略性调整，提升产业国际竞争力，是“十一五”时期重大而艰巨的任务。当前，部分行业盲目投资、低水平扩张导致生产能力过剩，已经成为经济运行的一个突出问题，如果不抓紧解决，将会进一步加剧产业结构不合理的矛盾，影响经济持续快速协调健康发展。为加快推进产能过剩行业的结构调整，现就有关问题通知如下：

### 一、加快推进产能过剩行业结构调整的重要性和紧迫性

近年来，随着消费结构不断升级和工业化、城镇化进程加快，带动了钢铁、水泥、电解铝、汽车等行业的快速增长。但由于经济增长方式粗放，体制机制不完善，这些行业在快速发展中出现了盲目投资、低水平扩张等问题。2004年，国家及时采取一系列宏观调控措施，初步遏制了部分行业盲目扩张的势头，投资增幅回落，企业兼并重组、关闭破产、淘汰落后生产能力等取得了一定成效。

但从总体上看，过度投资导致部分行业产能过剩的问题仍然没有得到根本解决。钢铁、电解铝、电石、铁合金、焦炭、汽车等行业产能已经出现明显过剩；水泥、煤炭、电力、纺织等行业目前虽然产能基本平

衡,但在建规模很大,也存在着产能过剩问题。在这种情况下,一些地方和企业仍在这些领域继续上新的项目,生产能力大于需求的矛盾将进一步加剧。还应看到,这些行业不但总量上过剩,在企业组织结构、行业技术结构、产品结构上的不合理问题也很严重。目前,部分行业产能过剩的不良后果已经显现,产品价格下跌,库存上升,企业利润增幅下降,亏损增加。如果任其发展下去,资源环境约束的矛盾就会更加突出,结构不协调的问题就会更加严重,企业关闭破产和职工失业就会显著增加,必须下决心抓紧解决。要充分认识到,加快产能过剩行业的结构调整,既是巩固和发展宏观调控成果的客观需要,也是宏观调控的一项重要而艰巨的任务;既是把经济社会发展切实转入科学发展轨道的迫切需要,也是继续保持当前经济平稳较快增长好势头的重要举措。

部分行业产能过剩,给经济和社会发展带来了负面影响,但同时也为推动结构调整提供了机遇。在供给能力超过市场需求的情况下,市场竞争加剧,企业才有调整结构的意愿和压力,也有条件淘汰一部分落后的生产能力。国家在宏观调控的过程中,已经积累了产业政策与其他经济政策协调配合的经验,形成了相对完善的市场准入标准体系,为推进产业结构调整、淘汰落后生产能力提供了一定的制度规范和手段。各地区、各有关部门要进一步树立和落实科学发展观,加深对统筹协调发展、转变经济增长方式必要性和紧迫性的认识,增强预见性,避免盲目性,提高主动性和自觉性,因势利导,化害为利,加快推进产能过剩行业结构调整。

## 二、推进产能过剩行业结构调整的总体要求和原则



加快推进产能过剩行业结构调整的总体要求是：坚持以科学发展观为指导，依靠市场，因势利导，控制增能，优化结构，区别对待，扶优汰劣，力争今年迈出实质性步伐，经过几年努力取得明显成效。在具体工作中要注意把握好以下原则：

（一）充分发挥市场配置资源的基础性作用。坚持以市场为导向，利用市场约束和资源约束增强的“倒逼”机制，促进总量平衡和结构优化。调整和理顺资源产品价格关系，更好地发挥价格杠杆的调节作用，推动企业自主创新、主动调整结构。

（二）综合运用经济、法律手段和必要的行政手段。加强产业政策引导、信贷政策支持、财税政策调节，推动行业结构调整。提高并严格执行环保、安全、技术、土地和资源综合利用等市场准入标准，引导市场投资方向。完善并严格执行相关法律法规，规范企业和政府行为。

（三）坚持区别对待，促进扶优汰劣。根据不同行业、不同地区、不同企业的具体情况，分类指导、有保有压。坚持扶优与汰劣结合，升级改造与淘汰落后结合，兼并重组与关闭破产结合。合理利用和消化一些已经形成的生产能力，进一步优化企业结构和布局。

（四）健全持续推进结构调整的制度保障。把解决当前问题和长远问题结合起来，加快推进改革，消除制约结构调整的体制性、机制性障碍，有序推进产能过剩行业的结构调整，促进经济持续快速健康发展。

### 三、推进产能过剩行业结构调整的重点措施

推进产能过剩行业结构调整，关键是要发挥市场配置资源的基础性作用，充分利用市场的力量推动竞争，促进优胜劣汰。各级政府在结构

调整中的作用，一方面是通过深化改革，规范市场秩序，为发挥市场机制作用创造条件，另一方面是综合运用经济、法律和必要的行政手段，加强引导，积极推动。2006年，要通过重组、改造、淘汰等方法，推动产能过剩行业加快结构调整步伐。

(一) 切实防止固定资产投资反弹。这是顺利推进产能过剩行业结构调整的重要前提。一旦投资重新膨胀，落后产能将死灰复燃，总量过剩和结构不合理矛盾不但不能解决，而且会越来越突出。要继续贯彻中央关于宏观调控的政策，严把土地、信贷两个闸门，严格控制固定资产投资规模，为推进产能过剩行业结构调整创造必要的前提条件和良好的环境。

(二) 严格控制新上项目。根据有关法律法规，制定更加严格的环境、安全、能耗、水耗、资源综合利用和质量、技术、规模等标准，提高准入门槛。对在建和拟建项目区别情况，继续进行清理整顿；对不符合国家有关规划、产业政策、供地政策、环境保护、安全生产等市场准入条件的项目，依法停止建设；对拒不执行的，要采取经济、法律和必要的行政手段，并追究有关人员责任。原则上不批准建设新的钢厂，对个别结合搬迁、淘汰落后生产能力的钢厂项目，要从严审批。提高煤炭开采的井型标准，明确必须达到的回采率和安全生产条件。所有新建汽车整车生产企业和现有企业跨产品类别的生产投资项目，除满足产业政策要求外，还要满足自主品牌、自主开发产品的条件；现有企业异地建厂，还必须满足产销量达到批准产能80%以上的要求。提高利用外资质量，禁止技术和安全水平低、能耗物耗高、污染严重的外资项目进入。

(三)淘汰落后生产能力。依法关闭一批破坏资源、污染环境和不具备安全生产条件的小企业,分期分批淘汰一批落后生产能力,对淘汰的生产设备进行报废处理。逐步淘汰立窑等落后的水泥生产能力;关闭淘汰敞开式和生产能力低于1万吨的小电石炉;尽快淘汰5000千伏安以下铁合金矿热炉(特种铁合金除外)、100立方米以下铁合金高炉;淘汰300立方米以下炼铁高炉和20吨以下炼钢转炉、电炉;彻底淘汰土焦和改良焦设施;逐步关停小油机和5万千瓦及以下凝汽式燃煤小机组;淘汰达不到产业政策规定规模和安全标准的小煤矿。

(四)推进技术改造。支持符合产业政策和技术水平高、对产业升级有重大作用的大型企业技术改造项目。围绕提升技术水平、改善品种、保护环境、保障安全、降低消耗、综合利用等,对传统产业实施改造提高。推进火电机组以大代小、上煤压油等工程。支持汽车生产企业加强研发体系建设,在消化引进技术的基础上,开发具有自主知识产权的技术。支持纺织关键技术、成套设备的研发和产业集群公共创新平台、服装自主品牌的建设。支持大型钢铁集团的夏大技改和新产品项目,加快开发取向冷轧硅钢片技术,提升汽车板生产水平,推进大型冷、热连轧机组国产化。支持高产高效煤炭矿井建设和煤矿安全技术改造。

(五)促进兼并重组。按照市场原则,鼓励有实力的大型企业集团,以资产、资源、品牌和市场为纽带实施跨地区、跨行业的兼并重组,促进产业的集中化、大型化、基地化。推动优势大型钢铁企业与区域内其他钢铁企业的联合重组,形成若干年产3000万吨以上的钢铁企业集团。鼓励大型水泥企业集团对中小水泥厂实施兼并、重组、联合,增强在区

域市场上的影响力。突破现有焦化企业的生产经营格局，实施与钢铁企业、化工企业的兼并联合，向生产与使用一体化、经营规模化、产品多样化、资源利用综合化方向发展。支持大型煤炭企业收购、兼并、重组和改造一批小煤矿，实现资源整合，提高回采率和安全生产水平。

(六) 加强信贷、土地、建设、环保、安全等政策与产业政策的协调配合。认真贯彻落实《国务院关于发布实施〈促进产业结构调整暂行规定〉的决定》(国发〔2005〕40号)，抓紧细化各项政策措施。对已经出台的钢铁、电解铝、煤炭、汽车等行业发展规划和产业政策，要强化落实，加强检查，在实践中不断完善。对尚未出台的行业发展规划和产业政策，要抓紧制定和完善，尽快出台。金融机构和国土资源、环保、安全监管等部门要严格依据国家宏观调控和产业政策的要求，优化信贷和土地供应结构，支持符合国家产业政策、市场准入条件的项目和企业的土地、信贷供应，同时要防止信贷投放大起大落，积极支持市场前景好、有效益、有助于形成规模经济的兼并重组；对不符合国家产业政策、供地政策、市场准入条件、国家明令淘汰的项目和企业，不得提供贷款和土地，城市规划、建设、环保和安全监管部门不得办理相关手续。坚决制止用压低土地价格、降低环保和安全标准等办法招商引资、官目上项目。完善限制高耗能、高污染、资源性产品出口的政策措施。

(七) 深化行政管理体制和投资体制、价格形成和市场退出机制等方面的改革。按照建设社会主义市场经济体制的要求，继续推进行政管理体制和投资体制改革，切实实行政企分开，完善和严格执行企业投资的核准和备案制度，真正做到投资由企业自主决策、自担风险，银行独立审

货；积极稳妥地推进资源性产品价格改革，健全反映市场供求状况、资源稀缺程度的价格形成机制，建立和完善生态补偿责任机制；建立健全落后企业退出机制，在人员安置、土地使用、资产处置以及保障职工权益等方面，制定出台有利于促进企业兼并重组和退出市场，有利于维护职工合法权益的改革政策；加快建立健全维护市场公平竞争的法律法规体系，打破地区封锁和地方保护。

（八）健全行业信息发布制度。有关部门要完善统计、监测制度，做好对产能过剩行业运行动态的跟踪分析。要尽快建立判断产能过剩衡量指标和数据采集系统，并有计划、分步骤建立定期向社会披露相关信息的制度，引导市场投资预期。加强对行业发展的信息引导，发挥行业协会的作用，搞好市场调研，适时发布产品供求、现有产能、在建规模、发展趋势、原材料供应、价格变化等方面的信息。同时，还要密切关注其他行业生产、投资和市场供求形势的发展变化，及时发现和解决带有苗头性、倾向性的问题，防止其他行业出现产能严重过剩。

加快推进产能过剩行业结构调整，涉及面广，政策性强，任务艰巨而复杂，各地区、各有关部门要增强全局观念，加强组织领导，密切协调配合，积极有序地做好工作。要正确处理改革发展稳定的关系，从本地区、本单位实际情况出发，完善配套措施，认真解决企业兼并、破产、重组中出现的困难和问题，做好人员安置和资产保全等工作，尽量减少损失，避免社会震动。各地区、各有关部门要及时将贯彻落实本通知的情况上报国务院。国家发展改革委会同有关部门抓紧制定具体的政策措施，做好组织实施工作。

国务院

二〇〇六年三月十二日

**Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation**

(No. 40 [2005] of the State Council)

The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government, all ministries and commissions as well as all affiliated institutions of the State Council:

The "Interim Provisions on Promoting Industrial Structure Adjustment" (hereinafter referred to as the "Interim Provisions"), which were deliberated and adopted at 112th executive meeting of the State Council on November 9, 2005, are hereby promulgated.

The formulation and implementation of the "Interim Provisions" is an important measure to implement the spirit of the fifth plenary session of the 16th CPC Central Committee, to achieve the objective of the "Eleventh Five-year" planning, and is of great significance to ensure the all-round implementation of the scientific view of development, to strengthen and improve macro-control, to further transform the ways of economic growth, to propel industrial structure adjustment, optimization and upgrading, and to keep the stable and fast development of the national economy. The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government shall take the promotion of industrial structure adjustment as an important reform and development task at present and within a period in the future, establish the liability system, lay emphasis on implementation, and shall, in accordance with the "Interim Provisions" and in light of the local situation on industrial development, formulate specific measures, rationally guide the investment directions, encourage and support the development of advanced production capacities, restrict and eliminate outdated production capacities, prevent blind investments and low-level redundant construction, and effectively propel industrial structure optimization and upgrading. All relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment. The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government, the relevant administrative departments of the state for development and reform, public finance, taxation, land resources, environmental protection, industry and commerce, quality inspection, banking supervision, electric power supervision, work safety supervision, as well as the administrative departments of all industries, etc. shall establish and improve the mechanism for organization, supervision and inspection of the industrial structure adjustment work, perform their respective duties, cooperate with each other closely, form a resultant force, and effectively intensify the effectiveness of implementing industrial policies. The relevant governments and departments shall, when implementing the "Interim Provisions", correctly deal with the relationship between government guidance and market regulation, give full play to the fundamental role of the market in allocating resources, correctly deal with the

relationship between development and stability, that between partial interests and overall interests, and that between immediate interests and long-term interests, so as to keep the stable and fast development of the economy.

The State Council

December 2, 2005

## **Interim Provisions on Promoting Industrial Structure Adjustment**

### **Chapter I General Provisions**

**Article 1** The present Provisions are formulated in accordance with the relevant laws and administrative regulations of the state for the purpose of ensuring the all-round implementation of the scientific view of development, strengthening and improving the macro-control policy, guiding social investments, and promoting industrial structure optimization and upgrading.

**Article 2** Objectives of Industrial Structure Adjustment:

We shall propel industrial structure optimization and upgrading, promote the healthy and harmonious development of the first, second and third industries, gradually form the industry pattern with agriculture as the base, hi-tech industry as the forerunner, and basic industry and manufacturing industry as the support, under which the service industry develops in an all-round way. We shall also adhere to conservation-conscious development, clean development and safe development, and realize sustainable development.

**Article 3** Principles of Industrial Structure Adjustment:

Adhering to combining market regulation with government guidance. We shall give full play to the fundamental role of the market in allocating resources, strengthen the reasonable guidance of state industrial policies, and realize optimized resource allocation.

Improving the industrial technological level through independent innovation. We shall regard the enhancement of independent innovation capabilities as the central element of adjusting the industrial structure, and establish a technical innovation system with enterprises as the principal part and market as the guidance, which combines production, study and research. We shall make great efforts to enhance the original innovation capabilities, integrated innovation capabilities, and the capabilities of import, digestion, absorption and re-innovation, and shall improve the overall industrial technological level.

Adhering to walking a new road to industrialization. We shall drive industrialization with informatization, and promote informatization with industrialization; walk a safeguarded



development road with high scientific and technological contents, promising economic benefits, low consumption of resources, little environmental pollution, and full human resource advantages, and endeavor to propel the fundamental transformation of the way of economic growth.

Promoting coordinated and healthy industrial development. We shall develop advanced manufacturing industry, increase the proportion and improve the level of the service industry, strengthen infrastructural construction, optimize urban and rural regional industrial structure and layout, optimize the structure of foreign trade and foreign capital utilization, maintain the lawful rights and interests of the masses, endeavor to boost employment, and propel the harmonious economic and social development.

## **Chapter II Directions and Key Points of Industrial Structure Adjustment**

**Article 4** Consolidating and strengthening the basic status of agriculture, and speeding up the transformation of traditional agriculture into modern agriculture. We shall speed up agricultural technical progress, strengthen the construction of agricultural facilities, adjust the agricultural production structure, transform the way of agricultural growth, and enhance the comprehensive agricultural production capacities. We shall stabilize and develop grain production, speed up the implementation of high-quality grain industry projects, build large commodity grain production bases, and guarantee the grain safety. We shall optimize the agricultural production layout, propel industrialized agricultural management, speed up agricultural standardization, promote agricultural product processing conversion value adding, and develop high-yield, high-quality, high-efficiency, ecological and safe agriculture. We shall make great efforts to develop animal husbandry, improve the level of scale production, intensification and standardization, protect natural grasslands, and build forage grassland bases. We shall actively develop aquaculture, protect and reasonably utilize fishery resources, extend green fishery breeding modes, develop high-efficiency ecological breeding industry. We shall develop materials forests, timber forest bases in light of local circumstances, and raise the rate of comprehensive utilization of timbers. We shall strengthen water conservancy construction of farmlands, improve low and medium-yielding fields, and do a good job in land rehabilitation. We shall improve the level of agricultural mechanization, and improve the agricultural technology extension, agricultural product markets, agricultural product quality safety, and the animal and plant disease and pest prevention and control system. In addition, we shall actively adopt water saving irrigation, scientifically use fertilizers and pesticides, and promote sustainable development of agriculture.

**Article 5** Strengthening the construction of infrastructures such as energy, traffic, water conservancy and information network, etc., and enhancing their capacities of guaranteeing economic and social development.

We shall adhere to the principles of giving priority to conservation, and relying on domestic resources, focusing on developing coal resources, and developing diverse energy resources, and put in place a system that supplies stable, economical and clean energy. We shall optimize and develop coal electricity by stressing large-type high-efficiency sets, orderly developing hydro-electric power on the basis of ecological protection, actively develop nuclear power,

strengthen electric power network construction, optimize the structure of electric power network, and enlarge the scale of West-to-East power transmission. We shall build large-type coal bases, adjust and transform medium and small coal mines, firmly eliminate the small coal mines failing to meet work safety conditions and wasting or destroying resources, speed up comprehensive utilization of such resources as coal waste rocks, coal bed gas, mine drainage, etc., and encourage coal-electricity joint venture. We shall develop both petroleum and gas industry simultaneously, make greater efforts to explore, develop and utilize petroleum and natural gas resources, enlarge overseas cooperation and development, and speed up infrastructural construction in the areas of petroleum and natural gas. We shall actively support and develop new energy and renewable energy industries, encourage the development and utilization of substitute resources for petroleum, and clean energy, as well, actively propel the industrialization of clean coal technology, and speed up the development of wind power, solar energy, and biomass energy, etc.

We shall, by stressing network enlargement, form a convenient, expedite, high-efficiency, safe comprehensive traffic and transport system. We shall, by adhering to the overall planning and reasonable layout, realize mutual complement of advantages of the modes of transport by railway, by highway, by water, by civil aviation, and by pipeline, etc., and give play to the composite efficiency and overall advantages through mutual connection. We shall speed up the development of railways and urban track traffic network, emphatically build special passenger transport avenues, coal transport avenues, regional avenues, and railways in Western Regions. We shall improve the major arterial national highways and arterial highways in Western Regions, build national expressway network, and make great efforts to propel the construction of rural highways. We shall give priority to the development of urban public traffic, strengthen the construction of deepwater harbors for containers, energy resources and ores, and develop inland water navigation. We shall enlarge large airports, improve medium airports, increase small airports, and build up a harmoniously developing airport system with reasonable layout, appropriate scale and complete functions. We shall strengthen the construction of pipeline transport.

We shall strengthen water conservancy construction, and optimize water resource allocation. We shall make a unified planning on upriver and downriver water resources as well as surface water and underground water resources, control the exploitation of underground water, and actively desalt seawater. We shall strengthen flood prevention and drought-resistant project construction, intensify the construction to lessen the weak points in flood prevention and disaster reduction by stressing the reinforcement of embankment, key controlling water conservancy projects and other flood prevention systems, and continue reinforcing the embankments of big rivers, flood passage or storage basins, eliminating the dangers of dangerous reservoirs, strengthening backbone urban flood prevention projects construction, and constructing the South-North Water Diversion Project. We shall intensify our efforts in constructing and transforming drinking water projects for both people and stock and the auxiliary projects in irrigation areas.

We shall strengthen the construction of information infrastructures such as wide band communication network, digital television network and the next generation of Internet, etc., propel the integration of the three kinds of networks, and improve the information safeguarding system.

Article 6 Developing advanced manufacturing industry by stressing the promotion of equipment manufacturing industry, and giving play to its important supporting function to the economic development.

The equipment manufacturing industry shall depend on major construction projects, improve the localization of important technical equipment through independent innovation, technology import, cooperative development, combined manufacturing, etc., break through especially in the areas such as high-efficiency clean power generation and power transmission and transformation, large petroleum chemical and advanced applicable transport equipment, high-class numerical control machine tools, automation control and integrated circuit equipment, advanced power equipment, energy conservative and consumption reducing equipment, etc., improve the overall level of research and development design, supply, processing, manufacturing, and systematic integration of core elements and parts.

We shall adhere to driving industrialization with informatization, encourage the adoption of hi-techs and advanced applicable technologies to transform and enhance the manufacturing industry, and increase the proportions of independent intellectual property rights, independent brands and high-end products. We shall, in light of the energy and resource conditions as well as environmental capacity, emphatically adjust the product structure in the raw material industry, enterprise organization structure and industry layout, and improve product quality and technical content. We shall support the development of cold rolled stainless steel sheets, cold rolled silicon steel, high-density phosphate fertilizer, high-efficiency low-toxic and less-persistent pesticides, ethylene, fine chemical industry, and high-performance differentiated fibers. We shall urge the industries of oil refining, ethylene, steel, cement and paper making to develop towards those of large bases and of large scale. We shall strengthen the geological survey of important resources such as iron, copper and aluminum, etc., increase the geological reserve of resources, and practice rational exploitation and comprehensive utilization.

Article 7 Speeding up the development of hi-tech industry, and further strengthening the driving function of hi-tech industry to economic growth.

We shall enhance independent innovation capabilities, endeavor to grasp core and key technologies, make great efforts to develop the hi-techs which are of great importance to driving economic and social development, support and develop major industry technologies, formulate important technical standards, build technical bases for independent innovations, speed up the extension of hi-tech industry from processing and assembling to independent research and development manufacturing. We shall, in light of the requirements on industry gathering, scale development and enlargement of international cooperation, make great efforts to develop industries in the areas of information, biology, new materials, new energy, aviation and spaceflight, etc., and cultivate more new economic growth points. We shall give priority to developing information industry, make great efforts to develop core industries of integrated circuits and software, etc., emphatically cultivate information industry clusters in respect of digital audio and video frequency, the new generation of mobile communication, high-performance computer and network equipment, etc., strengthen information resource development and sharing, and propel the

dissemination and application of information technologies. We shall give full play to China's special resource advantages and technical advantages, emphatically develop biologic industries such as bio-agriculture, bio-medicine, bio-energy, bio-chemical industry, etc. We shall speed up the development of civil aviation and space industry, propel the development and industrialization of civil aircrafts, aeroengines and airborne systems, and further develop civil space technologies and satellite technologies. We shall actively develop new materials industry, support and develop the photoelectric materials which have technical characteristics and may exert the comparative advantages in China, as well as products such as materials with high-performance structure and special new functions.

Article 8 Increasing the proportion of the service industry, optimizing the structure of the service industry, and promoting the all-round and rapid development of the service industry. We shall adhere to the directions towards market, industrialization and socialization, strengthen the classified guidance and effective supervision, further innovate and improve the systems and mechanisms for service industry development, and establish a public, equal and regular industry access system. We shall develop large service enterprise groups with strong competitive strength. The big cities shall put the development of the service industries on a prior status, and the conditioned big cities shall gradually form an industrial structure mainly composed of service economy. We shall increase service varieties, improve our service level, and enhance the employment capacity and industrial quality. We shall make great efforts to develop finance, insurance, logistics, information and legal services, accounting, intellectual property rights, technology, design, consulting service and other similar modern service industries, actively develop the industries with big potentiality of demands such as cultural industry, tourism industry, and community service industry, etc., and speed up the reform and development in the areas of education, training, services for the aged, medical treatment, health care, etc. We shall regulate and enhance traditional service industries such as commercial trade, catering and accommodation, etc., propel such organizational forms and service modes as chained operation, franchise, agency system, multi-modal transport, and electronic commerce, etc.

Article 9 Making great efforts to develop circular economy, building a resource saving and environment-friendly society, and realizing the harmony of economic growth and population resource environment. We shall adhere to the guidelines of stressing both development and conservation but giving priority to the latter, and shall, in compliance with the reduction-based, re-utilization, resource-based principles, make great efforts to propel the conservation of energy, water, land and materials, strengthen comprehensive utilization of resources, adopt all-round clean production, improve a renewable resource recycling and utilization system, and form a low-cost, low-consumption, low-discharge and high-efficiency conservation-conscious way of growth. We shall actively develop and spread resource conserving, substitutive and circular utilization technologies and products, emphatically propel the transformation of energy conserving and consumption reducing technologies in the industries of steel, non-ferrous metal, electric power, petroleum chemistry, construction, coal, building materials, paper making, etc., develop energy conserving and land saving buildings, applying mandatory elimination system to the techniques and products with high energy consumption, serious pollution, work safety endangering, and outdated technologies, and lawfully close up enterprises that destroy environment and fail to meet

work safety conditions. We shall adjust the scale of industries with high energy consumption and serious pollution, and decrease the proportion of such industries. We shall encourage the production and use of various consumables with good conserving performance, and form a consumption mode of conserving resources. In addition, we shall make great efforts to develop the environmental protection industry, and intensify the ecological protection of water resources, land, forests, grasslands, and sea, etc. by stressing the control of unreasonable resource development.

Article 10 Optimizing the industrial organizational structure, and adjusting the regional industrial layout. We shall improve the enterprises' level of economy of scale and the extent of their industrial concentration, speed up the development of large enterprises, and form a group of large companies and enterprise groups with independent intellectual property rights, prominent performance, and strong core competitive strength. We shall give full play to the functions of medium and small enterprises, propel medium and small enterprises to form the work division and coordination relationship with large enterprises, improve their professional level of production, and promote the technical progress and industry upgrading of medium and small enterprises. We shall give full play to the comparative advantages, actively propel rational flow and allocation of production factors, and guide clustered development of industries. The Western Regions shall strengthen infrastructural construction and ecological environmental protection, improve public services, develop characteristic industries and enhance their self-development capabilities in light of local resource advantages. The Northeastern Regions shall speed up the industrial structure adjustment and state-owned enterprise reform and restructuring, develop modern agriculture, emphatically promote the equipment manufacturing industry, and promote the transformation of resource-exhausted cities. The Middle Regions shall do a good job in the construction of main grain-producing areas, develop energy and manufacturing industries with comparative advantages, strengthen infrastructural construction, and speed up building a modern market system. The Eastern Regions shall endeavor to improve independent innovation capabilities, speed up realizing the optimization and upgrading of structure and the transformation of the way of growth, improve the level of global-market-oriented economy, and enhance the international competitive strength and sustainable development capacity. They shall, by starting from the overall strategy layout of regional development, and on the basis of the bearing capacities of resources and environment as well as the development potentiality, adopt different regional industry layouts of optimized development, key development, restricted development and prohibited development, etc.

Article 11 Implementing the mutual-benefit and win-win opening strategy, improving the level of opening up, and promoting domestic industrial structure upgrading. We shall speed up transforming the way of foreign trade growth, enlarge the export of commodities with independent intellectual property rights and independent brands, control the export of products with high energy consumption and serious pollution, and encourage the import of advanced technologies, equipment and resources in short supply in China. We shall support conditioned enterprises to "Go Global", and to develop and grow up in international market competition, so as to drive the development of domestic industries. We shall improve the industrial level of processing trade, and enhance the domestic capacity of coordinated production. We shall make great efforts to develop service trade, continue opening service markets, and orderly undertake the transfer of international modern service industries. We shall improve the quality and level of utilization of foreign capital,

emphatically import advanced technologies, management experiences and high-quality talents, and pay attention to the digestion, absorption, innovation and improvement of the imported technologies. The regions and development zones which have strong capacities of absorbing foreign investments shall emphatically improve the level of production and manufacture, and actively extend themselves to the areas of research, development, and modern logistics, etc.

### **Chapter III Catalogue for the Guidance of Industrial Structure Adjustment**

Article 12 The "Catalogue for the Guidance of Industrial Structure Adjustment" is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.

The "Catalogue for the Guidance of Industrial Structure Adjustment" shall be formulated in accordance with the relevant laws and regulations of the state by the State Development and Reform Commission jointly with the relevant administrative departments of the State Council, and be promulgated upon approval of the State Council. If, when required by the actual situation, the "Catalogue for the Guidance of Industrial Structure Adjustment" needs to be partially adjusted, it shall be timely amended and promulgated by the State Development and Reform Commission jointly with the relevant administrative departments of the State Council.

In principle, the "Catalogue for the Guidance of Industrial Structure Adjustment" shall apply to various types of enterprises inside China. The foreign investments of such enterprises shall be governed by the "Catalogue for the Guidance of Foreign Investment Industries". The "Catalogue for the Guidance of Industrial Structure Adjustment" is the main basis for amending the "Catalogue for the Guidance of Foreign Investment Industries". The industries of the eliminated category under the "Catalogue for the Guidance of Industrial Structure Adjustment" shall apply to foreign-funded enterprises. The policy connection of the "Catalogue for the Guidance of Industrial Structure Adjustment" and the "Catalogue for the Guidance of Foreign Investment Industries" in implementation shall be subject to the deliberation and negotiation of the State Development and Reform Commission and the Ministry of Commerce.

Article 13 The "Catalogue for the Guidance of Industrial Structure Adjustment" is composed of three categories of industries, namely, the encouraged category, the restricted category and the eliminated category. The industries not belonging to the encouraged category, the restricted category or the eliminated category, but conforming to the relevant laws, regulations and policies of the state, shall belong to the permitted category. The industries of the permitted category are not listed into the "Catalogue for the Guidance of Industrial Structure Adjustment".

Article 14 The encouraged category mainly include the key technologies, equipment and products which are to be encouraged and supported with policies and measures, have important promoting functions to economic and social development, and are conducive to resource saving, environmental protection, and industrial structure optimization and upgrading. We shall, in compliance with the following principles, determine the catalogue for the guidance of encouraged industries:

- (1) Having technical base for research, development and industrialization in China, and being conducive to technical innovations and to forming a new economic growth point;
- (2) Having large market demands and a wide development prospect at present and within a period in the future, and being conducive to improving the capacity of supplying commodities in short supply, and conducive to developing domestic and overseas markets;
- (3) Having high technical content, and being conducive to promoting industrial technical progress and to improving the industrial competitive strength;
- (4) Meeting the requirements of the sustainable development strategy, being conducive to the work safety, conducive to conservation and comprehensive utilization of resources, conducive to the development and utilization of new energy and renewable energy, conducive to improving energy efficiency, and conducive to protecting and improving ecological environment;
- (5) Being conducive to giving play to China's comparative advantages, especially the advantages of the old industrial bases in the Middle and Western Regions and the Northeastern Regions, etc. in respect of energy, mineral resources and labor resources, etc.;
- (6) Being conducive to boosting employment, and increasing job positions; and
- (7) Other circumstances prescribed in laws and administrative regulations.

Article 15 The restricted category mainly include the production capacities, techniques, equipment and products which have outdated techniques, do not meet the conditions for industry access or the relevant provisions, are un-conducive to industrial structure optimization and upgrading, need to be transformed or prohibited from being newly built. The catalogue for the guidance of the restricted industries shall be determined in compliance with the following principles:

- (1) Not conforming to the conditions for industry access, with outdated techniques, and of no use to improve the industrial structure;
- (2) Being un-conducive to work safety;
- (3) Being un-conducive to conservation of resources or energy;
- (4) Being un-conducive to environmental protection or resumption of the ecological system;
- (5) Being under serious low-level redundant construction, and with obviously surplus production capacities; and
- (6) Other circumstances prescribed in laws and administrative regulations.

Article 16 The eliminated category mainly include the outdated techniques, equipment and products which do not conform to the relevant laws and regulations, seriously waste resources, pollute environment, do not meet the work safety conditions, and need to be eliminated. The catalogue for the guidance of eliminated industries shall be determined in compliance with the following principles:

- (1) Endangering production or personal safety, and not meeting the work safety conditions;
- (2) Seriously polluting the environment or seriously destroying the ecological environment;
- (3) The product quality is lower than the minimum standard prescribed by the state or the industry;
- (4) Seriously wasting resources or energy; and
- (5) Other circumstances prescribed in laws and administrative regulations.

Article 17 The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. All financial institutions shall provide credit supports in compliance with credit principles. The equipment shall be imported within the total amount of investments for the importer's own use. Except for the commodities listed in the "Catalogue of Non-tax Free Imported Commodities for Domestic Investment Projects (Amended in 2000)" promulgated by the Ministry of Finance, the abovementioned equipment shall still be exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects exempted from no tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall apply.

Article 18 Investments are prohibited from being contributed to projects of the restricted category. The investment administrative department shall not examine, approve, ratify or archive the projects of the restricted category. No financial institution shall grant loans for such projects, and no administrative department of land administration, urban planning, construction, environmental protection, quality inspection, fire prevention, customs, or industry and commerce, etc. shall handle the relevant procedures for such projects. In case of any violation of the provisions to carry out construction based on investment or financing, the relevant entities and persons shall be subject to liabilities.

With respect to the existing production capacities in a restricted industry, the enterprises shall be allowed to, within a certain period, take measures to transform or upgrade themselves, and the financial institutions shall, in compliance with the credit principles, continue providing supports. The relevant administrative department of the state shall, when required by industrial structure optimization and upgrading, comply with the principle of survival of the fittest to provide classified guidance.



Article 19 Investments are prohibited from being contributed to projects of the eliminated category. All financial institutions shall stop various forms of credit granting supports to such projects, and take measures to recover the granted loans. All localities and departments as well as the relevant enterprises shall take powerful measures to eliminate such projects within the prescribed time limit. The state price administrative department may, within the time limit for elimination, raise the electricity price. No production technique, equipment or product to be eliminated by the state by explicit order may be imported, transferred, produced, sold, used or adopted.

If any enterprise of the eliminated category refuses to eliminate the production technique, equipment or products, the local people's government at each level and the relevant administrative department shall, in accordance with the relevant laws and regulations of the state, order it to stop production or close it, and shall take appropriate measures to resettle the employees of the enterprise, and guarantee the safety of financial institutions' credit assets, etc. If its products are subject to the administration by permit for production, the relevant administrative department shall lawfully revoke its permit for production; the administrative department for industry and commerce shall urge it to lawfully go through modification registration or nullification registration; the administrative department of environmental protection shall revoke its permit for pollution discharge; and the electric power supply enterprise shall lawfully stop supplying electricity to it. If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.

#### Chapter IV Supplementary Provisions

Article 20 The present Provisions shall come into force on the date of promulgation. The "Catalogue of Industries, Products and Technologies Emphatically Encouraged by the State to Be Developed (Amended in 2000)" promulgated by the former State Planning Commission and former State Economic and Trade Commission, as well as the "Catalogue of Outdated Production Capacities, Techniques and Products to Be Eliminated (Batch I, Batch II and Batch III)" and "Catalogue of Projects Stopped from Redundant Construction in the Area of Industrial and Commercial Investment (Batch I)" promulgated by the former State Economic and Trade Commission shall be repealed simultaneously.

Article 21 The relevant preferential policies implemented in accordance with the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State (Amended in 2000)" shall be adjusted into those implemented in accordance with the Catalogue of Encouraged Industries in the "Catalogue for the Guidance of Industrial Structure Adjustment". The establishment of foreign-funded enterprise and the relevant taxation policies, etc. shall be governed by the relevant laws and administrative regulations of the state on foreign investments.

