

**IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE**

Originating Summons No. 24 of 2014

In the Matter of Section 10 of
the International Arbitration
Act (Cap. 143A)

And

In the Matter of Order 69A of
the Rules of Court (Cap 322,
R 5, 2006 Rev Ed)

Between

**THE GOVERNMENT OF
THE LAO PEOPLE'S
DEMOCRATIC REPUBLIC**
(No ID exists)

...Plaintiff

And

**SANUM INVESTMENTS
LIMITED**
(ID No Unknown)

...Defendant

AFFIDAVIT

I, **GUIGUO WANG** (Hong Kong SAR, China Passport No. KJ0033063), of care of School of Law, City University of Hong Kong, Tat Chee Avenue , Kowloon, Hong Kong, do solemnly and sincerely affirm and say as follows:

1. I am Chair Professor of Chinese and Comparative Law, Director of the Centre for Judicial Education and Research and former Dean of the School of Law, City University of Hong Kong.
2. Now produced and shown to me, annexed hereto and marked as "**GW-1**" is a true copy of my Expert Opinion.
3. Notwithstanding the fact that my Expert Opinion was requested by the Plaintiff, I confirm that my views set forth in my Expert Opinion have not been influenced by the Plaintiff. I believe that the opinions expressed in my Expert Opinion are correct.
4. I accept full responsibility for my Expert Opinion. I have read and understood the duties of an expert witness as set out in Order 40A of the Rules of Court.

5. I understand that in giving the opinions expressed in my Expert Opinion, my duty is to assist the Court on the matters within my expertise and that this duty overrides any obligation to the party from whom I have received instructions or by whom I am paid. I have complied with that duty.

Affirmed in Hong Kong)
by the abovenamed)
GUIGUO WANG)
on this 7th day of April 2014)



BEFORE ME,



Albert Dan Bing Kin
Notary Public
Hong Kong SAR

A NOTARY PUBLIC



This affidavit is filed on behalf of the Plaintiff.

THIS IS THE EXHIBIT MARKED "GW-1"
REFERRED TO IN THE AFFIDAVIT
OF **GUIGUO WANG**
AFFIRMED THIS 7th DAY
OF APRIL 2014

BEFORE ME



A handwritten signature in black ink, appearing to be "Albert Dan Bing Kin".

Albert Dan Bing Kin
Notary Public
Hong Kong SAR

A NOTARY PUBLIC

EXPERT REPORT

PROFESSOR GUIGUO WANG

School of Law
City University of Hong Kong
Tat Chee Avenue
Kowloon
Hong Kong
Phone: +(852)-3442-8183
Email: lwwgg@cityu.edu.hk

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EXPERT REPORT OF GUIGUO WANG

1. I, Guiguo Wang, am Chair Professor of Chinese and Comparative Law, Director of the Centre for Judicial Education and Research, and former Dean of the School of Law, City University of Hong Kong.
2. I am a member of the China People's Political Consultative Conference of the People's Republic of China ("PRC").
3. I am a member of the Professorial Committee of the Law School of Zhejiang University, China; distinguished professor of law of Hunan Normal University, China and an Expert retained under the "One Thousand Talents" Plan of the PRC.
4. I am a Titular Member and Chairman of the National Committee (HK) of the International Academy of Comparative Law; and Vice President, Chinese Society of International Economic Law, China.
5. I am Co-Editor in Chief of the Journal of International and Comparative Law and have served as associate editor and member of the editorial board of a number of journals.

6. I am Chairman of the Hong Kong World Trade Organisation Research Institute, a member of the Telecommunications (Competition Provisions) Appeal Board of the Hong Kong Special Administrative Region (“SAR”) of the PRC.

7. I am an arbitrator of the:
 - (a) Hong Kong International Arbitration Centre;
 - (b) China International Economic and Trade Arbitration Commission (“CIETAC”), China;
 - (c) Panel of Arbitrators of Korean Commercial Arbitration Board; and
 - (d) the Chinese Arbitration Association, Taipei, Taiwan.

8. I have also been invited to join the Committee of Experts of CIETAC.

9. I graduated with a diploma (B.A. equivalent, as there was no degree system in the PRC at that time) from Beijing University of Foreign Studies in 1979.

