

- (一) 被代理人取得或者恢复民事行为能力；
- (二) 被代理人或者代理人死亡；
- (三) 代理人丧失民事行为能力；
- (四) 指定代理的人民法院或者指定单位取消指定；
- (五) 由其他原因引起的被代理人和代理人之间的监护关系消灭。

第五章 民事权利

第一节 财产所有权和与财产所有权有关的财产权

第七十一条 财产所有权是指所有人依法对自己的财产享有占有、使用、收益和处分的权利。

第七十二条 财产所有权的取得，不得违反法律规定。按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

第七十三条 国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

第七十四条 劳动群众集体组织的财产属于劳动群众集体所有，包括：

- (一) 法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等；
- (二) 集体经济组织的财产；
- (三) 集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施；
- (四) 集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有，由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡（镇）农民集体经济组织所有的，可以属于乡（镇）农民集体所有。

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破坏或者非法查封、扣押、冻结、没收。

第七十五条 公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。

公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏或者非法查封、扣押、冻结、没收。

- (i) acquisition or resumption of capacity for civil acts by the principal;
- (ii) death of the principal or agent;
- (iii) loss by the agent of capacity for civil acts;
- (iv) cancellation of designated agency by the People's Court or designating unit;
- (v) dissolution, due to other reasons, of the guardianship relationship between a principal and an agent.

CHAPTER V — CIVIL RIGHTS

Section 1: Property Ownership and Related Property Rights

Article 71. Property ownership refers to the rights of an owner, according to the law, to possess, use, reap benefit from and dispose of his own property.

Article 72. The ownership property may not be acquired in violation of the provisions of the law. Where property is acquired in accordance with a contract or other legal means, ownership of the property shall pass from the time the property is handed over, unless otherwise stipulated by the law or by agreement between the interested parties.

Article 73. State property is owned by the whole people.

State property is sacred and inviolable. It is prohibited for any organisation or individual to occupy, fraudulently seize, privately divide, withhold or damage State property.

Article 74. The property of a collective organisation of the working people is owned by the collective, including:

- (i) land, forests, mountains, grasslands, wastelands, siltbanks, etc., stipulated by law as being owned by the collective;
- (ii) property of collective economic organisations;
- (iii) buildings, reservoirs, irrigation and water conservation installations and educational, scientific, cultural, health and sports facilities, etc., which are owned by the collective;
- (iv) other property owned by the collective.

Land owned by a collective shall, in accordance with the law, be owned collectively by the village peasants and managed and administered by an agricultural collective economic organisation such as the village agricultural production co-operative or by the village citizens' committee. Land which is already owned by a township peasants' collective economic organisation may be collectively owned by the township peasants.

Property owned by a collective is protected by law. It is prohibited for any organisation or individual to occupy, fraudulently seize, privately divide, damage or illegally seal up, detain, freeze or confiscate such property.

Article 75. The private property of a citizen includes lawful income, house, savings, daily effects, cultural relics, books and library materials, forest trees, livestock and means of production which a citizen is permitted by law to own, and other lawful property.

The lawful property of a citizen is protected by law. It is prohibited for any organisation or individual to occupy, fraudulently seize, privately divide, damage or illegally seal up, detain, freeze or confiscate such property.

- (三) 原外商投资企业投资者关于终止原合同、章程的决议；
- (四) 原外商投资企业资产评估报告；
- (五) 发起人（包括但不限于原外商投资企业投资者）协议；
- (六) 公司章程；
- (七) 原外商投资企业的营业执照、批准证书，最近连续三年的财务报告；
- (八) 设立公司的申请书；
- (九) 发起人的资信证明；
- (十) 可行性研究报告。

第十六条 上述申请经对外贸易经济合作部批准后，发起人应自批准证书签发并缴足其认购的股本金后向公司登记机关办理变更登记手续。

第十七条 外商投资企业变更登记为公司后，原外商投资企业的一切权利、义务全部转由公司承担。

外商投资企业的中外投资者在原外商投资企业合同、章程中承诺的义务，应列入发起人协议及章程，同样适用所设立的公司。

第十八条 国有企业、集体所有制企业如申请转变为公司的，除符合本规定其他条款的规定外，还须符合以下条件：

- (一) 该企业至少营业五年并有最近连续三年的盈利记录；
- (二) 外国股东以可自由兑换的外币购买并持有该企业的股份占该企业注册资本的百分之二十五以上；
- (三) 企业的经营范围符合外商投资企业产业政策。

中外股东作为发起人签定设立公司的协议、章程，报企业所在地审批机关初审同意后转报对外贸易经济合作部审批。

申请转变应报送下列文件：

- (一) 原企业资产评估报告；
- (二) 设立公司的申请书；

- (3) a resolution of the investors of the original foreign investment enterprise on the termination of the original contracts and articles of association;
- (4) a capital verification report on the original foreign investment enterprise;
- (5) the promoters' agreement ("promoters" to include but not to be limited to investors of the original foreign investment enterprise);
- (6) the company's articles of association;
- (7) the business licence and certificate of approval of the original foreign investment enterprise, and a financial report for the last three (3) successive years;
- (8) an application for the establishment of a company;
- (9) certificates of creditworthiness for the various promoters;
- (10) a feasibility study report.

Article 16. Subject to approval by the Ministry of Foreign Trade and Economic Cooperation of the above application, the promoters shall, after the issuing of the certificate of approval and after promoters have subscribed their respective shares in full, apply to the company registration authority for the modification of registration.

Article 17. Once a foreign investment enterprise has registered its transformation into a company, all rights and obligations of the original foreign investment enterprise shall be vested in that company.

The obligations undertaken by Sino-foreign investors in a foreign investment enterprise which are contained in the contracts and articles of association of the original foreign investment enterprise shall be included in the promoters' agreement and articles of association which shall then apply to the established company.

Article 18. If a State-owned enterprise or a collectively owned enterprise applies to transform into a company, it shall, in addition to complying with the provisions of other articles of these Regulations, also meet the following criteria:

- (1) the enterprise has been operating its business for a minimum of five (5) years and has a profit record for the last three (3) successive years;
- (2) shares of the enterprise bought and held by foreign shareholders using freely convertible currency constitute more than 25% of the enterprise's registered capital;
- (3) the scope of business operation of the enterprise shall be in conformity with industrial policies for foreign investment enterprises.

Subject to preliminary examination and approval by the examination authority at the location of the enterprise, the agreement and articles of association for the establishment of the company signed by Sino-foreign shareholders acting as promoters shall be submitted to the Ministry of Foreign Trade and Economic Cooperation for examination and approval.