## 国务院关于发布实施《促进产业结构调整暂行规定》的决定

(国发[2005]40号)

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

《促进产业结构调整暂行规定》(以下简称《暂行规定》)已经2005年11月9日国务院第112次常务会议审议通过，现予发布。

制定和实施《暂行规定》，是贯彻落实党的十六届五中全会精神，实现“十一五”规划目标的一项重要举措。对于全面落实科学发展观，加强和改善宏观调控，进一步转变经济增长方式，推进产业结构调整和优化升级，保持国民经济平稳较快发展具有重要意义。各省、自治区、直辖市人民政府要将推进产业结构调整作为当前和今后一段时期改革发展的重要任务，建立责任制，狠抓落实，按照《暂行规定》的要求，结合本地区产业发展实际，制订具体措施，合理引导投资方向，鼓励和支持发展先进生产能力，限制和淘汰落后生产能力，防止盲目投资和低水平重复建设，切实推进产业结构优化升级。各有关部门要加快制定和修订财税、信贷、土地、进出口等相关政策，切实加强与企业政策的协调配合，进一步完善促进产业结构调整的政策体系。各省、自治区、直辖市人民政府和国家发展改革委、财政、税务、国土资源、环保、工商、质检、银监、电监、安全监管以及行业主管等有关部门，要建立健全产业结构调整工作的组织协调和监督检查机制，各司其职，密切配合，形成合力，切实增强产业政策的执行效力。在贯彻实施《暂行规定》时，要正确处理政府引导与市场调节之间的关系，充分发挥市场配置资源的基础性作用，正确处理发展与稳定、局部利益与整体利益、眼前利益与长远利益的关系，保持经济平稳较快发展。

国务院

二〇〇五年十二月二日

### 促进产业结构调整暂行规定

#### 第一章 总则

第一条 为全面落实科学发展观，加强和改善宏观调控，引导社会投资，促进产业结构优化升级，根据国家有关法律、行政法规，制定本规定。

## 第二条 产业结构调整的目标:

推进产业结构优化升级,促进一、二、三产业健康协调发展,逐步形成农业为基础、高新技术产业为先导、基础产业和制造业为支撑、服务业全面发展的产业格局,坚持节约发展、清洁发展、安全发展,实现可持续发展。

## 第三条 产业结构调整的原则:

坚持市场调节和政府引导相结合。充分发挥市场配置资源的基础性作用,加强国家产业政策的合理引导,实现资源优化配置。

以自主创新提升产业技术水平。把增强自主创新能力作为调整产业结构的中心环节,建立以企业为主体、市场为导向、产学研相结合的技术创新体系,大力提高原始创新能力、集成创新能力和引进消化吸收再创新能力,提升产业整体技术水平。

坚持走新型工业化道路。以信息化带动工业化,以工业化促进信息化,走科技含量高、经济效益好、资源消耗低、环境污染少、安全有保障、人力资源优势得到充分发挥的发展道路,努力推进经济增长方式的根本转变。

促进产业协调健康发展。发展先进制造业,提高服务业比重和水平,加强基础设施建设,优化城乡区域产业结构和布局,优化对外贸易和利用外资结构,维护群众合法权益,努力扩大就业,推进经济社会协调发展。

## 第二章 产业结构调整的方向和重点

第四条 巩固和加强农业基础地位,加快传统农业向现代农业转变。加快农业科技进步,加强农业设施建设,调整农业生产结构,转变农业增长方式,提高农业综合生产能力。稳定发展粮食生产,加快实施优质粮食产业工程,建设大型商品粮生产基地,确保粮食安全。优化农业生产布局,推进农业产业化经营,加快农业标准化,促进农产品加工转化增值,发展高产、优质、高效、生态、安全农业。大力发展畜牧业,提高规模化、集约化、标准化水平,保护天然草场,建设饲料草场基地。积极发展水产业,保护和合理利用渔业资源,推广绿色渔业养殖方式,发展高效生态养殖业。因地制宜发展原料林、用材林基地,提高木材综合利用率。加强农田水利建设,改造中低产田,搞好土地整理。提高农业机械化水平,健全农业技术推广、农产品市场、农产品质量安全和动植物病虫害防控体系。积极推行节水灌溉,科学使用肥料、农药,促进农业可持续发展。

第五条 加强能源、交通、水利和信息等基础设施建设,增强对经济社会发展的保障能力。

坚持节约优先、立足国内、煤为基础、多元发展,优化能源结构,构筑稳定、经济、清洁的能源供应体系。以大型高效机组为重点优化发展煤电,在生态保护

基础上有序开发水电,积极发展核电,加强电网建设,优化电网结构,扩大西电东送规模。建设大型煤炭基地,调整改造中小煤矿,坚决淘汰不具备安全生产条件和浪费破坏资源的小煤矿,加快实施煤矸石、煤层气、矿井水等资源综合利用,鼓励煤电联营。实行油气并举,加大石油、天然气资源勘探和开发利用力度,扩大境外合作开发,加快油气领域基础设施建设。积极扶持和发展新能源和可再生能源产业,鼓励石油替代资源和清洁能源的开发利用,积极推进洁净煤技术产业化,加快发展风能、太阳能、生物质能等。

以扩大网络为重点,形成便捷、通畅、高效、安全的综合交通运输体系。坚持统筹规划、合理布局,实现铁路、公路、水运、民航、管道等运输方式优势互补,相互衔接,发挥组合效率和整体优势。加快发展铁路、城市轨道交通,重点建设客运专线、运煤通道、区域通道和西部地区铁路。完善国道主干线、西部地区公路干线,建设国家高速公路网,大力推进农村公路建设。优先发展城市公共交通。加强集装箱、能源物资、矿石深水码头建设,发展内河航运。扩大大型机场,完善中型机场,增加小型机场,构建布局合理、规模适当、功能完备、协调发展的机场体系。加强管道运输建设。

加强水利建设,优化水资源配置。统筹上下游、地表地下水资源调配、控制地下水开采,积极开展海水淡化。加强防洪抗旱工程建设,以堤防加固和控制性水利枢纽等防洪体系为重点,强化防洪减灾薄弱环节建设,继续加强大江大河干流堤防、行蓄洪区、病险水库除险加固和城市防洪骨干工程建设,建设南水北调工程,加大人畜饮水工程和灌区配套工程建设改造力度。

加强宽带通信网、数字电视网和下一代互联网等信息基础设施建设,推进“三网融合”,健全信息安全保障体系。

**第六条** 以振兴装备制造业为重点发展先进制造业,发挥其对经济发展的重要支撑作用。

装备制造业要依托重点建设工程,通过自主创新、引进技术、合作开发、联合制造等方式,提高重大技术装备国产化水平,特别是在高效清洁发电和输变电、大型石油化工、先进适用运输装备、高档数控机床、自动化控制、集成电路设备、先进动力装备、节能降耗装备等领域实现突破,提高研发设计、核心元器件配套、加工制造和系统集成的整体水平。

坚持以信息化带动工业化,鼓励运用高新技术和先进适用技术改造提升制造业,提高自主知识产权、自主品牌和高端产品比重。根据能源、资源条件和环境容量,着力调整原材料工业的产品结构、企业组织结构和产业布局,提高产品质量和技术含量。支持发展冷轧薄板、冷轧硅钢片、高浓度磷肥、高效低毒低残留农药、乙烯、精细化工、高性能差别化纤维。促进炼油、乙烯、钢铁、水泥、造纸向基地化和大型化发展。加强铁、铜、铝等重要资源的地质勘查,增加资源地质储量,实行合理开采和综合利用。

**第七条** 加快发展高技术产业,进一步增强高技术产业对经济增长的带动作用。

增强自主创新能力,努力掌握核心技术和关键技术,大力开发对经济社会发展具有重大带动作用的高新技术,支持开发重大产业技术,制定重要技术标准,构建自主创新的技术基础,加快高技术产业从加工装配为主向自主研发制造延伸,按照产业聚集、规模化发展和扩大国际合作的要求,大力发展信息、生物、新材料、新能源、航空航天等产业,培育更多新的经济增长点。优先发展信息产业,大力发展集成电路、软件等核心产业,重点培育数字化音视频、新一代移动通信、高性能计算机及网络设备等信息产业群,加强信息资源开发和共享,推进信息技术的普及和应用。充分发挥我国特有的资源优势和技术优势,重点发展生物农业、生物医药、生物能源和生物化工等生物产业。加快发展民用航空、航天产业,推进民用飞机、航空发动机及机载系统的开发和产业化,进一步发展民用航天技术和卫星技术。积极发展新材料产业,支持开发具有技术特色以及可发挥我国比较优势的光电子材料、高性能结构和新型特种功能材料等产品。

第八条 提高服务业比重,优化服务业结构,促进服务业全面快速发展。坚持市场化、产业化、社会化的方向,加强分类指导和有效监管,进一步创新、完善服务业发展的体制和机制,建立公开、平等、规范的行业准入制度。发展竞争力较强的大型服务企业集团,大城市要把发展服务业放在优先地位,有条件的要逐步形成服务经济为主的产业结构。增加服务品种,提高服务水平,增强就业能力,提升产业素质。大力发展金融、保险、物流、信息和法律服务、会计、知识产权、技术、设计、咨询服务等现代服务业,积极发展文化、旅游、社区服务等需求潜力大的产业,加快教育培训、养老服务、医疗保健等领域的改革和发展。规范和提升商贸、餐饮、住宿等传统服务业,推进连锁经营、特许经营、代理制、多式联运、电子商务等组织形式和服务方式。

第九条 大力发展循环经济,建设资源节约和环境友好型社会,实现经济增长与人口资源环境相协调。坚持开发与节约并重、节约优先的方针,按照减量化、再利用、资源化原则,大力推进节能节水节地节材,加强资源综合利用,全面推行清洁生产,完善再生资源回收利用体系,形成低投入、低消耗、低排放和高效率的节约型增长方式。积极开发推广资源节约、替代和循环利用技术和产品,重点推进钢铁、有色、电力、石化、建筑、煤炭、建材、造纸等行业节能降耗技术改造,发展节能省地型建筑,对消耗高、污染重、危及安全生产、技术落后的工艺和产品实施强制淘汰制度,依法关闭破坏环境和不具备安全生产条件的企业。调整高耗能、高污染产业规模,降低高耗能、高污染产业比重。鼓励生产和使用节约性能好的各类消费品,形成节约资源的消费模式。大力发展环保产业,以控制不合理的资源开发为重点,强化对水资源、土地、森林、草原、海洋等的生态保护。

第十条 优化产业组织结构,调整区域产业布局。提高企业规模经济水平和产业集中度,加快大型企业发展,形成一批拥有自主知识产权、主业突出、核心竞争力强的大公司和企业集团。充分发挥中小企业的作用,推动中小企业与大企业形成分工协作关系,提高生产专业化水平,促进中小企业技术进步和产业升级。

充分发挥比较优势，积极推动生产要素合理流动和配置，引导产业集群化发展。西部地区要加强基础设施建设和生态环境保护，健全公共服务，结合本地资源优势发展特色产业，增强自我发展能力。东北地区要加快产业结构调整 and 国有企业改革改组改造，发展现代农业，着力振兴装备制造业，促进资源枯竭型城市转型，中部地区要抓好粮食主产区建设，发展有比较优势的能源和制造业，加强基础设施建设，加快建立现代市场体系。东部地区要努力提高自主创新能力，加快实现结构优化升级和增长方式转变，提高外向型经济水平，增强国际竞争力和可持续发展能力。从区域发展的总体战略布局出发，根据资源环境承载能力和发展潜力，实行优化开发、重点开发、限制开发和禁止开发等有区别的区域产业布局。

第十一条 实施互利共赢的开放战略，提高对外开放水平，促进国内产业结构升级。加快转变对外贸易增长方式，扩大具有自主知识产权、自主品牌的商品出口，控制高能耗高污染产品的出口，鼓励进口先进技术和国内短缺资源。支持有条件的企业“走出去”，在国际市场竞争中发展壮大，带动国内产业发展。提高加工贸易的产业层次，增强国内配套能力。大力发展服务贸易，继续开放服务市场，有序承接国际现代服务业转移。提高利用外资的质量和水平，着重引进先进技术、管理经验和高素质人才，注重引进技术的消化吸收和创新提高。吸引外资能力较强的地区和开发区，要着重提高生产制造层次，并积极向研究开发、现代物流等领域拓展。

### 第三章 产业结构调整指导目录

第十二条 《产业结构调整指导目录》是引导投资方向，政府管理投资项目，制定和实施财税、信贷、土地、进出口等政策的重要依据。

《产业结构调整指导目录》由发展改革委会同国务院有关部门依据国家有关法律法规制订，经国务院批准后公布。根据实际情况，需要对《产业结构调整指导目录》进行部分调整时，由发展改革委会同国务院有关部门适时修订并公布。

《产业结构调整指导目录》原则上适用于我国境内的各类企业。其中外商投资按照《外商投资产业指导目录》执行。《产业结构调整指导目录》是修订《外商投资产业指导目录》的主要依据之一。《产业结构调整指导目录》淘汰类适用于外商投资企业。《产业结构调整指导目录》和《外商投资产业指导目录》执行中的政策衔接问题由发展改革委会同商务部研究协商。

第十三条 《产业结构调整指导目录》由鼓励、限制和淘汰三类目录组成。不属于鼓励类、限制类和淘汰类，且符合国家有关法律、法规和政策规定的，为允许类。允许类不列入《产业结构调整指导目录》。

第十四条 鼓励类主要是对经济社会发展有重要促进作用，有利于节约资源、保护环境、产业结构优化升级，需要采取政策措施予以鼓励和支持的关键技术、装备及产品。按照以下原则确定鼓励类产业指导目录：

（一）国内具备研究开发、产业化的技术基础，有利于技术创新，形成新的经济增长点；

（二）当前和今后一个时期有较大的市场需求，发展前景广阔，有利于提高短缺商品的供给能力，有利于开拓国内外市场；

（三）有较高技术含量，有利于促进产业技术进步，提高产业竞争力；

（四）符合可持续发展战略要求，有利于安全生产，有利于资源节约和综合利用，有利于新能源和可再生能源开发利用、提高能源效率，有利于保护和改善生态环境；

（五）有利于发挥我国比较优势，特别是中西部地区和东北地区等老工业基地的能源、矿产资源与劳动力资源等优势；

（六）有利于扩大就业，增加就业岗位；

（七）法律、行政法规规定的其他情形。

第十五条 限制类主要是工艺技术落后，不符合行业准入条件和有关规定，不利于产业结构优化升级，需要督促改造和禁止新建的生产能力、工艺技术、装备及产品。按照以下原则确定限制类产业指导目录：

（一）不符合行业准入条件，工艺技术落后，对产业结构没有改善；

（二）不利于安全生产；

（三）不利于资源和能源节约；

（四）不利于环境保护和生态系统的恢复；

（五）低水平重复建设比较严重，生产能力明显过剩；

（六）法律、行政法规规定的其他情形。

第十六条 淘汰类主要是不符合有关法律法规规定，严重浪费资源、污染环境、不具备安全生产条件，需要淘汰的落后工艺技术、装备及产品。按照以下原则确定淘汰类产业指导目录：

（一）危及生产和人身安全，不具备安全生产条件；

（二）严重污染环境或严重破坏生态环境；

（三）产品质量低于国家规定或行业规定的最低标准；

(四) 严重浪费资源、能源；

(五) 法律、行政法规规定的其他情形。

第十七条 对鼓励类投资项目，按照国家有关投资管理规定进行审批、核准或备案；各金融机构应按照信贷原则提供信贷支持；在投资总额内进口的自用设备，除财政部发布的《国内投资项目不予免税的进口商品目录（2000年修订）》所列商品外，继续免征关税和进口环节增值税，在国家出台不予免税的投资项目目录等新规定后，按新规定执行。对鼓励类产业项目的其他优惠政策，按照国家有关规定执行。

第十八条 对属于限制类的新建项目，禁止投资。投资管理部门不予审批、核准或备案，各金融机构不得发放贷款，土地管理、城市规划和建设、环境保护、质检、消防、海关、工商等部门不得办理有关手续。凡违反规定进行投融资建设的，要追究有关单位和人员的责任。

对属于限制类的现有生产能力，允许企业在一定期限内采取措施改造升级，金融机构按信贷原则继续给予支持。国家有关部门要根据产业结构优化升级的要求，遵循优胜劣汰的原则，实行分类指导。

第十九条 对淘汰类项目，禁止投资。各金融机构应停止各种形式的授信支持，并采取措回收已发放的贷款；各地区、各部门和有关企业要采取有力措施，按规定限期淘汰。在淘汰期限内国家价格主管部门可提高供电价格。对国家明令淘汰的生产工艺技术、装备和产品，一律不得进口、转移、生产、销售、使用和采用。

对不按期淘汰生产工艺技术、装备和产品的企业，地方各级人民政府及有关企业要依据国家有关法律法规责令其停产或予以关闭，并采取妥善措施安置企业人员、保全金融机构信贷资产安全等；其产品属实行生产许可证管理的，有关部门要依法吊销生产许可证；工商行政管理部门要督促其依法办理变更登记或注销登记；环境保护管理部门要吊销其排污许可证；电力供应企业要依法停止供电。对违反规定者，要依法追究直接责任人和有关领导的责任。

#### 第四章 附则

第二十条 本规定自发布之日起施行。原国家计委、国家经贸委发布的《当前国家重点鼓励发展的产业、产品和技术目录（2000年修订）》、原国家经贸委发布的《淘汰落后生产能力、工艺和产品的目录（第一批、第二批、第三批）》和《工商投资领域制止重复建设目录（第一批）》同时废止。



第二十一条 对依据《当前国家重点鼓励发展的产业、产品和技术目录(2000年修订)》执行的有关优惠政策,调整为依据《产业结构调整指导目录》鼓励类目录执行。外商投资企业的设立及税收政策等执行国家有关外商投资的法律、行政法规规定。

ATTACHMENT A7

## 中华人民共和国价格法

(1997年12月29日第八届全国人民代表大会常务委员会第二十九次会议  
通过 1997年12月29日中华人民共和国主席令第九十二号公布 自1998年5  
月1日起施行)

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- 第四章 价格总水平调控
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- 第六章 法律责任
- 第七章 附 则

### 第一章 总 则

**第一条** 为了规范价格行为,发挥价格合理配置资源的作用,稳定市场价格总水平,保护消费者和经营者的合法权益,促进社会主义市场经济健康发展,制定本法。

**第二条** 在中华人民共和国境内发生的价格行为,适用本法。

本法所称价格包括商品价格和服务价格。

商品价格是指各类有形产品和无形资产的价格。

服务价格是指各类有偿服务的收费。

**第三条** 国家实行并逐步完善宏观经济调控下主要由市场形成价格的机制。价格的制定应当符合价值规律，大多数商品和服务价格实行市场调节价，极少数商品和服务价格实行政府指导价或者政府定价。

市场调节价，是指由经营者自主制定，通过市场竞争形成的价格。

本法所称经营者是指从事生产、经营商品或者提供有偿服务的法人、其他组织和个人。

政府指导价，是指依照本法规定，由政府价格主管部门或者其他有关部门，按照定价权限和范围规定基准价及其浮动幅度，指导经营者制定的价格。

政府定价，是指依照本法规定，由政府价格主管部门或者其他有关部门，按照定价权限和范围制定的价格。

**第四条** 国家支持和促进公平、公开、合法的市场竞争，维护正常的价格秩序，对价格活动实行管理、监督和必要的调控。

**第五条** 国务院价格主管部门统一负责全国的价格工作。国务院其他有关部门在各自的职责范围内，负责有关的价格工作。

县级以上地方各级人民政府价格主管部门负责本行政区域内的价格工作。县级以上地方各级人民政府其他有关部门在各自的职责范围内，负责有关的价格工作。

## 第二章 经营者的价格行为

**第六条** 商品和服务价格，除依照本法第十八条规定适用政府指导价或者政府定价外，实行市场调节价，由经营者依照本法自主制定。

**第七条** 经营者定价，应当遵循公平、合法和诚实信用的原则。

**第八条** 经营者定价的基本依据是生产经营成本和市场供求状况。

**第九条** 经营者应当努力改进生产经营管理,降低生产经营成本,为消费者提供价格合理的商品和服务,并在市场竞争中获取合法利润。

**第十条** 经营者应当根据其经营条件建立、健全内部价格管理制度,准确记录与核定商品和服务的生产经营成本,不得弄虚作假。

**第十一条** 经营者进行价格活动,享有下列权利:

- (一) 自主制定属于市场调节的价格;
- (二) 在政府指导价规定的幅度内制定价格;
- (三) 制定属于政府指导价、政府定价产品范围内的新产品的试销价格,特定产品除外;
- (四) 检举、控告侵犯其依法自主定价权利的行为。

**第十二条** 经营者进行价格活动,应当遵守法律、法规,执行依法制定的政府指导价、政府定价和法定的价格干预措施、紧急措施。

**第十三条** 经营者销售、收购商品和提供服务,应当按照政府价格主管部门的规定明码标价,注明商品的品名、产地、规格、等级、计价单位、价格或者服务的项目、收费标准等有关情况。

经营者不得在标价之外加价出售商品,不得收取任何未予标明的费用。

**第十四条** 经营者不得有下列不正当价格行为:

- (一) 相互串通,操纵市场价格,损害其他经营者或者消费者的合法权益;
- (二) 在依法降价处理鲜活商品、季节性商品、积压商品等商品外,为了排挤竞争对手或者独占市场,以低于成本的价格倾销,扰乱正常的生产经营秩序,损害国家利益或者其他经营者的合法权益;
- (三) 捏造、散布涨价信息,哄抬价格,推动商品价格过高上涨的;
- (四) 利用虚假的或者使人误解的价格手段,诱骗消费者或者其他经营者与其进行交易;

(五) 提供相同商品或者服务, 对具有同等交易条件的其他经营者实行价格歧视;

(六) 采取抬高等级或者压低等级等手段收购、销售商品或者提供服务, 变相提高或者压低价格;

(七) 违反法律、法规的规定牟取暴利;

(八) 法律、行政法规禁止的其他不正当价格行为。

**第十五条** 各类中介机构提供有偿服务收取费用, 应当遵守本法的规定。法律另有规定的, 按照有关规定执行。

**第十六条** 经营者销售进口商品、收购出口商品, 应当遵守本章的有关规定, 维护国内市场秩序。

**第十七条** 行业组织应当遵守价格法律、法规, 加强价格自律, 接受政府价格主管部门的工作指导。

### 第三章 政府的定价行为

**第十八条** 下列商品和服务价格, 政府在必要时可以实行政府指导价或者政府定价:

- (一) 与国民经济发展和人民生活关系重大的极少数商品价格;
- (二) 资源稀缺的少数商品价格;
- (三) 自然垄断经营的商品价格;
- (四) 重要的公用事业价格;
- (五) 重要的公益性服务价格。

**第十九条** 政府指导价、政府定价的定价权限和具体适用范围, 以中央的和地方的定价目录为依据。

中央定价目录由国务院价格主管部门制定、修订，报国务院批准后公布。

地方定价目录由省、自治区、直辖市人民政府价格主管部门按照中央定价目录规定的定价权限和具体适用范围制定，经本级人民政府审核同意，报国务院价格主管部门审定后公布。

省、自治区、直辖市人民政府以下各级地方人民政府不得制定定价目录。

**第二十条** 国务院价格主管部门和其他有关部门，按照中央定价目录规定的定价权限和具体适用范围制定政府指导价、政府定价；其中重要的商品和服务价格的政府指导价、政府定价，应当按照规定经国务院批准。

省、自治区、直辖市人民政府价格主管部门和其他有关部门，应当按照地方定价目录规定的定价权限和具体适用范围制定在本地区执行的政府指导价、政府定价。

市、县人民政府可以根据省、自治区、直辖市人民政府的授权，按照地方定价目录规定的定价权限和具体适用范围制定在本地区执行的政府指导价、政府定价。

**第二十一条** 制定政府指导价、政府定价，应当依据有关商品或者服务的社会平均成本和市场供求状况、国民经济与社会发展要求以及社会承受能力，实行合理的购销差价、批零差价、地区差价和季节差价。

**第二十二条** 政府价格主管部门和其他有关部门制定政府指导价、政府定价，应当开展价格、成本调查，听取消费者、经营者和有关方面的意见。

政府价格主管部门开展对政府指导价、政府定价的价格、成本调查时，有关单位应当如实反映情况，提供必需的帐簿、文件以及其他资料。

**第二十三条** 制定关系群众切身利益的公用事业价格、公益性服务价格、自然垄断经营的商品价格等政府指导价、政府定价，应当建立听证会制度，由政府价格主管部门主持，征求消费者、经营者和有关方面的意见，论证其必要性、可行性。

**第二十四条** 政府指导价、政府定价制定后，由制定价格的部门向消费者、经营者公布。

**第二十五条** 政府指导价、政府定价的具体适用范围、价格水平，应当根据经济运行情况，按照规定的定价权限和程序适时调整。

消费者、经营者可以对政府指导价、政府定价提出调整建议。

#### 第四章 价格总水平调控

**第二十六条** 稳定市场价格总水平是国家重要的宏观经济政策目标。国家根据国民经济发展的需要和社会承受能力，确定市场价格总水平调控目标，列入国民经济和社会发展规划，并综合运用货币、财政、投资、进出口等方面的政策和措施，予以实现。

**第二十七条** 政府可以建立重要商品储备制度，设立价格调节基金，调控价格，稳定市场。

**第二十八条** 为适应价格调控和管理的需要，政府价格主管部门应当建立价格监测制度，对重要商品、服务价格的变动进行监测。

**第二十九条** 政府在粮食等重要农产品的市场购买价格过低时，可以在收购中实行保护价格，并采取相应的经济措施保证其实现。

**第三十条** 当重要商品和服务价格显著上涨或者有可能显著上涨，国务院和省、自治区、直辖市人民政府可以对部分价格采取限定差价率或者利润率、规定限价、实行提价申报制度和调价备案制度等干预措施。

省、自治区、直辖市人民政府采取前款规定的干预措施，应当报国务院备案。

**第三十一条** 当市场价格总水平出现剧烈波动等异常状态时，国务院可以在全国范围内或者部分区域内采取临时集中定价权限、部分或者全面冻结价格的紧急措施。

**第三十二条** 依照本法第三十条、第三十一条的规定实行干预措施、紧急措施的情形消除后，应当及时解除干预措施、紧急措施。

## 第五章 价格监督检查

**第三十三条** 县级以上各级人民政府价格主管部门，依法对价格活动进行监督检查，并依照本法的规定对价格违法行为实施行政处罚。

**第三十四条** 政府价格主管部门进行价格监督检查时，可以行使下列职权：

（一）询问当事人或者有关人员，并要求其提供证明材料和与价格违法行为有关的其他资料；

（二）查询、复制与价格违法行为有关的帐簿、单据、凭证、文件及其他资料，核对与价格违法行为有关的银行资料；

（三）检查与价格违法行为有关的财物，必要时可以责令当事人暂停相关营业；

（四）在证据可能灭失或者以后难以取得的情况下，可以依法先行登记保存，当事人或者有关人员不得转移、隐匿或者销毁。

**第三十五条** 经营者接受政府价格主管部门的监督检查时，应当如实提供价格监督检查所必需的帐簿、单据、凭证、文件以及其他资料。

**第三十六条** 政府部门价格工作人员不得将依法取得的资料或者了解的情况用于依法进行价格管理以外的任何其他目的，不得泄露当事人的商业秘密。

**第三十七条** 消费者组织、职工价格监督组织、居民委员会、村民委员会等组织以及消费者，有权对价格行为进行社会监督。政府价格主管部门应当充分发挥群众的价格监督作用。

新闻单位有权进行价格舆论监督。

**第三十八条** 政府价格主管部门应当建立对价格违法行为的举报制度。



任何单位和个人均有权对价格违法行为进行举报。政府价格主管部门应当对举报者给予鼓励，并负责为举报者保密。

## 第六章 法律责任

**第三十九条** 经营者不执行政府指导价、政府定价以及法定的价格干预措施、紧急措施的，责令改正，没收违法所得，可以并处违法所得五倍以下的罚款；没有违法所得的，可以处以罚款；情节严重的，责令停业整顿。

**第四十条** 经营者有本法第十四条所列行为之一的，责令改正，没收违法所得，可以并处违法所得五倍以下的罚款；没有违法所得的，予以警告，可以并处罚款；情节严重的，责令停业整顿，或者由工商行政管理机关吊销营业执照。有关法律对本法第十四条所列行为的处罚及处罚机关另有规定的，可以依照有关法律的规定执行。

有本法第十四条第（一）项、第（二）项所列行为，属于是全国性的，由国务院价格主管部门认定；属于是省及省以下区域性的，由省、自治区、直辖市人民政府价格主管部门认定。

**第四十一条** 经营者因价格违法行为致使消费者或者其他经营者多付价款的，应当退还多付部分；造成损害的，应当依法承担赔偿责任。

**第四十二条** 经营者违反明码标价规定的，责令改正，没收违法所得，可以并处五千元以下的罚款。

**第四十三条** 经营者被责令暂停相关营业而不停止的，或者转移、隐匿、销毁依法登记保存的财物的，处相关营业所得或者转移、隐匿、销毁的财物价值一倍以上三倍以下的罚款。

**第四十四条** 拒绝按照规定提供监督检查所需资料或者提供虚假资料的，责令改正，予以警告；逾期不改正的，可以处以罚款。

**第四十五条** 地方各级人民政府或者各级人民政府有关部门违反本法规定，超越定价权限和范围擅自制定、调整价格或者不执行法定的价格干预措施、紧急措施的，责令改正，并可以通报批评；对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

**第四十六条** 价格工作人员泄露国家秘密、商业秘密以及滥用职权、徇私舞弊、玩忽职守、索贿受贿，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

## 第七章 附 则

**第四十七条** 国家行政机关的收费，应当依法进行，严格控制收费项目，限定收费范围、标准。收费的具体管理办法由国务院另行制定。

利率、汇率、保险费率、证券及期货价格，适用有关法律、行政法规的规定，不适用本法。

**第四十八条** 本法自1998年5月1日起施行。

## PRICE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Issued on December 29, 1997 and by President's decree of PRC (No. 92). Adopted at the 29th Meeting of the Standing Committee of the Eight National People's Congress and implementation as of May 1, 1998.)

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### CHAPTER ONE GENERAL PROVISIONS

Article 1 This law is formulated with a view to standardizing price behavior so as to strengthen their role in rational disposition of resources, stabilize the general price level of the market, protect the lawful rights and interests of consumers and business operators and then promote the healthy development of the socialist market economy.

Article 2 The law is applicable to all the price behaviors that occur within the territory of the People's Republic of China.

The term "price" used in the law includes prices of all kinds of merchandise and prices of all kinds of services.

The term "price of merchandise" refers to the prices of all kinds of tangible and non-tangible assets.

The term "price of services" refers to fees collected for services rendered.

Article 3 The State shall introduce and gradually improve the mechanism of regulation of prices mainly through market force and under a kind of macroeconomic control. Under such a mechanism, pricing should be made to accord with the value law with most of the merchandises

and services to adopt market regulated prices while only a few of them to be put under government-set or guided prices.

Market-regulated prices refer to prices fixed independently by business operators through market competition.

"Business operator" used in this law refers to legal persons, other organizations or individuals that engage in production or marketing of merchandises or provide paid services.

Government-guided prices refer to prices as fixed by business operators according to benchmark prices and range of the prices as set by the government department in charge of price or other related departments within their term of reference.

Government-set prices as fixed by the government department in charge of prices or related departments within their term of reference according to the provisions of this law.

Article 4 The State shall support and prompt fair, open and legal market competition, maintain normal price order and exercise administration, regulation and necessary control over conduct of prices.

Article 5 The State Council department in charge of prices shall be responsible for the administration of the work related to prices in the whole country and other related departments shall be responsible for such work within their terms of reference.

Price departments of the people's governments at and above the county level shall be responsible for the work related to prices within the regions under their jurisdiction. Price departments of the people's governments at and above the county level shall be responsible for the work related to prices within their terms of reference.

## CHAPTER TWO PRICE BEHAVIOR OF BUSINESS OPERATORS

Article 6 Prices of all merchandises and services, except those as set in Article 18 of this law to adopt government-set or guided prices, shall be subject to market regulation to be fixed by business operators independently according to the provisions of this law.

Article 7 In fixing prices, business operators should follow the principle of fairness, lawfulness, honesty and trustworthiness.

Article 8 Prices should be fixed by business operators basing on the cost of production or operation and market supply and demand.

Article 9 Business operators should strive for a better management to their own production and business operations so as to lower cost and provide consumers with merchandises and services at reasonable prices while obtaining lawful profits in market competition.

Article 10 Business operators should establish and improve their system of internal price management, accurately record and verify the cost of production or operations for their merchandise or services, in which any deception or forgery is not allowed.

Article 11 Operators shall enjoy the following rights in pricing:

1. To fix prices that are subject to market regulation;
2. To fix prices within the guided range as set by the government;
3. To fix prices for new products which are subject to government-set or guided prices, except special products for trial sales; and
4. To report or claim against actions that have infringe upon their rights of independent pricing.

Article 12 In their work related to prices, business operators should strictly keep up with laws, regulations, government guided-prices, government-set prices, legal price intervention measures and emergency measures adopted by the government according to law.

Article 13 In marketing and purchasing merchandises or providing services, business operators should clearly tap the related prices, specify names, places of origin, specifications, grades, price units, prices or items, fee collection standards and other related information according to the government's regulations.

Business operators must not sell merchandises at prices above the marked prices or collect fees not specified.

Article 14 Business operators must not act whatsoever in the following ways to effect abnormal price behaviors:

1. To work collaboratively with others to control market prices to great detriments to the lawful rights and interests of other business operators or consumers;
2. To engage in dumping sales (except the cases of sales of fresh and live merchandises, seasonal merchandises and stockpiled merchandises at discount) at below cost prices in order to attain an upper hand over rivals or dominate the market and disrupt the normal production and operation

order to great detriments to the interests of the State or the lawful rights and interests of other business operators;

3. To fabricate and spread price rise information for pushing up the prices to excessively high level;
4. To resort to deceitful or misleading means in terms of prices to entice consumers or other business operators into trading in terms of prices;
5. To discriminate in terms of prices same kinds of merchandises or services offered by certain business operators under same trading conditions;
6. To disguisely raise or lower prices at irrational ranges by artificially raising or lowering grades of merchandises or services;
7. To seek exorbitant profits in violation of laws and regulations; and
8. To effect other illicit price behaviors that are forbidden by law or administrative decrees.

Article 15 In collecting fees for services rendered, all intermediary organizations should abide by the provisions of this law, except otherwise provided by other laws.

Article 16 In a bid to keep the domestic market order, business operators must observe related provisions of this chapter in selling imported merchandises or purchasing export merchandises.

Article 17 Organizations of various sectors should abide by laws and regulations governing prices, persist in self-discipline with regard to prices and accept guidance from government price departments.

### **CHAPTER THREE PRICE BEHAVIOR OF GOVERNMENT**

Article 18 The government shall issue government-set or guided prices for the following merchandises and services if necessary:

1. The few merchandises that are of great importance to development of the national economy and the people's livelihood;
2. The few merchandises that are in shortage of resources;
3. Merchandises of monopoly in nature;
4. Important public utilities;
5. Important services of public welfare in nature.

Article 19 Scope of specific items and uses for government-set or guided prices shall depend on the price catalogs issued by the central and local governments.

Catalogs of central government-set prices shall be fixed and revised by the price department of the State Council and published after the approval of the State Council.

Catalogs of prices to be set by departments of the people's governments of provinces, autonomous regions and municipalities within their power according to scope of specific items and uses as set in the central price catalog could be published with the examination and approval of the people's governments at the same level.

Local people's governments below the provincial, autonomous regional and municipal level shall not make their own price catalogs.

Article 20 State Council price department and other related departments shall fix government-set and guided prices according to scope of items and uses as set in the central prices and the government-set and guided prices for major merchandises and services shall get the approval from the State Council.

Price departments and other related departments of the people's governments of provinces, autonomous regions and municipalities shall fix indicative local government-set and guided prices within their respective power according to scope of items and uses as set in the local price catalogs.

People's governments of cities and counties may fix government-set and guided prices for their localities within their own power according to scope of items and uses as prescribed in the local price catalogs.

Article 21 Government-set and guided prices shall be fixed according to the average cost and market supply and demand of related merchandises or services, the economic and social development and the affordance of the people, allowing rational price differentials between buying and selling, between wholesale and retail sale, among different regions and different seasons.

Article 22 In fixing government-set and guided prices, price departments and other related departments shall carry out investigations into prices and costs and hear views from consumers, business operators and other quarters.

Upon investigated by government price departments and related departments in terms of prices and costs, related units should provide true fact and necessary books, documents and other materials.

Article 23 In fixing government-set and guided prices for public utilities services of public welfare in nature and the prices for merchandises of monopoly in nature that are important to immediate interest of people public hearings presided over by government price department should be conveyed to solicit views from consumers, business operators and other quarters to explore the necessity and feasibility.

Article 24 After the government-set and guided prices are determined, they shall be made public by the price departments.

Article 25 The scope and level of the government-set and guided prices shall properly be adjusted in the light of the operation of the national economy.

Consumers and business operators may put forward their recommendations with regard to the adjustment of the government-set and guided prices.

#### **CHAPTER FOUR CONTROL AND ADJUSTMENT TO GENERAL PRICE LEVEL**

Article 26 To stabilize the general price level is one of the major objectives of macro-economic policy. The State shall set targets for the monitoring and adjustment of general price level in the light of the requirements of the development of the national economy and the endurance of the people, list them into the national economic and social development programs and help their realization through means of monetary, fiscal, investment and import and export policies and measures.

Article 27 The government shall build a major merchandise reserve system and establish a price regulation fund to control prices and stabilize the market.

Article 28 In order to better control prices, government price departments shall establish a price monitoring system to monitor changes in the prices of major merchandises and services.

Article 29 Whereas the selling prices of grain and other major farm produce are too low on the market, the government shall introduce protective prices and adopt corresponding measures to ensure the protective prices be put into effect.

Article 30 Whereas prices of major merchandises or services rise sharply or are likely to rise sharply, the State Council and the people's governments of provinces, autonomous regions and municipalities may set limit at disparity of prices or rate of profitability for part of the



merchandises, fix price ceilings or introduce other measures for intervention such as a system for announcing or recording price rises.

After adoption of above-mentioned intervention measures, provincial, autonomous regional and municipal people's governments should report to the State Council for the record.

Article 31 When such abnormalities as violent fluctuation in the general price level occur nationwide, the State Council shall introduce power for the concentrated fixation of prices in the whole country or part of the regions for the time being or adopt such emergency measures as freezing part or all prices.

Article 32 The intervention or emergency measures introduced according to the provisions of Article 30 and Article 31 shall be removed or lifted in time when the situations that call for such measures disappear.

#### CHAPTER FIVE MONITORING AND CHECKING OF PRICES

Article 33 The price departments of the people's governments at and above the county level exercise monitoring and checking over pricing activities according to law and mete out administrative punishments on acts that violate the law.

Article 34 In exercising monitoring and checking of prices, government price departments shall exercise the following powers:

1. To inquire into people concerned or related personnel and demand for evidences or other materials relating to law-violating acts;
2. To look into and duplicate account books, bills, vouchers, documents or other materials related to price law violating acts and verify banking materials associated with price law violating acts.
3. To check property related to the price law violating acts and, if necessary, order the people concerned to stop business operation.
4. To register and keep some evidences that are liable to be destroyed or kept out of hand or is hard to obtain for which people concerned or related personnel must not in any case remove, hide or destroy.

Article 35 In accepting the monitoring and checking by government price departments, business operators should provide their account books, bills and vouchers, documents or other materials needed for such monitoring and checking.

Article 36 The personnel of government prices departments are wholly prohibited to use materials or information obtained according to law for purposes other than price control or reveal business secrets of the people concerned.

Article 37 Consumer organizations, workers' price monitoring organizations, neighborhood committees, village committees and consumers have the right to exercise monitoring over price activities. Government price departments should give a full play to the monitoring roles of the people.

Medias have the right to mobilize public opinion for the monitoring of prices.

Article 38 Government price departments shall establish a system for reporting acts of violation of the price law.

Any unit or individual has the right to report acts of violation of price law and the government price departments shall encourage such reporting and undertake to keep secret what concerns concerning the reporters.

## CHAPTER SIX LEGAL LIABILITIES

Article 39 Business operators who refuse to implement the government-set or guided prices, legal price intervention measures or emergency measures shall be ordered to correct, have their illegal proceeds confiscated and be fined concurrently for an amount less than five times the illegal proceeds. In cases of no illegal proceeds involved, a fine may still be imposed. For serious cases, they shall be ordered to stop business operation and make correction.

Article 40 Business operators who have violated one of the acts listed in Article 14 of this law shall be ordered to correct, have their illegal proceeds confiscated and be fined concurrently for an amount less than five times the illegal proceeds. In cases of no illegal proceeds involved, a warning shall be issued, together with a fine. For serious cases, they shall be ordered to stop operation for correction or have their business licenses revoked.

If other laws have stipulations concerning the punishments for acts listed in Article 14 of this law, the related laws shall prevail. Whether acts listed in 1, 2 of Article 14 and are of national in nature shall be upon the judgment of the State Council price department and whether the acts are regional in nature, they shall be confirmed by price departments of provincial, autonomous regional and municipal people's governments.

Article 41 Whereas business operators have caused overpayment by consumers or other business operators in violation of price law, the part in excess of the due payment shall be returned. If damages are done, the business operators shall undertake to compensate for the losses.

Article 42 Whereas business operators violate the provisions about price marking, they shall be ordered to correct, have their proceeds confiscated and be fined concurrently for an amount of less than RMB5,000.

Article 43 For business operators who refuse to stop operation for correction as ordered or remove, hide or destroy things recorded for keeping according to law, a fine ranging from over one time to less than three times the value of the things removed, hidden or destroyed shall be imposed.

Article 44 Business operators who refuse to provide materials needed for price monitoring and checking or provide false materials shall be ordered to correct, with a warning. Whereas they refuse to correct within the prescribed time limit, a fine shall be imposed.

Article 45 Whereas local people's governments at all levels or related government departments at all levels fix or adjust prices beyond their terms of reference or refuse to implement price intervention measures or emergency measures shall be ordered to correct and may be criticized by issuing circulars. People in charge or related people directly responsible shall be given administrative punishments according to law.

Article 46 Whereas government personnel in charge of prices have leaked state secrets, commercial secrets or abused their power, resort to deception for personal gains, commit dereliction of duty or accept bribes and the cases are serious enough as to constitute crimes, criminal responsibilities shall be affixed. If a case is not serious enough to constitute a crime, an administrative punishment shall be meted out.

#### CHAPTER SEVEN SUPPLEMENTARY PROVISIONS

Article 47 State administrative organs shall collect fees strictly according to law, limit fee collection items and scope and standards of fee collection. Specific administration methods for such fee collection shall be provided for separately by the State Council.

Interest rates, exchange rates, insurance premium rates, securities and futures prices shall be subject to related laws or administrative decrees instead of this law.

Article 48 The law shall come into force as of May 1, 1998.

## Guidelines for Accelerating the Restructuring of the Aluminum Industry

(Fa Gai Yun Xing [2006] No.589)

The development and reform commissions; economy commissions (the economy and trade commissions, industry department); departments of finance; departments of land and resource; departments in charge of business; Shanghai headquarter, branches, sub-branches, and local offices in the provincial capital cities of People's Bank of China; Guangdong office, Tianjin specially appointed office, Shanghai specially appointed office, and each regional office directly under the Customs head office; state administration of taxation; the bureau of quality supervision; and the bureau of environmental protection of each province, autonomous region, municipality directly under the Central Government and city under direct planning by the state, Xinjiang Production and Construction Corps:

In order to carry out the *Notice Concerning Publishing and Implementing the 'Interim Measure of Improving Adjustment of Industry Structure'* (GuoFa[2005] No. 40) by the State Council and the *Notice Concerning Further Improving the Structural Adjustment of Excess-Productive Industry* (Guofa[2006] No. 11), the guiding opinions towards the structural adjustment of aluminum industry will be present as following:

## I. significance of improving the structural adjustment of aluminum industry

Aluminum is an important fundamental raw material for the development of national economy. The aluminum industry in China is comprised of three sectors, alumina, electrolytic alumina and aluminum process. In recent years, a number of technology and techniques such as intensify sintering, tube digestion and Bayer

mineral processing, have been adopted to produce alumina. The electrolytic aluminum production capacity through the approach of the large-scale prebaked anode aluminum reduction cell has taken a proportion of 80% out of the whole production capacity. The production of aluminum process has been increasing rapidly with a significant technology development.