10. I obtained my LLM degree from Columbia Law School in 1982 and my JSD degree from Yale Law School in 1984.

11. I have been teaching Chinese law, comparative law, international investment law, and international economic law since 1987 in Peking University, the University of British Columbia and City University of Hong Kong, and have been invited to give lectures in many universities around the world including but not limited to Harvard University, Yale Law School, Columbia Law School, Vienna University, University of Paris, Tokyo University, Korea University, Seoul National University and Sydney University.
12. I have conducted numerous arbitrations both as the presiding arbitrator and as arbitrator, and have served as legal representative for the parties in arbitration under the rules of the CIETAC, the Hong Kong International Arbitration Centre and International Chamber of Commerce over 25 years.
13. I have given expert opinions to courts, taxation tribunals, arbitration tribunals and other bodies numerous times.
14. I worked in the Law and Treaties Department of the Ministry of Foreign Affairs of the PRC and participated in treaty negotiations and conclusions for the PRC in 1980 and 1981. I am familiar with the functioning of the Ministry of Foreign Affairs of the PRC and the coordination in work between the Ministry of Foreign Affairs and other ministries and institutions of the PRC.

15. I am the first recipient of the scholarship offered by the United Nations Institute for Training and Research since the establishment of the PRC, which enabled me to experience the work of the International Court of Justice, the United Nations and the World Bank.
16. I have published more than 20 books and more than 100 articles in both Chinese and English on Chinese law, comparative law, international economic law, international investment law, international trade law, international financial law and arbitration and dispute resolution. My *Wang's Business Law of China* (Butterworths, LexisNexis, 4th edition) is being used widely by law schools worldwide.
17. I was invited to give a special course at The Hague Academy of International Law in 2010, which is considered the highest honour for international law scholars¹.
18. I have been approached by the Government of the Lao People's Democratic Republic ("Laos"), the Plaintiff herein, to act as an expert witness to provide an opinion on certain issues concerning the laws of the PRC arising out of Originating Summons 24 of 2014 ("OS 24").

¹ A copy of my Curriculum Vitae is annexed hereto as **Annex A**.

19. For the reasons stated herein, I believe that I have the necessary and relevant expertise to provide an expert opinion on the issues herein. I verily believe that my opinions as set out in this expert report are correct.

20. I have read Order 40A of the Rules of Court (Cap 322, R 5). I understand that it is my duty to assist this Honourable Court on matters within my expertise, and that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid. I understand that, in giving this report, my duty is to the Honourable Court and I confirm that I have complied with that duty.

A. FACTS AND ISSUES

21. I understand that the present proceedings arise out of an investor-state dispute between Laos and the Defendant, Sanum Investments Limited (“**Sanum**”), a company incorporated in accordance with the laws of the Macao SAR, which dispute was handled by an arbitration tribunal (“**Tribunal**”) of the Permanent Court of Arbitration (“**PCA**”) in PCA Case No. 2013-13. The said Tribunal delivered an award on 13 December 2013 (the “**Award**”), in which it ruled, *inter alia*, that it had jurisdiction to arbitrate the expropriation claims of Sanum under Article 8(3) of the Agreement between the Government of the

People's Republic of China and the Government of the Lao People's Democratic Republic Concerning the Encouragement and Reciprocal Protection of Investments dated 31 January 1993 (“**PRC-Laos BIT**”).

22. It is my understanding that the PCA Tribunal’s ruling on jurisdiction in the Award was based, *inter alia*, on its finding that the PRC-Laos BIT applies to the territory of the Macao SAR.
23. I understand that Laos has instituted the current proceedings in OS 24 to appeal against the Award and that one of the grounds that the Plaintiff is relying on in OS 24 is that the PRC-Laos BIT does not apply to the Macao SAR and that the Tribunal had erred in ruling that it has jurisdiction over Sanum’s expropriation claims.
24. It is my understanding that after the Tribunal issued the Award, Laos sent a letter dated 7 January 2014 (the “**Laos Letter**”) to the Embassy of the PRC located in Vientiane, Laos (the “**Embassy**”), requesting for the views of the Government of the PRC on the status of the PRC-Laos BIT.
25. In the Laos Letter, Laos also expressed its view that the PRC-Laos BIT “does not extend to Macau Special Administrative Region for the reasons based on

the People's Republic of China's policy of one country, two systems, its constitutional and legal framework, the Basic Law of Macau Special Administrative Region as well as the fact that the Agreement itself is silent on its extension to Macau Special Administrative Region."²