The following documents shall be submitted when applying for transformation into a company:

- (1) a capital verification report for the original enterprise;
- (2) an application for the establishment of a company;

第五条 合作企业的主管部门为中国合作者的主管部门。合作企业有二个以上中国合作者的，由审查批准机关会同有关部门协商确定一个主管部门。但是，法律、行政法规另有规定的除外。

合作企业的主管部门对合作企业的有关事宜依法进行协调、提供协助。

第二章 合作企业的设立

第六条 设立合作企业对对外贸易经济合作部或者国务院授权的部门和地方人民政府审查批准。

设立合作企业属下列情形的，由国务院授权的部门或者地方人民政府审查批准：

- (一) 投资总额在国务院规定由国务院授权的部门或者地方人民政府审批的投资限额以内的；
- (二) 自筹资金，并且不需要国家平衡建设、生产条件的；
- (三) 产品出口不需要领取国家有关主管部门发放的出口配额、许可证，或者虽需要领取，但在报送项目建议书前已征得国家有关主管部门同意的；
- (四) 有法律、行政法规规定由国务院授权的部门或者地方人民政府审查批准的其他情形的。

第七条 设立合作企业，应当由中国合作者向审查批准机关报送下列文件：

- (一) 设立合作企业的项目建议书，并附送主管部门审查同意的文件；
- (二) 合作各方共同编制的可行性研究报告，并附送主管部门审查同意的文件；
- (三) 由合作各方的法定代表或其授权的代表签署的合作企业协议、合同章程；

Article 5. The department in charge of a cooperative enterprise is the department in charge of the Chinese partner to that cooperative enterprise. If there are more than two (2) Chinese partners to a cooperative enterprise, the department in charge will be determined through consultation by the examination and approval authority in conjunction with relevant departments, except if otherwise stipulated in laws and statutory regulations.

The department in charge of a cooperative enterprise will coordinate with and provide assistance to the cooperative enterprise in handling matters related to the cooperative enterprise.

CHAPTER II — ESTABLISHMENT OF A COOPERATIVE ENTERPRISE

Article 6. The establishment of a cooperative enterprise will be subject to the examination and approval of the Ministry of Foreign Trade and Economic Cooperation or a department or local people's government as authorised by the State Council.

The establishment of a cooperative enterprise in the following circumstances will be subject to the examination and approval of a department or local people's government as authorised by the State Council:

- (1) where the total amount of investment in the cooperative enterprise is within the limits subject to examination and approval of a department or local people's government authorised by the State Council;
- (2) where the cooperative enterprise is self-financing and does not need the State to contribute to the balance of its construction and production conditions;
- (3) where it is not necessary for the cooperative enterprise to obtain an export quota and/or licence issued by the relevant State department in charge for the export of products; or, where it is necessary to obtain an export quota and/or licence but where the consent of the relevant State departments in charge has been obtained prior to submission of the project proposal;
- (4) in other circumstances in which the establishment of a cooperative enterprise is subject to examination and approval by a department or local people's government authorised by the State Council as stipulated in laws and statutory regulations.

Article 7. When establishing a cooperative enterprise, the Chinese partner will be responsible for submitting the following documents to the examination and approval authority:

- (1) a project proposal for the cooperative enterprise to be established, together with the document of examination and consent issued by the department in charge;
- (2) a feasibility study report jointly prepared by the parties to the cooperative enterprise, together with the document of examination and consent issued by the department in charge;
- (3) a cooperative enterprise agreement, contract and articles of association signed by the legal representatives of the parties to the cooperative enterprise or their authorised representatives;

- (一) 具有撤销权的当事人自知道或者应当知道撤销事由之日起一年内行使撤销权；
- (二) 具有撤销权的当事人知道撤销事由后明确表示或者以自己的行为放弃撤销权。

第五十六条 无效的合同或者被撤销的合同自始没有法律约束力。合同部分无效，不影响其他部分效力的，其他部分仍然有效。

第五十七条 合同无效、被撤销或者终止的，不影响合同中独立存在的有关解决争议方法的条款的效力。

第五十八条 合同无效或者被撤销后，因该合同取得的财产，应当予以返还；不能返还或者没有必要返还的，应当折价补偿。有过错的一方应当赔偿对方因此受到的损失，双方都有过错的，应当各自承担相应的责任。

第五十九条 当事人恶意串通，损害国家、集体或者第三人利益的，因此取得的财产收归国家所有或者返还集体、第三人。

第四章 合同的履行

第六十条 当事人应当按照约定全面履行自己的义务。

当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

第六十一条 合同生效后，当事人就质量、价款或者报酬、履行地点等内容没有约定或者约定不明确的，可以协议补充；不能达成补充协议的，按照合同有关条款或者交易习惯确定。

第六十二条 当事人就有关合同内容约定不明确，依照本法第六十一条的规定不能确定的，适用下列规定：

- (一) 质量要求不明确的，按照国家标准、行业标准履行；没有国家标准、行业标准的，按照通常标准或者符合合同目的的特定标准履行。

- (1) the party with the right to revoke has failed to exercise this right within one (1) year from the date on which the said party knew or ought to have known of the circumstances out of which the right to revoke arose; or
- (2) after the party possessing the right to revoke has become aware that the right to revoke has arisen, the said party, through a clear declaration or by his or her conduct, waives the right of revocation.

Article 56. Contracts that are invalid or have been revoked possess no legal binding force *ab initio*. Where a contract is invalid in part, but the invalidity of the said part does not affect the validity of the other parts of the contract, then these other parts will still be valid.

Article 57. A contract's invalidity, revocation or termination does not affect the effectiveness of those clauses in the contract relating to methods of dispute resolution which exist independently.

Article 58. After a contract has been declared invalid or revoked, all property obtained by reason of the said contract shall be returned; where the property cannot be returned or there is no need to return it, compensation shall be paid on the basis of the depreciated value of the property. A party that is at fault is liable to compensate the other party for its resulting losses, and where both parties are at fault, then each party shall bear the relevant liability respectively.

Article 59. Where the contract involves a malicious conspiracy, and is detrimental to the interests of the State, a collective or a third party, all property thereby obtained shall be the property of the State or shall be returned to the collective or the third person.

CHAPTER IV — PERFORMANCE OF CONTRACTS

Article 60. The parties shall perform their respective obligations in their entirety in accordance with the terms of their agreement.

Parties shall observe the principles of honesty and trustworthiness, and shall perform all notification, assistance and confidentiality obligations, etc, in accordance with the nature and purpose of the contract and in accordance with business practices.

Article 61. After the contract comes into effect, where the parties have made no agreement or have not come to a clear agreement with respect to matters such as quality, price or remuneration, the place of performance, etc, they may agree on additional provisions dealing with these matters; where the parties are unable to reach agreement on such provisions, the said matters will be determined by reference to the relevant provisions of the contract or by reference to business practice.