Pursuant to the requirements of the state macro-control, the electrolytic aluminum sector has made a significant achievement by carrying out a file, GuoBanFa[2003] No. 103 enacted by the executive office of the State Council. 23 illegal electrolytic aluminum projects have been terminated, which involve investments valuing 1,730 million RMB. The total production capacity of terminated or postponed projects will be 2,470,000 tons. Enterprises have made a significant achievement on corporate merge and restructure. Some electrolytic aluminum enterprises, which adopt backward techniques or which production cost is high, have been terminated. The terminated production capacity would be approximately 1,200,000 tons. The Soderberg cell approach has been abolished due to the serious pollution to the environment. The comprehensive current power consumption from main electrolytic aluminum enterprises have been reduced by 347 kilo-watt hour per ton aluminum in 2004 compared with those of last year, which totally save power about 2.31 billions kilo-watt hours. The power consumption in 2005 has been lower than that of last year by 61 kilo-watt hours per ton aluminum, which might save power approximately 0.48 billions kilo-watt hours. The policy of the export tax for electrolytic aluminum has been adjusted. The trade for alumina process has been

stopped which results in the export reduction of 21.7% in 2005 on the non-forging-rolling aluminum compared with that of last year.

Even though there are some achievements made through macro control over national economy, the problems relating to structural and production of aluminum industry stand out significantly because some structural and systematic problems, which result in investment booming in aluminum industry, have not been resolved yet.

The problems are as following:

(1) problems relating to bauxite resource are outstanding. Protection on bauxite resource is limited in China. The proportion of the bauxite reserve only takes 2.4% of all throughout the world; however, the annual exploitation volume has reached 8% of the whole exploitation in the world. There are 323 certificates of aluminum exploitation permission throughout china, but bauxite exploitation spots are over 779, which indicate the governmental management and supervision over the aluminum exploitation has deficiency.

(2) the construction of aluminum production line are excess and disorder. The blindly-invested alumina projects, regardless the resource protection and other external conditions, cannot be eliminated completely. At present, there are 11 alumina projects under construction with the planned production capacity being 12.15 million tons and aggregative investment being approximately 55 billion RMB. The capacity of the projects under construction at the first phrase is 6.1 million tons with investment of 30 billion RMB. There are another five proposals of future projects with total capacity of 3.2 million tons. Some of these projects have not obtained legal

approvals; some of them have not confirmed their bauxite resource, and the others have not completed the procedures for the land utilization. Many of them have not reported their environmental effect evaluation for approval; and even a number of them have not undertaken their environmental effect evaluation yet.

(3) the production capacity of electrolytic aluminum are much more than demanding amount; the blindly constructions re-emerge in the market. A large number of capacities have to stand idle due to the excess supply of electrolytic aluminum over demand. The ratio of the activity is only 75%-78%. However, there are still 11 projects under construction with total capacity of 1.12 million tons and aggregative investment amounts of approximately 7.3 billions RMB. Most of them are re-construction projects. Most of them have not complied with their proposals nor approved by the administrative departments in charge. Furthermore, there are 10 more proposals with aggregative production capacity is 1,400,000 tons.

(4) the structure of aluminum smelting falls in imbalance; the operation of electrolytic aluminum enterprises has been difficult. The production capacities do not match one another between electrolytic aluminum smelting capacity, alumina supply, and bauxite exploitation capacity. Therefore, the production cost of alumina is high; but the production can only satisfy the half of demand. The average production of electrolytic aluminum in 2005 was only 74,000 tones. The power supply cannot match the usage for production. The Export volume was excess. The ratio of the cost to produce alumina was too high. All these result in that the enterprises suffer significant loss. In 2005, most of 80 defective enterprises are electrolytic aluminum enterprises,

which suffered the loss of 1.31 billion RMB, up to 110% over the same period last year.

(5) the industrial concentration of aluminum process is low, and the product structure is not optimal. The average production of aluminum process enterprises in 2005 was just 4.2 thousand tons. The equipment level in the aluminum process sector has been low; the adopted technology and techniques in the industry have fallen behind; the variety of highly-added value products has been insufficient; the proportion of the electrolytic aluminum products which adopts the direct cast-rolling approach has been low; and the waste of resources has been serious.

II. primary principles and objectives of the structural adjustment of aluminum industry

(1) guiding principles. The guiding principles are comprised of focusing on transference of the growth pattern of aluminum industry, centering the structural adjustment, optimizing the industrial structure, innovating production technology and techniques, designing and planning in scientific way, considering the situation as a whole as undertaking adjustment, reducing the production consumption, and protecting the environment. These principles should be exercised as a guide for macro-control. They aim to develop the alumina industry orderly, to restrain the illegal investment in the electrolytic aluminum industry, to facilitate to develop highly-added value products in aluminum process industry, to improve the adopted technology and equipment, to upgrade the product structure, to accelerate to realize modern industrialization for the aluminum industry, and to maintain sustainable



development.

(2) main objectives. Domestic production of alumina will reach 14 million tons in 2010. The alumina produced overseas will reach 4 million tons. The Bayer mineral processing approach of will be spread widely. The Bayer approach, mixture-combination approach and intensified sintering approach will be improved further. All equipment and facilities will be improved respectively. The comprehensive energy consumption will be reduced down to 900 kilograms standard coal per ton or less. The recovery rate will be increased up to 93% or higher. The proportion of sand-like alumina will be up to 90% out of all alumina production.

It is necessary to keep the balance electrolytic aluminum between supply and demand. It is important to support good enterprises and eliminate the inferior through the market, and to encourage the good enterprises to increase their production up to 75% out of entire production of the whole industry. It is encouraged to adopt the 160KA smelting technique of the large-scale rebaked anode aluminum reduction cell or better. The current efficiency will reach to 94% or higher. The comprehensive alternative current consumption of significant enterprises will be less than 143,000 kilo-watt hours per ton. The unit consumption of alumina will be less than 1.9 ton. The pollution discharge will meet the standard. The consumption of the regenerated aluminum will make up 30% of entire consumption of aluminum.

The proportion of highly-added-valued products should be increased. The proportion of plate, strip, and foil to the extrusions is up to 6:4. The proportion of industrial extrusion to constructive extrusion is up to 7:3. the proportion of double

zero aluminum foil to the single zero one is up to 4:6. The aluminum products which are directly cast-rolled by electrolyte take a proportion of 70%. The comprehensive yield of aluminum processing products reaches to 76%. It is important to develop abilities to design and manufacture advanced equipment for aluminum process. The backward techniques and technology should be abolished. And the backward and defective equipment and device should be eliminated.

III. primary measures and policy to accelerate structural adjustment for aluminum industry

(1) strengthen the direction to the industrial policy and industrial layout and plan

It is important to complement the *Industrial Development Policy of Aluminum Industry* approved by the State Council, to stipulate the detailed measures for the implementation, and to accelerate the structural adjustment of the industry. According to the *Special Planning for Aluminum Industry Development*, the aluminum industry will be designed well and developed orderly. The local and central enterprises should take into account of energy, transportation, environment and other external conditions, and then design the aluminum industry development and optimize the industrial structure. It is important for the departments at various levels to strengthen the disclosure of information, to restrain illegal investment activities in the market, to encourage technological innovation, and to optimize the product structure.

(2) enhance the concentration of the industry, and encourage to comprehensively use and save the resources

The departments can provide appropriate legal and administrative environment

for enterprises' merge and reformation which can assist enterprises to re-organize their economic resources through market approach. It is encouraged to merge or reform alumina, electrolytic aluminum or aluminum process enterprises, which can make them obtain international competence through complementary advantages and improved industrial concentration. It is also encouraged to attract private capital and foreign investment participating into the SOEs' (State-owned enterprises) re-organization, re-structure and reformation. Main enterprises need to continue improving their technology and management; while small/medium sized enterprises need to speed up their technology innovation process and enhance their utilization efficiency of resources. The enterprises which produce regenerated aluminum, improve the level of environmental protection, and make scale economy achievement should be supported and encouraged. The main enterprises of electrolytic aluminum production are encouraged to strengthen their self-discipline and to relieve the stress of excess supply over demand through market method.

(3) strengthen the coordination between credit policy and industrial policy, build up an exit mechanism under the legal system

The regulation, that is capital invested in the electrolytic aluminum construction projects is proportioned by 35% or more, should be strictly enforced. According to the national macro-control policy, industrial policy and credit policy, the financial departments should allocate the credit capital rationally. The financial departments should continue providing financial support to the alumina and electrolytic aluminum enterprises which are conformed to the state industrial policy, credit

policy and the industrial access conditions. As to the enterprises, which are not conformed to the industrial policy and market access conditions, or which have been eliminated by the laws or regulations due to backward technology or techniques, the financial departments should not provide any support in any form. If any support has been provided to the enterprises by mistake, the financial departments should withdraw it to avoid financial risk.

According to the master plan relating to the adjustment of industrial structure and product structure, as to the electrolytic aluminum industry and aluminum process industry, a principle will be exercised, which is to encourage large scale economy instead of small scale and to innovate technology and techniques with elimination of backward one, to build up a market exit mechanism with the support of laws, regulations and policy. The departments and governments at various levels should strictly regulate the reform of enterprises in the aluminum industry, and prevent the enterprises from taking the chance of reform to evade bank's debts.

(4) strengthen environmental law enforcement, and eliminate backward production capacity

It is necessary to strictly enforce the environmental protection standards and to eliminate backward production capacity of electrolytic aluminum. The Ministry of Environmental protection will regularly publish a list which includes electrolytic aluminum enterprises which cannot meet the standards. The enterprises in the list should correct themselves in a required period. The enterprises need to carry out the *Law of Accelerating Clean Production*, the *Law of Saving Energy* to save energy

and reduce consumption. They also need to implement the *Interim Measures of Monitoring Clean Production* to get their clean production examined. They can support their innovation of technology and techniques for environmental protection and energy saving through various financing methods such as national bonds capital. According to the industrial policy, the technique of the two-people-pattern rolling mill should be eliminated completely.

(5) rectify the bauxite exploitation order, and exploit the domestic resources reasonably

The departments should by law rectify the enterprises where they destroy the resources, pollute the environment or conduct production without complying with safety production requirements. They should restrain predatory and illegal mining, and mining without permission certificate. They must strictly handle the examination and approval procedures to grant exploration permission and exploitation permission for newly-built bauxite mining. The newly-built bauxite enterprises should strictly go through the approval procedure of environmental effect evaluation report and the acceptance procedure of "three-simultaneousness" environmental equipment and facility. The newly-built alumina enterprises must apply the mining right of bauxite first. The administrative and registration departments of mineral resources should strictly examine and approve the applications from the enterprises, and then grant permission certificate of exploitation. The enterprises entitled a right of exploitation permission must legally exploit the bauxite resource according to their exploitation scheme approved

already by relevant departments. The alumina enterprises must not purchase bauxite which was exploited without legal certificate or permission.

The departments need to improve the compensation mechanism of resources and tax and fee policy for resources, to encourage enhancing exploitation strength, and to increase backup reserve of resources. It is important to develop technology to make full use of low grade bauxite, and to improve the utilization efficiency of the resources.

(6) encourage to exploit overseas resources, and widen the channels of using overseas alumina resources

It is encouraged to use overseas bauxite resources through overall planning of exploration and exploitation on the significant overseas alumina resources. The goal to be realized is that the overseas alumina resources exploited by domestic enterprises can satisfy 50% of the domestic demands within 10 years.

According to relevant industrial policy and conditions of market access, it should be considered to widen the channels of importing alumina. It is important to strengthen the coordination and monitoring over the import of alumina, to improve the functions of the industrial organizations and associations, to reduce purchasing cost, and to decrease the market risk.

(7) strictly control the export of electrolytic aluminum, improve the mechanisms of power price formation and power supply

The export rebate rules do not apply to the electrolytic aluminum export products. The trade of alumina process is not allowed. (继续对电解铝产品出口执行取消退税

政策，严格禁止氧化铝加工贸易。) The price mechanism for electrolytic aluminum should be improved. The new electricity price policy should be formulated by taking into account of voltage grade, loading rate, and other electricity characteristics or factors. The significant electrolytic aluminum enterprises will be supported to apply to participate into the trial according to the *Tentative Measure of Purchasing Electrical Power Straight from Power Plants to Electrical Power Users*, or to invest into the power plants to realize multiple-mode affiliation between aluminum enterprises and power plants. The power plants are encouraged to supply powers directly to the electrolytic aluminum enterprises for the purpose of decreasing power consumption and operation cost, increasing utilization efficiency of resources, and accelerating harmonious development between industries. It is permitted that the electrolytic aluminum enterprises, which have been involved in the master planning and general layout of electrical power construction, can build up power plants for their own use.

(8) develop the aluminum smelting orderly, and develop highly-added value aluminum process products

It needs to clear illegal alumina projects. The departments and governments at various levels should comply with relevant regulations and carry out clearance work to the alumina projects under construction in the respective jurisdiction areas. The major area for clearance work is in Henan province and Shanxi province. The projects under construction, which are not conformed to the industry policy, access conditions or industrial planning and layout; which have not gone through relevant legal procedures for land utilization, or which have not had their environmental effect

evaluation report for alumina projects approved according to the *Regulations of Hierarchical Examination and Approval to Environmental Effect Evaluation Report of Construction Projects* (No. 15 stipulated by the Ministry of Environmental Protection), should suspend constructing. The results of clearance should be reported to the State Development and Reform Commission. The solution and arrangement will be laid down subsequently. As to the finished alumina projects or those in use, the administrative departments of local governments need to conduct an examination, to provide a description to the examination, and to punish the violation conducts by laws and regulations. The enterprises should confirm their bauxite resources, and go through relevant legal procedures for project establishment, land utilization, environmental protections and others. To the enterprises which violate relevant regulations, a differential electricity price policy will be applied.

Those approved alumina projects should be fulfilled promptly; and the overseas investment for aluminum resources should be encouraged. The alumina enterprises approved (or examined and approved) by the relevant departments should carry out their projects promptly to ensure realize their production goals on schedule in order to release the stress between alumina supply and demand. The relevant departments should improve their evaluation ability to alumina projects on the aspects of bauxite resources, construction capital, and technology and techniques levels. They should examine and approve qualified projects promptly according to relevant legal and administrative procedures for investment, and advise enterprises to accomplish their projects on time.



The departments should prevent the re-emergence of the blindly constructions of the electrolytic aluminum. They should also restrain the amount of proposals for constructing electrolytic aluminum projects, examine every proposal and eliminate the one(s) which are not conformed to the planning and layout. The local governments, departments of land and resources, and departments of environmental protection should not handle any procedure for land utilization, should not accept any evaluation report for environmental effect. The financial departments should not provide any support in any form. The departments should strictly clear the electrolytic aluminum projects under construction. As to those projects, which are not conformed to the relevant policy, regulations or the requirements in the document of GuoBanFa[2003] No. 103, which have not gone through relevant legal procedures for land utilization, which do not comply with the *Notice Concerning Further Strengthening Environmental Management of the Electrolytic Aluminum Industry* stipulated by the Ministry of Environmental protection (HuanFa[2004] No. 94) to submit in their evaluation report of environmental effect for approval, and which capital proportion cannot meet the legal requirements, the departments should stop the construction.

It is to develop highly-added value products of aluminum process. According to the *Guiding Category of the Adjustment of the Industrial Structure* (2005 Edition), the goals are to adjust the product structure; to develop technology, technique and equipment to produce high-quality aluminum plate, strip, foil, speedy thin strip, large-sized aluminum alloy extrusion for rail transportation, and other highly-added value aluminum products; spread innovative technology and techniques which assist

to enhance efficiency, decrease cost, reduce energy consumption, shorten the producing processes, and produce environmental friendly aluminum processing products; to improve stability and credibility within the producing processes, and to reduce the cost. It is needed to stipulate access conditions and requirements to the aluminum industry. As to the newly-built enterprises which produce primary aluminum process products such as normal construction extrusions, the departments of quality control should not license any certificate of production permission to the enterprises where their products cannot meet the relevant standards or their products are defective.

Relevant departments and governments at various levels should accelerate the structural adjustment of aluminum industry with the full use of the opportunity of current adjustment of the economic structure, and eliminate the production capacity which features as follows: adopting backward technology and techniques, which quality of products being low, polluting the environment, wasting resources, or being not conformed to the requirements of safety production, according to relevant laws, regulations, and policy.

## 关于加快铝工业结构调整指导意见的通知（发改运行[2006]589号）

各省、自治区、直辖市和计划单列市、新疆生产建设兵团发展改革委、经委（经贸委、工业办）、财政厅（局）、国土资源厅（局）、商务主管部门、中国人民银行上海总部、各分行、营业管理部、各省会（首府）城市中心支行，海关总署广东分署、天津特派办、上海特派办、各直属海关，国家税务局、质监局、环保局：

为贯彻落实国务院《关于发布实施〈促进产业结构调整暂行规定〉的决定》（国发[2005]40号）和《关于加快推进产能过剩行业结构调整的通知》（国发[2006]11号）精神，现将加快铝工业结构调整指导意见通知如下：

### 一、促进铝工业结构调整的重要意义

铝是国民经济发展的重要基础原材料。我国的铝工业主要由氧化铝、电解铝、铝加工三部分组成，近年来氧化铝强化烧结、管道化溶出、选矿拜尔法等技术已广泛使用；大型预焙槽电解铝生产能力已占总能力的百分之八十；铝加工材产量快速增长，技术水平有所提高。

按照国家宏观调控要求，电解铝行业贯彻落实国务院办公厅国办发[2003]103号文件精神成效显著，共清理违规电解铝项目23个，涉及投资额173亿元。停建和缓建的电解铝项目总能力达247万吨。企业兼并重组工作取得重大进展。工艺落后、生产成本高的电解铝企业相继停产，停产能力约120万吨。污染严重的自焙槽基本被淘汰。2004年主要电解铝企业综合交流电耗水平比上年降低347千瓦时/吨铝，由于电耗下降约节电23.1亿千瓦时；2005年电耗水平比上年降低61千瓦时/吨铝，

估计节电 4.8 亿千瓦时。电解铝出口税收政策调整，停止氧化铝加工贸易，促使 2005 年未锻轧铝出口同比下降 21.7%。

尽管贯彻落实国家宏观调控政策取得成效，但引发投资热的一些结构性和体制性的深层次矛盾并未得到根本解决，铝工业总量和结构方面存在的问题仍然突出。主要表现为：

（一）铝土矿资源问题突出。资源保障程度有限，储量仅占世界总量的 2.4%，但年开采量却占全世界开采总量的 8%。全国铝土矿采矿证 323 个，矿山（点）却多达 779 个，开采秩序混乱。

（二）氧化铝无序建设问题严重。不顾资源保障程度和外部条件盲目建设的氧化铝项目屡禁不止，目前氧化铝在建项目 11 个，计划建设能力 1215 万吨，投资总额约 550 亿元；正在建设的一期工程总能力 610 万吨，投资约 300 亿元。另有拟建项目 5 个，总能力 320 万吨。这些项目多属越权核准或未经核准，有的铝土矿资源不落实，或土地使用手续不齐全，大部分项目环境影响评价报告书未按要求报批，有的甚至不进行环境影响评价论证。

（三）电解铝产能大大超过需求，盲目建设有反弹压力。电解铝供过于求已使大量产能闲置，利用率仅约 75-78%。但目前仍有在建项目 11 个，建设总能力 112 万吨，投资总额约 73 亿元。这些项目虽多为续建项目，但除个别外，均未按照规划布局建设，也未经有效核准。此外，尚有 10 个拟建项目，总能力 140 万吨。

（四）铝冶炼结构失衡，电解铝企业经营困难。电解铝冶炼能力、氧化铝供应能力、铝土矿采选能力不匹配，氧化铝生产成本低，产量仅能满足需求的一半左右。2005 年电解铝企业平均产量仅 7.4 万吨，且用电矛盾突出，出口量偏大，氧化铝

占生产成本比例过高，企业亏损严重。2005年亏损的80个铝冶炼企业几乎全部是电解铝企业，亏损额13.1亿元，同比增长1.1倍。

(五) 铝加工产业集中度低，产品结构不合理。2005年铝加工企业平均产量仅0.42万吨。行业整体装备水平低，技术经济指标落后，高附加值加工材品种不足；电解铝液直接铸轧的比例低，资源浪费严重。

## 二、铝工业结构调整的指导原则和主要目标

(一) 指导原则。以转变铝工业增长方式为中心，以结构调整为重点，按照结构优化、技术创新、科学规划、总量调控、降低消耗、保护环境的原则进行宏观引导，做到氧化铝行业实现有序发展、电解铝行业制止违规投资反弹、铝加工行业重点开发高附加值品种，推动企业技术装备水平的提高和产品结构的升级，促进铝工业走新型工业化道路，实现可持续发展。

(二) 主要目标。2010年国内氧化铝总产能达到1400万吨，企业的海外氧化铝能力达到400万吨。选矿拜尔法普遍推广，拜尔法、混联法、强化烧结法等工艺不断完善，装备水平改善，综合能耗降低到900千克标准煤/吨以下，回收率提高到93%以上。砂状氧化铝比例达到90%。

保持电解铝供需基本平衡。扶优汰劣，使骨干企业的产量达总产量的3/4以上。淘汰落后能力，力争全部采用160KA以上大型预焙槽冶炼工艺，电流效率达到94%以上，主要企业综合交流电耗在14300千瓦时/吨以下、氧化铝单耗在1.9吨以下，污染物达标排放。再生铝的消费量达到铝总消费量的30%以上。

增加高附加值加工材比重。使板带材与型材比例达到6:4，工业型材与建筑型材比例达到7:3，双零铝箔与单零铝箔比例达到4:6。电解液直接铸轧的比例达到70%、铝加工材综合成

品率达到 76%。增强先进铝加工装备设计制造能力，淘汰技术水平低、产品质量差的落后装备。

### 三、加快铝工业结构调整的主要政策措施

#### (一) 加强产业政策和行业规划布局指导

贯彻落实国务院批准的《铝工业产业发展政策》，抓紧制定实施细则，推进产业结构调整。按照《铝工业发展专项规划》的要求，合理布局，有序发展。各地及中央企业要统筹考虑资（能）源、交通、环境等外部条件，规划铝工业发展及调整优化结构。加强市场信息发布，引导企业投资行为，严格控制总量的扩张，加强技术改造，优化产品结构。

#### (二) 提高产业集中度，鼓励综合利用和节约资源

为企业兼并重组创造有利条件，加快企业通过经济手段联合重组的步伐。支持氧化铝、电解铝、铝加工企业联合重组，组建具有国际竞争力的企业集团，实现优势互补，提高产业集中度。鼓励民营资本和外资参与国有企业的改革、改组和改造。鼓励骨干企业继续提高技术和管理水平，加快中小铝加工企业技术改造，提高资源利用率。支持再生铝企业提高环保水平，形成经济规模。支持电解铝骨干企业加强行业自律，缓解供过于求的局面。

(三) 加强信贷政策和产业政策的协调配合，建立政策支持下的退出机制

严格执行电解铝建设项目 35%及以上资本金比例的规定。根据国家宏观调控、产业政策和信贷原则要求，由金融机构合理配置信贷资金。对于符合国家产业政策、市场准入条件和信贷原则的氧化铝、电解铝企业，继续给予授信支持；对于不符合国家产业政策和市场准入条件，工艺落后、属于禁止类目录或明令淘汰的企业，不得提供任何形式的授信支持，对已经提

供的授信，要采取妥善措施收回，有效防范金融风险。

按照产业结构与产品结构调整的总体规划，对电解铝和铝加工行业，坚持上大与关小、升级改造与淘汰落后相结合，建立政策支持下的市场退出机制。各地政府和有关部门应严格规范铝工业企业的改制工作，采取有效措施防范企业借重组改制之机逃废银行债务。

#### （四）加强环保执法，淘汰落后能力

严格执行环保标准，淘汰落后的电解铝生产能力。由国家环保总局定期公布环保不达标电解铝企业名单，限期进行治理。贯彻《清洁生产促进法》、《节约能源法》，促使企业节能降耗，并依照《清洁生产审核暂行办法》进行清洁生产审核。利用国债资金等多种融资手段，支持企业的环保、节能改造。按照产业政策规定，彻底淘汰二人转轧机等铝加工工艺装备。

#### （五）整顿铝土矿开采秩序，合理开发国内资源

依法关闭破坏资源、污染环境和不符合安全生产条件的矿点，制止乱采滥挖、无证开采行为。严格执行新建铝土矿矿山、勘查许可证和采矿许可证审批制度。新建铝土矿矿山要认真履行环境影响评价文件审批和环保设施“三同时”验收程序。新建氧化铝企业，必须按规定首先申请铝土矿采矿权；矿产资源开采登记管理部门严格依法审批和颁发采矿许可证；采矿权人要按照批准的方案，依法开采铝土矿资源。氧化铝生产企业不得收购无证开采的铝土矿。

完善资源补偿机制及资源税费政策。加大勘探力度，增加后备资源。开发低品位铝土矿利用技术，提高资源利用率。

#### （六）鼓励开发海外资源，拓宽利用国外氧化铝资源渠道

鼓励使用国外铝土矿资源，统筹规划国外重大氧化铝资源的开发利用，力争 10 年内使我国企业开发的国外氧化铝资源量

达到国内需求量的 50%。

继续按照有关政策界限和市场准入条件进行清理认定，拓宽氧化铝一般贸易进口渠道。加强氧化铝进口协调和监管，发挥行业组织作用，降低采购成本，规避市场风险。

(七) 从严控制电解铝出口，完善电价形成和电力供应机制

继续对电解铝产品出口执行取消退税政策，严格禁止氧化铝加工贸易。完善电解铝行业的电价形成机制，按照电压等级、负荷率等用电特性，制定新的差别电价政策。支持骨干电解铝企业按照《电力用户向发电企业直接购电试点暂行办法》，申请直购试点，或参股电厂，实现多种方式的铝电联营。鼓励电厂向电解铝企业直供电力，降低电力消耗和经营成本，提高能源利用效率，促进行业协调发展。允许已经纳入电力建设的整体规划和布局的电解铝企业建设自备电厂。

(八) 有序发展铝冶炼，开发高附加值铝加工材

清理违规氧化铝项目。各地要严格按照有关规定对所在地区的氧化铝在建项目进行清理，清理的重点地区是河南、山西省。对不符合产业政策、准入条件和规划布局，未依法办理土地使用手续，未按《建设项目环境影响评价文件分级审批规定》（国家环保总局令第 15 号）要求报批环境影响报告书的氧化铝项目，一律暂停建设。清理结果报国家发展改革委研究后再做出合理安排。对已经建成投产或基本建成的氧化铝项目，地方政府主管部门要作出说明和检查，依法、依规处理；企业要落实铝土矿资源，并依法按规定补齐或完善立项、土地、环保等相关手续。对该类违规企业，有关部门可以实行差别电价。

抓好已批（核）准氧化铝项目的组织实施。加快规划内项目建设和海外资源开发步伐，国家已批（核）准建设的氧化铝



企业要确保在建项目如期达产，缓解供需矛盾。加快已经落实铝土矿资源、建设资金和具备技术能力的氧化铝项目的评估，及时按投资管理程序核准并组织实施。

防止电解铝盲目建设反弹。坚决遏制拟建电解铝项目，逐一核对拟建的电解铝项目，不符合规划布局的一律不允许开工。地方政府和国土资源部门、环保总局等有关部门不予办理土地使用手续，不接受环境影响评价，各金融机构不得提供任何形式的授信支持。严格清理在建的电解铝项目，凡不符合有关政策规定和国办发[2003]103号文件要求，未依法办理土地使用手续，未按环保总局《关于进一步加强电解铝行业环境管理的通知》（环发[2004]94号）要求报批环境影响评价报告书，资本金比例达不到规定要求的建设项目，一律停止建设。

开发高附加值铝加工材产品。根据国家《产业结构调整指导目录（2005年本）》，以调整产品结构为主，重点开发高精铝板、带、箔及高速薄带和轨道交通用大型铝合金型材等高附加值产品的生产技术和设备；推广高效率、低成本、低能耗、短流程、环保型铝加工新技术、新工艺；提高生产过程的稳定性、可靠性，降低成本。研究制定铝加工行业准入条件。对于新建的生产普通建筑型材等初级铝加工产品的企业，如产品质量达不到相关标准，或者有生产伪劣产品行为者，质检部门一律不予颁发生产许可证。

各级政府及有关部门要充分利用当前经济结构调整的有利时机，大力推进铝工业结构调整，依据国家法律法规和相关政策，坚决淘汰技术落后、质量低劣、污染环境、浪费资源，以及不符合安全生产条件的生产能力。

ATTACHMENT 139

Public  
File 141

## CHINALCO 2007 SOCIAL RESPONSIBILITY REPORT (EXTRACT)

### Message from the President

As social citizens, enterprises' development is intrinsically combined with that of the society. A responsible enterprise should undertake the double responsibilities of its own and the social development in its dedication to achieve the harmonious increase of economic and social benefits.

...

## **Responsibility Fulfillments**

### **Citizen responsibility----to operate legally and abide by integrity scrupulously**

Integrity is canonized by Chinese people from generation to generation and regarded as the intrinsic rules of human relations in "The Book of Rites": "Integrity is the natural rule; meanwhile pursuing integrity is the basic doctrine of humankind".

Since its establishment, Chinalco has taken "Integrity to be the essence, and return to be a priority" as its operation notion and canonized the saying of "words to be acted and promise to be practiced". With the stress on operating legally and abiding by integrity scrupulously, Chinalco strives to pay taxes legally, operate honestly, support public welfare, provide qualified products and excellent service to the society, and finally realize the synchronized increase of benefits from all sides, including the nation, shareholders, the corporate, its employees, business partners and the society. While developing and enlarging itself, Chinalco is presenting its dedication and value to society.

An example on integrity: Since Chinalco's subsidiary enterprises are located in 20 provinces (autonomous regions/ municipalities), with a view to realize mutual benefit between Chinalco and its customers, in compliance with centralized management and unified operation, Chinalco has optimized and integrated the sales channels of products on a large scale for twice and realized four advantages for customers: the shortest transportation distance, cheapest transportation fee, fastest goods supply, and most reliable goods guarantee. Many customers have achieved "zero inventory" of production material and efficiently get their capital piling reduced....

### **Economic responsibility----to create value and make profit**

In the past 7 years since Chinalco's establishment, the outputs of main products of Chinalco have increased sharply: alumina from 4.29 million tonnes to 10.46 million tonnes, primary aluminum from 670 thousand tonnes to 3.56 million tonnes, aluminum fabricated materials from 10 thousand tonnes to 798 thousand tonnes. Besides, the output of copper, molybdenum and titanium has also achieved their respective jumping increase; sales revenue increases from RMB 19.8 billion yuan to RMB 131.7 billion yuan, the aggregate tax paid increases from RMB 2.78 billion yuan to RMB 11.27 billion yuan, realized profit from RMB 1.7 billion yuan to RMB 21.5 billion yuan, and total assets from RMB 35.8 billion yuan to RMB 201.4 billion yuan, with return on net assets doubled.

**Quality responsibility----to set up famous brands and supply with high quality**

In compliance of the guideline "quality to be a first priority", Chinalco spares no effort in cultivating the staff to set up the concept of quality consciousness and quality responsibility. The principle that the products must be responsible for customers and society becomes a common rule for its staff. In 2007, this rule has been successfully practiced as is seen from following customers' satisfaction to Chinalco's main products: products of alumina above the second grade have realized 100%, above 99.70% purity of primary aluminum 98.62%, comprehensive qualified ratio of anode carbon blocks 95.68%, customers' satisfaction of alumina 95%, and customers' satisfaction of primary aluminum 98%.

Chinalco is a research, development and production base of advanced, precise and top aluminum materials, titanium materials and copper materials, as well as a research, development and guarantee base of spaceflight and aviation materials. The produced aluminum materials, titanium materials and copper materials are not only widely used in each section of national economy, but also in national key projects such as Long March carrier rockets, Asian satellites, Shenzhou airships, Chang'e I lunar probe, big airplane and Electron-

Positron collider etc. Besides, with the production permit of precise aluminum aviation materials from the US Boeing Company, Chinalco is a special supplier of aluminum materials for Boeing Company. With its engineering technology service getting into the international market, Chinalco has successfully exported special technology of alumina and primary aluminum industry to India, Iran, Kazakhstan, Malaysia and Azerbaijan etc. Furthermore, Chinalco has turned into general contractors of many construction projects and its aggregate foreign exchange of technical exportation has amounted to 156 million US dollars.

A little story of quality control: picking up a hair on the ground

The surrounding environment is rigorously and strictly required in high purity workshop. Every day the employees have to clean the wall and ground with cloth. No matter you are a manager or worker, a hair found on the ground should be picked up. They think that quality comes from hypercriticism to the details. Only by starting to work from the details and sticking to checking on each process, the quality of products can be guaranteed.

**Innovative responsibility----to innovate independently and be the pioneer in the industry**

As the first 103 national "Pilot Innovation-oriented Enterprises", Chinalco, all the time, persists in scientific development, focuses on scientific and technological innovation, tries to improve independent innovation capability and leads and pushes the technological development of China's aluminum industry.

In 2007, industrialization project of Chinalco R & D results of "Ore-dressing Bayer process to produce alumina" was awarded "Sample Project of the National High-Tech Industrialization". "Ore-dressing Bayer Process" is a new technology to use low quality

bauxite to produce alumina economically by means of ore-dressing Bayer Process to increase the A/S ratio of bauxite. This technology can reduce over 50% of energy consumption, over 5% of alkali consumption, 50% of stone lime consumption, and 40% of fresh water consumption. It is the first time to realize the industrial exploitation of bauxite which can not be used before in the world. With this technology, the medium and low quality bauxite achieved effective utilization.

By the end of 2007, the check and acceptance of the industrialization project of the control technologies optimized in three aspects (bath liquid's temperature, bath liquid's overheating temperature and aluminum fluoride concentration) for the aluminum electrolytic pots was put through. Its application results in a qualitative span of electrolytic production and technology management, as well as material balance and energy balance of the pots, and hence the pots will all along be at stable operation status. This technology greatly intensifies current efficiency, reduces the material and energy consumption, and lowers anode effect coefficient and the emission of harmful gas.

Besides, the R&D of a batch of new technologies have made success one after another, for instance, the technology increasing bauxite volume to make its concentration up after digestion by using Bayer process, industrial test on 400 kA pre-baked electrolytic pots, purified technology of high intensity and high temper aluminum alloy solution, as well as scrap recovery technology of aluminum and lithium alloy.

**Safety responsibility----to set employees first and ensure security**

Chinalco persists in human-oriented policy and strictly implements various work measures of safe production. All the member enterprises take security seriously and place emphasis on the fulfilling process and strength. In 2007, Chinalco's safe production situation

kept better and 39 security accidents occurred, including 4 deaths, 12 seriously injured, 33 slightly injured, with the death rate and injured rate distinctly better than that of 2006.

Chinalco carried out cultural construction of security and built up staff's safe consciousness. Focused on the subject "to make safety become a habit and make the habit safer", safe-production-month activity was organized and implemented. Activities such as "reviewing the operation regulations of safe production", "reading a book of safe control", "learning a skill of safety" and "conducting defects exhibition" etc. are sufficiently carried out through mass media like newspaper, broadcast, TV, and internet etc., in the form of special programs, art performance, speeches and safe knowledge and skills competition etc..

A little story on security: Father and Son study "safe confirmation system" by questioning and answering each other

Lei Jifeng, a worker of boiler workshop of thermal power plant of Chalco Henan Branch, took his son as his partner in order to have "safe confirmation system" at his finger ends. He answered while his son questioned. By this way, the knowledge could be impressed. Once he could not answer, RMB 1 yuan should be paid to the son for reminding. From the start of questioning to being familiar with all the contents of "safe confirmation system", his son totally earned more than RMB 20 yuan. This "safe confirmation system" of Henan Branch had been spread nationally as a typical model by State Administration of Work Safety. Lei Jifeng, together with his son and wife, was invited to the studio by "Current Workers" Column of CCTV to introduce the experience of studying and applying "safe confirmation system".

**Environmental responsibility----to save resources and protect environment**

Since its establishment, Chinalco has always attached the issue of environmental protection with great importance. After long-period unremitting endeavor, the relatively perfect ecological industrial system has been set up preliminarily. Carried out since its establishment, a series of acts (such as saving resources and energy, protecting and optimizing environment and building ecological nonferrous metals industry etc.) have made new improvements and new results in 2007.

To build clean production system, implement clean production auditing and steadfastly push energy conservation and emission reduction work. In 2007, the aggregate AC consumption for primary aluminum dropped by 343.24 kWh/tonne, the consumption of sodium fluoride down by 4.39 kg/tonne, net consumption of carbon anode of primary aluminum down by 4.17kg/tonne. In 2007, the aggregate electricity saving of primary aluminum enterprises reached 1.225 billion kWh, petroleum coke saved nearly 20 thousand tonnes and the reduction of PFC reached 53%.

To create environmentally friendly enterprise and push the development of cyclic economy. The key alumina enterprises of Chinalco have realized zero emission of industrial waste water; Guangxi Branch pursues the road of green mining with engineering recultivation and biological recultivation implemented in empty mine areas, which become plowland again and achieve mine withdrawal and farming renewal. Two national pilot enterprises of cyclic economy project (Zhongzhou Branch and Baotou Aluminum (Group) Co., Ltd) are carrying into execution. 5000 tonne precise aluminum production line under the first-phase of energy-saving modernization project of Baotou Aluminum Co., Ltd has been put into operation. The construction work of recycling alumina project from waste catalyzer of Shandong Aluminum Company is pushed ahead. Southwest Aluminum (Group) Co., Ltd has been built as local environmentally friendly enterprise.



To enhance comprehensive utilization and save resources and energy. The company produces many products like cement and heat insulation materials etc. by using wastes from alumina production, extracts iron concentrates and copper metals by using molybdenum gangue, recycles copper concentrates by using slag, extracts sulfuric acid from waste gas, generates power from surplus heat from alumina production, extracts precious metals like gallium from waste liquids. All of the above technologies have achieved great economic benefit and social benefit.

**Internal responsibility----to vindicate the rights and benefit the employees**

There are 240 thousand employees in Chinalco, including 1 academician of the Chinese Academy of Engineering, 2 national selected persons of the New Century National Hundred, Thousand and Ten Thousand Talent Project, 210 winners of special government allowance of the State Council and 66 academic leaders of nonferrous metals industry.

The notions of "top enterprises need top talented people" and "human resources are the first resource" have been deeply understood by the staff of Chinalco. The company always sticks to human-oriented notion and takes the managerial notion of "common survival and common development harmoniously". Starting from all-around development of employees, Chinalco implements occupation career design by combining the occupational development of employees with the enterprise's development effectively and sets up employees' occupational development pathway from three post series of operation and management, engineering and technologies, as well as production operation and service.

The company has taken effective measures to steadily carry out "221" talented people project, namely bring up 20 chief engineers, 200 directorial engineers and 1000 executive engineers...

A story caring about employees: three "never"

Chinalco Guizhou enterprise loudly shouted out: "never let the basic living of a difficult family unbearable, never let the children of a difficult family dropout and never let a badly ill employee incurable". The enterprises set up a help center for difficult employees and built help fund for them. The leaders of enterprises were not only the first to donate, but also donated RMB 480 thousand yuan awarded by Chinalco to the leader group as help fund, which aroused great response of 17 thousand employees and the total donation amounted to RMB 1.02 million yuan. In 2007, 289 difficult employees/ families were aided and RMB 363.3 thousand yuan provided.

A story of training employees: delivering excellent employees to colleges

Chinalco Shandong enterprise, jointly with the University of Xi'an Architectural Science & Technology, launched the master's degree classes with the major of metallurgy and mechanical engineering. 58 excellent employees were chosen to take 3 years study on-the-job and 12 excellent basic group leaders to be trained in the college off their duties. By the end of 2007, over 70% member enterprises have established the joint education relationship with domestic famous colleges. Chalco Qinghai Branch selected 5 excellent employees to participate in the foreign language intensified training program of Beijing Foreign Studies University, who would be sent to study abroad in the future.