26. I understand that the Embassy responded to the Laos Letter by way of a letter to Laos dated 9 January 2014 ("**PRC Letter**"). I have been provided with a copy of the PRC Letter in its original Chinese, as well as both Laos's and Sanum's certified English translations of the PRC Letter³. The opinions I express in this report are not affected by which party's certified English translation of the PRC Letter is used. Nonetheless, for convenience, the quoted words below are from Laos's certified English translation of the PRC Letter.
27. The PRC Letter stated that "In accordance with the <<Basic Law of the Macao Special Administrative Region of the People's Republic of China>>, the Government of Macau Special Administrative Region may, with the authorization from the Central People's Government conclude and implement investment agreements on its own with foreign states and regions; in principle the bilateral investment agreements concluded by the Central People's

² A copy of the Laos Letter is annexed hereto as **Annex B**.

³ Copies of the PRC Letter and both certified translations are collectively annexed hereto as **Annex C**.

Government are not applicable to the Macau Special Administrative Region, unless the opinion of the Special Administrative Region Government has been sought, and separate arrangements have been made after consultation with the contracting party.”

28. The PRC Letter further stated that the PRC-Laos BIT “is not applicable to the Macao Special Administrative Region unless both China and Laos make separate arrangements in the future.”
29. I have been asked to review the Expert Report of Professor Wenhua Shan (“**Professor Shan’s Report**”) filed on behalf of Sanum, and to provide my views on the opinions expressed in Professor Shan’s Report in relation to issues pertaining to my area of expertise.
30. In particular, I have been asked to provide my expert opinion on the issue of whether the PRC Letter represents a formal decision or an authoritative interpretation of the PRC Government on the question of whether the PRC-Laos BIT applies to the Macao SAR under the laws of the PRC.

B. DOCUMENTS REVIEWED

31. In preparing this report, I have reviewed and referred to, *inter alia*, the following documents and/or legislation:

- (a) OS 24;
- (b) Summons No. 884 of 2014;
- (c) the Award;
- (d) the 1st Affidavit of Wenhua Shan dated 19 March 2014;
- (e) the Constitutional Law of the PRC;
- (f) the General Principles of Law of the PRC;
- (g) the Civil Procedure Law of the PRC, effective as of 9 April 1991 (“**Civil Procedure Law**”);
- (h) the Administrative Procedure Law of the PRC, effective on 1 October 1990 (“**Administrative Procedure Law**”);
- (i) the Basic Law of the Macao SAR, effective on 20 December 1999 (“**Basic Law**”);
- (j) the Law of the PRC on Diplomatic Personnel Stationed Abroad, effective on 1 January 2010 (“**Law on Diplomatic Personnel Stationed Abroad**”);

- (k) the Laos Letter;
- (l) the PRC Letter; and
- (m) the Vienna Convention on Diplomatic Relations 1961 (“**VCDR**”).

32. I have also reviewed the expert report of Professor Simon Chesterman filed in respect of these proceedings. Contrary to Professor Shan’s Report, Professor Chesterman’s report concluded that:

- (a) the PRC Letter is relevant to the interpretation of the PRC-Laos BIT under international law; and
- (b) the position in the PRC Letter is consistent with and supported by state practice and the wealth of academic literature that clearly demonstrate that, as a matter of international law, the PRC-Laos BIT does not apply to the Macao SAR.

33. I understand that it is for this Honourable Court to determine whether it accepts the views expressed in Professor Shan’s Report or Professor Chesterman’s Report.

34. I note, however, that the conclusions expressed in Professor Chesterman’s

Report are more consistent with my understanding of the position, as a matter of international law, of the status of the PRC-Laos BIT in relation to the Macao SAR.

C. SUMMARY OF CONCLUSIONS

35. The PRC Letter represents the formal view of the Government of the PRC and hence an authoritative interpretation of the Government of the PRC in relation to the applicability of the PRC-Laos BIT to the Macao SAR.

36. The interpretation of the PRC-Laos BIT which is set out in the PRC Letter is also consonant with the fact that under PRC Law including the Basic Law, the PRC-Laos BIT is not applicable to the Macao SAR and therefore cannot be invoked by entities like Sanum.