Article 62. Where the parties have not come to a clear agreement on a relevant issue under the contract, and it is not possible to determine the issue in accordance with the provisions of Article 61 of this Law, the following provisions shall apply:

- (1) Where there has been no clear agreement as to quality requirements, performance shall be in accordance with state or industry standards; where there are no state or industry standards, performance shall be in accordance with usual standards or in accordance with special standards as appropriate given the purpose of the contract.

第一百八十二条 用电人应当按照国家有关规定和当事人的约定及时交付电费。用电人逾期不交付电费的，应当按照约定支付违约金。经催告用电人在合理期限内仍不交付电费和违约金的，供电人可以按照国家规定的程序中止供电。

第一百八十三条 用电人应当按照国家有关规定和当事人的约定安全用电。用电人未按照国家有关规定和当事人的约定安全用电，造成供电人损失的，应当承担损害赔偿责任。

第一百八十四条 供用水、供用气、供用热力合同，参照供用电合同的有关规定。

第十一章 赠与合同

第一百八十五条 赠与合同是赠与人将自己的财产无偿给予受赠人，受赠人表示接受赠与的合同。

第一百八十六条 赠与人在赠与财产的权利转移之前可以撤销赠与。

具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，不适用前款规定。

第一百八十七条 赠与的财产依法需要办理登记等手续的，应当办理有关手续。

第一百八十八条 具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，赠与人不交付赠与的财产的，受赠人可以要求交付。

第一百八十九条 因赠与人故意或者重大过失致使赠与的财产毁损、灭失的，赠与人应当承担损害赔偿责任。

第一百九十条 赠与可以附义务。

赠与附义务的，受赠人应当按照约定履行义务。

第一百九十一条 赠与的财产有瑕疵的，赠与人不承担责任。附义务的赠与，赠与的财产有瑕疵的，赠与人在附义务的限度内承担与出卖人相同的责任。

Article 182. The electricity consumer shall promptly pay electricity fees in accordance with relevant state regulations and as agreed between the parties. Where the consumer is overdue in its payment of electricity fees, it shall pay a penalty for breach of contract in accordance with the parties' agreement. Where the supplier has called on the consumer to make a payment, but within a reasonable period of time the consumer has still not paid the said electricity fees or the penalty for breach of contract, the supplier may cut off the supply of electricity in accordance with procedures stipulated by the State.

Article 183. The electricity consumer shall consume electricity safely in accordance with relevant state regulations and as agreed by the parties. Where the electricity consumer fails to consume electricity safely in accordance with relevant state regulations and as agreed by the parties, resulting in losses to the electricity supplier, the electricity consumer shall be liable to pay compensatory damages.

Article 184. With respect to contracts for the supply and consumption of water, gas and heating, the relevant provisions applying to contracts for the supply and consumption of electricity shall be consulted.

CHAPTER XI — GIFT CONTRACTS

Article 185. A gift contract is a contract under which the donor gives its own property to the donee without consideration, and the donee indicates its acceptance of the gift.

Article 186. The donor may revoke the gift at any stage prior to the transfer of its proprietary interests in the granted property.

The preceding paragraph shall not apply to gift contracts for the public welfare or in compliance with a moral obligation, such as contracts for disaster or poverty relief, etc., or gift contracts which have already been notarised.

Article 187. Where it is necessary to complete registration and other procedures in relation to the granted property in accordance with the law, the relevant procedures shall be completed.

Article 188. Where the donor fails to deliver property granted according to gift contracts for the public welfare or in compliance with a moral obligation, such as contracts for disaster or poverty relief, etc., or according to gift contracts which have already been notarised, the donee may demand that the said property be delivered.

Article 189. Where, as a result of a deliberate act or gross negligence on the part of the donor, the granted property is damaged or lost, the donor shall be liable to pay compensatory damages for the losses sustained.

Article 190. There may be obligations attached to the making of a gift.

Where obligations are attached to the making of a gift, the donee shall perform these obligations as agreed.

Article 191. Where the granted property contains a defect, the donor shall not bear any liability. Where obligations on the donee are attached to the making of the gift by the donor, and the granted property contains a defect, the donor shall, to an extent limited by the nature of the donee's obligations, bear the same liability as that of a seller.

- (一) 不具备产品应当具备的使用性能而事先未作说明的；
- (二) 不符合在产品或者其包装上注明采用的产品标准的；
- (三) 不符合以产品说明、实物样品等方式表明的质量状况的。

销售者依照前款规定负责修理、更换、退货、赔偿损失后，属于生产者的责任或者属于向销售者提供产品的其他销售者（以下简称供货者）的责任的，销售者有权向生产者、供货者追偿。

销售者未按照第一款规定给予修理、更换、退货或者赔偿损失的，由产品质量监督部门或者工商行政管理部门责令改正。

生产者之间、销售者之间、生产者与销售者之间订立的买卖合同、承揽合同有不同约定的，合同当事人按照合同约定执行。

第四十一条 因产品存在缺陷造成人身、缺陷产品以外的其他财产（以下简称他人财产）损害的，生产者应当承担赔偿责任。

生产者能够证明有下列情形之一的，不承担赔偿责任：

- (一) 未将产品投入流通的；
- (二) 产品投入流通时，引起损害的缺陷尚不存在的；
- (三) 将产品投入流通时的科学技术水平尚不能发现缺陷的存在。

第四十二条 由于销售者的过错使产品存在缺陷，造成人身、他人财产损害的，销售者应当承担赔偿责任。

销售者不能指明缺陷产品的生产者，也不能指明缺陷产品的供货者的，销售者应当承担赔偿责任。

第四十三条 因产品存在缺陷造成人身、他人财产损害的，受害人可以向产品的生产者要求赔偿，也可以向产品的销售者要求赔偿。属于产品的生产者的责任，产品的销售者赔偿的，产品的销售者有权向产品的生产者追偿。属于产品的销售者的责任，产品的生产者赔偿的，产品的生产者有权向产品的销售者追偿。

第四十四条 因产品存在缺陷造成受害人人身伤害的，侵害人应当赔偿医疗费、治疗期间的护理费、因误工减少的收入等费用；造成残疾的，还应当支付残疾者

- (1) the product sold does not possess the properties for use that it should possess, and no prior and clear indication is given of such a situation;
- (2) the product sold does not conform to the applied product standard as carried on the product or its packaging;
- (3) the product sold does not conform to the quality indicated by such means as a product description or physical sample.

After a seller has taken responsibility for repair, replacement or return of the products, or has borne liability for compensation for losses pursuant to the provisions of the preceding paragraph, if the producer is liable or another seller who provided the product to the seller (hereinafter referred to as the supplier) is liable, the seller shall have the right to recovery from the producer or the supplier.