A story of growing up of an employee: from a storage keeper to "a Patent King"

Basing herself upon the post, by self-study and innovation, Zheng L.in, a storage keeper of vehicles section of transportation department of Chalco Henan Branch, accomplished 15 small innovations successively, including 4 national patents. In 2007, she was awarded the honor of a precursor of national knowledge-oriented employees and one of the 10 knowledge-oriented workers of Chalco Zhengzhou enterprises.

An impressive story of an employee: to remarry with her former husband

Xu Shiqiang was paralyzed in an accident and his wife, Li Yuanhong, a female worker of Chalco Guizhou Branch, promised to take care of him all his life. In 1994, Li Yuanhong remarried Cai De, her current husband, and together with him looked after Xu Shiqiang for the promise and brought up their little girl. Li Yuanhong's story was widely reported by CCTV, Workers' Daily and People's Daily Online and highly recognized by people. On September 18 of 2007, Li Yuanhong was awarded the honor of "Nominated Person of National Virtue Models" by Central Spiritual Civilization Office, All-China Federation of Trade Unions, the Central Committee of the Communist Youth League and All-China Women's Federation.

An impressive story of an employee: to contribute a kidney to help Mother's life

Li Junli, an employee from Chinalco Zhongzhou enterprise, in order to save his mother's life suffering from uremia, resolutely contributed one of his kidney to his mother. His story moved people's heart deeply.

An impressive story of an employee: ready to help others for a just cause

In the afternoon of August 20, 2007, Cui Kaipeng, a child of Zhangwu Village of Senglou Town of Hejin City, immodestly dropped into the rushing current while playing water beside the Yellow River Diversion. Jia Junqing, an employee of Shanxi Huaze Aluminum & Power Co., Ltd, passed by at that moment. Showing resourcefulness in an emergency, he found a wooden stick (he could not swim), jumped into the water and successfully rescued the dropped child. Afterward, the parents of Cui Kaipeng came to Huaze Company through all-around inquiry according to the known clues and showed their gratitude to Jia Junqing, appraising that the company brought up such a brave and daredevil employee like Jia Junqing.

**Public welfare responsibility----to take a return as the first priority and benefit all of society**

Chinalco actively participates in various social welfare activities and makes efforts to provide a return to society. In 2007, new contributions have been made in the aspects of Tibet-aid, Sinkiang-aid, poverty relief, disaster rescue, education support, school aid and socialist new countryside building etc. According to the incomplete statistics, the donated amount reached 148 million yuan, including 37.4 million yuan from the headquarters.

To support the new countryside construction work. In 2007, Chinalco donated 10 million yuan to support the new countryside construction work of Qinghai province. As partners of surrounding poverty-stricken villages, the member enterprises actively supported local economic development and helped them to build road, set up irrigation projects, plant economic crops and build the Hope Primary Schools.

Disaster resistance and rescue are conducted. Chinalco aided people of disaster-stricken areas to rebuild their home by donating to quake-stricken disaster areas of Yunnan Province, flooded areas of Anhui, Henan Provinces and Chongqing City.

Aiding Tibet and Sinkiang. Since 2003, of which year Chinalco started to participate in Tibet-aid, Sinkiang-aid work, 12 employees have been delivered to minority areas of Tibet, Sinkiang and Yunnan Provinces and poverty aid projects of over 50 million yuan have been completed. In 2007, Tibet-aid projects of 35 million yuan are carried into execution.

A help fund for difficult employees and a data record of difficult employees has been set up in Chinalco headquarters and its member enterprises. Some of enterprises stipulated employment clauses protecting workers from the villages and made efforts to improve their production and living situation.

A story of aiding the crippled: to rescue little Yanli

Several motorcycle fans from Chinalco Zhengzhou enterprises found in remote mountains a 13-year-old little girl named Liu Yanli who had crippled both feet and only been able to crawl. In order to help the unlucky girl, in January, 2007, the several employees transmitted their idea of curing little Yanli (with related pictures attached) to the internet, and quickly got response from many kind people. On March 5, the employees rode a motorcycle and took little Yanli from the mountains and sent her into the Shenyuan Urinary Surgical Hospital in Zhengzhou City to accept treatment.

## **Circular of Shanghai Stock Exchange concerning Issuing the Guidelines of Shanghai Stock Exchange for the Internal Control of Listed Companies**

All listed companies,

In order to push forward and direct the listed companies to set up a sound internal control system, enhance the risk management level of companies and protect the legitimate rights and interests of investors, the Guidelines of Shanghai Stock Exchange for the Internal Control of Listed Companies are instituted by this Stock Exchange according to the Company Law, Securities Law, Circular of the State Council on Approving and Forwarding the Opinions of China Securities Regulatory Commission concerning Promoting the Quality of Listed Companies, other laws, regulations and regulatory documents, and the Rules of Shanghai Stock Exchange concerning the Listing of Stocks, and hereby are promulgated for implementation.

**Shanghai Stock Exchange**  
**June 5, 2006**

# **Guidelines of Shanghai Stock Exchange for the Internal Control of Listed Companies**

## **Chapter I General Provisions**

**Article 1** In order to push forward and direct the listed companies to set up a sound internal control system, enhance the security management level of the companies and protect the legitimate rights and interests of investors, the Guidelines of Shanghai Stock Exchange for the Internal Control of Listed Companies are formulated by this Stock Exchange according to the Company Law, Securities Law, Circular of the State Council concerning Approving and Forwarding the Opinions of China Securities Regulatory Commission concerning Promoting the Quality of Listed Companies, other laws, regulations and regulatory documents, and the Rules of Shanghai Stock Exchange concerning the Listing of Stocks.

**Article 2** The term "internal control" refers to the related rules and arrangements which are made for the management of the risks underlying the strategies making and business operating of a listed company to ensure the realization of the strategic aims of the company. It is an activity in which the board of directors, the management level and the staff jointly take part.

**Article 3** According to the laws, administrative regulations, departmental rules and regulations, and the provisions of this Stock Exchange concerning the listing of stocks, any company listed in this Stock Exchange shall set up and perfect a sound internal control system. shall ensure the completeness, reasonableness and effectiveness in practicing of the internal control system to enhance the effectiveness and effect in company operations, promote the reliability of the information disclosed by the company to ensure the lawfulness and regulation compliance of the acts of the company.

**Article 4** The establishment, the effective implementation, and the inspection and supervision of a sound internal control system of the company shall be in the charge of the board of directors of a company. The board of directors and all its members shall ensure that the contents of the information disclosure concerning the internal control are genuine, exact and complete.

## **Chapter II Framework of Internal Control**

**Article 5** A company shall try best to make the internal control system comprehensive and complete, and make arrangements at least in the aspects as follows:

- (1) The aspect of the company;
- (2) The aspect of the departments and the affiliated companies of the company; and
- (3) The aspect of the business links of the company.

**Article 6** When setting up and carrying out the internal control system, a company shall take into consideration of the basic elements as follows:

- (1) The expression "to set a goal" means that the board of directors and the management level set a strategic aim in the light of the security preferences of the company.
- (2) The term "internal environment" refers to the organizational culture and other comprehensive factors affecting the staff's awareness of the securities, such as the perspectives of the staff on the securities, the security management concept and security preferences of the management level, the occupational and professional ethic norms and working environment, the attention paid to the securities and the directions on the securities given by the board of directors and the board of supervisors.
- (3) The term "confirmation of securities" means that the board of directors and the management level makes confirmation on the internal and external security factors causing affect on the realization of the aim of the company.
- (4) The term "security evaluation" means that the board of directors and the management level make sure the security management methods according to the likeliness and consequences of the security factors.
- (5) The expression "selection of security management strategies" means that the board of directors and the management level make choices on the security management strategies according to the security bearing ability and the security preferences.
- (6) The term "control activities" refers to the system and procedures to ensure the effective implementation of the security management strategies, consisting of the approval, authorization, verification, adjustment, review, periodic check, recording and checking up, functional division, asset preservation, performance evaluation, etc.
- (7) The term "information communication" refers to the course during which the information resulting from the planning, implementation, supervision and other management activities is provided to the users timely, and
- (8) The term "inspection and supervision" refers to the course during which the company exams itself and supervise the running of internal control.

**Article 7** Based on satisfying the overall strategic aims, a company shall set up related internal control systems for its subordinate departments and affiliated companies, as well as its business links.

**Article 8** In general, the internal control of a company shall cover all business links in the business operation activities, which shall include but not be limited to:

- (1) The link of sale of goods and receipt of payments for goods, consisting of the conducting of orders, credit management, transport and delivery of goods, issuance of invoices for the goods sold, confirmation of income and receivables, received cash payments and the records thereof, etc.
- (2) The link of purchase and payment, consisting of the procurement application, conducting of procurement orders, check and acceptance of goods, filling out check and acceptance report or dealing with the goods returned, the record on accounts payable, check and approval of payments, cash payments and records thereof, etc.
- (3) The link of production, consisting of the production plan to be made, issuance of checklist of materials to be used, storage of raw materials, bringing into operation, calculation of production costs of inventories,

calculation of costs of goods sold, quality control, etc.

- (4) The link of management on fixed assets, consisting of the self-construction, purchase, disposal, maintenance, preservation and record of the fixed assets, etc.
- (5) The link of management on monetary fund, consisting of the entries, transfer out, recording, reporting of the monetary fund, authorization to the cashier and financial accountants, etc.
- (6) The link of relevant transactions, consisting of the definition of the related parties, the pricing, authorization, implementation, reporting and record of relevant transactions.
- (7) The link of guaranty and financing, consisting of the authorization, enforcement, recording, etc concerning the borrowing, guaranty, acceptance, leasing, issuance of new stocks and issuance of bonds.
- (8) The link of investment, consisting of the resolutions, enforcement, preservation, recording, etc concerning the investments in the negotiable securities, stock right, real property, operating assets, financial derivatives, and other long term and short term investments, entrusted financing, and the use of funds raised.
- (9) The link of research and development, consisting of the basic research, design of products, development of technology, test of products, record of research and development, as well as preservation of documents, and
- (10) The link of personnel management, consisting of the employment and conclusion of employment contracts, training, leave, overtime work, leaving post, dismissal, retirement, time calculation, calculation of salaries and wages, calculation of individual income tax and all withholding items, records of wages and salaries, payments for salaries and wages, check on work attendance records, evaluation, etc.

When formulating internal control system, a company may modulate the business links in accordance with the sector in which the company founds itself and its production and business operation features.

**Article 9** The internal control system of a company shall not only consist of the control of all links of the business activities, but also the management rules concerning the business activities of each link, which consist of but not be limited to: the management of use of seals, receipt and use of instruments, budget management, asset management, quality management, guaranty management, post authorization and agent rules, regular communication rules, information disclosure management rules, as well as rules concerning the management of affiliated companies.

**Article 10** If using the computer-aided information system, a company shall also institute internal control rules concerning the information management. The internal control rules concerning the information management shall at least cover the contents as follows:

- (1) The division of functions between the information processing department and information using departments;
- (2) The division of the functions and duties of information processing department;
- (3) The control of development of the system and modification of procedures;
- (4) The control of procedures, access of materials, and data processing;
- (5) The safety control of archives, equipment and information; and
- (6) The control of the public information disclosure activities to be implemented through the website of this Stock Exchange or through the website of the company.

**Article 11** In the light of the relevant provisions of the finance administrative department of the state, a company shall set up internal accounting control rules.

**Article 12** A company in the finance sector or in any other special sector shall set up an internal control system, but also be governed by the provisions of the related competent departments.

**Article 13** According to its own business features, a company shall set up an internal control system. This



Stock Exchange encourages it to employ an intermediary institution to help it set up an internal control system.

## Chapter III Internal Control of Special Risks

### Section 1 Management and Control of Affiliated Companies

**Article 14** A company shall manage and control its controlling subsidiaries mainly in the aspects as follows:

- (1) To set up a control structure for its controlling subsidiaries according to the law, to determine the main clauses of the articles of association of the controlling subsidiaries, as well as to select directors, supervisors, managers and financial principal;
- (2) To coordinate the business strategies and security management strategies of its controlling subsidiaries and security management strategies in accordance with the strategic plan of the company, and to urge its controlling subsidiaries to make related business operation plan and security management procedures;
- (3) To institute rules concerning the evaluation, incentives and restraints of the business performances of its controlling subsidiaries;
- (4) To institute policies and procedures concerning the business competition and relevant transactions among the parent company and the subsidiaries;
- (5) To institute an internal reporting system of the important matters of its controlling subsidiaries. The important matters shall consist of, but not be limited to, development plans and budgets, important investments, purchase and sale of assets, provision of financial aids, provision of guaranties to others, investments into the securities and financial derivatives, conclusion of important contracts, as well as foreign exchange security management of its overseas controlling subsidiaries, and
- (6) To regularly get monthly financial reports and management reports of its controlling subsidiaries, and entrust an accounting firm to audit the financial reports of its controlling subsidiaries in accordance with the related provisions.

**Article 15** A company shall make evaluation on implementing, and inspecting and supervising the internal control system of its controlling subsidiaries.

**Article 16** With reference to the above-mentioned requirements, a company shall arrange the internal control system of its branch companies, and the joint stock companies which is with an important affect.

### Section 2 Internal Control of Transactions of Financial Derivatives

**Article 17** A company which takes part in transactions of financial derivatives shall first make evaluation on its own security control capability and set up a related internal control system. The transactions of financial derivatives shall consist of, but not be limited to, futures transactions, options transactions, forward transactions and swap transactions on the basis of commodities or securities.

**Article 18** The board of directors of a company shall have the full realization about the nature and security of the transactions of financial derivatives and shall make a reasonable determination about the security limits and related transaction parameters of the financial derivatives based on the security bearing capability of the company.

**Article 19** According to the requirements as follows, a company shall carry out internal control over the transactions of financial derivatives:

- (1) To reasonably set up an aim for transactions of financial derivatives, and hedging strategies;

(2) To set up rules concerning the implementation of transactions of financial derivatives, consisting of policies and procedures for the qualifications, evaluation, security remoteness, implementation, stop-loss, record and reports of the traders;

(3) To set up a security reporting system for the transactions of financial derivatives, consisting of the authorization, implementation, contingent assets, potential security, hedging strategies and other details of transactions; and

(4) To set up a security management system for transactions of financial derivatives, consisting of the policies and procedures for the organizational setup, duties, records and reports.

### Section 3 Internal Control of Other Risks

**Article 20** According to the industrial characteristics, strategic aims and different security management strategies, a company shall make related internal control arrangements for the particular securities.

**Article 21** A company shall set up a crisis management and control system.

## Chapter IV Inspection and Supervision of Internal Control

**Article 22** A company shall inspect the implementation of its internal control system regularly or irregularly. Upon the inspection and supervision over the internal control system, the board of directors and management level shall find whether there are any defects in the internal control system and whether there are any problems in the implementation thereof, and improve it in time in order to ensure the effective implementation thereof.

**Article 23** A company shall make a determination about a special functional department to take charge of the routine inspection and supervision of internal control and shall, in accordance with the related provisions and the actual circumstances of the company, arrange full-time personnel for the inspection and supervision of internal control. A company may arrange the organizational setup of this functional department according to its own organizational structure and the industrial characteristics.

The "special functional department" mentioned in the preceding paragraph (hereinafter referred to as the "inspection and supervision department") may make a direct report to the board of directors. The board of directors may determine the appointment and dismissal of the person-in-charge of this department.

**Article 24** A company shall set up measures to inspect and supervise the internal control, which shall at least cover:

- (1) The authorization granted by the board of directors or related institution concerning the inspection and supervision of internal control;
- (2) The cooperative obligations of the departments and subordinate institutions of the company in the inspection and supervision of internal control;
- (3) The items, time, procedures and methods for the inspection and supervision of internal control;
- (4) The means of reporting of the work of inspection and supervision of internal control;
- (5) The division of the responsibilities concerning the work of inspection and supervision of internal control; and
- (6) The incentive system for the inspection and supervision of internal control.

**Article 25** In accordance with its own business operation features, a company shall set up an annual plan concerning the inspection and supervision of internal control and make it serve as the basis for evaluating the running of internal control.

The important matters, such as the purchase and sale of assets, relevant transactions, transactions of derivatives, financial aids offered, guaranties given to others, use of fund raised, entrusted financing, shall be considered as indispensable items in the plan concerning the inspection and supervision of internal control by a company.

**Article 26** A report on the work of inspection and supervision of internal control shall be handed in to the board of directors by an inspection and supervision department at the end of a year and half a year.

In accordance with the business operation features of the company, the board of directors of a company shall make requirements for the contents and formats of a report concerning the work of inspection and supervision of internal control.

**Article 27** The board of directors of a company shall guide the work of inspection and supervision of internal control, and review the report concerning the work of inspection and supervision of internal control handed in by the inspection and supervision department. If there is an audit committee under the board of directors of the company, the aforesaid work may be conducted by the audit committee.

**Article 28** In the report concerning the work of inspection and supervision of internal control, the inspection and supervision personnel shall reflect the defects of internal control and the problems occurring in the implementation thereof according to the facts, and track them after reporting them to the board of directors in order to make sure that the related department has taken appropriate improvement measures in time.

The defects of internal control and the problems occurring in the exercise thereof referred to in the preceding paragraph shall be listed by the company as important items for the performance evaluation of all departments.

**Article 29** The working materials of inspection and supervision department, consisting of the reports concerning the work of inspection and supervision of internal control, working papers and related materials, shall be preserved for 10 years or more.

## Chapter V Information Disclosure of Internal Control

**Article 30** During the inspection and supervision of internal control, if a company finds that there is any serious defect or severe security in the internal control, it shall report it to the board of directors in time. The board of directors of the company shall report it to this Stock Exchange in time and shall make an announcement in time upon confirmation of this Stock Exchange.

In the public announcement the company shall explain the links wherein defects may appear in the internal control, the aftermaths and related liabilities and the remedial measures therefore.

**Article 31** According to the report on the work of inspection and supervision of internal control and related information, the board of directors shall make evaluation on the establishment and implementation of internal control system of the company and make a report concerning the self-evaluation of internal control. The board of directors of the company shall make a resolution about the report concerning the self-evaluation of internal control when it deliberates the annual financial report.

There is an audit committee under the board of directors of a company, the audit committee may make a draft report concerning the self-evaluation of internal control and hand in it to the board of directors for deliberation.

**Article 32** When disclosing the annual report, the board of directors of a company shall, at the same time, disclose the annual report concerning the self-evaluation of internal control and the verification and evaluation opinions of the accounting firm on the report concerning the self-evaluation of internal control.

**Article 33** The report concerning the self-evaluation of internal control of a company shall at least cover the following contents:

- (1) Whether or not an internal control system has been set up and perfect;
- (2) Whether or not the internal control system is carried out effectively;
- (3) The circumstances concerning the work of inspection and supervision of internal control;
- (4) the serious securities occurred in the internal control system and during the period of implementation thereof, and how to conduct the serious securities;
- (5) The evaluation of completion of the plan concerning the work of inspection and supervision of internal control for this year;
- (6) Related measures on improving internal control system; and
- (7) The plan concerning the internal control of the related work for the next year.

An accounting firm shall make verification and evaluation on the reports concerning the self-evaluation of internal control of companies according to the related provisions of the competent organ..

## Chapter VI Supplementary Provisions

**Article 34** This Stock Exchange shall be responsible for the interpretation of these Guidelines.

**Article 35** These Guidelines shall go into effect as of July 1, 2006.

ATTACHMENT 137

## Appendix 14

### CODE ON CORPORATE GOVERNANCE PRACTICES

*This Code on Corporate Governance Practices sets out the principles of good corporate governance, and two levels of recommendations: (a) code provisions, and (b) recommended best practices.*

*Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.*

*Issuers must state whether they have complied with the code provisions set out in this Code for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).*

*Every issuer must carefully review each code provision set out in this Code and, where the issuer deviates from any of the code provisions, the issuer must give considered reasons:*

- (a) in the case of annual reports (and summary financial reports), in the Corporate Governance Report which must be issued in accordance with Appendix 23; and*
- (b) in the case of interim reports (and summary interim reports), either
  - (i) by giving considered reasons for each deviation, or*
  - (ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. Such references must be clear and unambiguous and the interim report (or summary interim report) must not only contain a cross-reference without any discussion of the matter.**

*In the case of the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.*

**PRINCIPLES OF GOOD GOVERNANCE, CODE PROVISIONS  
AND RECOMMENDED BEST PRACTICES**

**A. DIRECTORS**

**A.1 The Board**

**Principle**

An issuer should be headed by an effective board which should assume responsibility for leadership and control of the issuer and be collectively responsible for promoting the success of the issuer by directing and supervising the issuer's affairs. Directors should take decisions objectively in the interests of the issuer.

**Code Provisions**

- A.1.1 The board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals. It is expected that such regular board meetings will normally involve the active participation, either in person or through other electronic means of communication, of a majority of directors entitled to be present. Accordingly, a regular meeting does not include the practice of obtaining board consent through the circulation of written resolutions.
- A.1.2 Arrangements should be in place to ensure that all directors are given an opportunity to include matters in the agenda for regular board meetings.
- A.1.3 Notice of at least 14 days should be given of a regular board meeting to give all directors an opportunity to attend. For all other board meetings, reasonable notice should be given.
- A.1.4 All directors should have access to the advice and services of the company secretary with a view to ensuring that board procedures, and all applicable rules and regulations, are followed.
- A.1.5 Minutes of board meetings and meetings of board committees should be kept by a duly appointed secretary of the meeting and such minutes should be open for inspection at any reasonable time on reasonable notice by any director.
- A.1.6 Minutes of board meetings and meetings of board committees should record in sufficient detail the matters considered by the board and decisions reached, including any concerns raised by directors or dissenting views expressed. Draft and final versions of minutes of board meetings should be sent to all directors for their comment and records respectively, in both cases within a reasonable time after the board meeting is held.

- A 1 7 There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances, at the issuer's expense. The board should resolve to provide separate independent professional advice to directors to assist the relevant director or directors to discharge his/their duties to the issuer.
- A 1 8 If a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should not be dealt with by way of circulation or by a committee (except an appropriate board committee set up for that purpose pursuant to a resolution passed in a board meeting) but a board meeting should be held. Independent non-executive directors who, and whose associates, have no material interest in the transaction should be present at such board meeting.

*Notes: 1 Directors are reminded of the requirement under rule 13.44 that they must abstain from voting on any board resolution in which they or any of their associates have a material interest and that they shall not be counted in the quorum present at the board meeting. The existing exceptions to the general voting prohibition are currently set out in note 1 to Appendix 3.*

*2 Such exceptions to the general voting prohibition should also be taken into account when considering whether a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board. If the relevant exceptions apply, a regular board meeting need not be held. For this purpose, please refer to A.1 1 for the meaning of a regular board meeting.*

#### **Recommended Best Practices**

- A 1 9 An issuer should arrange appropriate insurance cover in respect of legal action against its directors.
- A 1 10 Board committees should adopt, so far as practicable, the principles, procedures and arrangements set out in A.1 1 to A.1 8.

#### **A.2 Chairman and Chief Executive Officer**

##### **Principle**

There are two key aspects of the management of every issuer - the management of the board and the day-to-day management of the issuer's business. There should be a clear division of these responsibilities at the board level to ensure a balance of power and authority, so that power is not concentrated in any one individual.

#### **Code Provisions**

- A.2.1 The roles of chairman and chief executive officer should be separate and should not be performed by the same individual. The division of responsibilities between the chairman and chief executive officer should be clearly established and set out in writing.

*Note: Under paragraphs 2(c)(vii) and 7(d) of Appendix 23, issuers must disclose in their Corporate Governance Report the identity of the chairman and the chief executive officer and whether these two roles are segregated and the nature of any relationship (including financial, business, family or other material/relevant relationship(s)), if any, among members of the board and in particular, between the chairman and the chief executive officer.*

- A.2.2 The chairman should ensure that all directors are properly briefed on issues arising at board meetings.
- A.2.3 The chairman should be responsible for ensuring that directors receive adequate information, which must be complete and reliable, in a timely manner.

#### **Recommended Best Practices**

- A.2.4 One of the important roles of the chairman is to provide leadership for the board. The chairman should ensure that the board works effectively and discharges its responsibilities, and that all key and appropriate issues are discussed by the board in a timely manner. The chairman should be primarily responsible for drawing up and approving the agenda for each board meeting taking into account, where appropriate, any matters proposed by the other directors for inclusion in the agenda. The chairman may delegate such responsibility to a designated director or the company secretary.
- A.2.5 The chairman should take responsibility for ensuring that good corporate governance practices and procedures are established.
- A.2.6 The chairman should encourage all directors to make a full and active contribution to the board's affairs and take the lead to ensure that the board acts in the best interests of the issuer.
- A.2.7 The chairman should at least annually hold meetings with the non-executive directors (including independent non-executive directors) without the executive directors present.



A.2.8 The chairman should ensure that appropriate steps are taken to provide effective communication with shareholders and that views of shareholders are communicated to the board as a whole.

A.2.9 The chairman should facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

### **A.3 Board composition**

#### **Principle**

The board should have a balance of skills and experience appropriate for the requirements of the business of the issuer. The board should ensure that changes to its composition can be managed without undue disruption. The board should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.

*Notes: 1 Under rule 3.10, every board of directors of a listed issuer must include at least three independent non-executive directors.*

*2 Guidelines on independence of independent non-executive directors are set out in rule 3.13.*

#### **Code Provisions**

A.3.1 The independent non-executive directors should be expressly identified as such in all corporate communications that disclose the names of directors of the issuer.

*Note: Under paragraph 2(c)(ii) of Appendix 23, issuers must disclose the composition of the board, by category of directors, including names of chairman, executive directors, non-executive directors and independent non-executive directors in the Corporate Governance Report.*

#### **Recommended Best Practices**

A.3.2 An issuer should appoint independent non-executive directors representing at least one-third of the board.

A.3.3 An issuer should maintain on its website an updated list of its directors identifying their role and function and whether they are independent non-executive directors.

#### **A.4 Appointments, re-election and removal**

##### **Principle**

There should be a formal, considered and transparent procedure for the appointment of new directors to the board. There should be plans in place for orderly succession for appointments to the board. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director.

##### **Code Provisions**

A.4.1 Non-executive directors should be appointed for a specific term, subject to re-election.

*Note: Under paragraph 2(e) of Appendix 23, issuers must disclose the term of appointment of non-executive directors in the Corporate Governance Report*

A.4.2 All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after their appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.

*Notes: 1 The names of all directors submitted for election or re-election must be accompanied by the same biographical details as required for newly appointed directors set out in rule 13.51(2) (including other directorships held in listed public companies in the last three years and other major appointments) to enable shareholders to make an informed decision on their election.*

*2 If a director resigns or is removed from office, an issuer must comply with the disclosure requirements in rule 13.51(2) and include in its announcement about the director's resignation or removal the reasons given by the director for his resignation (including but not limited to information relating to a relevant director's disagreement with the issuer, if any, and a statement confirming whether or not there are any matters that need to be brought to the attention of shareholders)*

**Recommended Best Practices**

- A.4.3 Serving more than nine years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, any further appointment of such independent non-executive director should be subject to a separate resolution to be approved by shareholders. The board should set out to shareholders in the papers accompanying a resolution to elect such an independent non-executive director the reasons they believe that the individual continues to be independent and why he should be re-elected.
- A.4.4 Issuers should establish a nomination committee. A majority of the members of the nomination committee should be independent non-executive directors.
- A.4.5 The nomination committee should be established with specific written terms of reference which deal clearly with the committee's authority and duties. It is recommended that the nomination committee should discharge the following duties:
- (a) review the structure, size and composition (including the skills, knowledge and experience) of the board on a regular basis and make recommendations to the board regarding any proposed changes;
  - (b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of individuals nominated for directorships;
  - (c) assess the independence of independent non-executive directors; and
  - (d) make recommendations to the board on relevant matters relating to the appointment or re-appointment of directors and succession planning for directors in particular the chairman and the chief executive officer.
- A.4.6 The nomination committee should make available its terms of reference explaining its role and the authority delegated to it by the board.

*Notes 1 This requirement could be met by making it available on request and by including the information on the issuer's website.*

*2 Under paragraph 2(g)(ii) of Appendix 23, issuers must explain the role of the nomination committee (if any) in the Corporate Governance Report.*

A.4.7 The nomination committee should be provided with sufficient resources to discharge its duties.

A.4.8 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting why they believe the individual should be elected and the reasons why they consider the individual to be independent.

## **A.5 Responsibilities of directors**

### **Principle**

Every director is required to keep abreast of his responsibilities as a director of an issuer and of the conduct, business activities and development of that issuer. Given the essential unitary nature of the board, non-executive directors have the same duties of care and skill and fiduciary duties as executive directors.

*Note: These duties are summarised in "Non-statutory Guidelines of Directors' Duties" issued by the Companies Registry in January 2004. In determining whether a director has met the requisite standard of care, skill and diligence expected of him, courts will generally have regard to a number of factors. These include the functions that are to be performed by the director concerned, whether the director is a full-time executive director or a part-time non-executive director and the professional skills and knowledge of the director concerned.*

### **Code Provisions**

A.5.1 Every newly appointed director of an issuer should receive a comprehensive, formal and tailored induction on the first occasion of his appointment, and subsequently such briefing and professional development as is necessary, to ensure that he has a proper understanding of the operations and business of the issuer and that he is fully aware of his responsibilities under statute and common law, the Exchange Listing Rules, applicable legal requirements and other regulatory requirements and the business and governance policies of the issuer.

A.5.2 The functions of non-executive directors should include but should not be limited to the following:

- (a) participating in board meetings of the issuer to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct;

- (b) taking the lead where potential conflicts of interests arise,
- (c) serving on the audit, remuneration, nomination and other governance committees, if invited, and
- (d) scrutinising the issuer's performance in achieving agreed corporate goals and objectives, and monitoring the reporting of performance

A 5.3 Every director should ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot do so.

A 5.4 Directors must comply with their obligations under the Model Code set out in Appendix 10 and, in addition, the board should establish written guidelines on no less exacting terms than the Model Code for relevant employees in respect of their dealings in the securities of the issuer. For this purpose, "relevant employee" includes any employee of the issuer or a director or employee of a subsidiary or holding company of the issuer who, because of such office or employment, is likely to be in possession of unpublished price sensitive information in relation to the issuer or its securities.

#### **Recommended Best Practices**

A 5.5 All directors should participate in a programme of continuous professional development to develop and refresh their knowledge and skills to help ensure that their contribution to the board remains informed and relevant. The issuer should be responsible for arranging and funding a suitable development programme.

A 5.6 Each director should disclose to the issuer at the time of his appointment, and on a periodic basis, the number and nature of offices held in public companies or organisations and other significant commitments, with the identity of the public companies or organisations and an indication of the time involved. The board should determine for itself how frequently such disclosure should be made.

A 5.7 Non executive directors, as equal board members, should give the board and any committees on which they serve such as the audit, remuneration or nomination committees the benefit of their skills, expertise and varied backgrounds and qualifications through regular attendance and active participation. They should also attend general meetings and develop a balanced understanding of the views of shareholders.

A.5.8 Non-executive directors should make a positive contribution to the development of the issuer's strategy and policies through independent, constructive and informed comments

#### **A.6 Supply of and access to information**

##### **Principle**

Directors should be provided in a timely manner with appropriate information in such form and of such quality as will enable them to make an informed decision and to discharge their duties and responsibilities as directors of an issuer.

##### **Code Provisions**

A.6.1 In respect of regular board meetings, and so far as practicable in all other cases, an agenda and accompanying board papers should be sent in full to all directors in a timely manner and at least 3 days before the intended date of a board or board committee meeting (or such other period as agreed)

A.6.2 Management has an obligation to supply the board and its committees with adequate information in a timely manner to enable it to make informed decisions. The information supplied must be complete and reliable. To fulfil his duties properly a director may not in all circumstances be able to rely purely on what is volunteered by management and further enquiries may be required. Where any director requires more information than is volunteered by management, he should make further enquiries where necessary. The board and each director should have separate and independent access to the issuer's senior management.

*Notes 1 The information provided should include background or explanatory information relating to matters to be brought before the board, copies of disclosure documents, budgets, forecasts and monthly and other relevant internal financial statements. In respect of budgets, any material variance between the projections and actual results must also be disclosed and explained.*

*2 For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.*

A 6.3 All directors are entitled to have access to board papers and related materials. Such papers and related materials should be prepared in such form and quality as will enable the board to make an informed decision on matters placed before it. Where queries are raised by directors, steps must be taken to respond as promptly and fully as possible.

## **B. REMUNERATION OF DIRECTORS AND SENIOR MANAGEMENT**

### **B.1 The level and make-up of remuneration and disclosure**

#### **Principle**

An issuer should disclose information relating to its directors' remuneration policy and other remuneration related matters. There should be a formal and transparent procedure for setting policy on executive directors' remuneration and for fixing the remuneration packages for all directors. Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. No director should be involved in deciding his own remuneration.

*Notes: 1 Under paragraph 24B of Appendix 16, issuers are required to give a general description of the emolument policy and long-term incentive schemes of the group as well as the basis of determining the emolument payable to their directors.*

*2 Under paragraph 24 of Appendix 16, directors' fees and any other reimbursement or emolument payable to a director must be disclosed in full in the annual reports and accounts of the issuer on an individual and named basis.*

#### **Code Provisions**

- B.1.1 Issuers should establish a remuneration committee with specific written terms of reference which deal clearly with its authority and duties. A majority of the members of the remuneration committee should be independent non-executive directors.
- B.1.2 The remuneration committee should consult the chairman and/or chief executive officer about their proposals relating to the remuneration of other executive directors and have access to professional advice if considered necessary.

B.1.3 The terms of reference of the remuneration committee should include, as a minimum, the following specific duties: -

- (a) to make recommendations to the board on the issuer's policy and structure for all remuneration of directors and senior management and on the establishment of a formal and transparent procedure for developing policy on such remuneration;

*Note: For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.*

- (b) to have the delegated responsibility to determine the specific remuneration packages of all executive directors and senior management, including benefits in kind, pension rights and compensation payments, including any compensation payable for loss or termination of their office or appointment, and make recommendations to the board of the remuneration of non-executive directors. The remuneration committee should consider factors such as salaries paid by comparable companies, time commitment and responsibilities of the directors, employment conditions elsewhere in the group and desirability of performance-based remuneration,

*Note: Please refer to the Note to B.1.3(a) of this Code for the definition of "senior management".*

- (c) to review and approve performance-based remuneration by reference to corporate goals and objectives resolved by the board from time to time;
- (d) to review and approve the compensation payable to executive directors and senior management in connection with any loss or termination of their office or appointment to ensure that such compensation is determined in accordance with relevant contractual terms and that such compensation is otherwise fair and not excessive for the issuer;

*Note: Please refer to the Note to B.1.3(a) of this Code for the definition of "senior management".*

- (e) to review and approve compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that such arrangements are determined in accordance with relevant contractual terms and that any compensation payment is otherwise reasonable and appropriate, and



- (f) to ensure that no director or any of his associates is involved in deciding his own remuneration.

*Note. The remuneration committee shall advise shareholders on how to vote with respect to any service contracts of directors that require shareholders' approval under rule 13.68*

- B.1.4 The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board.

*Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website*

*2 Under paragraph 2(f)(i) of Appendix 23, issuers must explain the role of the remuneration committee (if any) in the Corporate Governance Report*

- B.1.5 The remuneration committee should be provided with sufficient resources to discharge its duties

**Recommended Best Practices**

- B.1.6 A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

- B.1.7 Issuers should disclose details of any remuneration payable to members of senior management, on an individual and named basis, in their annual reports and accounts

*Notes: 1 Issuers should disclose details of any remuneration payable to members of senior management. Such disclosure should be to the same standard as that required for directors of issuers under paragraph 24 of Appendix 16.*

*2 For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.*

- B.1.8 Where the board resolves to approve any remuneration or compensation arrangements which the remuneration committee has previously resolved not to approve, the board must disclose the reasons for its resolution in its next annual report

**C. ACCOUNTABILITY AND AUDIT**

**C.1 Financial reporting**

**Principle**

The board should present a balanced, clear and comprehensible assessment of the company's performance, position and prospects.

**Code Provisions**

- C.1.1 Management should provide such explanation and information to the board as will enable the board to make an informed assessment of the financial and other information put before the board for approval.

*Note: Issuers are reminded of their obligation to comply with the financial reporting and disclosure requirements set out in the Exchange Listing Rules. Failure to comply with such requirements constitutes a breach of the Exchange Listing Rules.*

- C.1.2 The directors should acknowledge in the Corporate Governance Report their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities in the auditors' report on the financial statements. Unless it is inappropriate to assume that the company will continue in business, the directors should prepare the accounts on a going concern basis, with supporting assumptions or qualifications as necessary. When the directors are aware of material uncertainties relating to events or conditions that may cast significant doubt upon the issuer's ability to continue as a going concern, such uncertainties should be clearly and prominently set out and discussed at length in the Corporate Governance Report. The Corporate Governance Report should contain sufficient information so as to enable investors to understand the severity and significance of the matters at hand. To the extent that it is reasonable and appropriate, the issuer may refer to the other relevant parts of the annual report. Any such references should be clear and unambiguous and the Corporate Governance Report should not only contain a cross-reference without any discussion of the matter.
- C.1.3 The board's responsibility to present a balanced, clear and understandable assessment extends to annual and interim reports, other price-sensitive announcements and other financial disclosures required under the Exchange Listing Rules, and reports to regulators as well as to information required to be disclosed pursuant to statutory requirements.

### **Recommended Best Practices**

- C.1.4 An issuer should announce and publish quarterly financial results within 45 days after the end of the relevant quarter, disclosing such information as would enable shareholders to assess the performance, financial position and prospects of the issuer. Any such quarterly financial reports should be prepared using the accounting policies applied to the issuer's half-year and annual accounts.
- C.1.5 Once an issuer decides to announce and publish its quarterly financial results, it should continue to adopt quarterly reporting for each of the first 3 and 9 months periods of subsequent financial years. Where the issuer decides not to announce and publish its financial results for a particular quarter, it should publish an announcement to disclose the reason(s) for such decision.

## **C.2 Internal controls**

### **Principle**

The board should ensure that the issuer maintains sound and effective internal controls to safeguard the shareholders' investment and the issuer's assets.

### **Code Provisions**

- C.2.1 The directors should at least annually conduct a review of the effectiveness of the system of internal control of the issuer and its subsidiaries and report to shareholders that they have done so in their Corporate Governance Report. The review should cover all material controls, including financial, operational and compliance controls and risk management functions.
- C.2.2 The board's annual review should, in particular, consider the adequacy of resources, qualifications and experience of staff of the issuer's accounting and financial reporting function, and their training programmes and budget.

### **Recommended Best Practices**

- C.2.3 The board's annual review should, in particular, consider:
- (a) the changes since the last annual review in the nature and extent of significant risks, and the issuer's ability to respond to changes in its business and the external environment,
  - (b) the scope and quality of management's ongoing monitoring of risks and of the system of internal control, and where applicable, the work of its internal audit function and other providers of assurance.

- (c) the extent and frequency of the communication of the results of the monitoring to the board (or board committee(s)) which enables it to build up a cumulative assessment of the state of control in the issuer and the effectiveness with which risk is being managed;
  - (d) the incidence of significant control failings or weakness that has been identified at any time during the period and the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the issuer's financial performance or condition; and
  - (e) the effectiveness of the issuer's processes relating to financial reporting and Listing Rule compliance
- C.2.4 Issuers should disclose as part of the Corporate Governance Report a narrative statement how they have complied with the code provisions on internal control during the reporting period. The disclosures should also include the following items:
- (a) the process that an issuer has applied for identifying, evaluating and managing the significant risks faced by it;
  - (b) any additional information to assist understanding of the issuer's risk management processes and system of internal control;
  - (c) an acknowledgement by the board that it is responsible for the issuer's system of internal control and for reviewing its effectiveness;
  - (d) the process that an issuer has applied in reviewing the effectiveness of the system of internal control; and
  - (e) the process that an issuer has applied to deal with material internal control aspects of any significant problems disclosed in its annual reports and accounts.
- C.2.5 Issuers should ensure that their disclosures provide meaningful information and do not give a misleading impression.
- C.2.6 Issuers without an internal audit function should review the need for one on an annual basis and should disclose the outcome of such review in the issuers' Corporate Governance Report.