D. OPINION

37. I set out below the reasons for my conclusions.

1. The PRC Letter is the official and formal position of the PRC that the PRC-Laos BIT is not applicable to the Macao SAR

38. The analysis of the issue of whether the PRC Letter represents the formal and official position of the PRC should start from the functions of an embassy of the PRC in a foreign country.
39. Under Chinese law, an embassy is an institution in charge of relations between the PRC and the host country in which that embassy is located. This can be discerned from the Law on Diplomatic Personnel Stationed Abroad, adopted in accordance with the Constitution and the Civil Servant Law of China.⁴ Article 2 of the Law on Diplomatic Personnel Stationed Abroad states that the term “overseas diplomatic institution” refers to the “overseas embassies and consulates of the People’s Republic of China and representative institutions of the People’s Republic of China located in inter-governmental international organisations, such as permanent missions to the United Nations.”
40. Article 2 of the Law on Diplomatic Personnel Stationed Abroad makes it clear that an embassy is a diplomatic institution under Chinese law. A group of people from one state that is present in another state to represent the sending state officially in the receiving state is commonly referred to as a “mission”. This is in line with the practice of the international community.

⁴ Copies of the Law on Diplomatic Personnel Stationed Abroad and certified translation of the Articles I have referred to are annexed hereto as **Annex D**.

41. Under PRC law, the mission of a diplomatic institution stationed abroad is headed by an ambassador extraordinary and plenipotentiary (“**an Ambassador**”), a consul general or a consul depending on the constitution of the institution. Although the term “chief of mission” is not defined in the Law on Diplomatic Personnel Stationed Abroad, it is a generic term that is commonly used to refer to the head of a diplomatic representation. Article 21 of the Law on Diplomatic Personnel Stationed Abroad states:

“The chief of mission is the chief executive of the overseas diplomatic institution. An ambassador extraordinary and plenipotentiary is the chief of mission of an embassy. A representative is the chief of mission to an inter-governmental international organisation. A consul general is the chief of mission of a consulate-general. A consul is the chief of mission of a consulate.”

42. Like most countries, the posts of Chinese diplomatic personnel stationed abroad can be divided into Ambassador Extraordinary and Plenipotentiary, representative, deputy representative, minister, minister counselor, counselor, first secretary, second secretary, third secretary, and attaché under Chinese law. A person holding any of the posts mentioned above is considered a

diplomat insofar as the Law on Diplomatic Personnel Stationed Abroad is concerned. An Ambassador, however, holds the highest diplomatic position among all diplomats and is the top representative of the PRC to the receiving state in which he or she is sent.

43. Article 5 of the Law on Diplomatic Personnel Stationed Abroad confirms the status of an Ambassador and states that “the ambassador extraordinary and plenipotentiary is the representative of the People’s Republic of China in the host country”.
44. Because of the importance of their positions and functions, Ambassadors and their representatives can only be sent or recalled by the President of the People’s Republic of China in accordance with the decision of the Standing Committee of the National People’s Congress. This is provided for under Article 24 of the Law on Diplomatic Personnel Stationed Abroad.
45. Further, Article 5 of the Law on Diplomatic Personnel Stationed Abroad sets out the duties that all persons holding diplomatic posts (including an Ambassador) have. Article 5 states:

“Diplomatic personnel stationed aboard shall perform the following duties according to their positions and division of work responsibilities:

- (i) Safeguard national sovereignty, security, honour and interests;*
- (ii) Implement foreign policies and guidelines of the state;*
- (iii) Lodge diplomatic representations on behalf of the state;*
- (iv) Promote the relationship between China and the host country, participate in the activities of international organisations, and advance bilateral and multilateral friendly exchanges and cooperation;*
- (v) Safeguard the lawful rights and interests of Chinese citizens and legal persons in foreign countries;*
- (vi) Report the state of affairs of the host country and relevant regional and international situations;*
- (vii) Give briefings on China’s conditions and domestic and foreign policies, improve the understanding which the host country and the rest of the world has of China;*
- (viii) Perform other diplomatic or consular duties.”*

46. The above provisions show that a Chinese diplomat, being an Ambassador or a person holding another post, is authorised to represent the PRC—either

individually or collectively as part of the mission—in the country where he or she is sent. In fact, it is not only a right but also a duty for a Chinese diplomat to make representations on behalf of the PRC.

47. The Chinese law provisions discussed above are in compliance with international practice and the VCDR to which the PRC is a contracting party.

48. The VCDR in its preamble stipulates:

“Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

...

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States ...” [Emphasis in original.]