If a seller fails to repair, replace or return the product or fails to compensate for losses pursuant to the provisions of paragraph 1 of this Article, the product quality supervision department or the administration for industry and commerce shall order rectification of such a situation.

If product purchase and sale contracts and work contracts concluded between producers, between sellers or between producers and sellers stipulate otherwise, the parties to such contracts shall proceed pursuant to such contracts.

Article 41. If a defect in a product causes physical injury or damage to property other than the defective product (hereinafter referred to as third party property), the producer shall bear liability for compensation.

A producer may not bear liability for compensation if any of the following circumstances is proven:

- (1) the product has not been put into circulation;
- (2) the defect causing the damage did not exist when the product was put into circulation;
- (3) when the product was put into circulation, the level of science and technology at the time was not sufficient to detect the existence of the defect.

Article 42. Where a product is defective due to a mistake made by the seller and such defect causes physical injury or damage to third party property, the seller shall bear liability for compensation.

If a seller is unable to identify the producer of a defective product and is also unable to identify the supplier thereof, the seller shall bear liability for compensation.

Article 43. If a defect in a product causes physical injury or damage to third party property, the party which was injured or incurred damage may claim compensation against the producer or may claim compensation against the seller. If the producer of the product is liable and compensation is made by the seller of the product, the seller of the product shall have the right of recovery against the producer of the product; if the seller of the product is liable and compensation is made by the producer of the product, the producer of the product shall have the right of recovery against the seller of the product.

Article 44. If a defect in a product causes physical injury to the injured party, the injuring party shall compensate for expenses such as medical expenses, nursing costs for the period of treatment and loss of income due to absence from work; where a defect

- (三) 经审批机构批准, 合营企业以增加资本所进口的国内不能保证生产应的机器设备、零部件和其他物料;
- (四) 合营企业为生产出口产品, 从国外进口的原材料、辅料、元器件、零部件和包装物料。

上述减税、免税进口物资, 经批准在中国国内转卖或者转用于在中国国内销售的产品, 应当照章纳税或者补税。

第六十二条 合营企业生产的出口产品, 除中国限制出口的以外, 依照中国税法的有关规定减税、免税或者退税。

第十章 外汇管理

第六十三条 合营企业的一切外汇事宜, 按照《中华人民共和国外汇管理条例》和有关管理办法的规定办理。

第六十四条 合营企业凭营业执照, 在境内银行开立外汇账户和人民币账户, 由开户银行监督收付。

第六十五条 合营企业在国外或者港澳地区的银行开立外汇账户, 应当经国家外汇管理局或者其分局批准, 并向国家外汇管理局或者其分局报告收付情况和提供银行对账单。

第六十六条 合营企业在国外或者港澳地区设立的分支机构, 其年度资产负债表和年度利润表, 应当通过合营企业报送国家外汇管理局或者其分局。

第六十七条 合营企业根据经营业务的需要, 可以向境内的金融机构申请外汇贷款和人民币贷款, 也可以按照国家有关规定从国外或者港澳地区的银行借入外汇资金, 并向国家外汇管理局或者其分局办理登记或者备案手续。

第六十八条 合营企业的外籍职工和港澳职工的工资和其他正当收益, 在汇出后, 减去在中国境内的花费, 其剩余部分可以按照国家有关规定购汇汇出。

- (3) Machinery, equipment, parts and other materials imported by the joint venture with additional capital under the approval of the examination and approval authority, and for which China cannot guarantee production and supply;
- (4) Raw materials, auxiliary materials, components, parts and packaging materials imported by the joint venture for production of export goods.

Taxes shall be paid or added according to regulations when the above-mentioned duty-free materials are approved for sale inside China or used for the production of items to be sold on the Chinese domestic market.

Article 62. Except for those export items restricted by the State, taxes on export products of a joint venture shall be reduced, exempted or refunded in accordance with the relevant provisions of the Chinese tax law.

CHAPTER X — FOREIGN EXCHANGE CONTROL

Article 63. All matters concerning foreign exchange for joint ventures shall be handled according to the Rules of the People's Republic of China on Foreign Exchange Control and relevant provisions of administrative measures.

Article 64. With a business licence, a joint venture may open foreign exchange accounts and Renminbi accounts with banks inside China. The bank handling the accounts of the joint venture shall exercise supervision of receipts and expenditures.

Article 65. A joint venture shall obtain permission from the State Administration of Foreign Exchange or one of its branches to open a foreign exchange deposit account with an overseas bank or one in Hong Kong or Macao, and report to the State Administration of Foreign Exchange or one of its branches its foreign exchange receipts and expenditures, and provide account balance sheets.

Article 66. Branches and divisions set up by a joint venture in foreign countries or in Hong Kong or Macao shall submit its annual statement of assets and liabilities and annual profit report to the State Administration of Foreign Exchange or one of its branches through the joint venture.

Article 67. A joint venture may, in accordance with its operation needs, apply to a financial institution inside China for foreign exchange loans and Renminbi loans. It may also borrow foreign exchange from banks abroad or in Hong Kong or Macao in accordance with the relevant provisions of the State, and carry out procedures for registration or filing for record with the State Administration of Foreign Exchange or one of its branches.

Article 68. After foreign staff and workers and staff and workers from Hong Kong and Macao have paid income tax on their salaries and other legitimate incomes in accordance with the law, they may remit outside China the remaining foreign exchange after deduction of their living expenses in China, in accordance with relevant provisions of the State.

- (四) 改组方应当公开发布改组信息, 广泛地征集外国投资者, 对外国投资者的资质、信誉、财务状况、管理能力、付款保障、经营者素质等进行调查。优先选择能带来先进技术和管理经验、产业关联度高的中长期投资者。

改组方和外国投资者应当应对方的合理要求, 如实、详尽地提供有关信息资料, 不得有误导和欺诈行为, 并承担相应保密义务。

- (五) 企业改组以转让国有产权或出售资产方式进行的, 改组方应当优先采用公开竞价方式确定外国投资者及转让价格。采用公开竞价方式转让, 应当依法履行有关手续, 并将拟转让国有产权或拟出售资产的相关情况予以公告。采取协议转让的, 也应当公开运作。

不论采取何种转让方式, 改组方与外国投资者均应当按照国家有关规定和本规定签订转让协议。转让协议内容应当主要包括转让国有产权的基本情况、职工安置、债权债务处置、转让比例、转让价格、付款方式及付款条件、产权交割事项以及企业重整等条款。

第九条 利用外资改组国有企业应当按下列程序办理:

- (一) 改组方(两个以上的改组方应当确定一个改组方)应当向同级经济贸易主管部门提出改组申请。改组申请材料应当附可行性研究报告、改组方和被改组企业的情况、外国投资者的情况(包括经注册会计师审计的最近三年的财务报告和在中国境内拥有实际控制权的同行业企业产品或服务的市场占有率)、改组方案(包括职工安置、债权债务处置和企业重整方案)、改组后的企业(包括其直接或间接持股的企业)的经营范围和股权结构等文件。

- (4) Restructuring parties shall announce information on restructuring, solicit foreign investors and investigate the qualifications, reputation, financial status, management capabilities, payment security, quality of business administrators, etc. of foreign investors. Priority shall be given to selection of mid- and long-term investors who can introduce advanced technology and management experience and who are closely associated with the industry.