### C.3 Audit Committee

#### Principle

The board should establish formal and transparent arrangements for considering how it will apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors. The audit committee established by an issuer pursuant to the Exchange Listing Rules should have clear terms of reference.

#### Code Provisions

- C.3.1 Full minutes of audit committee meetings should be kept by a duly appointed secretary of the meeting (who should normally be the company secretary). Draft and final versions of minutes of the audit committee meetings should be sent to all members of the committee for their comment and records respectively, in both cases within a reasonable time after the meeting.
- C.3.2 A former partner of the issuer's existing auditing firm should be prohibited from acting as a member of the issuer's audit committee for a period of 1 year commencing on the date of his ceasing:
- (a) to be a partner of the firm; or
  - (b) to have any financial interest in the firm,
- whichever is the later.
- C.3.3 The terms of reference of the audit committee should include at least the following duties:

#### *Relationship with the issuer's auditors*

- (a) to be primarily responsible for making recommendation to the board on the appointment, reappointment and removal of the external auditor, and to approve the remuneration and terms of engagement of the external auditor, and any questions of resignation or dismissal of that auditor;

*Note: Issuers are reminded that rule 13.51(4) requires an announcement to be published when there is a change of auditors. The announcement must also include a statement as to whether there are any matters that need to be brought to holders of securities of the issuer.*

- (b) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process in accordance with applicable standard. The audit committee should discuss with the auditor the nature and scope of the audit and reporting obligations before the audit commences;
- (c) to develop and implement policy on the engagement of an external auditor to supply non-audit services. For this purpose, external auditor shall include any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the audit firm nationally or internationally. The audit committee should report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

*Review of financial information of the issuer*

- (d) to monitor integrity of financial statements of an issuer and the issuer's annual report and accounts, half-year report and, if prepared for publication, quarterly reports, and to review significant financial reporting judgements contained in them. In this regard, in reviewing the issuer's annual report and accounts, half year report and, if prepared for publication, quarterly reports before submission to the board, the committee should focus particularly on: -
  - (i) any changes in accounting policies and practices;
  - (ii) major judgmental areas;
  - (iii) significant adjustments resulting from audit;
  - (iv) the going concern assumptions and any qualifications;
  - (v) compliance with accounting standards; and
  - (vi) compliance with the Exchange Listing Rules and other legal requirements in relation to financial reporting;
- (e) In regard to (d) above -
  - (i) members of the committee must liaise with the issuer's board of directors and senior management and the committee must meet, at least once a year, with the issuer's auditors; and

- (iii) the committee should consider any significant or unusual items that are, or may need to be, reflected in such reports and accounts and must give due consideration to any matters that have been raised by the issuer's staff responsible for the accounting and financial reporting function, compliance officer or auditors.

*Oversight of the issuer's financial reporting system and internal control procedures*

- (f) to review the issuer's financial controls, internal control and risk management systems,
- (g) to discuss with the management the system of internal control and ensure that management has discharged its duty to have an effective internal control system including the adequacy of resources, qualifications and experience of staff of the issuer's accounting and financial reporting function, and their training programmes and budget;
- (h) to consider any findings of major investigations of internal control matters as delegated by the board or on its own initiative and management's response,
- (i) where an internal audit function exists, to ensure co-ordination between the internal and external auditors, and to ensure that the internal audit function is adequately resourced and has appropriate standing within the issuer, and to review and monitor the effectiveness of the internal audit function,
- (j) to review the group's financial and accounting policies and practices,
- (k) to review the external auditor's management letter, any material queries raised by the auditor to management in respect of the accounting records, financial accounts or systems of control and management's response,
- (l) to ensure that the board will provide a timely response to the issues raised in the external auditor's management letter;
- (m) to report to the board on the matters set out in this code provision; and
- (n) to consider other topics, as defined by the board

*Notes: The following are only intended to be suggestions as to how compliance with the above code provision may be achieved and do not form part of the code provision.*

- 1 *The audit committee may wish to consider establishing the following procedure to review and monitor the independence of external auditors: :*
  - (i) *consider all relationships between the issuer and the audit firm (including the provision of non-audit services);*
  - (ii) *seek from the audit firm, on an annual basis, information about policies and processes for maintaining independence and monitoring compliance with relevant requirements, including current requirements regarding rotation of audit partners and staff, and*
  - (iii) *meet with the auditor, at least annually, in the absence of management, to discuss matters relating to its audit fees, any issues arising from the audit and any other matters the auditor may wish to raise*
- 2 *The audit committee may wish to consider agreeing with the board the issuer's policies relating to the hiring of employees or former employees of the external auditors and monitor the application of such policies. The audit committee should then be in a position to consider whether in the light of this there has been any impairment or appearance of impairment, of the auditor's judgement or independence in respect of the audit.*
- 3 *The audit committee would normally be expected to ensure that the provision by an external auditor of non-audit services does not impair the external auditor's independence or objectivity. When assessing the external auditor's independence or objectivity in relation to the provision of non-audit services, the audit committee may wish to consider:*
  - (i) *whether the skills and experience of the audit firm make it a suitable supplier of the non-audit services;*
  - (ii) *whether there are safeguards in place to ensure that there is no threat to objectivity and independence in the conduct of the audit resulting from the provision of such services by the external auditor;*



(iii) the nature of the non-audit services, the related fee levels and the fee levels individually and in aggregate relative to the audit firm, and

(iv) the criteria which govern the compensation of the individuals performing the audit.

- 4 For further guidance on the duties of an audit committee, issuers may refer to the "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence" issued by the Technical Committee of the International Organization of Securities Commissions in October 2007 and "A Guide for Effective Audit Committees" published by the Hong Kong Institute of Certified Public Accountants (formerly known as the Hong Kong Society of Accountants) in February 2002. Issuers may also adopt the terms of reference set out in those guides, or they may adopt any other comparable terms of reference for the establishment of an audit committee

C.3.4 The audit committee should make available its terms of reference, explaining its role and the authority delegated to it by the board

Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.

2 Under paragraph 2(i)(i) of Appendix 23, issuers must explain the role of the audit committee in the Corporate Governance Report.

C.3.5 Where the board disagrees with the audit committee's view on the selection, appointment, resignation or dismissal of the external auditors, the issuer should include in the Corporate Governance Report a statement from the audit committee explaining its recommendation and also the reason(s) why the board has taken a different view.

C.3.6 The audit committee should be provided with sufficient resources to discharge its duties.

#### **Recommended Best Practices**

C.3.7 The terms of reference of the audit committee should also require the audit committee:

- (a) to review arrangements by which employees of the issuer may, in confidence, raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for the fair and independent investigation of such matters and for appropriate follow-up action, and

- (b) to act as the key representative body for overseeing the issuer's relation with the external auditor

## **D. DELEGATION BY THE BOARD**

### **D.1 Management functions**

#### **Principle**

An issuer should have a formal schedule of matters specifically reserved to the board for its decision. The board should give clear directions to management as to the matters that must be approved by the board before decisions are made on behalf of the issuer.

#### **Code Provisions**

- D.1.1 When the board delegates aspects of its management and administration functions to management, it must at the same time give clear directions as to the powers of management, in particular, with respect to the circumstances where management should report back and obtain prior approval from the board before making decisions or entering into any commitments on behalf of the issuer.

*Note: The board should not delegate matters to a board committee, executive directors or management to an extent that would significantly hinder or reduce the ability of the board as a whole to discharge its functions.*

- D.1.2 An issuer should formalise the functions reserved to the board and those delegated to management. It should review those arrangements on a periodic basis to ensure that they remain appropriate to the needs of the issuer.

*Note: Under paragraph 2(c)(iv) of Appendix 23, issuers must include in their Corporate Governance Report a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.*

#### **Recommended Best Practices**

- D.1.3 An issuer should disclose the division of responsibility between the board and management to assist those affected by corporate decisions to better understand the respective accountabilitys and contributions of the board and management.

D.1.4 Directors should clearly understand delegation arrangements in place. To that end, issuers should have formal letters of appointment for directors setting out the key terms and conditions relative to their appointment.

## **D.2 Board Committees**

### **Principle**

Board committees should be formed with specific written terms of reference which deal clearly with the committees' authority and duties.

### **Code Provisions**

D.2.1 Where board committees are established to deal with matters, the board should prescribe sufficiently clear terms of reference to enable such committees to discharge their functions properly.

D.2.2 The terms of reference of board committees should require such committees to report back to the board on their decisions or recommendations, unless there are legal or regulatory restrictions on their ability to do so (such as a restriction on disclosure due to regulatory requirements).

## **E. COMMUNICATION WITH SHAREHOLDERS**

### **E.1 Effective communication**

#### **Principle**

The board should endeavour to maintain an on-going dialogue with shareholders and in particular, use annual general meetings or other general meetings to communicate with shareholders and encourage their participation.

#### **Code Provisions**

E.1.1 In respect of each substantially separate issue at a general meeting, a separate resolution should be proposed by the chairman of that meeting.

*Note: An example of a substantially separate issue is the nomination of persons as directors. Accordingly, each such person should be nominated by means of a separate resolution.*

E.1.2 The chairman of the board should attend the annual general meeting and arrange for the chairmen of the audit, remuneration and nomination committees (as appropriate) or in the absence of the chairman of such committees, another

member of the committee or failing this his duly appointed delegate, to be available to answer questions at the annual general meeting. The chairman of the independent board committee (if any) should also be available to answer questions at any general meeting to approve a connected transaction or any other transaction that is subject to independent shareholders' approval.

E.1.3 The issuer should arrange for the notice to shareholders to be sent in the case of annual general meetings at least 20 clear business days before the meeting and to be sent at least 10 clear business days in the case of all other general meetings.

## **E.2 Voting by Poll**

### **Principle**

The issuer should ensure that shareholders are familiar with the detailed procedures for conducting a poll.

### **Code Provisions**

E.2.1 The chairman of a meeting should at the commencement of the meeting ensure that an explanation is provided of the detailed procedures for conducting a poll and then answer any questions from shareholders regarding voting by way of a poll.

## Registration Application of Enterprise Incorporation

Name			
The Notice No. on the Pre-approval of Enterprise Name		Tel	
domicile		Zip code	
Name of Legal Representative		Post	
Registered Capital	(Ten thousand RMB)	Enterprise Type	
Paid-up Capital	(Ten thousand RMB)	Form of Incorporation	
Business Scope	Licensing Business projects:  General Business Projects:		
Business Term	Long-term/ _____ years	Number of Application copies	

The company will establish in accordance with "Company Law" and "Regulation of Business Registration of Company". The submitted information and documentations are true and valid. And we are responsible for the authenticity of these documentations.

Signature of Legal Representative:

Date:

Note:

1. The manually application and signature shall be filled out in black or blue-black ink, please do not use ballpoint pen.
2. The type of enterprise shall be filled out by "Limited Liability Company" or "Joint Stock Limited Company". Thereinto, wholly State-owned Companies shall fill out "Limited Liability Company (wholly state-owned)"; One-person Limited Liability Companies shall note "Limited Liability Companies (only one natural person shareholder)" or "Limited Liability Companies (only one legal person shareholder)".
3. The Joint Stock Limited Company shall fill out "establishment by promotion" or "establishment by stock floatation" in the box of "form of incorporation".
4. Business Term: please choose "long-term" or "\*\* years".

(1)  
**The Capital Contribution Information of Shareholders (Promoters)**

The name of Shareholders (promoters)	ID Name and Number	Capital Subscription		The proportion of shares held (%)	Paid-up Contribution		Note
		The amount of capital contribution	The form of capital contribution		The amount of capital contribution	The form of capital contribution	

Note:  
 1. Please fill out the table in accordance with the Articles of Association and the situation of paid-up contribution. In case this page is not enough for fill, please attach extra paper.  
 2. The column of "Note" please fill out the following character: A. Enterprise Legal Person; B. social organization Legal Person; C. Institution

Legal Person; D, the State Council and local government; E, Natural Person; F, Foreign Invested Enterprise, G others  
3、 The form of capital contribution shall fill out with "in cash", "in kind", "in intellectual property right", in land use right, or other.



(2)

## The information about Directors, Supervisors and Mangers

Name: \_\_\_\_\_ Title: \_\_\_\_\_ ID Number: \_\_\_\_\_

(The duplicate of ID please attach here)

Name: \_\_\_\_\_ Title: \_\_\_\_\_ ID Number: \_\_\_\_\_

(The duplicate of ID please attach here)

Name: \_\_\_\_\_ Title: \_\_\_\_\_ ID Number: \_\_\_\_\_

(The duplicate of ID please attach here)

(3)

## The Information of Legal Representative

Name		Tel	
Title		The authority of appointed or dismissed	
ID type			
ID Number			
(The duplicate of ID please attach here)			
Signature of Legal Representative: _____			
Date:			
<p>The above information is authentic, the duplicate of ID is consistent with the original. And it comply with the relevant provisions for the qualification of legal representative in the "Company Law" and "Rules for the Registration Administration of Legal Representatives of Legal Entities", and we responsible for the authenticity.</p> <p style="text-align: right;">(Signature or Seal) Date</p> <p>Note: In accordance with the procedure stipulated in "Company Law" and Articles of Association, the</p>			

company which the legal representative decided by investors or shareholders' meeting shall sign this document by half or more of its investors or shareholders; the company which the legal representative decided by the board of directors shall sign this document by half or more of its directors.

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA FOR  
CONTROLLING THE REGISTRATION OF ENTERPRISES AS LEGAL  
PERSONS

(Adopted by the Fourth Executive Meeting of the State Council on  
May 13, 1988, promulgated by Decree No. 1 of the State Council of the  
People's Republic of China on June 3, 1988, and effective as of July 1,  
1988)

Chapter I General Provisions

Article 1

In accordance with relevant provisions of the General Principles of the  
Civil Law of the People's Republic of China, the present Regulations are  
formulated with a view to establishing a system for controlling the  
registration of enterprises as legal persons, confirming their status as  
such, safeguarding their legitimate rights and interests, stamping out  
illegal business operations, and preserving social and economic order.

Article 2

Any of the following enterprises which are qualified as legal persons  
shall register as such in accordance with the relevant provisions of the  
present Regulations:

- (1) enterprises owned by the whole people;
- (2) enterprises under collective ownership;
- (3) jointly operated enterprises;
- (4) Chinese-foreign equity joint ventures, Chinese-foreign contractual  
joint ventures and foreign-capital enterprises established within the  
territory of the People's Republic of China;
- (5) privately operated enterprises;
- (6) other enterprises required by the law to register as legal persons.

Article 3

Those enterprises applying for registration as legal persons shall be given Business Licenses for Enterprises as Legal Persons and the status of legal persons when their applications for registration have been examined and approved by the authorities in charge of the registration of enterprises as legal persons and their legitimate rights and interests shall be protected by laws of the State.

Those enterprises, which are required by law to register as legal persons but which have not gone through the procedures of examination and approval registration by the authorities in charge of the registration of enterprises as legal persons, shall not be allowed to engage in business operations.

## Chapter II Registration Authorities

### Article 4

The authorities in charge of the registration of enterprises as legal persons (hereinafter referred to as the registration authorities) are the State Administration for Industry and Commerce and administrative departments for industry and commerce at various levels. Registration authorities at various levels shall perform their functions according to law under the leadership of higher registration authorities and be free from unlawful interference.

### Article 5

The registration of national corporations, enterprise groups and corporations handling import-export business set up with the approval of the State Council or departments authorized by the State Council shall be examined and approved by the State Administration for Industry and Commerce. The registration of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises shall be examined and approved by the State Administration for Industry

and Commerce or by local administrative departments for industry and commerce authorized by the State Administration for Industry and Commerce. The registration of son (or branch) companies of national corporations, enterprises, enterprise groups or companies handling import-export trade established with the approval of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government or departments authorized by them shall be examined and approved by the administrative departments for industry and commerce of the provinces, autonomous regions and municipalities directly under the Central Government. The registration of other enterprises shall be examined and approved by the administrative departments for industry and commerce of the cities of counties (districts) where the enterprises are located.

#### Article 6

Registration authorities at various levels shall institute a file of the registration of enterprises as legal persons and a system for tabulating statistics relating to such registration, and collect basic information about the registration of enterprises as legal persons so as to serve the development of a planned commodity economy. Registration authorities shall offer, in a planned manner and according to the needs of society, the service of providing the public with data about the registration of enterprises as legal persons.

### Chapter III Conditions for Registration and Entities to Apply for Registration

#### Article 7

Entities applying for registration as enterprises as legal persons must satisfy the following conditions, i.e. having:

- (1) name, organization and articles of association;
- (2) fixed sites for business operations and essential facilities;
- (3) funds and employees in conformity with State regulations and in line

with their scale of production, operation or service;

(4) ability to bear civil liabilities independently;

(5) a scope of business in conformity with the provisions of the relevant laws, regulations and policies of the State.

#### Article 8

The application of an enterprise for registration as a legal person shall be filed by the person responsible for establishing the enterprise.

The registration as a legal person of a jointly operated enterprise which bears civil liabilities independently shall be applied for by the person responsible for initiating the said enterprise.

### Chapter IV Items of Registration

#### Article 9

The major items to be registered for an enterprise as a legal person are: name, residence, site for business operation, legal representative, economic nature, scope of business, mode of operation, registered capital, number of employees, duration of operation and subdivisions.

#### Article 10

An enterprise as a legal person shall use only one name. The name to be used by the enterprise as a legal person in its application for registration shall be examined by the registration authorities and, after it is approved and registered, the enterprise as a legal person shall enjoy the right to the exclusive use of the registered name within a definite limit.

Those who apply for establishing Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures or foreign-capital enterprises shall apply to the registration authorities for registering the names of the enterprises before their contracts and articles of association are examined and approved.

Article 11

The legal representative of an enterprise as a legal person, which has been registered after examination and approval by a registration authority, shall be the signatory who exercises functions and powers on behalf of the enterprise. The signature of the legal representative shall be submitted to the registration authority for the record.

Article 12

The registered capital of an enterprise as a legal person represents the total value of the property the State entrusts to it for operation and management or that of the property owned by the enterprise itself.

When an enterprise as a legal person registers for starting operations, the discrepancy between the sum of capital it applies for registration and the sum of capital it actually possesses shall be handled in accordance with specific regulations of the State.

Article 13

The scope of business of an enterprise as a legal person shall be in harmony with its capital, sites, equipment, employees and technical force. It may focus on one line of business as its main operation while engaging in other operations simultaneously in accordance with relevant regulations of the State. An enterprise as a legal person shall engage in operations within the scope of business as approved in registration.

Chapter V Registration for Starting Operations

Article 14

An enterprise as a legal person shall apply to a registration authority for registration for starting operations within 30 days after the approval of the department in charge of it or that of an authority for examination and approval. For an enterprise which does not have a department in charge or authority for examination and approval, its application for



registration for starting operations shall be examined by a registration authority. The registration authority shall make a decision of approval or disapproval of the application for registration within 30 days after receiving it.

#### Article 15

An enterprise as a legal person shall submit the following papers when applying for registration for starting operations:

- (1) an application for registration signed by the person responsible for its establishment;
- (2) the document of approval issued by the department in charge or the authority for examination and approval;
- (3) its articles of association;
- (4) a certificate of its credit worthiness, a certificate of the verification of its capital or a guarantee for its capital;
- (5) a certificate of the identity of the principal responsible person of the enterprise;
- (6) a certificate of the right to use the residence and site for operation;
- (7) other relevant papers and certificates.

#### Article 16

When the application filed by an entity for starting operations as an enterprise as a legal person has been examined and approved by a registration authority and a Business License for Enterprises as a Legal Person is received, the enterprise shall be considered as established. The enterprises as a legal person may henceforth have its official seal made, open a bank account, sign contracts and conduct business operations by dint of its Business License.

The registration authority may, after a check-up, issue duplicates of the Business License, if the enterprise as a legal person needs them for its business operations.

## Chapter VI Changes in Registration

### Article 17

An enterprise as a legal person shall apply for making changes in its registration whenever it changes its name, residence, site, legal representative, economic nature, scope of business, mode of operation, registered capital or duration of operation and whenever it increases or disbands its branches.

### Article 18

An enterprise as a legal person shall apply to the registration authority for making changes in its registration within 30 days after the changes are approved by the department in charge or by the authority for examination and approval.

### Article 19

An enterprise as a legal person shall apply to the registration authority for making changes in its registration, or for registration for starting operations or for cancelling its registration, whenever it is split up, or merged with others or moved elsewhere, within 30 days after these changes are approved by the department in charge or by the authority for examination and approval.

## Chapter VII Cancellation of Registration

### Article 20

An enterprise as a legal person shall go through the procedures for cancelling its registration with the registration authority when it closes down, is dissolved, declares bankruptcy or terminates its business operations for other reasons.

### Article 21

Whenever an enterprise as a legal person is to cancel its registration, it must submit an application signed by its legal representative, a document of approval issued by the department in charge or by the authority for examination and approval, a certificate showing the completion of the clearing up of its liabilities, or a document showing that a liquidation organization will be responsible for clearing up its creditor's rights and liabilities. The registration authority, after examining and approving the application, shall recall the Business License for Enterprise as a Legal Person, duplicates of the License, take over the official seal of the enterprise, and notify the banks at which it has opened an account of the cancellation of its registration.

#### Article 22

An enterprise as a legal person, which fails to start operations 6 months after receiving its Business License for Enterprise as a Legal Person or which has ceased its operations for a year, shall be regarded as having closed down, and the registration authority shall recall its Business License for Enterprises as a Legal Person, duplicates of the License, take over its official seal and notify the banks at which it has opened an account of the cancellation of its registration.

### Chapter VIII Announcement, Annual Check-up and Control of Certificates

#### Article 23

The registration authority shall issue registration announcements whenever an enterprise as a legal person starts operations, changes its name or cancels its registration. No other organ shall be entitled to issue such announcements without the approval of the registration authority.

#### Article 24

A system for conducting annual check-up shall be instituted to administer the registration of enterprises as legal persons. An enterprise as a legal

person shall submit its annual check-up report, its balance sheet or statement of assets and liabilities to the registration authority at the time it prescribes. The registration authority shall check up the major items contained in the registration of the enterprise as a legal person.

#### Article 25

The Business License for Enterprises as a Legal Person issued by the registration authority is the certificate of an enterprise as a legal person. Except the registration authority, which may withhold or cancel it in accordance with the legal procedures, no other organ or individual is entitled to take over, detain or destroy it. An enterprise as a legal person, which has lost its Business License for Enterprise as a Legal Person or duplicates of the License, must announce the loss in a newspaper before it can apply for a replacement.

The Business License for Enterprise as a Legal Person and its duplicates may not be forged, altered, leased, lent, sold or reproduced without permission.

#### Article 26

An enterprise as a legal person shall pay registration and annual check-up fees according to the rules when it registers for starting operations and applies for making changes in its registration and when it receives the annual check-up. The fees to be charged on registration for starting operations shall be 0.1% of the sum of the enterprise's registered capital; in cases where the registered capital exceeds 10 million yuan, the fees to be charged on the portion in excess of the said sum shall be 0.05% of it; in cases where the registered capital exceeds 100 million yuan, no fees shall be charged on the portion in excess of the said sum.

The minimum registration fee shall be 50 yuan. Fees to be charged on making changes in the registration and conducting the annual check-up shall be prescribed by the State Administration for Industry and Commerce.

Chapter IX Control of the Registration of Business Operations by Institutions  
and Scientific and Technological Public Organizations

Article 27

When institutions or scientific and technological public organizations establish enterprises qualified as legal persons in line with relevant regulations of the state, the applications for registration shall be filed by the enterprises. They may engage in business operations only after their applications for registration have been approved by the registration authorities and after they have received their respective Business Licenses for Enterprise as a Legal Person.

Article 28

Institutions, which are run like enterprises in accordance with relevant regulations of the State and which no longer receive operating funds from the State, or scientific and technological public organizations which are established for business operations, shall apply for registration if they are qualified to be enterprises as legal persons. They may engage in business operations only after their applications have been approved by the registration authorities and they have received their respective Business Licenses for Enterprise as a Legal Person.

Chapter X Supervision and Control

Article 29

The registration authorities shall exercise the following functions of supervision and control over enterprises as legal persons according to law:

- (1) supervising the registration for starting operations, the application for making changes and the cancellation of registration by enterprises as legal persons according to regulations;

- (2) supervising the conduct of business operations by enterprises as legal persons in line with the items of registration, articles of association and contracts;
- (3) supervising the compliance of enterprises as legal persons and their legal representatives with laws, regulations and policies of the State;
- (4) stopping, investigating or dealing with illegal business operations of enterprises as legal persons; protecting their legitimate rights and interests.

#### Article 30

The registration authority may, in light of the circumstances, penalize an enterprise as legal person by warning, fine, confiscation of illegal earnings, suspension of business for consideration, or withholding or revoking the Business License for Enterprise as a Legal Person, if it is involved in any of the following case:

- (1) concealing the true situation and resorting to deception in the course of registration or starting operations before the approval of its registration;
- (2) altering major items in the registration without permission or engaging in business operations beyond the scope of business as approved in registration;
- (3) failing to cancel registration according to the rules or failing to submit the annual check-up report or receive the annual check-up;
- (4) forging, altering, leasing, lending, transferring, selling or reproducing the Business License for Enterprise as a Legal Person or its duplicates without permission;
- (5) withdrawing or transferring capital, concealing assets or dodging liabilities;
- (6) engaging in illegal business operations.

While penalizing an enterprise as a legal person in line with the above provisions, the registration authority shall investigate its legal

representative's administrative and economic responsibilities according to the seriousness of the violations of the law; judicial organs shall investigate the criminal responsibilities of those who have violated the criminal law.

Article 31

The registration authority shall ascertain the facts and act according to law when dealing with the illegal activities of an enterprise as a legal person and notify the parties concerned of its decision in writing.

Article 32

When an enterprise as a legal person disagrees with the penalty meted out by the registration authority, it may appeal within 15 days after receiving the notice of penalty, to the immediate higher registration authority for reconsideration. The higher registration authority shall make a reconsideration decision within 30 days after receiving the appeal for reconsideration. The enterprise may file a suit in a people's court within 30 days after receiving the notice of reconsideration if it disagrees with the reconsideration decision. The registration authority may, in accordance with the prescribed procedures, ask the bank at which the enterprise has an account to transfer from its account the sum to be fined or confiscated as penalty, if it fails to appeal or to pay the fine or the confiscated sum at the expiry of the prescribed period.

Article 33

When an enterprise as a legal person has its business license revoked, the registration authority shall take over its official seal and notify the bank at which it has an account of the cancellation of its registration, and the department in charge or a liquidation organization shall be responsible for settling its creditor's rights and liabilities.

Article 34

Any functionary of the department in charge, the authority for examination and approval or of the registration authority, who has violated the

present Regulations, neglected his duties to a serious extent, abused his powers, practised graft and embezzlement, extorted and taken bribes or encroached on the legitimate rights and interests of an enterprise as a legal person, shall be given administrative or economic penalty in light of the circumstances; the judicial organ shall investigate, according to law, his criminal responsibility, if he violates the criminal law.

#### Chapter XI Supplementary Provisions

##### Article 35

When an enterprise as a legal person establishes a branch which is incapable of bearing civil liability independently, the registration of the branch shall be applied for by the enterprise. The branch shall receive a Business License after the application is approved by the registration authority and may engage in business operations within the scope of business as approved in registration.

In accordance with relevant State regulations, administrative institutions depending on State funding or scientific and technological social bodies must apply for registration if they engage in business operations or establish enterprises not qualified as legal persons. They shall receive Business Licenses after their applications are approved by the registration authorities and may engage in business operations within the scope of business as approved in registration.

The specific control of the registration involved shall be enforced with reference to the provisions of the present Regulations.

##### Article 36

For new enterprises to be established with the approval of relevant departments of the State Council or planning departments at various levels, if their preparations have been under way for more than 1 year, applications for the registration of the establishment shall be filed



according to specific regulations.

Article 37

Enterprises qualified as legal persons, whose registration was approved by the registration authorities before the present Regulations are put into effect, are not required to go through the formalities again for registration as enterprises as legal persons.

Article 38

The State Administration for Industry and Commerce shall be responsible for interpreting the present Regulations; and the rules for their implementation shall also be formulated by the State Administration for Industry and Commerce.

Article 39

The present Regulations shall enter into force on July 1, 1988. The Regulations for Controlling the Registration of Chinese-Foreign Equity Joint Ventures promulgated by the State Council on July 26, 1980, the Regulations for Controlling the Registration of Industrial and Commercial Enterprises promulgated by the State Council on August 9, 1982, and the Interim Provisions for Controlling the Registration of Companies approved by the State Council on August 14, 1985 and promulgated by the State Administration for Industry and Commerce on August 25, 1985 shall all be abrogated on the same date.

中华人民共和国企业法人登记管理条例

第一章 总 则

第一条 为建立企业法人登记管理制度，确认企业法人资格，保障企业合法权益，取缔非法经营，维护社会经济秩序，根据《中华人民共和国民法通则》的

有关规定，制定本条例。

第二条 具备法人条件的下列企业，应当依照本条例的规定办理企业法人登记：

(一) 全民所有制企业；

(二) 集体所有制企业；

(三) 联营企业；

(四) 在中华人民共和国境内设立的中外合资经营企业、中外合作经营企业和外资企业；

(五) 私营企业；

(六) 依法需要办理企业法人登记的其他企业。

第三条 申请企业法人登记，经企业法人登记主管机关审核，准予登记注册的，领取《企业法人营业执照》，取得法人资格，其合法权益受国家法律保护。

依法需要办理企业法人登记的，未经企业法人登记主管机关核准登记注册，

不得从事经营活动。

## 第二章 登记主管机关

第四条 企业法人登记主管机关(以下简称登记主管机关)是国家工商行政管理局和地方各级工商行政管理局。各级登记主管机关在上级登记主管机关的领导下,依法履行职责,不受非法干预。

第五条 经国务院或者国务院授权部门批准的全国性公司、企业集团、经营进出口业务的公司,由国家工商行政管理局核准登记注册。中外合资经营企业、中外合作经营企业、外资企业由国家工商行政管理局或者国家工商行政管理局授权的地方工商行政管理局核准登记注册。

全国性公司的子(分)公司,经省、自治区、直辖市人民政府或其授权部门批准设立的企业、企业集团、经营进出口业务的公司,由省、自治区、直辖市工商行政管理局核准登记注册。

其他企业,由所在市、县(区)工商行政管理局核准登记注册。

第六条 各级登记主管机关,应当建立企业法人登记档案和登记统计制度,掌握企业法人登记有关的基础信息,为发展有计划的商品经济服务。

登记主管机关应当根据社会需要，有计划地开展向公众提供企业法人登记资料的服务。

### 第三章 登记条件和申请登记单位

第七条 申请企业法人登记的单位应当具备下列条件：

- (一) 名称、组织机构和章程；
- (二) 固定的经营场所和必要的设施；
- (三) 符合国家规定并与其生产经营和服务规模相适应的资金数额和从业人员；
- (四) 能够独立承担民事责任；
- (五) 符合国家法律、法规和政策规定的经营范围。

第八条 企业办理企业法人登记，由该企业的组建负责人申请。

独立承担民事责任的联营企业办理企业法人登记，由联营企业的组建负责人申请。

#### 第四章 登记注册事项

第九条 企业法人登记注册的主要事项：企业法人名称、住所、经营场所、法定代表人、经济性质、经营范围、经营方式、注册资金、从业人数、经营期限、分支机构。

第十条 企业法人只准使用一个名称。企业法人申请登记注册的名称由登记主管机关核定，经核准登记注册后在规定的范围内享有专用权。

申请设立中外合资经营企业、中外合作经营企业和外资企业应当在合同、章程审批之前，向登记主管机关申请企业名称登记。

第十一条 登记主管机关核准登记注册的企业法人的法定代表人是代表企业行使职权的签字人。法定代表人的签字应当向登记主管机关备案。

第十二条 注册资金是国家授予企业法人经营管理的财产或者企业法人自有财产的数额体现。

企业法人办理开业登记，申请注册的资金数额与实有资金不一致的，按照国家专项规定办理。

第十三条 企业法人的经营范围应当与其资金、场地、设备、从业人员以及技术力量相适应；按照国家有关规定，可以一业为主，兼营他业。企业法人应当在核准登记注册的经营范围內从事经营活动。

## 第五章 开业登记

第十四条 企业法人办理开业登记，应当在主管部门或者审批机关批准后三十日内，向登记主管机关提出申请；没有主管部门、审批机关的企业申请开业登记，由登记主管机关进行审查。登记主管机关应当在受理申请后三十日内，做出核准登记或者不予核准登记的决定。

第十五条 申请企业法人开业登记，应当提交下列文件、证件：

- (一) 组建负责人签署的登记申请书；
- (二) 主管部门或者审批机关的批准文件；
- (三) 组织章程；
- (四) 资金信用证明、验资证明或者资金担保；
- (五) 企业主要负责人的身份证明；

(六)住所和经营场所使用证明；

(七)其他有关文件、证件。

第十六条 申请企业法人开业登记的单位，经登记主管机关核准登记注册，领取《企业法人营业执照》后，企业即告成立。企业法人凭据《企业法人营业执照》可以刻制公章、开立银行帐户、签订合同，进行经营活动。

登记主管机关可以根据企业法人开展业务的需要，核发《企业法人营业执照》副本。

## 第六章 变更登记

第十七条 企业法人改变名称、住所、经营场所、法定代表人、经济性质、经营范围、经营方式、注册资金、经营期限，以及增设或者撤销分支机构，应当申请办理变更登记。

第十八条 企业法人申请变更登记，应当在主管部门或者审批机关批准后三十日内，向登记主管机关申请办理变更登记。

第十九条 企业法人分立、合并、迁移，应当在主管部门或者审批机关批准

后三十日内，向登记主管机关申请办理变更登记、开业登记或者注销登记。

## 第七章 注销登记

第二十条 企业法人歇业、被撤销、宣告破产或者因其他原因终止营业，应当向登记主管机关办理注销登记。

第二十一条 企业法人办理注销登记，应当提交法定代表人签署的申请注销登记报告、主管部门或者审批机关的批准文件、清理债务完结的证明或者清算组织负责清理债权债务的文件。经登记主管机关核准后，收缴《企业法人营业执照》、《企业法人营业执照》副本，收缴公章，并将注销登记情况告知其开户银行。

第二十二条 企业法人领取《企业法人营业执照》后，满六个月尚未开展经营活动或者停止经营活动满一年的，视同歇业，登记主管机关应当收缴《企业法人营业执照》、《企业法人营业执照》副本，收缴公章，并将注销登记情况告知其开户银行。

## 第八章 公告、年检和证照管理

第二十三条 企业开业、变更名称、注销，由登记主管机关发布企业法人登记公告。未经登记主管机关批准，其他单位不得发布企业法人登记公告。



第二十四条 企业法人登记管理实行年度检验制度。企业法人应当按照登记主管机关规定的时间提交年检报告书、资金平衡表或者资产负债表。登记主管机关应当对企业法人登记的主要事项进行审查。

第二十五条 登记主管机关核发的《企业法人营业执照》是企业法人凭证，除登记主管机关依照法定程序可以扣缴或者吊销外，其他任何单位和个人不得收缴、扣押、毁坏。

企业法人遗失《企业法人营业执照》、《企业法人营业执照》副本，必须登报声明后，方可申请补领。

《企业法人营业执照》、《企业法人营业执照》副本，不得伪造、涂改、出租、出借、转让、出卖和擅自复印。

第二十六条 企业法人办理开业登记、变更登记、年度检验，应当按规定缴纳登记费、年检费。开业登记费按注册资金总额的1%缴纳；注册资金超过一千万的，超过部分按0.5%缴纳；注册资金超过一亿元的，超过部分不再缴纳。登记费最低额为五十元。变更登记费、年检费的缴纳数额由国家工商行政管理局规定。

第九章 事业单位、科技性的社会团体从事经营活动的登记管理

第二十七条 事业单位、科技性的社会团体根据国家有关规定,设立具备法人条件的企业,由该企业申请登记,经登记主管机关核准,领取《企业法人营业执照》,方可从事经营活动。

第二十八条 根据国家有关规定,实行企业化经营,国家不再核拨经费的事业单位和从事经营活动的科技性的社会团体,具备企业法人登记条件的,由该单位申请登记,经登记主管机关核准,领取《企业法人营业执照》,方可从事经营活动。

## 第十章 监督管理

第二十九条 登记主管机关对企业法人依法履行下列监督管理职责:

- (一) 监督企业法人按照规定办理开业、变更、注销登记;
- (二) 监督企业法人按照登记注册事项和章程、合同从事经营活动;
- (三) 监督企业法人和法定代表人遵守国家法律、法规和政策;
- (四) 制止和查处企业法人的违法经营活动,保护企业法人的合法权益。

第三十条 企业法人有下列情形之一的,登记主管机关可以根据情况分别给

予警告、罚款、没收非法所得、停业整顿、扣缴、吊销《企业法人营业执照》的  
处罚：

(一) 登记中隐瞒真实情况、弄虚作假或者未经核准登记注册擅自开业的；

(二) 擅自改变主要登记事项或者超出核准登记的经营范围从事经营活动  
的；

(三) 不按照规定办理注销登记或者不按照规定报送年检报告书，办理年  
检的；

(四) 伪造、涂改、出租、出借、转让、出卖或者擅自复印《企业法人营  
业执照》、《企业法人营业执照》副本的；

(五) 抽逃、转移资金，隐匿财产逃避债务的；

(六) 从事非法经营活动的。

对企业法人按照上述规定进行处罚时，应当根据违法行为的情节，追究法  
定代表人的行政责任、经济责任；触犯刑律的，由司法机关依法追究刑事责任。

第三十一条 登记主管机关处理企业法人违法活动，必须查明事实，依法处

理，并将处理决定书面通知当事人。

第三十二条 企业法人对登记主管机关的处罚不服时，可以在收到处罚通知后十五日内向上一级登记主管机关申请复议。上级登记主管机关应当在收到复议申请之日起三十日内作出复议决定。申请人对复议决定不服的，可以在收到复议通知之日起三十日内向人民法院起诉。逾期不提出申诉又不缴纳罚没款的，登记主管机关可以按照规定程序通知其开户银行予以划拨。

第三十三条 企业法人被吊销《企业法人营业执照》，登记主管机关应当收缴其公章，并将注销登记情况告知其开户银行，其债权债务由主管部门或者清算组织负责清理。

第三十四条 主管部门、审批机关、登记主管机关的工作人员违反本条例规定，严重失职、滥用职权、营私舞弊、索贿受贿或者侵害企业法人合法权益的，应当根据情节给予行政处分和经济处罚；触犯刑律的，由司法机关依法追究刑事责任。

#### 第十一章 附 则

第三十五条 企业法人设立不能独立承担民事责任的分支机构，由该企业法人申请登记，经登记主管机关核准，领取《营业执照》，在核准登记的经营范围內从事经营活动。

根据国家有关规定，由国家核拨经费的事业单位、科技性的社会团体从事经营活动或者设立不具备法人条件的企业，由该单位申请登记，经登记主管机关核准，领取《营业执照》，在核准登记的经营范围内从事经营活动。

具体登记管理参照本条例的规定执行。

第三十六条 经国务院有关部门或者各级计划部门批准的新建企业，其筹建期满一年的，应当按照专项规定办理筹建登记。

第三十七条 本条例施行前，具备法人条件的企业，已经登记主管机关核准登记注册的，不再另行办理企业法人登记。

第三十八条 本条例由国家工商行政管理局负责解释；施行细则由国家工商行政管理局制定。

第三十九条 本条例自1988年7月1日起施行。1980年7月26日国务院发布的《中外合资经营企业登记管理办法》，1982年8月9日国务院发布的《工商企业登记管理条例》，1985年8月14日国务院批准、1985年8月25日国家工商行政管理局发布的《公司登记管理暂行规定》同时废止。

Regulations of the People's Republic of China on the Administration of Company Registration (Revised 2005)

(Promulgated by Order No. 156 of the State Council of the People's Republic of China on June 24, 1994 and revised according to the Decision of the State Council on Revising the Regulations of the People's Republic of China on the Administration of Company Registration on December 18, 2005)

Chapter I General Provisions

Article 1 To validate the status of enterprise legal person of companies and standardize the conduct of company registration, these Regulations have been formulated in accordance with the Company Law of the People's Republic of China (hereinafter referred to as "company law").