49. “Diplomatic agents” certainly include Ambassadors and other diplomats. From the preamble of the VCDR, it is clear that the functions of diplomatic agents are to represent their own respective countries. This is further

confirmed by Article 3(1) of the VCDR⁵, which provides:

“The functions of a diplomatic mission consist inter alia in:

- (a) representing the sending State in the receiving State;*
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;*
- (c) negotiating with the Government of the receiving State;*
- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;*
- (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.”*

50. It is therefore established that, according to both PRC and international law, the essential function of an embassy, an Ambassador or a diplomat is to represent the sending country. As such, where a representation is made by an embassy, it represents the position of the country concerned—in the present case, the PRC—regardless of the form of such representation or form of

⁵ A copy of the Vienna Convention on Diplomatic Relations is annexed hereto as **Annex E**.

communicating the representation.

51. I note that the Laos Letter refers to, *inter alia*, a meeting between His Excellency Mr Alounkeo Kittikhoun, the Vice-Minister of Foreign Affairs of Laos and His Excellency Mr Guan Huabing, the Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the Lao People's Democratic Republic ("**Meeting**"). It is clear from the Laos Letter that this Meeting was between a representative of Laos and a representative of the PRC to Laos, in which Laos apparently raised the question of whether the PRC-Laos BIT is applicable to the Macao SAR.
52. I also note that the PRC Letter made a reference to the Laos Letter before stating the position of the PRC on the applicability of the PRC-Laos BIT to the Macao SAR. Therefore, there is no doubt that the PRC Letter was sent in response to the question raised at the Meeting. The PRC Letter was sent in the name of the Embassy of the PRC—the most formal communication by an embassy. It is hence without the slightest doubt that it represents the formal and official position of the PRC.
53. Is there any need for the PRC Letter to mention that an official and formal decision had been made by the PRC Government, or to disclose that, prior to

sending the PRC Letter, the PRC Government had gone through the required procedures for making such a decision, as paragraphs 25 and 26 of Professor Shan's Report appear to suggest?

54. The answer is an absolute "NO". What the PRC Letter conveys is the official and formal position of the PRC on the issue of whether the PRC-Laos BIT is applicable to the Macao SAR. It was sent in the name of the Embassy and therefore must be official and formal without any further discussion. An embassy, an Ambassador or a diplomat may always make representations on behalf of the PRC without disclosing the internal procedures through which a decision was reached and without distinguishing which branch of the government—administrative, legislative and judicial—made the decision.

2. The PRC-Laos BIT does not apply to the Macao SAR under PRC Law

55. I have also considered whether the official decision and position of the PRC as stated in the PRC Letter – namely that the PRC-Laos BIT does not apply to the Macao SAR – is consonant with the position under PRC law including the Basic Law.

56. The Macao SAR enjoys a high degree of autonomy under the policy of “one country, two systems” of the PRC which has been enshrined in the Basic Law⁶.
57. Article 136 of the Basic Law states that “the Macao Special Administrative Region may use the name "Macao, China" to maintain and promote relations and *conclude and implement agreements independently with foreign states* and regions and relevant international organisations *in the appropriate fields, such as economics, trade, finance*, shipping, communications, tourism, culture, science and technology, and sports.” [Emphasis added.] In practice, the Macao SAR has concluded a number of international agreements including an air services agreement with Laos⁷.
58. To safeguard the high degree of autonomy including the capitalist system of the Macao SAR, one of the measures taken is not to apply the national laws of the PRC to the Macao SAR. In this regard, Article 18 of the Basic Law states that “National laws shall not be implemented in the Macao Special Administrative Region except for those listed in Annex III to this Law. The laws listed in Annex III shall be implemented locally by way of promulgation

⁶ A copy of the original Chinese version of the Basic Law is annexed hereto as **Annex F**. A copy of an unofficial English translation of the entire Basic Law from the Macao SAR Government Printing Bureau is annexed hereto as **Annex G**. A certified English translation of the Articles that I have referred to in my report is annexed hereto as **Annex H**.

⁷ See paragraph 77 below.

or legislation by the Macao Special Administrative Region.”