Restructuring parties and foreign investors shall provide relevant, accurate and detailed information reasonably requested by the other party and shall not breach confidentiality or engage in misleading or fraudulent acts.

- (5) Restructuring parties shall give priority to open bidding for selection of foreign investors and transfer prices for restructuring through transfer of State-owned property rights or sale of assets. Transfer via open bidding shall comply with relevant formalities in accordance with laws and relevant information on the proposed transfer of State-owned property rights or sale of assets shall be announced. Negotiated transfer shall be conducted in a transparent manner.

Restructuring parties and foreign investors shall enter into transfer agreements in accordance with provisions of these Regulations and relevant State regulations. The contents of the transfer agreement shall include background information to the transfer of State-owned property rights, personnel deployment plan, settlement of creditors' rights and debts, transfer ratio, transfer price, payment method and terms, delivery items and enterprise restructuring etc.

Article 9. Utilisation of foreign investment for restructuring of State-owned enterprises shall be conducted in accordance with the following procedures:

- (1) The restructuring party (2 or more restructuring parties shall be consolidated into one restructuring party) shall submit a restructuring application to the counterpart trade and economics administrative authorities. The application shall be supported by a feasibility study report, background information on the restructuring party, restructuring enterprise and foreign investor (including financial reports for the last 3 years audited by a certified accountant and information on market share of the products or services of enterprises controlled by the foreign investor in the same industry), a restructuring plan (including personnel deployment plan, settlement of creditors' rights and debts and enterprise restructuring) and documents on the scope of business and shareholding structure of the restructuring enterprise (including enterprises with direct or indirect shareholding by the restructuring enterprise).

第十四条 转让方应当将产权转让公告委托产权交易机构刊登在省级以上公开发行的经济或者金融类报刊和产权交易机构的网站上，公开披露有关企业国有产权转让信息，广泛征集受让方。产权转让公告期为20个工作日。

转让方披露的企业国有产权转让信息应当包括下列内容：

- (一) 转让标的的基本情况；
- (二) 转让标的企业的产权构成情况；
- (三) 产权转让行为的内部决策及批准情况；
- (四) 转让标的企业近期经审计的主要财务指标数据；
- (五) 转让标的企业资产评估核准或者备案情况；
- (六) 受让方应当具备的基本条件；
- (七) 其他需披露的事项。

第十五条 在征集受让方时，转让方可以对受让方的资质、商业信誉、经营情况、财务状况、管理能力、资产规模等提出必要的受让条件。

受让方一般应当具备下列条件：

- (一) 具有良好的财务状况和支付能力；
- (二) 具有良好的商业信用；
- (三) 受让方为自然人的，应当具有完全民事行为能力；
- (四) 国家法律、行政法规规定的其他条件。

第十六条 受让方为外国及我国香港特别行政区、澳门特别行政区、台湾地区的法人、自然人或者其他组织的，受让企业国有产权应当符合国务院公布的《关于向外商投资方向规定》及其他有关规定。

第十七条 经公开征集产生两个以上受让方时，转让方应当与产权交易机构协商，根据转让标的的具体情况采取拍卖或者招投标方式组织实施产权交易。

采取拍卖方式转让企业国有产权的，应当按照《中华人民共和国拍卖法》及有关规定组织实施。

采取招投标方式转让企业国有产权的，应当按照国家有关规定组织实施。

Article 14. The transferor shall commission the property rights transaction organisation to publish a property rights transfer announcement in public distributed economic and financial newspapers and magazines of provincial level and above and on the organisation's website, disclose information on the transfer of State-owned property rights in the enterprise, and invite transferees. The period of public announcement for a property rights transfer shall be 20 working days.

Information disclosed by the transferor in respect of a transfer of State-owned property rights in an enterprise shall include the following content:

- (1) basic details about the subject of transfer;
 - (2) details of the composition of the property rights of the subject enterprise;
 - (3) details of internal decision making and approvals in relation to the transfer of property rights;
 - (4) recent data on the main audited financial indicators of the subject enterprise;
 - (5) details of the verification or record-filing of the subject enterprise;
 - (6) basic criteria to be met by the transferee; and
- Other matters required to be disclosed.

Article 15. When inviting transferees, the transferor may set necessary conditions for the transfer in relation to the transferee's qualifications, commercial credit standing, status of business operations, financial status, management capacity and scale of assets.

A transferee generally shall meet the following criteria:

- (1) good financial position and solvent;
- (2) good commercial credit standing;
- (3) where the transferee is a natural person, he/she shall have full civil capacity; and
- (4) other criteria stipulated by State laws and administrative regulations.

Article 16. Where the transferee is a legal person, a natural person or an organisation from overseas, Hong Kong Special Administrative Zone, Macau Special Administrative Zone or Taiwan, the acquisition of State-owned property rights in enterprises shall comply with the provisions of the Regulations on Foreign Investment Guidelines promulgated by the State Council and other relevant regulations.

Article 17. In the event of two or more candidates answering the invitation for transferees, the transferor and the property rights transfer organisation shall discuss the options of organising the property rights transaction either by auction or by tender, depending on the specific circumstances of the subject transfer.

Auctions for transfers of State-owned property rights in enterprises shall be organised and conducted in accordance with the Auction Law of the People's Republic of China and relevant regulations.

Tenders for transfers of State-owned property rights in enterprises shall be organised and implemented in accordance with relevant State regulations.

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

第五十六条 监事会每年度至少召开一次会议，监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经半数以上监事通过。监事会应当对所议事项的决定作成会议记录，出席会议的监事应当在会议记录上签名。

第五十七条 监事会、不设监事会的公司的监事行使职权所必需的费用，由公司承担。

第三节 一人有限责任公司的特别规定

第五十八条 一人有限责任公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

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

第五十九条 一人有限责任公司的注册资本最低限额为人民币十万元。股东应当一次足额缴纳公司章程规定的出资额。

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

第六十条 一人有限责任公司应当在公司登记中注明自然人独资或者法人独资，并在公司营业执照中载明。

第六十一条 一人有限责任公司章程由股东制定。

第六十二条 一人有限责任公司不设股东会。股东作出本法第三十八条所列决定时，应当采用书面形式，并由股东签名后置备于公司。

第六十三条 一人有限责任公司应当在每一会计年度终了时编制财务会计报告，并经会计师事务所审计。

第六十四条 一人有限责任公司的股东不能证明公司财产独立于股东自己的财产的，应当对公司债务承担连带责任。

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

Article 56. The board of supervisors shall convene at least one meeting every year; a supervisor may propose to convene an ad hoc meeting of the board of supervisors.