Article 2 A limited liability company or a joint stock limited company (hereinafter referred to as "company") shall conduct company registration of its formation, modification and termination.

To apply for company registration, an applicant shall be responsible for the authenticity of the application documents and materials.

Article 3 A company may acquire the status of enterprise legal person only after having been legally registered by the company registration organ and collected a Business License of Enterprise Legal Person.

A company formed after these Regulations becoming effective shall not engage in any business activity in the name of a company without registration with the company registration organ.

Article 4 The administration for industry and commerce shall be the company registration organ.

A company registration organ at a lower level shall carry out company registration under the leadership of a company registration organ at a higher level.

A company registration organ shall perform its functions according to law, free from any unlawful interference.

Article 5 The State Administration for Industry and Commerce shall be in charge of the work of company registration across the country.

Chapter II Jurisdiction over Registration

Article 6 The State Administration for Industry and Commerce shall take charge of the registration of the following companies:

(1) a company where the state-owned asset supervision and administration institution of the State Council performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;

- (2) a foreign-funded company;
- (3) a company which shall be registered by the State Administration for Industry and Commerce in accordance with a relevant law, administrative regulation or decision of the State Council; and
- (4) any other company which shall be registered by the State Administration for Industry and Commerce in accordance with the provisions of the State Administration for Industry and Commerce.

Article 7 The administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government shall take charge of the registration of the following companies within its administrative division:

- (1) a company where the state-owned asset supervision and administration institution of the people's government of a province, autonomous region or municipality directly under the Central Government performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;
- (2) a company formed by a natural person as an investor which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with the provisions of the administration for industry and commerce of the province, autonomous region or municipality directly under the Central Government;
- (3) a company which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with a relevant law, administrative regulation or decision of the State Council; and
- (4) any other company which shall be registered as empowered by the State Administration for Industry and Commerce.

Article 8 The administration for industry and commerce of a districted city (region) or county, the sub-administration for industry and commerce of a municipality directly under the Central Government, or the district sub-administration of the administration for industry and commerce of a districted city shall take charge of the registration of the following companies within its administrative division:

- (1) a company other than a company as set out in Articles 6 and 7 of these Regulations; and
- (2) a company which shall be registered as empowered by the State Administration for Industry and Commerce or the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

The specific jurisdiction over registration as set out in the preceding paragraph shall be formulated by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government. However, the administration

for industry and commerce of a districted city (region) shall take charge of the registration of joint stock limited companies.

#### Chapter III Items for Registration

Article 9 The items for company registration shall include:

- (1) name;
- (2) residence;
- (3) name of the legal representative;
- (4) registered capital;
- (5) paid-up capital;
- (6) type of company;
- (7) business scope;
- (8) duration of business operation; and
- (9) names of the shareholders of a limited liability company or names of promoters of a joint stock limited company, and amounts, time and forms of contributions as subscribed to and paid up.

Article 10 The items for company registration shall conform to the provisions of laws and administrative regulations. A company registration organ shall not register an item for registration which does not conform to the provisions of a law or administrative regulation.

Article 11 The name of a company shall conform to the relevant provisions of the state. A company may use one name only. The name of a company, which has been approved and registered by the company registration organ, shall be protected by law.

Article 12 The residence of a company shall be the seat of the principal office of the company. There may be only one residence registered with the company registration organ. The residence of a company shall be within the territorial jurisdiction of the company registration organ.

Article 13 The registered capital of a company shall be denominated in Renminbi, except as otherwise provided for by a law or administrative regulation.

Article 14 The form of contribution by a shareholder shall conform to the provisions of Article 27 of the Company Law. Where a shareholder contributes any property other than currency, property in kind, intellectual property or land use right, the measures for registration thereof shall be formulated by the State Administration for Industry and Commerce in conjunction with the relevant departments of the State Council.

No shareholder shall contribute, through evaluation, labor, credit, name of a natural person, goodwill, franchise or any property over which a security has been posted.



Article 15 The business scope of a company shall be prescribed in the bylaws of the company and registered according to law.

For the description of the business scope of a company, the standards for industrial categories of the national economy shall be referred to.

Article 16 The types of companies shall include limited liability company and joint stock limited company.

For a one-person limited liability company, the sole investor of a natural person or a legal person shall be stated in the registration of the company, and shall be also stated in the business license of the company.

#### Chapter IV Registration of Formation

Article 17 To form a company, an application shall be filed for the pre-approval of the company name.

For a company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, or whose business scope includes an item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, an application shall be filed for the pre-approval of the company name before report for approval in the company name as pre-approved by the company registration organ.

Article 18 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for the pre-approval of the company name to the company registration organ; to form a joint stock limited company, a representative designated or an agent jointly authorized by all the promoters shall apply for the pre-approval of the company name to the company registration organ.

In the application for the pre-approval of company name, the following documents shall be submitted:

- (1) a written application for pre-approval of company name, which is signed by all the shareholders of a limited liability company or by all the promoters of a joint stock limited company;
- (2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders or promoters; and
- (3) any other document as required by the State Administration for Industry and Commerce.

Article 19 A pre-approved company name shall be reserved for six months, and within such a period, the pre-approved name shall not be used for any business operation or transferred.

Article 20 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for registration of formation to the company registration organ. To form a company wholly owned by the state, the

state-owned asset supervision and administration institution of the State Council or the local people's government as empowered by the local people's government shall act as an applicant to apply for registration of formation. For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, an application shall be filed for registration of formation within 90 days from the date of approval; for an overdue application for registration for formation, the applicant shall report to the examination and approval organ for confirmation of validity of the original approval document or for a separate approval.

To apply for forming a limited liability company, an applicant shall submit the following documents to the company registration organ:

- (1) a written application for registration of formation, which is signed by the legal representative of the company;
- (2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders;
- (3) bylaws of the company;
- (4) a certificate of capital verification produced by a legally formed capital verification institution, except as otherwise provided for by a law or administrative regulation;
- (5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;
- (6) a certificate of capacity of each shareholder which is an entity or certificate of identification of each shareholder which is a natural person;
- (7) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;
- (8) an appointment document and a certificate of identification of the legal representative of the company;
- (9) a notice of pre-approval of enterprise name;
- (10) a certificate of residence of the company; and
- (11) any other document as required by the State Administration for Industry and Commerce.

The amount of initial contribution made by a shareholder of a foreign-funded limited liability company shall conform to laws and administrative regulations, and the rest of contribution shall be paid up within two years from the date of formation of the company. In particular, for an investment company, the rest of contribution may be paid up within five years.

For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 21 To form a joint stock limited company, the board of directors of the company shall apply for registration of formation to the company registration organ. For a joint stock limited company which is formed by stock floatation, the board of directors of the company shall apply for registration of formation to the company registration organ within 30 days after the end of the meeting of foundation.

To apply for forming a joint stock limited company, an applicant shall submit the following documents to the company registration organ:

- (1) a written application for registration of formation, which is signed by the legal representative of the company;
- (2) a certificate of designation of a representative or joint authorization of an agent by the board of directors;
- (3) bylaws of the company;
- (4) a certificate of capital verification produced by a legally formed capital verification institution;
- (5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;
- (6) a certificate of capacity of each promoter which is an entity or certificate of identification of each promoter which is a natural person;
- (7) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;
- (8) an appointment document and a certificate of identification of the legal representative of the company;
- (9) a notice of pre-approval of enterprise;
- (10) a certificate of residence of the company; and
- (11) any other document as required by the State Administration for Industry and Commerce.

For a joint stock limited company which is formed by stock floatation, the minutes of the meeting of foundation shall be also submitted; for a joint stock limited company which is formed by stock floatation and issues stocks publicly, the relevant approval document of the state-owned asset supervision and administration institution of the State Council shall be also submitted.

For a joint stock limited company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 22 Where the business scope in the application for company registration includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the item shall be reported to the

relevant department of the state for approval before the application for registration, and the relevant approval document shall be submitted to the company registration organ.

Article 23 Where any provision of the bylaws of a company violates a law or administrative regulation, a company registration organ shall have the authority to require the company to amend it correspondingly.

Article 24 The certificate of residence of a company refers to a document that may certify that the company enjoys the right to use the residence.

Article 25 A company registration organ shall issue a Business License of Enterprise Legal Person to a legally formed company. The date of issuance of the business license of the company shall be the date of formation of the company. The company shall have its corporate seal made, open a bank account and apply for the registration of tax payment on the strength of the Business License of Enterprise Legal Person issued by the company registration organ.

#### Chapter V Registration of Modification

Article 26 To modify any registered item, a company shall apply for registration of modification to the original company registration organ.

Without registration of modification, no company shall modify any registered item.

Article 27 To apply for registration of modification, a company shall submit the following documents to the company registration organ:

- (1) a written application for registration of modification, which is signed by the legal representative of the company;
- (2) a resolution or decision on modification made according to the Company Law; and
- (3) any other document as required by the State Administration for Industry and Commerce.

Where any registered item to be modified by a company involves the amendment of the bylaws of the company, the amended bylaws of the company or an amendment to the bylaws of the company signed by the legal representative of the company shall be submitted.

For a registered item to be modified which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted to the company registration organ.

Article 28 To modify the company name, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 29 To modify the company residence, a company shall apply for registration of modification before it moves into the new residence, and submit a certificate of use of the new residence.

Where the modification of residence crosses the territorial jurisdictions of the company registration organs, a company shall apply for registration of modification to the company registration organ at the place of its new residence before moving into its new residence; where the company registration organ at the place of new residence of the company accepts the application, the original company registration organ shall transfer the company registration files of the company to the company registration organ at the place of new residence of the company.

Article 30 To modify the legal representative, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 31 To modify the registered capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution.

Where a company increases its registered capital, the contributions of the shareholders of a limited liability company for the increased capital and the subscriptions to new stocks by the shareholders of a joint stock limited company shall be respectively subject to the relevant provisions of the Company Law on the payment of contribution for the formation of a limited liability company and the payment for stock subscription for the formation of a joint stock company. Where a joint stock limited company increases its registered capital by publicly issuing new stocks or where a listed company increases its registered capital by privately issuing new stocks, the relevant approval document of the securities regulatory organ of the State Council shall be also submitted.

Where the statutory common reserve of a company is converted into its registered capital, the certificate of capital verification shall show that the retained statutory common reserve of the company is not be lower than 25% of the registered capital of the company before the conversion.

To reduce the registered capital, a company shall apply for registration of modification within 45 days from the date of announcement, and submit the relevant proof that the company has published an announcement on reduction of registered capital in a newspaper and a statement on debt repayment or debt guarantee by the company.

The registered capital of a company after reduction shall not be lower than the minimum statutory amount.

Article 32 To modify the paid-up capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution, and the capital contributions shall be made according to the time and form of contribution as prescribed in the bylaws of the company. A company shall apply for registration of modification within 30 days from the date when the capital contributions or stock payments are paid up.

Article 33 To modify the business scope, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made; where the modification of the business scope of a company involves any item which must be reported for approval before registration according to a law,

administrative regulation or decision of the State Council, the company shall apply for registration of modification within 30 days from the date of approval by the relevant state department.

Where a license or any other approval document for an item in the business scope of a company which must be reported for approval according to a law, administrative regulation or decision of the State Council is suspended or revoked, or the term of validity of the license or any other approval document expires, the company shall, within 30 days from the date of suspension or revocation of the license or any other approval document or from the date of expiration of the license or any other approval document, apply for registration of modification or conduct the formalities for deregistration according to the provisions of Chapter VI of these Regulations.

Article 34 To modify the type of company, a company shall apply for registration of modification to a company registration organ within the prescribed time limit according to the formation requirements for the type of company after modification, and submit the relevant documents.

Article 35 Where a shareholder of a limited liability company transfers any shares in the company, the company shall apply for registration of modification within 30 days from the date of transfer of shares, and submit the certificate of capacity of the new shareholder which is an entity or certificate of identification of the new shareholder which is a natural person.

Where the legal inheritor of a deceased natural person shareholder of a limited liability company succeeds to the status of shareholder, the company shall apply for registration of modification according to the preceding paragraph.

Where a shareholder of a limited liability company or a promoter of a joint stock limited company changes its name, the company shall apply for registration of modification within 30 days from the date of change of name.

Article 36 Where the modification of any registered item of a company involves the modification of any registered item of its branch, the company shall apply for registration of modification of its branch within 30 days from the date of registration of modification of the company.

Article 37 Where the amendment of the bylaws of a company does not involve any registered item, the company shall submit the amended bylaws or an amendment to the bylaws to the original company registration organ for the record.

Article 38 Where any director, supervisor or manager of a company changes, the company shall file the change with the original company registration organ for the record.

Article 39 Where any registered item of a surviving company changes after a merger or separation, the company shall apply for registration of modification; a company which is dissolved after a merger or separation shall apply for deregistration; a company newly formed after a merger or separation shall apply for registration of formation.

For a merger or separation of a company, the company shall apply for registration within 45 days from the date of announcement, and submit the merger agreement, the resolution or decision on merger or separation, the relevant proof that the company has published an announcement on merger or separation in a newspaper and a statement on debt repayment or debt guarantee by the company. For a merger or separation of a company, which must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 40 Where the modification of a registered item involves any item stated in the Business License of Enterprise Legal Person, a company registration organ shall reissue a business license to replace the original one.

Article 41 To apply for revocation of registration or modification to the company registration organ according to the provision of Article 22 of the Company Law, a company shall submit the following documents:

- (1) a written application, which is signed by the legal representative of the company; and
- (2) a judgment of the people's court.

#### Chapter VI Deregistration

Article 42 Where a company is dissolved and shall be liquidated according to law, a liquidation group shall, within 10 days from the date of its formation, submit a list of the members and person in charge of the liquidation group to the company registration organ for the record.

Article 43 Under any of the following circumstances, the liquidation group of a company shall apply for deregistration to the original company registration organ within 30 days from the date of conclusion of liquidation of the company:

- (1) the company is declared bankrupt according to law;
- (2) the duration of business operation prescribed in the bylaws of the company expires or any other situation for dissolution prescribed in the bylaws of the company occurs, unless the company continues to exist by virtue of an amendment to the bylaws of the company;
- (3) the company is dissolved by a resolution of the shareholders' meeting or shareholder's assembly or is dissolved by the shareholder of a one-person limited liability company or a resolution of the board of directors of a foreign-funded company;
- (4) the business license of the company is revoked or the company is ordered to be closed down or dissolved according to law;
- (5) the company is dissolved by the people's court according to law; or
- (6) any other circumstance of dissolution set out by a law or administrative regulation.

Article 44 To apply for deregistration, a company shall submit the following documents:

- (1) a written application for deregistration, which is signed by the person in charge of the liquidation group of the company;

- (2) a bankruptcy ruling or dissolution judgment of the people's court, a resolution or decision made by the company according to the Company Law or a document of the administration organ on ordered closedown or dissolution of the company;
- (3) a liquidation report archived and affirmed by the shareholders' meeting or shareholder's assembly, the shareholder of a one-person limited liability company, the board of directors of a foreign-funded company, the people's court or the organ approving the company;
- (4) the Business License of Enterprise Legal Person; and
- (5) any other document as required by a law or administrative regulation.

To apply for deregistration, a wholly state-owned company shall also submit a decision of the state-owned asset supervision and administration institution. In particular, a key wholly state-owned company as determined by the State Council shall also submit the approval document of the people's government at the same level.

To apply for deregistration, a company which has a branch shall also submit the certificate of deregistration of its branch.

Article 45 A company shall be terminated upon the deregistration by the company registration organ.

#### Chapter VII Registration of a Branch of a Company

Article 46 A branch of a company refers to an organization formed by a company to engage in business operation at a place other than the residence of the company. A branch shall not have the status of enterprise legal person.

Article 47 The items for registration of a branch of a company shall include: name, business premises, person in charge and business scope of the branch.

The name of a branch of a company shall conform to the relevant provisions of the state.

The business scope of a branch of a company shall not be outside the business scope of the company.

Article 48 To form a branch, a company shall apply for registration to the company registration organ at the place of residence of the branch within 30 days from the date when a decision is made; where the formation of a branch must be reported to the relevant department for approval according to a law, administrative regulation or decision of the State Council, a company shall apply for registration to the company registration organ within 30 days from the date of approval.

To form a branch, a company shall submit the following documents to the company registration organ:

- (1) a written application for registration of formation of a branch, which is signed by the legal representative of the company;



- (2) bylaws of the company, and a photocopy of the Business License of Enterprise Legal Person on which the corporate seal is affixed;
- (3) a certificate of use of business premises;
- (4) an appointment document and a certificate of identification of the person in charge of the branch; and
- (5) any other document as required by the State Administration for Industry and Commerce.

Where the formation of a branch must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a branch includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

The company registration organ of a branch shall issue a Business License to a branch whose registration is approved. A company shall, within 30 days from the date of registration of its branch, file a record with the company registration organ on the strength of the Business License of its branch.

Article 49 To modify a registered item, a branch of a company shall apply for registration of modification to the company registration organ.

To apply for registration of modification, a branch shall submit a written application for registration of modification which is signed by the legal representative of the company. To modify the name or business scope, a branch shall submit a photocopy of the Business License of Enterprise Legal Person on which the corporate seal of the company is affixed, and where the business scope of a branch includes any item which must be reported for approval before registration according to a laws, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted. To modify the business premises, a branch shall submit a certificate of use of the new business premises. To modify the person in charge, a branch shall submit the appointment and removal documents and certificates of identification.

Upon approving the registration of modification, the company registration organ shall reissue a Business License to replace the original one.

Article 50 Where a branch of a company is dissolved by the company or ordered to be closed down according to law, or the business license of a branch of a company is revoked, the company shall apply for deregistration to the company registration organ of the branch within 30 days from the date when a decision is taken. To apply for deregistration, the company shall submit a written application for deregistration which is signed by the legal representative of the company and the Business License of the branch. Upon approving the deregistration, the company registration organ shall recover the Business License of the branch.

Article 51 To apply for registration of a company or a branch of a company, an applicant may come to the company registration organ to file an application, or file an application by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Where an application is filed by such means as telegraph, telex, fax, electronic data exchange or e-mail, the contact method and mailing address of the applicant shall be provided.

Article 52 The company registration organ shall decide whether or not to accept an application according to the following circumstances respectively:

(1) Where the application documents and materials are complete and consistent with the statutory formats, or an applicant has submitted all the additional or corrected application documents and materials as required by the company registration organ, the company registration organ shall decide to accept the application.

(2) Where the application documents and materials are complete and consistent with the statutory formats but the company registration organ deems that the application documents and materials need verification, the company registration organ shall decide to accept the application, and, at the same time, notify in writing the applicant of the items to be verified and reasons and time limit for verification.

(3) Where an application document or material has any error which may be corrected on the spot, the applicant shall be allowed to correct the error on the spot, affix its signature or seal on the place of correction and note the date of correction; after confirming that the application documents and materials are complete and consistent with the statutory formats, the company registration organ shall decide to accept the application.

(4) Where the application documents and materials are incomplete or inconsistent with the statutory formats, the company registration organ shall, on the spot or within 5 days, inform the applicant of all additions and corrections needed at one time; for notification on the spot, the company registration organ shall return the application documents and materials to the applicant; for notification within 5 days, the company registration organ shall receive the application documents and materials and issue a receipt of the application documents and materials, and where the company registration organ does not notify the applicant within the time limit, it shall be deemed that the company registration organ has accepted the application from the date of receipt of the application documents and materials.

(5) Where an item does not fall within the scope of company registration or does not fall within the scope of its registration jurisdiction, the company registration organ shall immediately decide not to accept the application, and notify the applicant to apply to a relevant administrative organ.

A company registration organ shall, within 5 days from the date of receipt of the application documents and materials, decide whether or not to accept an application which is filed by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Article 53 Unless a decision on approval of registration is made according to paragraph 1(1) of Article 54 of these Regulations, a company registration organ shall issue a Notice of Acceptance after deciding to accept an application; or after deciding to disapprove an application, shall issue a Notice of Disapproval, explaining the reasons for disapproval and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 54 After deciding to accept an application for registration, a company registration organ shall decide whether or not to approve the registration within the prescribed time limit according to the different circumstances:

(1) Where an application filed by an applicant coming to the company registration organ is accepted, the company registration organ shall decide whether or not to approve the registration on the spot.

(2) Where an application filed by an applicant by letter is accepted, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(3) Where an application filed by an applicant by such means as telegraph, telex, fax, electronic data exchange or e-mail, the applicant shall, within 15 days from the date of receipt of the Notice of Acceptance, submit the original application documents and materials which are consistent with the contents of the telegraph, telex, fax, electronic data exchange or e-mail and the statutory formats; where the applicant comes to the company registration organ to submit the original application documents and materials, the company registration organ shall decide whether or not to approve the registration on the spot; where the applicant submits the original application documents and materials by letter, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(4) Where a company registration organ does not receive the original application documents and materials within 60 days from the date of issuance of the Notice of Acceptance, or the original application documents and materials are inconsistent with the application documents and materials accepted by the company registration organ, the company registration organ shall decide to disapprove the registration.

Where a company registration organ needs to verify the application documents and materials, it shall decide whether or not to approve the registration within 15 days from the date of acceptance.

Article 55 Where a company registration organ decides to grant the pre-approval of a company name, it shall issue a Notice of Pre-approval of Enterprise Name; where the organ decides to approve the registration of formation of a company, it shall issue a Notice of Approval of Formation Registration, and notify the applicant to collect a business license within 10 days from the date of decision; where the organ decides to approve the registration of modification of a company, it shall issue a Notice of Approval of Modification Registration, and notify the applicant to replace its business license within 10 days from

the date of decision; where the organ decides to approve the deregistration of a company, it shall issue a Notice of Approval of Deregistration, and recover the business license.

Where a company registration organ decides not to grant the pre-approval of a company name or decides to disapprove a registration, it shall issue a Notice of Rejection of Enterprise Name or a Notice of Rejection of Registration, explaining the reasons for its not granting the pre-approval or for its disapproval of registration and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 56 To conduct the registration of formation or registration of modification, a company shall pay a registration fee to the company registration organ according to legal provisions.

To collect a Business License of Enterprise Legal Person, the fee for registration of formation shall be charged at 0.8‰ of the total amount of the registered capital; where the registered capital exceeds 10 million yuan, for the excess, such a fee shall be charged at 0.4‰; where the registered capital exceeds 100 million yuan, for the excess, no such a fee shall be charged.

To collect a Business License, the fee for registration of formation shall be 300 yuan.

To modify any registered item, the fee for registration of modification shall be 100 yuan.

Article 57 A company registration organ shall enter a company registration item which is approved to be registered into the company register book for the public to consult and copy.

Article 58 An announcement of revocation of the Business License of Enterprise Legal Person or Business License shall be published by a company registration organ.

#### Chapter IX Annual Inspection

Article 59 From March 1 to June 30 each year, a company registration organ shall conduct the annual inspection of companies.

Article 60 A company shall accept the annual inspection within the prescribed period of time according to the requirements of the company registration organ, and submit an annual inspection report, an annual balance sheet and profit and loss statement, and a duplicate of the Business License of Enterprise Legal Person.

A company which has a branch shall clearly reflect the relevant information on the branch in the submitted annual inspection materials, and submit a photocopy of the Business License.

Article 61 A company registration organ shall examine the information on the company registration items, on the basis of the annual inspection materials submitted by the company.

Article 62 A company shall pay an annual inspection fee to a company registration organ. The annual inspection fee shall be 50 yuan.

#### Chapter X Management of Licenses and Archives

Article 63 The Business License of Enterprise Legal Person or Business License shall be divided into original and duplicates, and the original and duplicates shall have equal legal effect.

The original of the Business License of Enterprise Legal Person or the original of the Business License should be placed on a conspicuous position at the residence of a company or business premises of a branch of a company.

A company may, according to the business needs, apply for issuance of several duplicates of the business license to the company registration organ.

Article 64 No entity or individual shall forge, alter, lease, lend or transfer a business license.

Where a business license is lost or damaged, a company shall declare its invalidity in a newspaper or periodical designated by a company registration organ, and apply for the reissue of the business license.

Where a company registration organ decides to approve a registration of modification, a deregistration or a revocation of registration of modification, and a company refuses to or cannot hand in its business license, the company registration organ shall announce the invalidity of the business license.

Article 65 A company registration organ may temporarily withhold a business license which needs authentication, but the withholding period shall not exceed 10 days.

Article 66 The borrowing, excerpting, carrying or duplicating of the company registration archives shall be carried out according to the prescribed powers and procedures.

No entity or individual shall modify, alter, mark or damage the company registration archives.

Article 67 The patterns of the original and duplicates of a business license and the major formats of documents or forms concerning the company registration shall be uniformly formulated by the State Administration for Industry and Commerce.

#### Chapter XI Legal Liability

Article 68 Where a company registration is acquired by falsification of the registered capital, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the falsified registered capital; if the case is serious, shall revoke the company registration or revoke the business license.

Article 69 Where a company registration is acquired by false submissions or other fraudulent means, a company registration organ shall order correction, and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the case is serious, shall revoke the company registration or revoke the business license.

Article 70 Where a promoter or shareholder of a company makes any false capital contribution, failing to deliver or failing to deliver as scheduled the monetary or non-monetary property as the contribution, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of the false capital contribution.

Article 71 Where a promoter or shareholder illegally withdraws its capital contribution after the company is formed, the company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the amount of illegally withdrawn capital.

Article 72 Where a company fails to open business more than six months after its formation without good reasons, or ceases business operation for more than six months consecutively after opening business, a company registration organ may revoke its business license.

Article 73 Where a company fails to conduct the relevant registration of modification according to these Regulations for any modification of the company registration items, a company registration organ shall order the company to conduct the registration within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan. In particular, where the business scope of a company to be modified includes any item which must be reported for approval according to a law, administrative regulation or decision of the State Council and such an approval is not acquired, if the company engages in the relevant business operation without the approval and the case is serious, the company registration organ shall revoke its business license.

Where a company fails to conduct the relevant record-filing formality according to these Regulations, the company registration organ shall order the company to conduct it within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not more than 30,000 yuan.

Article 74 Where a company fails to notify its creditors by a notice or by an announcement of a merger, separation, reduction of registered capital or liquidation, a company registration organ shall order correction, and impose a fine of not less than 10,000 yuan but not more than 100,000 yuan.

Where, in liquidation, a company conceals any property, makes any false record in its balance sheet or property checklist, or distributes the company property before repayment of debts, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of concealed property or distributed property before repayment of debts on the company; and shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan on the directly responsible person in charge and other directly liable persons.

Where, during the period of liquidation, a company engages in any business operation irrelevant to the liquidation, the company registration organ shall impose a warning, and confiscate the illegal proceeds.

Article 75 Where a liquidation group fails to submit a liquidation report to the company registration organ according to legal provisions, or the submitted liquidation report conceals any major fact or has any major omission, a company registration organ shall order correction.

Where any member of a liquidation group takes advantage of his power to practice favoritism, seeks any illegal proceeds or encroaches on any company asset, the company registration organ shall order return of the company asset and confiscate the illegal proceeds, and may impose a fine of not less than the amount but not more than 5 times the amount of illegal proceeds.

Article 76 Where a company fails to accept the annual inspection according to legal provisions, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan, and order it to accept the annual inspection within a prescribed time limit; and, if the company still fails to accept the annual inspection within the prescribed time limit, shall revoke its business license. Where a company conceals the truth or make falsification in the annual inspection, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 50,000 yuan, and order correction within a prescribed time limit; and, if the case is serious, shall revoke its business license.

Article 77 Where a company forges, alters, leases, lends or transfers its business license, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan; and, if the case is serious, shall revoke its business license.

Article 78 Where a business license is not placed on a conspicuous position at the residence of a company or business premises of a branch of a company, a company registration organ shall order correction; and if the ordered correction is refused, shall impose a fine of not less than 1,000 yuan but not more than 5,000 yuan.

Article 79 Where an institution which undertakes the asset appraisal, capital verification or verification of certificates provides any false materials, a company registration organ shall confiscate the illegal proceeds and impose a fine of not less than the amount but not more than 5 times the amount of the illegal proceeds, and the relevant competent department may also order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons, and revoke its business license.

Where an institution which undertakes the asset appraisal, capital verification or verification of certificates negligently submits a report containing any major omission, a company registration organ shall order correction; and if the case is relatively serious, shall impose a fine of not less than the amount but not more than 5 times the amount of its proceeds, and the relevant competent department may order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons and revoke its business license.

Article 80 Where any entity fails to register itself as a limited liability company or a joint stock limited company according to law but acts in the name of a limited liability company or a joint stock limited company, or fails to register itself as a branch of a limited liability

company or a joint stock limited company according to law but acts in the name of a branch of a limited liability company or a joint stock limited company, a company registration organ shall order correction or impose a ban, and may impose a fine of not more than 100,000 yuan.

Article 81 Where a company registration organ approves an application for company registration which does not meet the prescribed conditions, or disapproves an application for company registration which meets the prescribed conditions, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 82 Where a superior department of a company registration organ orders the company registration organ to approve an application for company registration which does not meet the prescribed conditions or disapprove an application for company registration which meets the prescribed conditions, or covers up any illegal registration, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 83 Where a foreign company forms any branch within the territory of China without approval in violation of the Company Law, the company registration organ shall order correction or closedown, and may impose a fine of not less than 50, 000 yuan but not more than 200, 000 yuan.

Article 84 Where a company engages in serious illegal activities in the name of the company, which compromises the national security or public interest, its business license shall be revoked.

Article 85 Where a branch of a company commits any illegal act as prescribed in this Chapter, the provisions of this Chapter shall apply.

Article 86 Where a violation of these Regulations constitutes a crime, the criminal liability shall be investigated according to law.

#### Chapter XII Supplementary Provisions

Article 87 The registration of a foreign-funded company shall be subject to these Regulations. Where a law on foreign-funded enterprise provides otherwise for the registration of a foreign-funded enterprise, such a law shall apply.

Article 88 Where the formation of a company must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a company includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the State Administration for Industry and Commerce shall compile and publish a Catalogue of Administrative Licensing before Enterprise Registration according to the relevant laws, administrative regulations and decisions of the State Council.

Article 89 These Regulations shall come into force on July 1, 1994.



## 中华人民共和国公司登记管理条例

(1994年6月24日中华人民共和国国务院令 第156号发布, 根据2005年12月18日《国务院关于修改〈中华人民共和国公司登记管理条例〉的决定》修订)

### 第一章 总则

第一条 为了确认公司的企业法人资格, 规范公司登记行为, 依据《中华人民共和国公司法》(以下简称《公司法》), 制定本条例。

第二条 有限责任公司和股份有限公司(以下统称公司)设立、变更、终止, 应当依照本条例办理公司登记。

申请办理公司登记, 申请人应当对申请文件、材料的真实性负责。

第三条 公司经公司登记机关依法登记, 领取《企业法人营业执照》, 方取得企业法人资格。

自本条例施行之日起设立公司, 未经公司登记机关登记的, 不得以公司名义从事经营活动。

第四条 工商行政管理机关是公司登记机关。

下级公司登记机关在上级公司登记机关的领导下开展公司登记工作。

公司登记机关依法履行职责, 不受非法干预。

第五条 国家工商行政管理总局主管全国的公司登记工作。

### 第二章 登记管辖

第六条 国家工商行政管理总局负责下列公司的登记:

(一) 国务院国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有50%以上股份的公司;

(二) 外商投资的公司;

(三) 依照法律、行政法规或者国务院决定的规定, 应当由国家工商行政管理总局登记的公司;

(四) 国家工商行政管理总局规定应当由其登记的其他公司。

第七条 省、自治区、直辖市工商行政管理局负责本辖区内下列公司的登记:

(一) 省、自治区、直辖市人民政府国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有50%以上股份的公司;

(二) 省、自治区、直辖市工商行政管理局规定由其登记的自然人投资设立的公司；

(三) 依照法律、行政法规或者国务院决定的规定，应当由省、自治区、直辖市工商行政管理局登记的公司；

(四) 国家工商行政管理总局授权登记的其他公司。

第八条 设区的市（地区）工商行政管理局、县工商行政管理局，以及直辖市的工商行政管理分局、设区的市工商行政管理局的区分局，负责本辖区内下列公司的登记：

(一) 本条例第六条和第七条所列公司以外的其他公司；

(二) 国家工商行政管理总局和省、自治区、直辖市工商行政管理局授权登记的公司。

前款规定的具体登记管辖由省、自治区、直辖市工商行政管理局规定。但是，其中的股份有限公司由设区的市（地区）工商行政管理局负责登记。

### 第三章 登记事项

第九条 公司的登记事项包括：

(一) 名称；

(二) 住所；

(三) 法定代表人姓名；

(四) 注册资本；

(五) 实收资本；

(六) 公司类型；

(七) 经营范围；

(八) 营业期限；

(九) 有限责任公司股东或者股份有限公司发起人的姓名或者名称，以及认缴和实缴的出资额、出资时间、出资方式。

第十条 公司的登记事项应当符合法律、行政法规的规定。不符合法律、行政法规规定的，公司登记机关不予登记。

第十一条 公司名称应当符合国家有关规定。公司只能使用一个名称。经公司登记机关核准登记的公司名称受法律保护。

第十二条 公司的住所是公司主要办事机构所在地。经公司登记机关登记的公司的住所只能有一个。公司的住所应当在其公司登记机关辖区内。

第十三条 公司的注册资本和实收资本应当以人民币表示，法律、行政法规另有规定的除外。

第十四条 股东的出资方式应当符合《公司法》第二十七条的规定。股东以货币、实物、知识产权、土地使用权以外的其他财产出资的，其登记办法由国家工商行政管理总局会同国务院有关部门规定。

股东不得以劳务、信用、自然人姓名、商誉、特许经营权或者设定担保的财产等作价出资。

第十五条 公司的经营范围由公司章程规定，并依法登记。

公司的经营范围用语应当参照国民经济行业分类标准。

第十六条 公司类型包括有限责任公司和股份有限公司。

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

#### 第四章 设立登记

第十七条 设立公司应当申请名称预先核准。

法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目，应当在报送批准前办理公司名称预先核准，并以公司登记机关核准的公司名称报送批准。

第十八条 设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准；设立股份有限公司，应当由全体发起人指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准。

申请名称预先核准，应当提交下列文件：

(一) 有限责任公司的全体股东或者股份有限公司的全体发起人签署的公司名称预先核准申请书；

(二) 全体股东或者发起人指定代表或者共同委托代理人的证明；

(三) 国家工商行政管理总局规定要求提交的其他文件。

第十九条 预先核准的公司名称保留期为6个月，预先核准的公司名称在保留期内，不得用于从事经营活动，不得转让。

第二十条 设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请设立登记。设立国有独资公司，应当由国务院或者地方人民政府授权的本级人民政府国有资产监督管理机构作为申请人，申请设立登记。法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的，应当自批准之日起90日内向公司登记机关申请设立登记；逾期申请设立登记的，申请人应当报批准机关确认原批准文件的效力或者另行报批。

申请设立有限责任公司，应当向公司登记机关提交下列文件：

(一) 公司法定代表人签署的设立登记申请书；

(二) 全体股东指定代表或者共同委托代理人的证明；

(三) 公司章程;

(四) 依法设立的验资机构出具的验资证明, 法律、行政法规另有规定的除外;

(五) 股东首次出资是非货币财产的, 应当在公司设立登记时提交已办理其财产权转移手续的证明文件;

(六) 股东的主体资格证明或者自然人身份证明;

(七) 载明公司董事、监事、经理的姓名、住所的文件以及有关委派、选举或者聘用的证明;

(八) 公司法定代表人任职文件和身份证明;

(九) 企业名称预先核准通知书;

(十) 公司住所证明;

(十一) 国家工商行政管理总局规定要求提交的其他文件。

外商投资的有限责任公司的股东首次出资额应当符合法律、行政法规的规定, 其余部分应当自公司成立之日起 2 年内缴足, 其中, 投资公司可以在 5 年内缴足。

法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的, 还应当提交有关批准文件。

第二十一条 设立股份有限公司, 应当由董事会向公司登记机关申请设立登记。以募集方式设立股份有限公司的, 应当于创立大会结束后 30 日内向公司登记机关申请设立登记。

申请设立股份有限公司, 应当向公司登记机关提交下列文件:

(一) 公司法定代表人签署的设立登记申请书;

(二) 董事会指定代表或者共同委托代理人的证明;

(三) 公司章程;

(四) 依法设立的验资机构出具的验资证明;

(五) 发起人首次出资是非货币财产的, 应当在公司设立登记时提交已办理其财产权转移手续的证明文件;

(六) 发起人的主体资格证明或者自然人身份证明;

(七) 载明公司董事、监事、经理姓名、住所的文件以及有关委派、选举或者聘用的证明;

(八) 公司法定代表人任职文件和身份证明;

(九) 企业名称预先核准通知书;

(十) 公司住所证明;

(十一) 国家工商行政管理总局规定要求提交的其他文件。

以募集方式设立股份有限公司的，还应当提交创立大会的会议记录；以募集方式设立股份有限公司公开发行股票的，还应当提交国务院证券监督管理机构的核准文件。

法律、行政法规或者国务院决定规定设立股份有限公司必须报经批准的，还应当提交有关批准文件。

第二十二條 公司申请登记的经营范围内属于法律、行政法规或者国务院决定规定在登记前须经批准的项目，应当在申请登记前报经国家有关部门批准，并向公司登记机关提交有关批准文件。

第二十三條 公司章程有违反法律、行政法规的内容的，公司登记机关有权要求公司作相应修改。

第二十四條 公司住所证明是指能够证明公司对其住所享有使用权的文件。

第二十五條 依法设立的公司，由公司登记机关发给《企业法人营业执照》。公司营业执照签发日期为公司成立日期。公司凭公司登记机关核发的《企业法人营业执照》刻制印章，开立银行账户，申请纳税登记。

## 第五章 变更登记

第二十六條 公司变更登记事项，应当向原公司登记机关申请变更登记。

未经变更登记，公司不得擅自改变登记事项。

第二十七條 公司申请变更登记，应当向公司登记机关提交下列文件：

- (一) 公司法定代表人签署的变更登记申请书；
- (二) 依照《公司法》作出的变更决议或者决定；
- (三) 国家工商行政管理总局规定要求提交的其他文件。

公司变更登记事项涉及修改公司章程的，应当提交由公司法定代表人签署的修改后的公司章程或者公司章程修正案。

变更登记事项依照法律、行政法规或者国务院决定规定在登记前须经批准的，还应当向公司登记机关提交有关批准文件。

第二十八條 公司变更名称的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第二十九條 公司变更住所的，应当在迁入新住所前申请变更登记，并提交新住所使用证明。

公司变更住所跨公司登记机关辖区的，应当在迁入新住所前向迁入地公司登记机关申请变更登记；迁入地公司登记机关受理的，由原公司登记机关将公司登记档案移送迁入地公司登记机关。

第三十條 公司变更法定代表人的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第三十一条 公司变更注册资本的，应当提交依法设立的验资机构出具的验资证明。

公司增加注册资本的，有限责任公司股东认缴新增资本的出资和股份有限公司的股东认购新股，应当分别依照《公司法》设立有限责任公司缴纳出资和设立股份有限公司缴纳股款的有关规定执行。股份有限公司以公开发行新股方式或者上市公司以非公开发行新股方式增加注册资本的，还应当提交国务院证券监督管理机构的核准文件。

公司法定公积金转增为注册资本的，验资证明应当载明留存的该项公积金不少于转增前公司注册资本的25%。

公司减少注册资本的，应当自公告之日起45日后申请变更登记，并应当提交公司在报纸上登载公司减少注册资本公告的有关证明和公司债务清偿或者债务担保情况的说明。

公司减资后的注册资本不得低于法定的最低限额。

第三十二条 公司变更实收资本的，应当提交依法设立的验资机构出具的验资证明，并应当按照公司章程载明的出资时间、出资方式缴纳出资。公司应当自足额缴纳出资或者股款之日起30日内申请变更登记。