59. The National Laws listed at Annex III of the Basic Law are:
- (i) Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China;
 - (ii) Resolution on the National Day of the People's Republic of China;
 - (iii) Nationality Law of the People's Republic of China;
 - (iv) Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities;
 - (v) Regulations of the People's Republic of China Concerning Consular Privileges and Immunities;
 - (vi) Law on the National Flag of the People's Republic of China;
 - (vii) Law on the National Emblem of the People's Republic of China;
 - (viii) Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone;

- (ix) Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf;
- (x) Garrison Law of the Macao Special Administrative Region of the People's Republic of China;
- (xi) Law of the People's Republic of China on the Immunity of Judicial Compulsory Measures against the Properties of Foreign Central Banks.*

*Has been amended – please refer to the Notice of the Chief Executive No.10/2006.

60. There are three important aspects to Article 18 of the Basic Law. In the first place, as a matter of principle, Chinese national laws do not apply to the Macao SAR. Secondly, as an exception to the principle of non-applicability, only those laws listed in Annex III are applicable to the Macao SAR. Thirdly, the laws listed in Annex III must go through the procedures of local promulgation and legislation before they become applicable in the Macao SAR.

61. Article 18 further provides:

“The Standing Committee of the National People’s Congress may add or delete from the list of laws set out in Annex III to this Law after consultation with its Committee for the Basic Law of the Macao Special Administrative Region and the government of the Macao Special Administrative Region. The laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other laws specified by this Law to be outside the limits of the autonomy of the Macao Special Administrative Region.”

62. In other words, except the National People’s Congress Standing Committee of the PRC (“**Standing Committee**”), no other bodies may add or delete any laws listed in Annex III. The Standing Committee is required to observe the stipulated procedures before adding or deleting such laws.
63. Clearly, Article 18 of the Basic Law excludes completely the application of any national law that is not listed in Annex III. Accordingly, the operation of Article 18 renders irrelevant the discussion (at paragraph 29 of Professor Shan’s Report) of the 2007 Provisions of the People’s Republic of China on the Disclosure of Government Information (“**2007 Provisions**”), as the 2007

Provisions cannot and should not be applied to the Macao SAR.

64. Another significance of Article 18 of the Basic Law is that, under PRC law, treaty provisions are considered part of national laws. For instance, Article 142 of the General Principles of the Civil Law of the People's Republic of China,⁸ effective as of 1 January 1987, provides:

“The application of law in foreign related civil relations shall be determined by the provisions of this Chapter.

Where the provisions of an international treaty concluded or acceded to by the People's Republic of China differ from the provisions of the Civil Law of the People's Republic of China, the provisions of the international treaty shall apply, except for those provisions where the People's Republic of China has declared its reservations.

Where it is not provided for under the laws of the People's Republic of China or under the international treaty concluded or acceded to by the People's Republic of China, international practice may be applied.”

⁸ A copy of the original Chinese text of the General Principles of the Civil Law of the People's Republic of China is annexed hereto as **Annex I**. A certified English translation of Article 142 referred to in my report is annexed hereto as **Annex J**.

65. Article 260 of the Civil Procedure Law⁹ provides¹⁰: “Where the provisions of an international treaty concluded or acceded to by the People's Republic of China differ from the provisions of this Law, the provisions of the international treaty shall apply, except for those provisions where the People's Republic of China has declared its reservations.”
66. Article 72 of the Administrative Law¹¹ contains the same provision, and similar provisions can also be found in other national laws including those relating to intellectual property, maritime and other matters.
67. The General Principles of the Civil Law, Civil Procedure Law and Administrative Procedure Law are the essential laws relating to civil, administrative and commercial matters and thus reflect the general position under PRC law.
68. From the provisions of these laws, it is clear that wherever a national law is applicable, related international treaties could also be applicable. Logically, in

⁹ A copy of the original Chinese text of the Civil Procedure Law (Revised in 2012) is annexed hereto as **Annex K**. A certified English translation of Article 260 is annexed hereto as **Annex L**.

¹⁰ The Civil Procedure Law was previously amended in 2007 and 2012. The present Article 260 was previously numbered Article 238. The contents of Article 260 / 238 have never been changed.

¹¹ A copy of the Administrative Procedure Law in English compiled by the Bureau of Legislative Affairs of the State Council of the PRC and published by the China Legal System Publishing House is annexed hereto as **Annex M**.

a circumstance where national laws may not apply, international treaties likewise cannot be applied.