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

Resolutions of a board of supervisors shall be passed by a simple majority of votes. The board of supervisors shall record minutes of meeting and the supervisors present at the meeting shall sign on the minutes of meeting.

Article 57. Expenses incurred by a board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) in exercising their duties and powers shall be borne by the company.

Section 3 — Special Provisions on One-person Limited Liability Companies

Article 58. The provisions of this Section shall apply to the establishment and organisation of one-person limited liability companies. Where there is no provision in this Section, the provisions of Sections 1 and 2 of this Chapter shall apply.

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

Article 59. The minimum registered capital of one-person limited liability companies shall be RMB100,000. The shareholders shall make a one-off capital contribution in accordance with the provisions of the articles of association of the company.

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

Article 60. A one-person limited liability company shall declare in its company registration details whether the company is wholly-funded by a natural person or a legal person and state so in its business licence.

Article 61. The articles of association of one-person limited liability companies shall be formulated by the shareholder.

Article 62. One-person limited liability companies are not required to establish a board of shareholders. The shareholder shall put decisions stipulated in Article 38(1) in writing and keep such documents in the company after signing.

Article 63. One-person limited liability companies shall formulate a financial accounting report at each accounting year-end for audit by an accounting firm.

Article 64. A shareholder of a one-person limited liability company who is unable to prove that the company's assets are independent of the shareholder's personal assets shall bear joint liability for the company's debt.

第八十八条 通过证券交易所的证券交易，投资者持有或者通过协议、其他安排与他人共同持有有一个上市公司已发行的股份达到百分之三十时，继续进行收购的，应当依法向该上市公司所有股东发出收购上市公司全部或者部分股份的收购要约。

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

第八十九条 依照前条规定发出收购要约，收购人必须事先向国务院证券监督管理机构报送上市公司收购报告书，并载明下列事项：

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

收购人还应当将上市公司收购报告书同时提交证券交易所。

第九十条 收购人在依照前条规定报送上市公司收购报告书之日起十五日后，公告其收购要约。在上述期限内，国务院证券监督管理机构发现上市公司收购报告书不符合法律、行政法规规定的，应当及时告知收购人，收购人不得公告其收购要约。

收购要约约定的收购期限不得少于三十日，并不得超过六十日。

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

第九十二条 收购要约提出的各项收购条件，适用于被收购公司的所有股东。

Article 88. Where an investor which has attained a 30% shareholding in a listed company through securities trading on a stock exchange or holds 30% of the issued share capital of a listed company as a joint shareholder through an agreement or other arrangements continues to acquire shares in the listed company, the investor shall make an offer to all shareholders of the listed company in accordance with the provisions of the law for a complete or partial acquisition of shares of the listed company.

An offer for partial acquisition of a listed company shall state that in the event that the number of shares undertaken to be sold by the shareholders of the company exceeds the proposed number of shares to be acquired, the offeror shall make an acquisition based on the ratio.

Article 89. An offeror who makes an acquisition offer in accordance with the provisions of the preceding article shall submit an acquisition report which states the following information to the securities regulatory authorities of the State Council in advance:

- (1) name and address of the offeror;
- (2) decision of the offeror on the acquisition;
- (3) name of the target listed company;
- (4) purpose of acquisition;
- (5) description of the shares to be acquired and the proposed number of shares to be acquired;
- (6) offer period and offer price;
- (7) the amount of funds required for the acquisition and funding assurance; and
- (8) the percentage of shareholding in the issued share capital of the target company at the time of submission of the acquisition report.

The offeror shall submit the acquisition report to the stock exchange simultaneously.

Article 90. The offeror shall announce the acquisition offer within 15 days from submission of the acquisition report in accordance with the provisions of the preceding article. If the securities regulatory authorities of the State Council discover during the aforesaid period that the acquisition report does not comply with the provisions of the laws and administrative regulations, it shall inform the offeror promptly and the offeror shall not announce the acquisition offer.

The offer period for an acquisition offer shall not be less than 30 days and shall not exceed 60 days.

Article 91. The offeror shall not retract the acquisition offer during the period of undertaking specified in the acquisition offer. Where a change to the acquisition offer is necessary, the offeror shall submit a report to the securities regulatory authorities of the State Council and the stock exchange to obtain prior approval and make an announcement upon obtaining the approval.

Article 92. The terms of an acquisition offer shall apply to all shareholders of the target company.

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

第二百零六条 违反本法第七十八条第一款、第三款的规定，扰乱证券市场的，由证券监督管理机构责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三万元的，处以三万元以上二十万元以下的罚款。

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

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

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

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

Article 205. The illegal income of securities companies which buy and sell securities for their clients or provide financing or securities lending services to their clients shall be confiscated; the relevant business operations or relevant business permit(s) shall be revoked and a fine of not more than the equivalent value of the illegal financing and securities lending shall be imposed. The person-in-charge and other personnel who are directly accountable shall be issued a warning, have their professional qualifications or employment qualifications for the securities industry revoked and be subject to a fine ranging from RMB30,000 to RMB300,000.

Article 206. Persons who disrupt the order of the securities market in violation of the provisions of Article 78(1) and (3) shall be ordered by the securities regulatory authorities to make correction and the illegal income shall be confiscated; a fine ranging from one to five times of the amount of illegal income shall be imposed; where there is no illegal income or the amount of illegal income is below RMB30,000, a fine ranging from RMB30,000 to RMB200,000 shall be imposed.

Article 207. Persons who make fraudulent representation or provide misleading information in securities transactions in violation of the provisions of Article 78(2) shall be ordered to make correction and a fine ranging from RMB30,000 to RMB200,000 shall be imposed; where the person is a civil servant, administrative punishment shall be imposed in accordance with the provisions of the law.

Article 208. Legal persons who open accounts in the name of others or use the accounts of others to buy and sell securities in violation of the provisions of this Law shall be ordered to make correction and the illegal income shall be confiscated; a fine ranging from one to five times of the amount of illegal income shall be imposed; where there is no illegal income or the amount of illegal income is below RMB30,000, a fine ranging from RMB30,000 to RMB300,000 shall be imposed. The person-in-charge or other personnel who are directly accountable shall be issued a warning and be subject to a fine ranging from RMB30,000 to RMB100,000.