第三十三条 公司变更经营范围的，应当自变更决议或者决定作出之日起30日内申请变更登记；变更经营范围涉及法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当自国家有关部门批准之日起30日内申请变更登记。

公司的经营范围中属于法律、行政法规或者国务院决定规定须经批准的项目被吊销、撤销许可证或者其他批准文件，或者许可证、其他批准文件有效期届满的，应当自吊销、撤销许可证、其他批准文件或者许可证、其他批准文件有效期届满之日起30日内申请变更登记或者依照本条例第六章的规定办理注销登记。

第三十四条 公司变更类型的，应当按照拟变更的公司类型的设立条件，在规定的期限内向公司登记机关申请变更登记，并提交有关文件。

第三十五条 有限责任公司股东转让股权的，应当自转让股权之日起30日内申请变更登记，并应当提交新股东的主体资格证明或者自然人身份证明。

有限责任公司的自然人股东死亡后，其合法继承人继承股东资格的，公司应当依照前款规定申请变更登记。

有限责任公司的股东或者股份有限公司的发起人改变姓名或者名称的，应当自改变姓名或者名称之日起30日内申请变更登记。

第三十六条 公司登记事项变更涉及分公司登记事项变更的，应当自公司变更登记之日起30日内申请分公司变更登记。

第三十七条 公司章程修改未涉及登记事项的，公司应当将修改后的公司章程或者公司章程修正案送原公司登记机关备案。

第三十八条 公司董事、监事、经理发生变动的，应当向原公司登记机关备案。

第三十九条 因合并、分立而存续的公司，其登记事项发生变化的，应当申请变更登记；因合并、分立而解散的公司，应当申请注销登记；因合并、分立而新设立的公司，应当申请设立登记。

公司合并、分立的，应当自公告之日起 45 日后申请登记，提交合并协议和合并、分立决议或者决定以及公司在报纸上登载公司合并、分立公告的有关证明和债务清偿或者债务担保情况的说明。法律、行政法规或者国务院决定规定公司合并、分立必须报经批准的，还应当提交有关批准文件。

第四十条 变更登记事项涉及《企业法人营业执照》载明事项的，公司登记机关应当换发营业执照。

第四十一条 公司依照《公司法》第二十二条规定向公司登记机关申请撤销变更登记的，应当提交下列文件：

- (一) 公司法定代表人签署的申请书；
- (二) 人民法院的裁判文书。

#### 第六章 注销登记

第四十二条 公司解散，依法应当清算的，清算组应当自成立之日起 10 日内将清算组成员、清算组负责人名单向公司登记机关备案。

第四十三条 有下列情形之一的，公司清算组应当自公司清算结束之日起 30 日内向原公司登记机关申请注销登记：

- (一) 公司被依法宣告破产；
- (二) 公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现，但公司通过修改公司章程而存续的除外；
- (三) 股东会、股东大会决议解散或者一人有限责任公司的股东、外商投资的公司董事会决议解散；
- (四) 依法被吊销营业执照、责令关闭或者被撤销；
- (五) 人民法院依法予以解散；
- (六) 法律、行政法规规定的其他解散情形。

第四十四条 公司申请注销登记，应当提交下列文件：

- (一) 公司清算组负责人签署的注销登记申请书；
- (二) 人民法院的破产裁定、解散裁判文书，公司依照《公司法》作出的决议或者决定，行政机关责令关闭或者公司被撤销的文件；
- (三) 股东会、股东大会、一人有限责任公司的股东、外商投资的公司董事会或者人民法院、公司批准机关备案、确认的清算报告；
- (四) 《企业法人营业执照》；
- (五) 法律、行政法规规定应当提交的其他文件。

国有独资公司申请注销登记，还应当提交国有资产监督管理机构的决定，其中，国务院确定的重要的国有独资公司，还应当提交本级人民政府的批准文件。

有分公司的公司申请注销登记，还应当提交分公司的注销登记证明。

第四十五条 经公司登记机关注销登记，公司终止。

#### 第七章 分公司的登记

第四十六条 分公司是指公司在其住所以外设立的从事经营活动的机构。分公司不具有企业法人资格。

第四十七条 分公司的登记事项包括：名称、营业场所、负责人、经营范围。

分公司的名称应当符合国家有关规定。

分公司的经营范围不得超出公司的经营范围。

第四十八条 公司设立分公司的，应当自决定作出之日起 30 日内向分公司所在地的公司登记机关申请登记；法律、行政法规或者国务院决定规定必须报经有关部门批准的，应当自批准之日起 30 日内向公司登记机关申请登记。

设立分公司，应当向公司登记机关提交下列文件：

- (一) 公司法定代表人签署的设立分公司的登记申请书；
- (二) 公司章程以及加盖公司印章的《企业法人营业执照》复印件；
- (三) 营业场所使用证明；
- (四) 分公司负责人任职文件和身份证明；
- (五) 国家工商行政管理总局规定要求提交的其他文件。

法律、行政法规或者国务院决定规定设立分公司必须报经批准，或者分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。

分公司的公司登记机关准予登记的，发给《营业执照》。公司应当自分公司登记之日起 30 日内，持分公司的《营业执照》到公司登记机关办理备案。

第四十九条 分公司变更登记事项的，应当向公司登记机关申请变更登记。

申请变更登记，应当提交公司法定代表人签署的变更登记申请书。变更名称、经营范围的，应当提交加盖公司印章的《企业法人营业执照》复印件，分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。变更营业场所的，应当提交新的营业场所使用证明。变更负责人的，应当提交公司的任免文件以及其身份证明。

公司登记机关准予变更登记的，换发《营业执照》。

第五十条 分公司被公司撤销、依法责令关闭、吊销营业执照的，公司应当自决定作出之日起 30 日内向该分公司的公司登记机关申请注销登记。申请注销登记应当提交公司法定代表人签署的注销登记申请书和分公司的《营业执照》。公司登记机关准予注销登记后，应当收缴分公司的《营业执照》。



## 第八章 登记程序

第五十一条 申请公司、分公司登记，申请人可以到公司登记机关提交申请，也可以通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请。

通过电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当提供申请人的联系方式以及通讯地址。

第五十二条 公司登记机关应当根据下列情况分别作出是否受理的决定：

（一）申请文件、材料齐全，符合法定形式的，或者申请人按照公司登记机关的要求提交全部补正申请文件、材料的，应当决定予以受理。

（二）申请文件、材料齐全，符合法定形式，但公司登记机关认为申请文件、材料需要核实的，应当决定予以受理，同时书面告知申请人需要核实的事项、理由以及时间。

（三）申请文件、材料存在可以当场更正的错误的，应当允许申请人当场予以更正，由申请人在更正处签名或者盖章，注明更正日期；经确认申请文件、材料齐全，符合法定形式的，应当决定予以受理。

（四）申请文件、材料不齐全或者不符合法定形式的，应当当场或者在5日内一次告知申请人需要补正的全部内容；当场告知时，应当将申请文件、材料退回申请人；属于5日内告知的，应当收取申请文件、材料并出具收到申请文件、材料的凭据，逾期不告知的，自收到申请文件、材料之日起即为受理。

（五）不属于公司登记范畴或者不属于本机关登记管辖范围的事项，应当即时决定不予受理，并告知申请人向有关行政机关申请。

公司登记机关对通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当自收到申请文件、材料之日起5日内作出是否受理的决定。

第五十三条 除依照本条例第五十四条第一款第（一）项作出准予登记决定的外，公司登记机关决定予以受理的，应当出具《受理通知书》；决定不予受理的，应当出具《不予受理通知书》，说明不予受理的理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十四条 公司登记机关对决定予以受理的登记申请，应当分别情况在规定的期限内作出是否准予登记的决定：

（一）对申请人到公司登记机关提出的申请予以受理的，应当当场作出准予登记的决定。

（二）对申请人通过信函方式提交的申请予以受理的，应当自受理之日起15日内作出准予登记的决定。

（三）通过电报、电传、传真、电子数据交换和电子邮件等方式提交申请的，申请人应当自收到《受理通知书》之日起15日内，提交与电报、电传、传真、电子数据交换和电子邮件等内容一致并符合法定形式的申请文件、材料原件；申请人到公司登记机关提交申请文件、材料原件的，应当当场作出准予登记的决定；申请人通过信函方式提交申请文件、材料原件的，应当自受理之日起15日内作出准予登记的决定。

(四) 公司登记机关自发出《受理通知书》之日起 60 日内, 未收到申请文件、材料原件, 或者申请文件、材料原件与公司登记机关所受理的申请文件、材料不一致的, 应当作出不予登记的决定。

公司登记机关需要对申请文件、材料核实的, 应当自受理之日起 15 日内作出是否准予登记的决定。

第五十五条 公司登记机关作出准予公司名称预先核准决定的, 应当出具《企业名称预先核准通知书》; 作出准予公司设立登记决定的, 应当出具《准予设立登记通知书》, 告知申请人自决定之日起 10 日内, 领取营业执照; 作出准予公司变更登记决定的, 应当出具《准予变更登记通知书》, 告知申请人自决定之日起 10 日内, 换发营业执照; 作出准予公司注销登记决定的, 应当出具《准予注销登记通知书》, 收缴营业执照。

公司登记机关作出不予名称预先核准、不予登记决定的, 应当出具《企业名称驳回通知书》、《登记驳回通知书》, 说明不予核准、登记的理由, 并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十六条 公司办理设立登记、变更登记, 应当按照规定向公司登记机关缴纳登记费。

领取《企业法人营业执照》的, 设立登记费按注册资本总额的 0.8% 缴纳; 注册资本超过 1000 万元的, 超过部分按 0.4% 缴纳; 注册资本超过 1 亿元的, 超过部分不再缴纳。

领取《营业执照》的, 设立登记费为 300 元。

变更登记事项的, 变更登记费为 100 元。

第五十七条 公司登记机关应当将登记的公司登记事项记载于公司登记簿上, 供社会公众查阅、复制。

第五十八条 吊销《企业法人营业执照》和《营业执照》的公告由公司登记机关发布。

## 第九章 年度检验

第五十九条 每年 3 月 1 日至 6 月 30 日, 公司登记机关对公司进行年度检验。

第六十条 公司应当按照公司登记机关的要求, 在规定的时间内接受年度检验, 并提交年度检验报告书、年度资产负债表和损益表、《企业法人营业执照》副本。

设立分公司的公司在其提交的年度检验材料中, 应当明确反映分公司的有关情况, 并提交《营业执照》的复印件。

第六十一条 公司登记机关应当根据公司提交的年度检验材料, 对与公司登记事项有关的情况进行审查。

第六十二条 公司应当向公司登记机关缴纳年度检验费。年度检验费为 50 元。

## 第十章 证照和档案管理

第六十三条 《企业法人营业执照》、《营业执照》分为正本和副本, 正本和副本具有同等法律效力。

《企业法人营业执照》正本或者《营业执照》正本应当置于公司住所或者分公司营业场所的醒目位置。

公司可以根据业务需要向公司登记机关申请核发营业执照若干副本。

第六十四条 任何单位和个人不得伪造、涂改、出租、出借、转让营业执照。

营业执照遗失或者毁坏的，公司应当在公司登记机关指定的报刊上声明作废，申请补领。

公司登记机关依法作出变更登记、注销登记、撤销变更登记决定，公司拒不缴回或者无法缴回营业执照的，由公司登记机关公告营业执照作废。

第六十五条 公司登记机关对需要认定的营业执照，可以临时扣留，扣留期限不得超过10天。

第六十六条 借阅、抄录、携带、复制公司登记档案资料的，应当按照规定的权限和程序办理。

任何单位和个人不得修改、涂抹、标注、损毁公司登记档案资料。

第六十七条 营业执照正本、副本样式以及公司登记的有关重要文书格式或者表式，由国家工商行政管理总局统一制定。

#### 第十一章 法律责任

第六十八条 虚报注册资本，取得公司登记的，由公司登记机关责令改正，处以虚报注册资本金额5%以上15%以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第六十九条 提交虚假材料或者采取其他欺诈手段隐瞒重要事实，取得公司登记的，由公司登记机关责令改正，处以5万元以上50万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第七十条 公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，处以虚假出资金额5%以上15%以下的罚款。

第七十一条 公司的发起人、股东在公司成立后，抽逃出资的，由公司登记机关责令改正，处以所抽逃出资金额5%以上15%以下的罚款。

第七十二条 公司成立后无正当理由超过6个月未开业的，或者开业后自行停业连续6个月以上的，可以由公司登记机关吊销营业执照。

第七十三条 公司登记事项发生变更时，未依照本条例规定办理有关变更登记的，由公司登记机关责令限期登记；逾期不登记的，处以1万元以上10万元以下的罚款。其中，变更经营范围涉及法律、行政法规或者国务院决定规定须经批准的项目而未取得批准，擅自从事相关经营活动，情节严重的，吊销营业执照。

公司未依照本条例规定办理有关备案的，由公司登记机关责令限期办理；逾期未办理的，处以3万元以下的罚款。

第七十四条 公司在合并、分立、减少注册资本或者进行清算时，不按照规定通知或者公告债权人的，由公司登记机关责令改正，处以1万元以上10万元以下的罚款。

公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额5%以上10%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1万元以上10万元以下的罚款。

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

第七十五条 清算组不按照规定向公司登记机关报送清算报告，或者报送清算报告隐瞒重要事实或者有重大遗漏的，由公司登记机关责令改正。

清算组成员利用职权徇私舞弊、谋取非法收入或者侵占公司财产的，由公司登记机关责令退还公司财产，没收违法所得，并可以处以违法所得1倍以上5倍以下的罚款。

第七十六条 公司不按照规定接受年度检验的，由公司登记机关处以1万元以上10万元以下的罚款，并限期接受年度检验；逾期仍不接受年度检验的，吊销营业执照。年度检验中隐瞒真实情况、弄虚作假的，由公司登记机关处以1万元以上5万元以下的罚款，并限期改正；情节严重的，吊销营业执照。

第七十七条 伪造、涂改、出租、出借、转让营业执照的，由公司登记机关处以1万元以上10万元以下的罚款；情节严重的，吊销营业执照。

第七十八条 未将营业执照置于住所或者营业场所醒目位置的，由公司登记机关责令改正；拒不改正的，处以1000元以上5000元以下的罚款。

第七十九条 承担资产评估、验资或者验证的机构提供虚假材料的，由公司登记机关没收违法所得，处以违法所得1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因过失提供有重大遗漏的报告的，由公司登记机关责令改正，情节较重的，处以所得收入1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

第八十条 未依法登记为有限责任公司或者股份有限公司，而冒用有限责任公司或者股份有限公司名义的，或者未依法登记为有限责任公司或者股份有限公司的分公司，而冒用有限责任公司或者股份有限公司的分公司名义的，由公司登记机关责令改正或者予以取缔，可以并处10万元以下的罚款。

第八十一条 公司登记机关对不符合规定条件的公司登记申请予以登记，或者对符合规定条件的登记申请不予登记的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

第八十二条 公司登记机关的上级部门强令公司登记机关对不符合规定条件的登记申请予以登记，或者对符合规定条件的登记申请不予登记的，或者对违法登记进行包庇的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第八十三条 外国公司违反《公司法》规定，擅自在中国境内设立分支机构的，由公司登记机关责令改正或者关闭，可以并处5万元以上20万元以下的罚款。

第八十四条 利用公司名义从事危害国家安全、社会公共利益的严重违法行为的，吊销营业执照。

第八十五条 分公司有本章规定的违法行为的，适用本章规定。

第八十六条 违反本条例规定，构成犯罪的，依法追究刑事责任。

#### 第十二章 附则

第八十七条 外商投资的公司的登记适用本条例。有关外商投资企业的法律对其登记另有规定的，适用其规定。

第八十八条 法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围内属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，由国家工商行政管理总局依照法律、行政法规或者国务院决定规定编制企业登记前置行政许可目录并公布。

第八十九条 本条例自 1994 年 7 月 1 日起施行。

## Civil Servant law of the People's Republic of China

### Chapter I General Provisions

Article 1 The present Law is formulated according to the Constitution with a view to regulating the administration of civil servants, ensuring the legitimate rights and interests of civil servants, strengthening the supervision on civil servants, constructing a high-quality troop of civil servants so as to promote diligent and honest government and enhance working efficiency.

Article 2 The term "civil servant" as mentioned in the present Law refers to those personnel who perform public duties according to laws and have been included into the state administrative staffing with wages and welfare borne by the state public finance.

Article 3 The obligations, rights and administration of civil servants shall be subject to the present Law.

Where there are other provisions on the appointment, dismissal and supervision of leading members of civil servants and on the obligations, rights and administration of judges and inquisitors, such provisions shall prevail.

Article 4 The civil servant system shall take Marxism, Leninism, Mao Zedong Thought and Deng Xiaoping Theory and the important thought of "Three Represents", as its guide. Carry out the basic route of the preliminary stage of socialism and the cadre routes and guidelines of the Chinese Communist Party (CPC), and adhere to the principle that the CPC assumes the administration of cadres.

Article 5 The administration of civil servants shall persist in the principle of openness, equality, competition and selecting the superior ones, and be carried out pursuant to the legal power limits, qualifications, standards and procedures.

Article 6 The administration of civil servants shall adhere to the principle of paying equal attention to supervisory restriction and incentive guarantee.

Article 7 The appointment of civil servants shall adhere to the principle of making appointment on abilities and having both political integrity and professional competence, and attach importance to practical achievements of work.

Article 8 The state shall adopt classified administration on civil servants to enhance the administrative efficiency and level of scientific administration.

Article 9 Any act of a civil servant to perform his duties according to law shall be protected by law.

Article 10 The central competent department of civil servants shall be responsible for the comprehensive administration on civil servants. The local competent departments of civil servants above the county level shall be responsible for the comprehensive administration on civil servants within their respective jurisdictional divisions. The competent department of civil servants at a higher level shall guide the administration on civil servants as carried out by its counterpart at a lower level. The competent department of civil servants at all levels shall guide the administration on civil servants of all organs at the same level.

## Chapter II Qualifications, Obligations and Rights of a Civil Servant

Article 11 A civil servant shall satisfy the following qualifications:

- (1) having the nationality of the people's Republic of China;
- (2) reaching the full age of 18;
- (3) upholding the Constitution of the people's Republic of China;
- (4) having good moralities;
- (5) being in a proper health state to perform his functions and duties normally;
- (6) having the educational level and working capacity as required by the post; and
- (7) any other qualification as prescribed by laws.

Article 12 A civil servant shall perform the following obligations:

- (1) playing an exemplary role in observing the Constitution and the law;
- (2) earnestly performing his functions and duties in light of the prescribed power limit and procedure, and making efforts to advance his working efficiency;
- (3) serving people heart and soul, and being subject to the supervision of people;
- (4) safeguarding the security, honor and interests of the state;
- (5) being loyal to his duty, being diligent and pious, obeying and implementing the decisions and orders made by the superior organ;
- (6) keeping the secrets of the state and the secrets relating to his work;
- (7) observing the disciplines, scrupulously abiding by the professional ethics, and playing an exemplary role in observing the social morals;
- (8) being honest and clean, just and upright;
- (9) any other obligations as provided for by laws.

Article 13 A civil servant may enjoy the following rights:

- (1) acquiring the necessary working conditions to perform his functions and duties;
- (2) being subject to no dismissal, demotion, expulsion or punishment without a legally prescribed cause or without following the legal procedures;
- (3) obtaining the remunerations of wages, and enjoying the treatment of welfare and insurance;
- (4) participating in trainings;
- (5) bringing forward criticisms or suggestions on the work or leaders of the organ he works for;
- (6) lodging an appeal or accusation;
- (7) applying for demission; and
- (8) any other right as prescribed by law.

### Chapter III Posts and Ranks

Article 14 The state adopts classified system of posts of civil servants.

The posts of civil servants shall, in light of the nature, features and necessities of administration on civil servant posts, be classified into such categories as comprehensive administrators, technological professionals and administrative law enforcers. The State Council may, according to the present Law, add any other category of posts for those with positional peculiarities and in need of separate administration. The scopes of application of the various posts shall be separately prescribed by the state.

Article 15 The state shall establish a sequence of civil servant posts according to the categories thereof.

Article 16 The posts of civil servants are divided into leading posts and non-leading posts.

The levels of leading posts are classified into chiefs at the state level, deputies at the state level, chiefs at the provincial and ministerial level, deputies at the provincial and ministerial level, chiefs at the department and bureau level, deputies at the department and bureau level, chiefs at the county and section level, deputies at the county and section level, chiefs at the township and sub-division level and deputies at the township and sub-division level.

The levels of non-leading posts shall be set up below the department and bureau level.

Article 17 The leading posts of comprehensive administrators shall be decided and established according to the Constitution, relevant laws, post levels and organizational specifications.

The non-leading posts in the category of comprehensive administration shall be inspectors, deputy inspectors, researchers, deputy researchers, division directors, deputy division director, division personnel and clerks.

The sequence of civil servant posts other than the category of comprehensive administration shall be otherwise prescribed by the state according to the present Law.

Article 18 All organs shall, according to decided functions, specifications, staffing quota and structural proportion, set up specific posts for civil servants within their respective organ, and decide the functions and duties of each post and the qualifications for assuming the post.

Article 19 The posts of civil servants shall be matched with the corresponding ranks. The corresponding relationship between the posts and ranks of civil servants shall be prescribed by the State Council.

The post and rank of a civil servant are the basis to decide the salary and any other treatment thereof.

The rank of a civil servant shall be decided by the post he assumes, the moral status and abilities thereof, the practical achievements of his work and his seniority. For the civil servants assuming a same post, the promotion of ranks thereof may be made according to the provisions of the state.



Article 20 The state may establish the corresponding ranks, according to the particularities of the work concerned, for those posts as assumed by such civil servants as the people's police and those working in the customs houses or in the institutions of foreign affairs stationed abroad.

#### Chapter IV Employment

Article 21 The employment of civil servants with the posts lower than the division director or in any other non-leading post at the corresponding level shall adopt measures of open examination, strict inspection, equal competition and employment on the basis of competitive selection.

Where there is any employment of civil servants in an autonomous region according to the provisions of the foreside paragraph, the applicants of ethnic minorities shall be given appropriate preferential treatment according to laws and other relevant provisions.

Article 22 The employment of civil servants in the state organs of the Central Government and the institutions directly under them shall be organized by administrative department of civil servants of the Central Government. The employment of civil servants in local state organs at all levels shall be organized by the administrative departments of civil servants at the provincial level. When necessary, the administrative department of civil servants at the provincial level may authorize the administrative department of civil servants in the districted cities to do it.

Article 23 Anyone entering for the examination for civil servants shall, besides the requirements as prescribed by Article 11 of the present Law, satisfy the qualifications for the would-be posts as prescribed by the administrative departments of civil servants above the provincial level.

Article 24 Anyone under the following circumstances shall not be employed as a civil servant:

- (1) having been imposed on a criminal punishment;
- (2) having been dismissed from public office; and
- (3) any other circumstance as prescribed by laws, under which one shouldn't be employed as a civil servant.

Article 25 Where anyone is to be employed as a civil servant, he shall be within the prescribed staffing quota, and there is a corresponding post vacancy.

Article 26 A notice of recruiting civil servants through examination shall be publicized for the employment of civil servants. The posts, quota, qualifications

for the said examination, application materials needed to be submitted and other points of attention for examination application shall be indicated in the notice.

The employing organ shall take measures to facilitate the examination application of citizens.

Article 27 The employing organ shall conduct inspection on the examination application in light of the qualification requirements for the applicants. The application materials as submitted by the applicants shall be true and accurate.

Article 28 The employment examination of civil servants shall be carried out in written form and

by interviews. The examination content shall be decided respectively according to the basic capabilities of civil servants as required and the different categories of posts.

Article 29 The employing organ shall decide candidates to be inspected pursuant to the results of examination, and shall conduct a re-examination over the application qualifications of applicants, make an inspection and health checkup.

The items and standard of health checkup shall be decided by the requirements of corresponding posts. The specific measures shall be provided for by the administrative department of civil servants of the Central Government in collaboration with the administrative department of sanitation of the State Council.

Article 30 The employing organ shall, according to examination results and results of inspection and health checkup, bring forward a name list of candidates to be employed and publicize it to the general public.

Where the duration of public announcement expires, the employing organ at the central level shall report the name list to the administrative department of civil servants of the Central Government for archival filing. The employing organs at the local level shall report the name list to the administrative department of civil servants at the provincial level or in the districted cities for examination and approval.

Article 31 As for the employment of civil servants for any special post, the procedures thereof may, upon the approval of the administrative department of civil servants at the provincial level or above, be simplified and other measures for test and appraisal may be adopted.

Article 32 The probation term of newly employed civil servants is 1 year. Anyone who is qualified at the expiration of the probation term may take the post. For anyone who is disqualified, the employment thereof shall be canceled.

#### **Chapter V Assessment**

Article 33 The assessment of a civil servant shall be managed according to the power limit of administration, and shall examine the morality, capability, diligence, achievement and uprightness thereof in an all-round manner and focus on the practical achievements of his work.

Article 34 The assessment of a civil servant includes assessment in usual days and periodical assessment. The periodical assessment shall be based on the assessment in usual days.

Article 35 The periodical assessment of a non-leader civil servant shall be conducted in the form of annual examination. First, the individual concerned shall make a summary in light of the post and duties thereof and relevant requirements. Then the leader-in-charge shall, after soliciting the opinions of the masses, bring forward a suggestion of assessment grade, and the person-in-charge of the organ concerned or the authorized assessment committee shall decide the assessment grade

As for those leading members of civil servants, the periodical assessment shall be conducted by

the administrative organ thereof according to relevant provisions.

Article 36 The results of periodical assessment shall be divided into four grades: excellent, competent, basically competent and incompetent.

The civil servant concerned shall be notified of the periodical assessment result thereof in written form.

Article 37 The result of periodical assessment shall be considered as the basis for the adjustment of post, rank, wage, reward, training and dismissal of a civil servant.

#### **Chapter VI Appointment and Dismissal**

Article 38 The employment system through selection and the employment system through appointment shall be adopted for the posts of civil servants.

The tenure system shall be adopted for the posts of leading members according to the provisions of the state.

Article 39 The civil servant by the employment system through selection may assume the post upon the enforcement of selection result thereof. No one may continue to assume his post when his tenure expires. The tenure of a post shall be terminated where anyone resigns his post or is dismissed or removed during his tenure.

Article 40 For a civil servant employed by the employment system through appointment, if he is found to qualified at the expiration of his probation term, or his post is changed, or he no longer assumes the post as a civil servant or is under any other circumstance where a dismissal is necessary, the appointment and dismissal thereof shall be decided in light of the power limit of administration and the prescribed procedures.

Article 41 The post assumption of a civil servant shall be carried through within the prescribed staffing quota and the amount of posts, and meets a corresponding post vacancy.

Article 42 A civil servant, who has a part-time job out of his organ due to his work, shall be subject to the approval of the relevant organs and shall not draw any reward from his part-time job.

#### **Chapter VII Promotion and Demotion**

Article 43 For the promotion of a civil servant, he shall satisfy the requirements in such aspects as the ideological and political qualifications, working capability, educational level and working experience.

The promotion of a civil servant shall be conducted grade by grade. Those, who are particularly excellent or are needed in work due to special reasons, may enjoy the exception of waiving conventional constraints or being promoted by two ranks according to relevant provisions.

Article 44 The promotion of a civil servant to a leading post shall be subject to the following

procedures:

- (1) deciding the candidate to be inspected by democratic recommendation;
- (2) organizing an inspection, bringing forward suggestion on appointment through deliberation and making preparation within a certain range where it is necessary;
- (3) discussing the decision according to the power limit of administration; and
- (4) going through the formalities of position according to the provisions. The promotion of a civil servant to a non-leading post shall be subject to the procedures as prescribed in the preceding paragraph.

Article 45 Where there is any vacancy of a leading post lower than the chief at the department and bureau level in an entity of an organ, the candidate may be selected through competitive post bidding within the foresaid organ or within the staff members thereof.

Where there is any vacancy of a leading post lower than the chief or higher than the deputy researcher at the department and bureau level or any other vacancy of non-leading post at the corresponding level, the candidate thereof may be selected through an open selection from the society.

The candidate of a judge or public procurator for the first time shall be selected through open selection from those who have obtained the relevant qualifications through the judicial examination as uniformly organized by the state.

Article 46 The system of public announcement before assuming the post and the system of probation for assuming the post shall be adopted in the promotion of a civil servant to a leading post according to relevant provisions.

Article 47 Where a civil servant is assessed as incompetent during the periodical assessment, he shall be demoted to a lower-level post according to the prescribed procedures.

### **Chapter VIII Rewards**

Article 48 Those civil servants or a collective of civil servants, who have made outstanding working performances, noticeable achievements and contributions or other outstanding deeds, shall be rewarded. And the awarding shall uphold the principle of combining spiritual rewards and material rewards with the focus on spiritual rewards.

The rewards for the collective of civil servants shall apply to those institutions as established according to the staffing sequence or those work collectives as formed to accomplish a special task.

Article 49 A civil servant or a collective of civil servants shall, under any of the following circumstances, be rewarded:

- (1) being loyal to his duties, working actively and having noticeable achievements;
- (2) observing disciplines, being clean-fingered in performing his official duties, working in an upright way, playing an outstanding exemplary role;
- (3) having any invention or creativity or having raised any reasonable suggestion in work, or having achieved obvious economic benefits or social benefits;
- (4) having made outstanding contributions to promoting ethic solidarity and safeguarding

social stability;

(5) having made outstanding achievements in cherishing public property and saving state assets;

(6) having meritorious acts in preventing or eliminating accidents so that the interests of the state and the masses are prevented from loss or the loss thereof is reduced;

(7) defying personal danger and making contributions under such special circumstances as rushing to deal with an emergency or providing disaster relief;

(8) having made achievements in fighting against any illegal or rule-breaking act;

(9) having won honors and interests for the state in foreign affairs; or

(10) having any other outstanding achievement.

Article 50 The rewards are divided into Commendation, Third-grade Merit, Second-grade Merit, First-grade Merit and being conferred an honorary title.

A civil servant who is rewarded or a collective of civil servants who is commended shall be given a one-off bonus or any other treatment.

Article 51 The rewards as conferred to a civil servant or a collective of civil servants shall be decided in light of the prescribed power limit and procedures, or shall be subject to examination and approval.

Article 52 The reward of a civil servant or a collective of civil servants shall be canceled under any of the following circumstances:

(1) practicing fraud or cheating to obtain rewards;

(2) concealing any serious mistake when filing an application for rewards, or severely violating the prescribed procedures; or

(3) any other circumstance as prescribed by laws or regulations, under which the rewards thereof shall be canceled.

## Chapter IX Punishments

Article 53 A civil servant shall observe disciplines and shall not have any of the following acts:

(1) disseminating any expression that damages the state reputation, organizing or participating in activities such as assembling, procession and demonstration that aims to oppose the state;

(2) organizing or participating in any illegal organization, or organizing or participating in any strike;

(3) neglecting his duties so that the work thereof is bungled;

(4) refusing to carry out the decision or order as made by the superior thereof;

(5) suppressing criticism or taking revenge;

(6) practicing fraud in order to mislead or cheat the leader thereof or the general public;

(7) being corrupt, giving or accepting bribes, making use of the post to seek personal gains for himself or others;

(8) violating the financial and economic disciplines and wasting state assets;

- (9) abusing his power to infringe on the legitimate rights and interests of any citizen, legal person or any other organization;
- (10) discovering any state secret or work secret;
- (11) damaging the state reputation or interests in foreign affairs;
- (12) participating in or supporting activities such as eroticism, drug abuse, gambling and superstition, etc.;
- (13) acting against professional ethics or public morality;
- (14) undertaking or participating in any profit-making activity, or holding a concurrent post in an enterprise or any other profit-making organization;
- (15) being absent from work or in the event of a business trip or a leave, failing to return at expiration of the leave of trip without any justifiable reason; or
- (16) any other act in violation of disciplines.

Article 54 Where a civil servant, when performing official duties, deems that there is something wrong with the decision or order of his superior, he may make a suggestion on correcting or canceling the said decision or order. Where the superior refuses to change the decision or order, or requires immediate performance, the civil servant concerned shall fulfill the decision or order. The superior shall be responsible for the consequences of the performance of duties, and the civil servant shall not be subject to any liability. However, where a civil servant fulfills any decision or order that is obviously illegal, he shall be subject to the corresponding liabilities according to law.

Article 55 In case a civil servant is subject to disciplinary liability due to any illegal act or disciplinary breach, he shall be given a punishment according to the present Law. For those disciplinary acts with lenient circumstances, he may be immune from punishment after he has made corrections upon criticism and education.

Article 56 The punishments are divided into warning, demerit, gross demerit, demotion, dismissal from post and expulsion.

Article 57 The punishment upon a civil servant shall be made with the bases of clear facts, irrefutable evidence, accurately determined nature, proper treatment, legal procedure and complete formalities.

For the discipline breach of a civil servant, the organ that makes the decision on punishment shall carry out an investigation into the disciplinary breach of the civil servant, and shall notify the civil servant concerned of the fact as acknowledged through investigation and the basis for the proposed punishment. The civil servant concerned may have rights to state and defend.

Where the organ that makes the decision of punishment deems that a civil servant shall be subject to a punishment, it shall, within the prescribed time limit, make a decision on punishment in light of the power limit of administration and the prescribed procedure. The civil servant concerned shall be notified of the decision on punishment in written form.

Article 58 A civil servant may not enjoy any post promotion or rank promotion during the duration of punishment. In particular, the civil servant who is given a demerit, gross demerit, demotion or dismissal may not enjoy any elevation of wage grade.

The durations of punishments are: 6 months of warning, 12 months of demerit, 18 months of gross demerit, 24 month of demotion/dismissal.

Anyone who is imposed upon punishment of dismissal shall be demoted according to relevant provisions.

Article 59 Where a civil servant who is imposed upon any punishment other than expulsion shows repentance during the duration of punishment and has committed no more disciplinary breach, the organ that has made the punishment decision shall relieve the punishment at the expiration of the term of punishment and inform the civil servant concerned in written form.

Where a punishment is relieved, the elevation of wage grade, promotion in rank and post shall no longer be affected by the former punishment. However, the removal of such punishment as demotion or dismissal shall not be deemed as a renewal of the original rank or post.

### **Chapter X Trainings**

Article 60 An organ shall, pursuant to the functions and duties of civil servants or the requirements to improve the qualities of civil servants, conduct categorized and rank-based trainings to civil servants.

The state shall establish special institutions for the training of civil servants. The organs may, when necessary, entrust any other training institution to carry out trainings for civil servants.

Article 61 The organs shall carry out trainings for those newly-employed civil servants who assume their posts for the first time. Those civil servants who have been promoted to leading posts shall be given trainings before assuming their posts or within 1 year after assuming their posts. Those civil servants who are engaged in special work shall be given special trainings. In-service trainings shall be carried out to all civil servants so as to upgrade their knowledge and improve their working capacities. In particular, those civil servants taking posts of special technologies shall, in light of the requirements of further education for special technical personnel, be given special technical trainings.

The state shall reinforce the training for reserve leading personnel in a planned manner.

Article 62 The registration administration shall be carried out in civil servant trainings.

The time for a civil servant to participate in trainings shall be decided by the administrative department of civil servants according to the provisions of Article 61 of the present Law.

The trainings and academic achievements shall be a kind of content of the civil servant examination and a basis for appointment and promotion.

### **Chapter XI Intercommunication and Avoidance**

Article 63 The civil servant intercommunication system is adopted by the state.

Civil servants may communicate within the troop of civil servants or may communicate with those personnel undertaking public office in state-owned enterprises, public institutions, people's associations or private organizations.

The forms of intercommunication include transferring to another post, changing to another post

and working out by assuming a temporary leading position in an inferior entity.

Article 64 Those personnel, who are engaged in public office of state-owned enterprises, public institutions, people's associations or private organizations, may be transferred to the state organs to hold leading posts or non-leading posts above the deputy researcher level, or hold any other non-leading post at the corresponding level. The person transferred shall satisfy the qualification requirements of the suggested posts as prescribed in Article 11 of the present Law, and shall not have any circumstance as prescribed in Article 24 of the present Law. The state organ to which such person is transferred shall conduct a strict inspection over the candidates for deployment, carry out examination and approval in light of the power limit of administration, and, when necessary, conduct an examination over the candidates for transfer.

Article 65 As for the transfer of a civil servant between different posts, he shall satisfy the qualifications for the suggested post, and the transfer of post shall be carried out with the prescribed staffing quota and number of posts.

As for those leading members below the level of provincial and ministerial chief, the transfer to another post between different regions or departments shall be carried out in a planned and focused way.

For a civil servant who assumes a leading post in an entity of a state organ or assumes a non-leading post with special work features, the transfer to another post thereof shall be carried out within the organ in a planned manner.

Article 66 According to the needs to train and cultivate civil servants, civil servants may be selected and appointed to the organs at a lower level or at a higher level, organs in other regions, state-owned enterprises or public institutions for practice out by assuming temporary leading positions.

When a civil servant suspends his duties to practice by assuming temporary leading positions in other entities, the personnel relationship with his original organ shall not be changed.

Article 67 A civil servant shall obey the decision on intercommunication as made by his entity.

The application of a civil servant for intercommunication shall be subject to the examination and approval in light of the power limit of administration.

Article 68 Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the persons concerned shall not assume posts immediately subordinate to the same leader in the same organ or hold posts with an relation of immediate superior and subordinator, or engage in such work as organization, human resource, disciplinary investigation, supervision and inspection auditing and finance in the organ where one party concerned holds the leading post.

Where it needs to avoid taking posts due to the peculiarities of region or work features, the avoidance shall be decided by the administrative department of public security above the provincial level.

Article 69 Where a civil servant assumes the leading post in an organ at the township level or



county level or the relevant department thereof, the regional avoidance shall be carried out, unless it is otherwise provided for by laws.

Article 70 When a civil servant performs his duties, under any of the following circumstances, he shall make avoidance:

- 1) Where any of his personal interests is involved;
- 2) Where any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or
- 3) Any other circumstance that may have any impact on the impartiality of duty performance.

Article 71 Where there is any circumstance under which a civil servant shall make avoidance, he shall apply for avoidance by himself. Any interested party may have the rights to apply for avoidance of the civil servant concerned. Other people may report to the organ the circumstances concerning the avoidance of a civil servant.

The organ shall, pursuant to the application of a civil servant himself or any interested party, decide whether or not the civil servant shall make avoidance after making examination or may make a direct decision on avoidance without the civil servant filing an application.

Article 72 Where there is any different provision on the avoidance of a civil servant by law, the provision shall prevail.

## **Chapter XII Wage, Welfare and Insurance**

Article 73 The uniform wage system of the state, which combines posts and ranks together, shall apply to civil servants.

The principle "distribution according to work" shall be carried out in the wage system of civil servants so as to embody factors such as functions, capabilities, concrete achievements and seniorities and maintain a reasonable wage discrepancy between different functions and ranks.

The mechanism for normal wage growth of civil servants shall be established by the state.

Article 74 The wage of a civil servant shall include the basic pay, allowances, subsidies and bonuses.

A civil servant may enjoy the regional additional allowances, difficult and outlying region allowances, subsidy appropriate to particular jobs and other allowances according to the provisions of the state.

A civil servant may enjoy subsidies or allowances such as housing and medicine according to the provisions of the state.

For a civil servant who has been acknowledged as "excellent" or "competent" in a periodical assessment, he may enjoy the year-end bonus according to the provisions of the state.

The wage of a civil servant shall be granted in full amount and in a timely manner.

Article 75 The wage level of a civil servant shall match with the national economic development and conform to the social progress.

The state shall adopt the wage investigation system, investigate and compare the wage levels of

civil servants and the counterparts in enterprises on a periodical base, and the result thereof shall be the basis for adjusting the wage levels of the civil servants.

Article 76 A civil servant may enjoy welfare treatment as provided for by the state. The state shall advance the welfare treatment of civil servants according to the economic and social development.