69. As Article 18 of the Macao Basic Law prohibits the application of the PRC's national laws (except those listed in Annex III of the Basic Law) to the Macao SAR, international treaties may not be applied either unless special arrangements are made (as discussed in the following paragraphs).
70. Reading Article 18 of the Basic Law and the other PRC laws discussed above together, it is obvious that no international treaty concluded by the PRC may be applied to the Macao SAR unless special and specific arrangements are made. Regarding arrangements for treaties and international agreements to be applied to the Macao SAR, the first sentence of Article 138 of the Basic Law states:

“The application of international agreements concluded by the People's Republic of China to the Macao Special Administrative Region shall be decided by the Central People's Government in accordance with the circumstances and the needs of the Macao Special Administrative Region and after the views of the government of the Macao Special Administrative Region have been sought.”

71. The first sentence of Article 138 of the Basic Law should be read together with the rest of Article 138, which forms the entire arrangement in respect of the Macao SAR's participation in international agreements. Specifically, the second sentence of Article 138 provides that "International agreements to which the People's Republic of China is not a party but have been applicable to the Macao Special Administrative Region may continue to be applicable to the Macao Special Administrative Region."
72. The third sentence of Article 138 at the same time stipulates that "the Central People's Government shall, based on the circumstances and where necessary, authorise or assist the government of the Macao Special Administrative Region in making appropriate arrangements for the application of other relevant international agreements in the Macao Special Administrative Region."
73. Thus, the Macao SAR is authorized to maintain the application of existing international agreements and enter into new ones. The role of the PRC Government is to assist the Macao SAR in such matters.
74. In the circumstance where the PRC Government wishes to apply a treaty or

international agreement that it has concluded to the Macao SAR, it must consider the needs of the Macao SAR and seek its views.

75. This arrangement is in compliance with and further informed by other provisions of the Basic Law. For instance, Article 13 of the Basic Law states: “The Central People’s Government authorizes the Macao Special Administrative Region to conduct relevant external affairs on its own in accordance with this Law.”
76. The “relevant external affairs” specified in Article 13 of the Basic Law certainly include entering into international agreements including bilateral agreements or investment treaties.
77. For example, on 25 June 2013, the Macao SAR and Laos signed an air services agreement. Notably, the PRC has its own civil aviation agreement with Laos, which was signed on 28 June 1978 and still effective today¹², more than 20 years before the creation of the Macao SAR in December 1999.
78. Therefore, reading Article 138 of the Basic Law in its entirety, it is crystal

¹² A copy of the original Chinese text of the Civil Aviation Transport Agreement signed on 28 June 1978 between Laos and the PRC is annexed hereto as **Annex N**. A certified English translation of the title, dates and parties to the Agreement is annexed hereto as **Annex O**.

clear that it is the PRC Government which is authorized to initiate the process of applying a given international agreement to the Macao SAR.

79. As the Macao SAR itself is authorized to conduct external affairs and to conclude international agreements, the need to apply an agreement entered into by the PRC Government to the Macao SAR will only rarely arise. Even then, however, there would have to be arrangements made with the other contracting party to the international agreement by the PRC Government before such international agreements would apply to the Macao SAR.

E. CONCLUSION

80. Based on the above, it is my opinion that the PRC Letter represents the formal and official view and position of the PRC – with or without the words like “official” or “formal” in the communication – in relation to the inapplicability of the PRC-Laos BIT to the Macao SAR.
81. This is so for the reason that the sender of the PRC Letter – the Embassy – is the representative of the PRC stationed in the territory of Laos.
82. My opinion that the PRC Letter represents the formal and official view and

position of the PRC on the interpretation of the PRC-Laos BIT – namely that it does not apply to the Macao SAR – is also consonant with the fact that in accordance with PRC law including the Basic Law, the PRC-Laos BIT is not applicable to the Macao SAR and to Macanese entities like Sanum.

83. For these reasons, I respectfully disagree with Professor Shan's Report.

A handwritten signature in black ink, appearing to read 'Wang Guiguo', written over a horizontal line.