Securities companies which provide their accounts or the securities trading accounts of others shall be subject to punishment in accordance with the provisions of the aforesaid paragraph; in addition, the person-in-charge and other personnel who are directly accountable shall have their professional qualifications or employment qualifications for the securities industry revoked.

Article 209. Securities companies which engage in self-operated securities business in the name of others or in the name of individuals in violation of the provisions of this Law shall be ordered to make correction; the illegal income shall be confiscated and a fine ranging from one to five times of the amount of illegal income shall be imposed; where there is no illegal income or the amount of illegal income is below RMB300,000, a fine ranging from RMB300,000 to RMB600,000 shall be imposed; where the case is serious, the self-operated securities business permit may be suspended or revoked. The person-in-charge and other personnel who are directly accountable shall be issued a warning, have their professional qualifications or employment qualifications for the securities industry revoked and be subject to a fine ranging from RMB30,000 to RMB100,000.

第五十二条 股票发行申请未获核准的，自中国证监会作出不予核准决定之日起六个月内，发行人可再次提出股票发行申请。

第四章 信息披露

第五十三条 发行人应当按照中国证监会的有关规定编制和披露招股说明书。

第五十四条 招股说明书内容与格式准则是信息披露的最低要求。不论准则是否有明确规定，凡是对投资者作出投资决策有重大影响的信息，均应当予以披露。

第五十五条 发行人及其全体董事、监事和高级管理人员应当在招股说明书上签字、盖章，保证招股说明书的内容真实、准确、完整。保荐人及其保荐代表人应当对招股说明书的真实性、准确性、完整性进行核查，并在核查意见上签字、盖章。

第五十六条 招股说明书中引用的财务报表在其最近一期截止日后六个月内有效。特别情况下发行人可申请适当延长，但至多不超过一个月。财务报表应当以年度末、半年度末或者季度末为截止日。

第五十七条 招股说明书的有效期为六个月，自中国证监会核准发行申请前招股说明书最后一次签署之日起计算。

第五十八条 申请文件受理后、发行审核委员会审核前，发行人应当将招股说明书（申报稿）在中国证监会网站（www.csrc.gov.cn）预先披露。发行人可以将招股说明书（申报稿）刊登于其企业网站，但披露内容应当完全一致，且不得早于在中国证监会网站的披露时间。

第五十九条 发行人及其全体董事、监事和高级管理人员应当保证预先披露的招股说明书（申报稿）的内容真实、准确、完整。

第六十条 预先披露的招股说明书（申报稿）不是发行人发行股票的正式文件，不能含有价格信息，发行人不得据此发行股票。

发行人应当在预先披露的招股说明书（申报稿）的显著位置声明：“本公司的发行申请尚未得到中国证监会核准。本招股说明书（申报稿）不具有法律效力，仅供预先披露之用。投资者应当以正式公告的招股说明书全文作为作出投资决定的依据。”

第六十一条 发行人应当在发行前将招股说明书摘要刊登于至少一种中国证监会指定的报刊，同时将招股说明书全文刊登于中国证监会指定的网站，并将招股说明书全文置于发行人住所、拟上市证券交易所、保荐人、主承销商和其他承销机构的住所，以备公众查阅。

Article 52. Where an application for issuance of shares is rejected, the issuer may submit a new application for issuance of shares after six months from the date of rejection decision of the CSRC.

Chapter IV — Information Disclosure

Article 53. An issuer shall prepare and disclose a prospectus in accordance with the relevant provisions of the CSRC.

Article 54. The guidelines for contents and format of prospectus shall be the minimum requirements for information disclosure. Regardless if the guidelines contain specific provisions, all information which has a significant impact on the investment decision of investors shall be disclosed.

Article 55. An issuer and all of its directors, supervisors and senior management personnel shall sign and affix seal on the prospectus, ensure that the contents of the prospectus are true, accurate and complete. The sponsor and its sponsor representative shall verify the truthfulness, accuracy and completeness of the prospectus and sign and affix seal on the verification opinion.

Article 56. The financial statements cited in the prospectus shall be valid up to six months from the latest cut-off date. Under special circumstances, an issuer may apply for an appropriate extension which shall not exceed one month. The cut-off dates for financial statements shall be year-end, half-year-end or quarter-end.

Article 57. A prospectus shall be valid for six months, with effect from the last date of signing on the prospectus prior to the CSRC's approval of issuance of shares.

Article 58. Upon acceptance of application documents and prior to examination by the issuance examination commission, an issuer shall pre-disclose the prospectus (draft for submission) on the CSRC website (www.csrc.gov.cn). An issuer may publish the prospectus (draft for submission) on the company website, provided that the disclosure contents shall be fully consistent and such disclosure shall not be prior to the disclosure on the CSRC website.

Article 59. An issuer and all of its directors, supervisors and senior management personnel shall ensure that the contents of the pre-disclosed prospectus (draft for submission) are true, accurate and complete.

Article 60. The pre-disclosed prospectus (draft for submission) is not an official document for issuance of securities by an issuer and shall not contain price information; an issuer shall not issue securities on such basis.

An issuer shall insert a statement at a prominent location of the pre-disclosed prospectus (draft for submission) that: "Our application for issuance has yet to be approved by the CSRC. This prospectus (draft for submission) does not constitute legal validity for issuance of securities and is for advance disclosure purpose only. Investors should base their investment decision on the full text of the prospectus to be announced officially."

Article 61. An issuer shall, prior to the issuance, publish the prospectus summary on at least one newspaper designated by the CSRC and simultaneously publish the full text of the prospectus on the websites designated by the CSRC and place the full text of the prospectus at the address of the issuer, the proposed stock exchange of listing, the Sponsor, lead underwriter and other underwriters for public inspection.

- (一) 协议各方的状况, 包括名称(姓名)、住所、法定代表人姓名、职务、国籍等;
- (二) 购买股权或认购增资的份额和价款;
- (三) 协议的履行期限、履行方式;
- (四) 协议各方的权利、义务;
- (五) 违约责任、争议解决;
- (六) 协议签署的时间、地点。

第二十三条 外国投资者资产并购的, 投资者应根据拟设立的外商投资企业的投资总额、企业类型及所从事的行业, 依照设立外商投资企业的法律、行政法规和规章的规定, 向具有相应审批权限的审批机关报送下列文件:

- (一) 境内企业产权持有人或权力机构同意出售资产的决议;
- (二) 外商投资企业设立申请书;
- (三) 拟设立的外商投资企业的合同、章程;
- (四) 拟设立的外商投资企业与境内企业签署的资产购买协议, 或外国投资者与境内企业签署的资产购买协议;
- (五) 被并购境内企业的章程、营业执照(副本);
- (六) 被并购境内企业通知、公告债权人的证明以及债权人是否提出异议的说明;
- (七) 经公证和依法认证的投资者的身份证明文件或开业证明、有关资信证明文件;
- (八) 被并购境内企业职工安置计划;
- (九) 本规定第十三条、第十四条、第十五条要求报送的文件。

依照前款的规定购买并运营境内企业的资产, 涉及其他相关政府部门许可的, 有关的许可文件应一并报送。

外国投资者协议购买境内企业资产并以该资产投资设立外商投资企业的, 在外商投资企业成立之前, 不得以该资产开展经营活动。

第二十四条 资产购买协议应适用中国法律, 并包括以下主要内容:

- (1) the basic information of the parties to the agreement such as their name and address, as well as, the name, designation and nationality of the legal representatives etc;
- (2) the right to purchase shares, the amount to be acquired and the price of equity in a subscription of additional capital;
- (3) the period and method of performance of the agreement;
- (4) the rights and obligations of the parties to the agreement;
- (5) the default liability and dispute resolution mechanism; and
- (6) the time and venue of execution of the agreement.