The working hours system shall apply to civil servants according to the provisions of the state. A civil servant may enjoy holidays as provided for by the state. Where a civil servant works for extra hours beyond the legal workdays, he shall enjoy corresponding deferred holidays.

Article 77 The state shall establish an insurance system for civil servants so as to ensure that a civil servant may get help and compensation under circumstances as retirement, illness, occupational injury, childbirth or unemployment.

In case a civil servant is disabled when performing his duties, he shall be given the treatment for the injured and disabled according to the provisions of the state. In case a civil servant sacrifices his life for his duties, dies for his work or dies from work-related illness, the relatives thereof may enjoy the consolation and preferential treatment as prescribed by the state.

Article 78 No organ may violate the provisions of the state and unlawfully alter the policies on wage, welfare and insurance by itself. or unlawfully raise or reduce the treatment of wage, welfare or insurance for civil servants. No organ may deduct or delay the payment of wage of any civil servant.

Article 79 The expenditure for wage, welfare, insurance, retirement pay as well as the employment, trainings, rewards and dismissal and etc. of civil servants shall be listed into the fiscal budget so as to provide guarantee for them.

### **Chapter XIII Resignation and Dismissal**

Article 80 Where a civil servant resigns his public office, he shall submit a written application to the organ in charge of appointment and dismissal, which shall conduct examination and approval within 30 days as of the date of application. Especially for an application of a leading member to resign his public office, the organ shall conduct examination and approval within 90 days as of the date of application.

Article 81 A civil servant, under any of the following circumstances, shall not resign his public office:

- (1) having not reached the minimum term of service as provided for by the state;
- (2) assuming any special post involving secrets of the state, or having not reached the term to open the secret when leaving the aforesaid post;
- (3) having not finished his important public duties, which shall be subject to the continuous work of the civil servant concerned;
- (4) being subject to an auditing or disciplinary examination, or being suspected of crime and the judicial procedure hasn't been concluded;

(5) any other circumstance as provided for by laws or administrative regulations, under which one shouldn't resign his public post.

Article 82 A civil servant who holds a leading post shall, when it is necessary for him to resign the present post due to the change of work according to the provisions of law, go through the formalities for resignation.

A civil servant who holds a leading post may, due to his personal reason or any other reason, resign his leading post on his own initiative.

Where a leader causes any serious damage or social impact due to his severe mistakes in work or breach of duties, or bears the leading liabilities for any serious accident, he shall take the blame and resign his leading post.

Where any leader shall take the blame and resign his post, or is no longer suitable for the present leading post but does not apply for resignation by himself, he shall be ordered to resign the leading post thereof.

Article 83 A civil servant, under any of the following circumstances, shall be subject to dismissal:

- (1) having been assessed as "incompetent" in the annual assessment for 2 consecutive years;
- (2) failing to be competent for his work and refusing to accept any other arrangement;
- (3) refusing a reasonable arrangement due to the adjustment, withdrawal, merge or reduction of staffing members of the organ where he works;
- (4) failing to perform his duties as a civil servant or abide by the disciplines of civil servants, making no improvement on education, and being unsuitable for continuing his work in the organ nor being proper to be imposed upon the punishment of dismissal; or
- (5) being absent from work or failing to return after the expiration of the term of a business trip or leave for more than 15 days or for an accumulative 30 days within a year.

Article 84 A civil servant, under any of the following circumstances, shall not be dismissed:

- (1) being disabled due to the performance of his duties, and having been acknowledged as losing or partially losing his working ability;
- (2) being ill or injured within the prescribed medical period;
- (3) for female civil servants, during the periods of pregnancy, maternity leave or lactation; or
- (4) any other circumstance as provided for by laws or regulations, under which a civil servant may not be dismissed.

Article 85 The dismissal of a civil servant shall be subject to the determination within the power limit of administration. The civil servant dismissed shall be notified of the decision of dismissal in written form.

The civil servant dismissed may draw the fee for dismissal or enjoy unemployment insurance according to the provisions of the state.

Article 86 The civil servant, who resigns his post or is dismissed, shall go through the hand-over formalities before leaving his post, and, when necessary, shall be subject to auditing according to relevant provisions.

#### Chapter XIV Retirement

Article 87 A civil servant shall retire, when he reaches the age of retirement as provided for by the state or where he completely loses his working ability.

Article 88 A civil servant may, under any of the following requirements, apply for retirement in advance on his own initiative and retire upon the approval of the organ in charge of appointment and dismissal:

- (1) having worked for 30 years;
- (2) having worked for 20 years and being 5 years younger than the retirement age as provided for by the state;
- (3) any other circumstance as provided for by the state, under which one may retire in advance.

Article 89 A civil servant may, after retirement, enjoy the retirement pay and other treatments as provided for by the state. The state shall provide necessary service and help for the life and health of the retired civil servants and encourages them to give full play to their specialties and participate in social development.

#### Chapter XV Appeal and accusation

Article 90 Where a civil servant is discontent with any of the following punishments concerned with himself, he may apply to the original organ that has imposed the punishment for an administrative review within 30 days as of the date when he is notified of the foresaid punishment; where he is discontent with the result of the administrative review, he may appeal to the administrative department of civil servants at the same level or appeal to that at a level higher than the organ that has imposed the punishment according to the provisions

of the state; or, he may directly lodge an appeal without any administration review within 30 days as of the date when he is notified of the foresaid punishment:

- (1) punishments;
- (2) dismissal or cancellation of employment;
- (3) demotion;
- (4) being assessed as "incompetent" in the periodical assessment;
- (5) being dismissed from his post;
- (6) his application for resignation or retirement in advance being rejected;
- (7) failing to decide or deduct his wage, welfare or insurance treatment according to relevant provisions;
- (8) any other circumstance as prescribed by laws or regulations on appealing.

Where anyone is discontent with the treatment for his appeal made by an organ below the provincial level, he may appeal again to the counterpart at a level higher than the organ that has made the treatment.

Where a civil servant in any administrative organ is discontent with the punishment and appeals to the administrative supervision organ, the matter shall be treated according to the provisions of the Law of Administration Supervision.

Article 91 The original organ that has imposed the punishment shall make a decision on the administrative review within 30 days as of acceptance of an application for review. The organ that has accepted the appeal of a civil servant shall make a punishment decision within 60 days as of the date of acceptance. Where the case is complicated, the duration may be extended but shall not be extended for more than 30 days.

The implementation of personnel punishment shall not be stopped during the period of an administration review or appeal.

Article 92 Where the organ that has accepted the appeal of a civil servant deems that the personnel punishment is wrong upon examination, the original organ that has imposed the punishment shall correct it in a timely manner.

Article 93 Where a civil servant believes that any leader thereof has damaged his legitimate rights and interests, he may lodge an accusation to the organ at a higher level or the relevant special organ. The organ that has accepted the accusation shall treat it according to relevant provisions in a timely manner.

Article 94 Where a civil servant lodges an appeal or accusation, he shall not fabricate facts, make false charge against any other person, or frame up any other person.

#### **Chapter XVI Appointment**

Article 95 The state organ may, in light of the needs of work, adopt the appointment system on those posts with strong speciality and with supplementary features, upon the approval of the administrative department of civil servants above the provincial level.

Where any post as described in the preceding paragraph involves state secrets, it shall not be subjected to the appointment system.

Article 96 Where a state organ employs civil servants, it may conduct an open invitation for employment according to the procedures for civil servant examination and employment, or may make appointment through a direct selection of those who meet the requirements.

The engagement of civil servants shall be conducted within the quota of staffing and limit of amount of salary as provided by laws.

Article 97 Where an organ employs a civil servant, a written contract of employment shall be concluded so as to clarify the rights and obligations of the organ and the civil servant employed, adhering to the principle of equality, willingness, consensus reached through consultation. The contact of employment may be altered or canceled upon the consensus of both parties through consultation.

The conclusion, alteration or withdrawal of an employment contact shall be put on archival filings in the administrative department of civil servants at the same level.

Article 98 An employment contract shall include clauses such as contractual term, post and the

requirements thereof, wage, welfare, insurance treatment and breach liabilities.

The term for an employment contract is one to five years. The probation period may be stipulated in the employment contract, which is one to six months.

The negotiated wage system shall be adopted for civil servants in the appointment system in accordance with the provisions of the state. The specific measures thereof shall be formulated by the Central Government's administrative department of civil servants.

Article 99 The state organs shall conduct administration on civil servants they employ according to the present Law and the employment contract.

Article 100 The arbitration system for personnel disputes is established by the state.

The arbitration of personnel disputes shall, pursuant to the principles of legality, impartiality and timeliness, maintain the legitimate rights and interests of the parties involved in the dispute according to law.

The arbitration committee of personnel disputes may be established where it is necessary. The arbitration committee of personnel disputes shall consist of representatives of the administrative department of civil servants, representatives of the employment organ, and representatives of civil servants in the appointment system and legal experts.

Where a civil servant in the appointment system has a dispute with the organ he works for due to the performance of the employment contract thereof, he may apply to the arbitration committee of personnel disputes for arbitration within 60 days as of the day when the dispute arises. In case any party concerned is discontent with the arbitration result, he may lodge a lawsuit to the people's court within 15 days as of the day when he receives the written arbitration.

After the arbitration result comes into force, and any party concerned refuses to perform his duties, the other party may apply to the people's court for coercive performance.

#### **Chapter XVII Legal Liabilities**

Article 101 Under any of the following circumstances violating of the present Law, the leading organ or the administrative department of civil servants above the county level shall, in light of the power limit of administration and the different situations, give an order for correction or announces it to be invalid; as for the responsible leader and the persons w directly responsible, a criticism and education or punishment shall be imposed on according to the seriousness of the circumstances; where the violation constitutes a crime, he shall be subject to criminal liabilities according to law.

(1) failing to carry out employment, deployment, post transfer, appointment and promotion for civil servants according to the staffing quota, number of posts or the requirements for the qualification of post assumption;

(2) failing to go through rewards, punishments, avoidance and retirement formalities according to requirements;

(3) failing to carry out employment, deployment, post transfer, appointment, promotion and competitive post bidding, open selection and examination and rewards and punishments according to prescribed procedures;

(4) violating the provisions of the state by altering the standard of wage, welfare, insurance treatment of civil servants;

(5) divulging test questions in the employment, competitive post bidding or open selection. breaching the disciplines of the examination room or any other act that has any severe impact on the openness and impartiality;

(6) failing to accept or handle any appeal or accusation of a civil servant according to relevant provisions;

(7) any other circumstance violating the provisions of the present Law.

Article 102 Where a civil servant resigns his post or retires, he shall not take any post in an enterprise or any other profit-making organization, which is directly related to his original post, or shall not engage in any profit-making activity directly related to his original work within 3 years after he leaves his post, if he is a leader before resignation.. For any other civil servant, the time limit is 2 years.

Where a civil servant has any violation of the provisions in the preceding paragraph after resignation or retirement, the administrative department of civil servants at the same level as the original organ he works for shall order him to make corrections within a prescribed time limit; where he fails to make corrections, the administration for industry and commerce above the county level shall confiscate the illegal proceedings generated from his business, order the entity concerned to dismiss him, and impose on the receiving entity a fine of one to five times of that as imposed on the person according to the seriousness of circumstances.

Article 103 Where an organ causes any reputation damage to a civil servant due to a concrete wrong personnel punishment, it shall make a formal apology to the civil servant, rehabilitate his reputation and eliminate the ill impact; where any economic damage has been caused, a compensation shall be paid according to law.

Article 104 Where any of the personnel of the administrative department of civil servants violates the provisions of the present Law by abusing his power, neglecting his duties, practicing favoritism and engaging in malpractice, and if a crime is constituted, he shall be subject to criminal liabilities; if no crime is constituted, he shall be imposed upon a sanction.

#### **Chapter XVIII Supplementary Provisions**

Article 105 The term "leader" as mentioned in the present Law refers to the leading members in state organs, which shall not include those leaders in the entities of the organs

Article 106 Those personnel except those logistics workers in public institutions which are authorized by any law or regulation to exercise the function of managing public affairs shall be subject to the present Law upon approval.

Article 107 The present Law shall come into force as of January 1, 2006. The Interim Provisions of the State Council on Rewarding and Punishment of Personnel in the State Administrative Organs as approved by the Standing Committee of the National People's Congress on October 23, 1957 and promulgated by the State Council on October 26, 1957 and the Interim

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Regulations on State Civil Servants as promulgated by the State Council on August 14, 1993 shall be simultaneously repealed.



## 中华人民共和国公务员法

### 第一章 总则

第一条 为了规范公务员的管理，保障公务员的合法权益，加强对公务员的监督，建设高素质的公务员队伍，促进勤政廉政，提高工作效能，根据宪法，制定本法。

第二条 本法所称公务员，是指依法履行公职、纳入国家行政编制、由国家财政负担工资福利的工作人员。

第三条 公务员的义务、权利和管理，适用本法。

法律对公务员中的领导成员的产生、任免、监督以及法官、检察官等的义务、权利和管理另有规定的，从其规定。

第四条 公务员制度坚持以马克思列宁主义、毛泽东思想、邓小平理论和“三个代表”重要思想为指导，贯彻社会主义初级阶段的基本路线，贯彻中国共产党的干部路线和方针，坚持党管干部原则。

第五条 公务员的管理，坚持公开、平等、竞争、择优的原则，依照法定的权限、条件、标准和程序进行

第六条 公务员的管理，坚持监督约束与激励保障并重的原则。

第七条 公务员的任用，坚持任人唯贤、德才兼备的原则，注重工作实绩。

第八条 国家对公务员实行分类管理，提高管理效能和科学化水平。

第九条 公务员依法履行职务的行为，受法律保护。

第十条 中央公务员主管部门负责全国公务员的综合管理工作。县级以上地方各级公务员主管部门负责本辖区内公务员的综合管理工作。上级公务员主管部门指导下级公务员主管部门的公务员管理工作。各级公务员主管部门指导同级各机关的公务员管理工作。

### 第二章 公务员的条件、义务与权利

第十一条 公务员应当具备下列条件：

- (一)具有中华人民共和国国籍；
- (二)年满十八周岁；
- (三)拥护中华人民共和国宪法；
- (四)具有良好的品行；
- (五)具有正常履行职责的身体条件；
- (六)具有符合职位要求的文化程度和工作能力；

(七)法律规定的其他条件。

**第十二条** 公务员应当履行下列义务：

- (一)模范遵守宪法和法律；
- (二)按照规定的权限和程序认真履行职责，努力提高工作效率；
- (三)全心全意为人民服务，接受人民监督；
- (四)维护国家的安全、荣誉和利益；
- (五)忠于职守，勤勉尽责，服从和执行上级依法作出的决定和命令；
- (六)保守国家秘密和工作秘密；
- (七)遵守纪律，恪守职业道德，模范遵守社会公德；
- (八)清正廉洁，公道正派；
- (九)法律规定的其他义务。

**第十三条** 公务员享有下列权利：

- (一)获得履行职责应当具有的工作条件；
- (二)非因法定事由、非经法定程序，不被免职、降职、辞退或者处分；
- (三)获得工资报酬，享受福利、保险待遇；
- (四)参加培训；
- (五)对机关工作和领导人员提出批评和建议；
- (六)提出申诉和控告；
- (七)申请辞职；
- (八)法律规定的其他权利。

### 第三章 职务与级别

**第十四条** 国家实行公务员职位分类制度。

公务员职位类别按照公务员职位的性质、特点和管理需要，划分为综合管理类、专业技术类和行政执法类等类别。国务院根据本法，对于具有职位特殊性，需要单独管理的，可以增设其他职位类别。各职位类别的适用范围由国家另行规定。

**第十五条** 国家根据公务员职位类别设置公务员职务序列。

**第十六条** 公务员职务分为领导职务和非领导职务。

领导职务层次分为：国家级正职、国家级副职、省部级正职、省部级副职、厅局级正职、厅局级副职、县处级正职、县处级副职、乡科级正职、乡科级副职。

非领导职务层次在厅局级以下设置

**第十七条** 综合管理类领导职务根据宪法、有关法律、职务层次和机构规格设置确定。

综合管理类的非领导职务分为：巡视员、副巡视员、调研员、副调研员、主任科员、副主任科员、科员、办事员。

综合管理类以外其他职位类别公务员的职务序列，根据本法由国家另行规

定。

第十八条 各机关依照确定的职能、规格、编制限额、职数以及结构比例，设置本机关公务员的具体职位，并确定各职位的工作职责和任职资格条件。

第十九条 公务员的职务应当对应相应的级别。公务员职务与级别的对应关系，由国务院规定。

公务员的职务与级别是确定公务员工资及其他待遇的依据。

公务员的级别根据所任职务及其德才表现、工作实绩和资历确定。公务员在同一职务上，可以按照国家规定晋升级别。

第二十条 国家根据人民警察以及海关、驻外外交机构公务员的工作特点，设置与其职务相对应的衔级。

#### 第四章 录用

第二十一条 录用担任主任科员以下及其他相当职务层次的非领导职务公务员，采取公开考试、严格考察、平等竞争、择优录取的办法。

民族自治地方依照前款规定录用公务员时，依照法律和有关规定对少数民族报考者予以适当照顾。

第二十二条 中央机关及其直属机构公务员的录用，由中央公务员主管部门负责组织。地方各级机关公务员的录用，由省级公务员主管部门负责组织，必要时省级公务员主管部门可以授权设区的市级公务员主管部门组织。

第二十三条 报考公务员，除应当具备本法第十一条规定的条件外，还应当具备省级以上公务员主管部门规定的拟任职位所要求的资格条件

第二十四条 下列人员不得录用为公务员：

- (一)曾因犯罪受过刑事处罚的；
- (二)曾被开除公职的；
- (三)有法律规定不得录用为公务员的其他情形的。

第二十五条 录用公务员，必须在规定的编制限额内，并有相应的职位空缺。

第二十六条 录用公务员，应当发布招考公告。招考公告应当载明招考的职位、名额、报考资格条件、报考需要提交的申请材料以及其他报考须知事项。招录机关应当采取措施，便利公民报考。

第二十七条 招录机关根据报考资格条件对报考申请进行审查。报考者提交的申请材料应当真实、准确。

第二十八条 公务员录用考试采取笔试和面试的方式进行，考试内容根据

公务员应当具备的基本能力和不同职位类别分别设置。

第二十九条 招录机关根据考试成绩确定考察人选，并对其进行报考资格复审、考察和体检。

体检的项目和标准根据职位要求确定。具体办法由中央公务员主管部门会同国务院卫生行政部门规定

第三十条 招录机关根据考试成绩、考察情况和体检结果，提出拟录用人员名单，并予以公示。

公示期满，中央一级招录机关将拟录用人员名单报中央公务员主管部门备案；地方各级招录机关将拟录用人员名单报省级或者设区的市级公务员主管部门审批。

第三十一条 录用特殊职位的公务员，经省级以上公务员主管部门批准，可以简化程序或者采用其他测评办法。

第三十二条 新录用的公务员试用期为一年。试用期满合格的，予以任职；不合格的，取消录用。

## 第五章 考核

第三十三条 对公务员的考核，按照管理权限，全面考核公务员的德、能、勤、绩、廉，重点考核工作实绩。

第三十四条 公务员的考核分为平时考核和定期考核。定期考核以平时考核为基础。

第三十五条 对非领导成员公务员的定期考核采取年度考核的方式，先由个人按照职位职责和有关要求进行总结，主管领导在听取群众意见后，提出考核等次建议，由本机关负责人或者授权的考核委员会确定考核等次。

对领导成员的定期考核，由主管机关按照有关规定办理。

第三十六条 定期考核的结果分为优秀、称职、基本称职和不称职四个等次。

定期考核的结果应当以书面形式通知公务员本人。

第三十七条 定期考核的结果作为调整公务员职务、级别、工资以及公务员奖励、培训、辞退的依据。

## 第六章 职务任免

第三十八条 公务员职务实行选任制和委任制。  
领导成员职务按照国家规定实行任期制。

第三十九条 选任制公务员在选举结果生效时即任当选职务；任期届满不再连任，或者任期内辞职、被罢免、被撤职的，其所任职务即终止。

第四十条 委任制公务员遇有试用期满考核合格、职务发生变化、不再担任公务员职务以及其他情形需要任免职务的，应当按照管理权限和规定的程序任免其职务。

第四十一条 公务员任职必须在规定的编制限额和职数内进行，并有相应的职位空缺。

第四十二条 公务员因工作需要经有关机关批准，并不得领取兼职报酬。

## 第七章 职务升降

第四十三条 公务员晋升职务，应当具备拟任职务所要求的思想政治素质、工作能力、文化程度和任职经历等方面的条件和资格。

公务员晋升职务，应当逐级晋升。特别优秀的或者工作特殊需要的，可以按照规定破格或者越一级晋升职务。

第四十四条 公务员晋升领导职务，按照下列程序办理：

(一)民主推荐，确定考察对象；  
(二)组织考察，研究提出任职建议方案，并根据需要在一定范围内进行酝酿；

(三)按照管理权限讨论决定；

(四)按照规定履行任职手续。

公务员晋升非领导职务，参照前款规定的程序办理。

第四十五条 机关内设机构厅局级正职以下领导职务出现空缺时，可以在本机关或者本系统内通过竞争上岗的方式，产生任职人选。

厅局级正职以下领导职务或者副调研员以上及其他相当职务层次的非领导职务出现空缺，可以面向社会公开选拔，产生任职人选。

确定初任法官、初任检察官的任职人选，可以面向社会，从通过国家统一司法考试取得资格的人员中公开选拔。

第四十六条 公务员晋升领导职务的，应当按照有关规定实行任职前公示制度和任职试用期制度。

第四十七条 公务员在定期考核中被确定为不称职的，按照规定程序降低一个职务层次任职。

## 第八章 奖励

第四十八条 对工作表现突出，有显著成绩和贡献，或者有其他突出事迹

的公务员或者公务员集体，给予奖励。奖励坚持精神奖励与物质奖励相结合、以精神奖励为主的原则。

公务员集体的奖励适用于按照编制序列设置的机构或者为完成专项任务组成的工作集体。

第四十九条 公务员或者公务员集体有下列情形之一的，给予奖励：

- (一) 忠于职守，积极工作，成绩显著的；
- (二) 遵守纪律，廉洁奉公，作风正派，办事公道，模范作用突出的；
- (三) 在工作中有发明创造或者提出合理化建议，取得显著经济效益或者社会效益的；
- (四) 为增进民族团结、维护社会稳定做出突出贡献的；
- (五) 爱护公共财产，节约国家资财有突出成绩的；
- (六) 防止或者消除事故有功，使国家和人民群众利益免受或者减少损失的；
- (七) 在抢险、救灾等特定环境中奋不顾身，做出贡献的；
- (八) 同违法违纪行为作斗争有功绩的；
- (九) 在对外交往中为国家争得荣誉和利益的；
- (十) 有其他突出功绩的。

第五十条 奖励分为：嘉奖、记三等功、记二等功、记一等功、授予荣誉称号。

对受奖励的公务员或者公务员集体予以表彰，并给予一次性奖金或者其他待遇。

第五十一条 给予公务员或者公务员集体奖励，按照规定的权限和程序决定或者审批。

第五十二条 公务员或者公务员集体有下列情形之一的，撤销奖励：

- (一) 弄虚作假，骗取奖励的；
- (二) 申报奖励时隐瞒严重错误或者严重违反规定程序的；
- (三) 有法律、法规规定应当撤销奖励的其他情形的

## 第九章 惩戒

第五十三条 公务员必须遵守纪律，不得有下列行为：

- (一) 散布有损国家声誉的言论，组织或者参加旨在反对国家的集会、游行、示威等活动；
- (二) 组织或者参加非法组织，组织或者参加罢工；
- (三) 玩忽职守，贻误工作；
- (四) 拒绝执行上级依法作出的决定和命令；
- (五) 压制批评，打击报复；
- (六) 弄虚作假，误导、欺骗领导和公众；
- (七) 贪污、行贿、受贿，利用职务之便为自己或者他人谋取私利；
- (八) 违反财经纪律，浪费国家资财；

- (九) 滥用职权, 侵害公民、法人或者其他组织的合法权益;
- (十) 泄露国家秘密或者工作秘密;
- (十一) 在对外交往中损害国家荣誉和利益;
- (十二) 参与或者支持色情、吸毒、赌博、迷信等活动;
- (十三) 违反职业道德、社会公德;
- (十四) 从事或者参与营利性活动, 在企业或者其他营利性组织中兼任职务;
- (十五) 旷工或者因公外出、请假期满无正当理由逾期不归;
- (十六) 违反纪律的其他行为。

第五十四条 公务员执行公务时, 认为上级的决定或者命令有错误的, 可以向上级提出改正或者撤销该决定或者命令的意见; 上级不改变该决定或者命令, 或者要求立即执行的, 公务员应当执行该决定或者命令, 执行的后果由上级负责, 公务员不承担责任; 但是, 公务员执行明显违法的决定或者命令的, 应当依法承担相应的责任。

第五十五条 公务员因违法违纪应当承担纪律责任的, 依照本法给予处分; 违纪行为情节轻微, 经批评教育后改正的, 可以免于处分。

第五十六条 处分分为: 警告、记过、记大过、降级、撤职、开除。

第五十七条 对公务员的处分, 应当事实清楚、证据确凿、定性准确、处理恰当、程序合法、手续完备。

公务员违纪的, 应当由处分决定机关决定对公务员违纪的情况进行调查, 并将调查认定的事实及拟给予处分的依据告知公务员本人。公务员有权进行陈述和申辩。

处分决定机关认为对公务员应当给予处分的, 应当在规定的期限内, 按照管理权限和规定的程序作出处分决定。处分决定应当以书面形式通知公务员本人。

第五十八条 公务员在受处分期间不得晋升职务和级别, 其中受记过、记大过、降级、撤职处分的, 不得晋升工资档次。

受处分的期间为: 警告, 六个月; 记过, 十二个月; 记大过, 十八个月; 降级、撤职, 二十四个月。

受撤职处分的, 按照规定降低级别。

第五十九条 公务员受开除以外的处分, 在受处分期间有悔改表现, 并且没有再发生违纪行为的, 处分期满后, 由处分决定机关解除处分并以书面形式通知本人。

解除处分后, 晋升工资档次、级别和职务不再受原处分的影响。但是, 解除降级、撤职处分的, 不视为恢复原级别、原职务。

## 第十章 培训

第六十条 机关根据公务员工作职责的要求和提高公务员素质的需要, 对

公务员进行分级分类培训。

国家建立专门的公务员培训机构。机关根据需要也可以委托其他培训机构承担公务员培训任务。

第六十一条 机关对新录用人员应当在试用期内进行初任培训；对晋升领导职务的公务员应当在任职前或者任职后一年内进行任职培训；对从事专项工作的公务员应当进行专门业务培训；对全体公务员应当进行更新知识、提高工作能力的在职培训，其中对担任专业技术职务的公务员，应当按照专业技术人员继续教育的要求，进行专业技术培训。

国家有计划地加强对后备领导人员的培训。

第六十二条 公务员的培训实行登记管理。

公务员参加培训的时间由公务员主管部门按照本法第六十一条规定的培训要求予以确定。

公务员培训情况、学习成绩作为公务员考核的内容和任职、晋升的依据之

## 第十一章 交流与回避

第六十三条 国家实行公务员交流制度。

公务员可以在公务员队伍内部交流，也可以与国有企业事业单位、人民团体和群众团体中从事公务的人员交流。

交流的方式包括调任、转任和挂职锻炼。

第六十四条 国有企业事业单位、人民团体和群众团体中从事公务的人员可以调入机关担任领导职务或者副调研员以上及其他相当职务层次的非领导职务。调任人选应当具备本法第十一条规定的条件和拟任职位所要求的资格条件，并不得有本法第二十四条规定的情形。调任机关应当根据上述规定，对调任人选进行严格考察，并按照管理权限审批，必要时可以对调任人选进行考试。

第六十五条 公务员在不同职位之间转任应当具备拟任职位所要求的资格条件，在规定的编制限额和职数内进行。

对省部级正职以下的领导成员应当有计划、有重点地实行跨地区、跨部门转任。

对担任机关内设机构领导职务和工作性质特殊的非领导职务的公务员，应当有计划地在本机关内转任。

第六十六条 根据培养锻炼公务员的需要，可以选派公务员到下级机关或者上级机关、其他地区机关以及国有企业事业单位挂职锻炼。

公务员在挂职锻炼期间，不改变与原机关的人事关系。

第六十七条 公务员应当服从机关的交流决定。

公务员本人申请交流的，按照管理权限审批。



第六十八条 公务员之间有夫妻关系、直系血亲关系、三代以内旁系血亲关系以及近姻亲关系的，不得在同一机关担任双方直接隶属于同一领导人员的职务或者有直接上下级领导关系的职务，也不得在其中一方担任领导职务的机关从事组织、人事、纪检、监察、审计和财务工作。

因地域或者工作性质特殊，需要变通执行任职回避的，由省级以上公务员主管部门规定。

第六十九条 公务员担任乡级机关、县级机关及其有关部门主要领导职务的，应当实行地域回避，法律另有规定的除外。

第七十条 公务员执行公务时，有下列情形之一的，应当回避：

- (一) 涉及本人利害关系的；
- (二) 涉及与本人有本法第六十八条第一款所列亲属关系人员的利害关系的；
- (三) 其他可能影响公正执行公务的。

第七十一条 公务员有应当回避情形的，本人应当申请回避；利害关系人有权申请公务员回避。其他人员可以向机关提供公务员需要回避的情况。

机关根据公务员本人或者利害关系人的申请，经审查后作出是否回避的决定，也可以不经申请直接作出回避决定。

第七十二条 法律对公务员回避另有规定的，从其规定。

## 第十二章 工资福利保险

第七十三条 公务员实行国家统一的职务与级别相结合的工资制度。

公务员工资制度贯彻按劳分配的原则，体现工作职责、工作能力、工作实绩、资历等因素，保持不同职务、级别之间的合理工资差距。

国家建立公务员工资的正常增长机制。

第七十四条 公务员工资包括基本工资、津贴、补贴和奖金。

公务员按照国家规定享受地区附加津贴、艰苦边远地区津贴、岗位津贴等津贴。

公务员按照国家规定享受住房、医疗等补贴、补助。

公务员在定期考核中被确定为优秀、称职的，按照国家规定享受年终奖金。

公务员工资应当按时足额发放。

第七十五条 公务员的工资水平应当与国民经济发展相协调、与社会进步相适应。

国家实行工资调查制度，定期进行公务员和企业相当人员工资水平的调查比较，并将工资调查比较结果作为调整公务员工资水平的依据。

第七十六条 公务员按照国家规定享受福利待遇。国家根据经济社会发展水平提高公务员的福利待遇。

公务员实行国家规定的工时制度，按照国家规定享受休假。公务员在法定工作日之外加班的，应当给予相应的补休。

第七十七条 国家建立公务员保险制度，保障公务员在退休、患病、工伤、生育、失业等情况下获得帮助和补偿。

公务员因公致残的，享受国家规定的伤残待遇。公务员因公牺牲、因公死亡或者病故的，其亲属享受国家规定的抚恤和优待。

第七十八条 任何机关不得违反国家规定自行更改公务员工资、福利、保险政策，擅自提高或者降低公务员的工资、福利、保险待遇。任何机关不得扣减或者拖欠公务员的工资。

第七十九条 公务员工资、福利、保险、退休金以及录用、培训、奖励、辞退等所需经费，应当列入财政预算，予以保障。

### 第十三章 辞职辞退

第八十条 公务员辞去公职，应当向任免机关提出书面申请。任免机关应当自接到申请之日起三十日内予以审批，其中对领导成员辞去公职的申请，应当自接到申请之日起九十日内予以审批。

第八十一条 公务员有下列情形之一的，不得辞去公职：

- (一) 未满国家规定的最低服务年限的；
- (二) 在涉及国家秘密等特殊职位任职或者离开上述职位不满国家规定的脱密期限的；
- (三) 重要公务尚未处理完毕，且须由本人继续处理的；
- (四) 正在接受审计、纪律审查，或者涉嫌犯罪，司法程序尚未终结的；
- (五) 法律、行政法规规定的其他不得辞去公职的情形。

第八十二条 担任领导职务的公务员，因工作变动依照法律规定需要辞去现任职务的，应当履行辞职手续。

担任领导职务的公务员，因个人或者其他原因，可以自愿提出辞去领导职务。

领导成员因工作严重失误、失职造成重大损失或者恶劣社会影响的，或者对重大事故负有领导责任的，应当引咎辞去领导职务。

领导成员应当引咎辞职或者因其他原因不再适合担任现任领导职务，本人不提出辞职的，应当责令其辞去领导职务。

第八十三条 公务员有下列情形之一的，予以辞退：

- (一) 在年度考核中，连续两年被确定为不称职的；
- (二) 不胜任现职工作，又不接受其他安排的；
- (三) 因所在机关调整、撤销、合并或者缩减编制员额需要调整工作，本人拒绝合理安排的；
- (四) 不履行公务员义务，不遵守公务员纪律，经教育仍无转变，不适合

继续在机关工作，又不宜给予开除处分的：

(五)旷工或者因公外出、请假期满无正当理由逾期不归连续超过十五天，或者一年内累计超过三十天的。

**第八十四条** 对有下列情形之一的公务员，不得辞退：

- (一)因公致残，被确认丧失或者部分丧失工作能力的；
- (二)患病或者负伤，在规定的医疗期内的；
- (三)女性公务员在孕期、产假、哺乳期内的；
- (四)法律、行政法规规定的其他不得辞退的情形。

**第八十五条** 辞退公务员，按照管理权限决定。辞退决定应当以书面形式通知被辞退的公务员。

被辞退的公务员，可以领取辞退费或者根据国家有关规定享受失业保险。

**第八十六条** 公务员辞职或者被辞退，离职前应当办理公务交接手续，必要时按照规定接受审计。

## 第十四章 退休

**第八十七条** 公务员达到国家规定的退休年龄或者完全丧失工作能力的，应当退休。

**第八十八条** 公务员符合下列条件之一的，本人自愿提出申请，经任免机关批准，可以提前退休：

- (一)工作年限满三十年的；
- (二)距国家规定的退休年龄不足五年，且工作年限满二十年的；
- (三)符合国家规定的可以提前退休的其他情形的。

**第八十九条** 公务员退休后，享受国家规定的退休金和其他待遇，国家为其生活和健康提供必要的服务和帮助，鼓励发挥个人专长，参与社会发展。

## 第十五章 申诉控告

**第九十条** 公务员对涉及本人的下列人事处理不服的，可以自知道该人事处理之日起三十日内向原处理机关申请复核；对复核结果不服的，可以自接到复核决定之日起十五日内，按照规定向同级公务员主管部门或者作出该人事处理的机关的上一级机关提出申诉；也可以不经复核，自知道该人事处理之日起三十日内直接提出申诉：

- (一)处分；
- (二)辞退或者取消录用；
- (三)降职；
- (四)定期考核定为不称职；
- (五)免职；
- (六)申请辞职、提前退休未予批准；

(七) 未按规定确定或者扣减工资、福利、保险待遇；

(八) 法律、法规规定可以申诉的其他情形。

对省级以下机关作出的申诉处理决定不服的，可以向作出处理决定的上一级机关提出再申诉。

行政机关公务员对处分不服向行政监察机关申诉的，按照《中华人民共和国行政监察法》的规定办理。

**第九十一条** 原处理机关应当自接到复核申请书后的三十日内作出复核决定。受理公务员申诉的机关应当自受理之日起六十日内作出处理决定；案情复杂的，可以适当延长，但是延长期间不得超过三十日。

复核、申诉期间不停止人事处理的执行。

**第九十二条** 公务员申诉的受理机关审查认定人事处理有错误的，原处理机关应当及时予以纠正。

**第九十三条** 公务员认为机关及其领导人员侵犯其合法权益的，可以依法向上级机关或者有关的专门机关提出控告。受理控告的机关应当按照规定及时处理。

**第九十四条** 公务员提出申诉、控告，不得捏造事实，诬告、陷害他人。

## 第十六章 职位聘任

**第九十五条** 机关根据工作需要，经省级以上公务员主管部门批准，可以对专业性较强的职位和辅助性职位实行聘任制。

前款所列职位涉及国家秘密的，不实行聘任制。

**第九十六条** 机关聘任公务员可以参照公务员考试录用的程序进行公开招聘，也可以从符合条件的人员中直接选聘。

机关聘任公务员应当在规定的编制限额和工资经费限额内进行。

**第九十七条** 机关聘任公务员，应当按照平等自愿、协商一致的原则，签订书面的聘任合同，确定机关与所聘公务员双方的权利、义务。聘任合同经双方协商一致可以变更或者解除。

聘任合同的签订、变更或者解除，应当报同级公务员主管部门备案。

**第九十八条** 聘任合同应当具备合同期限，职位及其职责要求，工资、福利、保险待遇，违约责任等条款。

聘任合同期限为一年至五年。聘任合同可以约定试用期，试用期为一个月至六个月。

聘任制公务员按照国家规定实行协议工资制，具体办法由中央公务员主管部门规定。

**第九十九条** 机关依据本法和聘任合同对所聘公务员进行管理。

第一百条 国家建立人事争议仲裁制度。

人事争议仲裁应当根据合法、公正、及时处理的原则，依法维护争议双方的合法权益。

人事争议仲裁委员会根据需要设立。人事争议仲裁委员会由公务员主管部门的代表、聘用机关的代表、聘任制公务员的代表以及法律专家组成。

聘任制公务员与所在机关之间因履行聘任合同发生争议的，可以自争议发生之日起六十日内向人事争议仲裁委员会申请仲裁。当事人对仲裁裁决不服的，可以自接到仲裁裁决书之日起十五日内向人民法院提起诉讼。仲裁裁决生效后，一方当事人不履行的，另一方当事人可以申请人民法院执行。

## 第十七章 法律责任

第一百零一条 对有下列违反本法规定情形的，由县级以上领导机关或者公务员主管部门按照管理权限，区别不同情况，分别予以责令纠正或者宣布无效；对负有责任的领导人员和直接责任人员，根据情节轻重，给予批评教育或者处分；构成犯罪的，依法追究刑事责任：

(一) 不按编制限额、职数或者任职资格条件进行公务员录用、调任、转任、聘任和晋升的；

(二) 不按规定条件进行公务员奖惩、回避和办理退休的；

(三) 不按规定程序进行公务员录用、调任、转任、聘任、晋升、竞争上岗、公开选拔以及考核、奖惩的；

(四) 违反国家规定，更改公务员工资、福利、保险待遇标准的；

(五) 在录用、竞争上岗、公开选拔中发生泄露试题、违反考场纪律以及其他严重影响公开、公正的；

(六) 不按规定受理和处理公务员申诉、控告的；

(七) 违反本法规定的其他情形的。

第一百零二条 公务员辞去公职或者退休的，原系领导成员的公务员在离职三年内，其他公务员在离职两年内，不得到与原工作业务直接相关的企业或者其他营利性组织任职，不得从事与原工作业务直接相关的营利性活动。

公务员辞去公职或者退休后有违反前款规定行为的，由其原所在机关的同级公务员主管部门责令限期改正；逾期不改正的，由县级以上工商行政管理部门没收该人员从业期间的违法所得，责令接收单位将该人员予以清退，并根据情节轻重，对接收单位处以被处罚人员违法所得一倍以上五倍以下的罚款。

第一百零三条 机关因错误的具体人事处理对公务员造成名誉损害的，应当赔礼道歉、恢复名誉、消除影响；造成经济损失的，应当依法给予赔偿。

第一百零四条 公务员主管部门的工作人员，违反本法规定，滥用职权、玩忽职守、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，给予处分。

## 第十八章 附则

第一百零五条 本法所称领导成员，是指机关的领导人员，不包括机关内设机构担任领导职务的人员。

第一百零六条 法律、法规授权的具有公共事务管理职能的事业单位中除工勤人员以外的工作人员，经批准参照本法进行管理。

第一百零七条 本法自2006年1月1日起施行。全国人民代表大会常务委员会1957年10月23日批准、国务院1957年10月26日公布的《国务院关于国家行政机关工作人员的奖惩暂行规定》、1993年8月14日国务院公布的《国家公务员暂行条例》同时废止。