Article 23. Pursuant to the total investment amount of the foreign investment enterprise established by the mergers and acquisitions, the type of enterprise and the industry where the enterprise operates in and pursuant to the provisions in laws, administrative regulations and rules on establishment of foreign investment enterprises, the following documents shall be submitted to the examination and approval authorities of corresponding scope for examination and approval, when foreign investor(s) engage in the mergers and acquisitions of assets:

- (1) a resolution passed by either the holder of the property rights of the domestic enterprise or the relevant authority on the disposal of assets;
- (2) the application form for the establishment of a foreign investment enterprise;
- (3) the contract and articles of association of the foreign investment enterprise proposed to be established;
- (4) an asset acquisition agreement entered into between the foreign investment enterprise proposed to be established and the domestic enterprise, or an asset acquisition agreement entered into between the foreign investor(s) and the domestic enterprise;
- (5) the articles of association and business licence (duplicate copy) of the acquired domestic enterprise;
- (6) a proof of notice and public announcement of the acquired domestic enterprise to its creditors and an explanation of whether the creditors have raised any objections;
- (7) a notarised and duly authenticated identity document or commencement of business and the relevant creditworthiness documents of the investor(s);
- (8) a staff deployment plan of the acquired domestic enterprise; and
- (9) any other documents stipulated in Article 13, Article 14 and Article 15.

Where the acquisition of assets of a domestic enterprise for business use pursuant to the provisions of the preceding paragraph involves permits granted by other relevant government departments, the relevant permit documents shall be jointly submitted.

Where the assets of domestic enterprises are acquired by foreign investors through a negotiated acquisition and the investment of such assets is for the establishment of foreign investment enterprises, such assets shall not be used for commencement of business activities prior to the establishment of such foreign investment enterprises.

Article 24. Any asset acquisition agreement shall be governed by China laws and shall include the following main contents:

严格限制以划拨方式设立建设用地使用权。采取划拨方式的，应当遵守法律、行政法规关于土地用途的规定。

第一百三十八条 采取招标、拍卖、协议等出让方式设立建设用地使用权的，当事人应当采取书面形式订立建设用地使用权出让合同。建设用地使用权出让合同一般包括下列条款：

- (一) 当事人的名称和住所；
- (二) 土地界址、面积等；
- (三) 建筑物、构筑物及其附属设施占用的空间；
- (四) 土地用途；
- (五) 使用期限；
- (六) 出让金等费用及其支付方式；
- (七) 解决争议的方法。

第一百三十九条 设立建设用地使用权的，应当向登记机构申请建设用地使用权登记。建设用地使用权自登记时设立。登记机构应当向建设用地使用权人发放建设用地使用权证书。

第一百四十条 建设用地使用权人应当合理利用土地，不得改变土地用途；需要改变土地用途的，应当依法经有关行政主管部门批准。

第一百四十一条 建设用地使用权人应当依照法律规定以及合同约定支付出让金等费用。

第一百四十二条 建设用地使用权人建造的建筑物、构筑物及其附属设施的所有权属于建设用地使用权人，但有相反证据证明的除外。

第一百四十三条 建设用地使用权人有权将建设用地使用权转让、互换、出资、赠与或者抵押，但法律另有规定的除外。

第一百四十四条 建设用地使用权转让、互换、出资、赠与或者抵押的，当事人应当采取书面形式订立相应的合同。使用期限由当事人约定，但不得超过建设用地使用权的剩余期限。

第一百四十五条 建设用地使用权转让、互换、出资或者赠与的，应当向登记机构申请变更登记。

第一百四十六条 建设用地使用权转让、互换、出资或者赠与的，附着于该土地上的建筑物、构筑物及其附属设施一并处分。

Rights to construction land use created by way of allocation shall be strictly limited. Where the allocation method is adopted, the provisions of laws and administrative regulations on land use must be complied.

Article 138 Where rights to construction land use is created by way of assignment through invitation to tender, auction and agreement, the parties concerned shall conclude a written construction land use rights assignment contract.

A construction land use rights assignment contract shall, generally, include the following terms:

- (1) name and address of the parties concerned;
- (2) land boundaries and land size;
- (3) area occupied by buildings, structures and auxiliary facilities;
- (4) land use;
- (5) term of use;
- (6) assignment fees and other expenses and their terms of payment; and
- (7) method of dispute resolution.

Article 139 Registration of the rights to construction land use must be completed with the registration authority for rights to construction land use to be created. Rights to construction land use shall be created at the time of registration. The registration authority shall issue a certificate of rights to construction land use to the rights holder.

Article 140 The holder of rights to construction land use shall use the land reasonably and shall not change the purpose of land use; where a need to change the purpose of land use arises, the approval of the relevant authorities must be obtained pursuant to law.

Article 141 The holder of rights to construction land use shall pay for assignment fees and other expenses pursuant to the provisions of the law and the contract.

Article 142 Unless there is evidence to the contrary, the ownership to buildings, structures and auxiliary facilities constructed by a holder of rights to construction land use shall belong to the holder of rights to construction land use.

Article 143 Unless the law provides to the contrary, a holder of rights to construction land use shall have the right to transfer, exchange, contribute as capital, donate or mortgage the rights to construction land use.

Article 144 A written contract must be concluded by the parties for any transfer, exchange, contribution as capital, donation or mortgage of the rights to construction land use. The term of use shall be agreed between the parties concerned but shall not exceed the remaining term of the rights to construction land use.

Article 145 Change registration formalities must be completed with the registration authority for any transfer, exchange, contribution as capital or donation of the rights to construction land use.

Article 146 Where rights to construction land use is transferred, exchanged, contributed as capital or donated, the buildings, structures and auxiliary facilities attached to the land shall also be disposed of simultaneously.