Professor WANG Guiguo

7 April 2014

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Annex-G	Unofficial English translation of the Basic Law of Macao SAR from the Macao SAR Government Printing Bureau
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Annex-L	Certified English translation of Article 260 of the Civil Procedure Law of the People's Republic of China
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Annex-N	Civil Aviation Transport Agreement signed on 28 June 1978 between Lao PDR and China (Original Chinese text)
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Annex A

to the Expert Report of Professor Guiguo Wang

WANG GUIGUO

Current Employment Position:

Chair Professor of Chinese and Comparative Law, School of Law, City University of Hong Kong and Director of the Centre for Judicial Education and Research, City University of Hong Kong

EDUCATION

1984	J.S.D. degree, Yale Law School
1982	LL.M. degree, Columbia Law School
1981	LL.M. candidate, Peking University, Law Department
1980	Trainee, under the United Nations Scholarship, The International Court of Justice, The Legal Affairs Department of the United Nations and the Legal Department of the World Bank
1979	Diploma (B.A. Equivalent) Beijing Foreign Studies University

EXPERIENCE

Oct 1995 — present	Chair Professor of Chinese and Comparative Law
Sept 2013 — present	Director, Centre for Judicial Education and Research
Aug 2007 – Jul 2013	Dean and Chair Professor of Chinese and Comparative Law
Sept - Oct 1999	Visiting Professor, China-Europe International Business School, Shanghai, China
Jan 1994 –	
Dec. 1998	Director, Centre for Chinese and Comparative Law, City University of Hong Kong
Jul 1994 -	Dean, Faculty of Law, City University of Hong Kong
Apr 1997	
Dec 1992 -	Reader, Department of Law, City University of Hong Kong

Oct 1995

Jan 1991 -

Dec 1992 Principal Lecturer, Department of Law, City University of Hong Kong

1987 - 1990 Associate Professor of Law, Peking University, Beijing, China (Left Beijing to serve as Visiting Associate Professor of Law at University of British Columbia, Canada in 1989 whilst keeping the position at Peking University)

1987 - 1990 Counsel, Beijing Number Seven Law Office

Involved in giving advice on Chinese law to both local and foreign entities and companies. Negotiating and drafting Chinese foreign joint venture contracts and related documents.

1989 - 1990 International Consultant, Blake, Cassels & Graydon and Stikeman, Elliott, Vancouver, B.C., Canada

Involved in general corporate laws including those relating to acquisition of companies, purchase and sale of equipment, tax planning; giving advice on banking law and drafting loan agreements, etc.

Sep 1989 -

Nov 1989 Visiting Associate Professor, University of British Columbia, Vancouver, B.C., Canada

Mar 1986 -

Aug 1987 Advisor, Johnson Stokes & Master, Hong Kong

Worked generally in corporate and commercial law areas; giving advice on banking matters; having participated in Chinese-foreign joint venture negotiations and drafting related documents; helping drafting documents on commercial transactions, etc.

May 1984 -

Feb 1986 Associate, Paul, Hastings, Janofsky & Walker, Los Angeles, U.S.A.

Worked in Corporation, taxation and commercial departments. The concentration of work being corporate laws, banking law including drafting loan agreements, documents relating to issue of debentures and stocks, etc.

1983-1984 (two consecutive summers): Summer Associate, Simpson Thacher & Bartlett, New York, USA

1979–1980 Legal Officer, Department of Law and Treaties, Foreign Ministry of China

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Sole Author Books

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3. "Economic Contract Law of China: Theory and Practice" (in Chinese), *Sino-German Annual Law Conference*, July 1988, Bonn, Germany.
4. "The Chinese Legal System re Foreign Investment" (in English), *International Commercial Law Conference*, Seoul National University in August 1988, Seoul, Korea.

5. "The Necessity for the Establishment of a Stock System in Current China" (in Chinese), *Conference on the Law of International Investment and Finance*, The Chinese Economic Law Association, 1988, Beijing, China.
6. "International Technology Transfer and the Protection of Intellectual Property in China" (in English), *Bi-annual International Law Conference*, Japanese Society of International Law in May 1989, Tokyo, Japan.
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8. "Dispute Resolution in China" (in English), *China Investment Law Seminar*, Aberdare Consultants (HK) Ltd., 1992, Hong Kong.
9. "The Banking System of Western Countries and Its Applicability in China" (in Chinese), *International Conference on Company and Securities Law*, organised by the People's University of China in October 1993, Beijing, China.
10. "China's Participation of International Law and Its Effect on International Law-making" (in English), the *Forum on the Practice of International Law*, Yale Law School in December 1993, New Haven, USA.
11. "China's Company Law and Market Economy: A Comparative Analysis of the Rights and Duties of Directors" (in Chinese), *The First Market Economy and Law Conference* co-organised by City University of Hong Kong and Peking University, 1994.
12. "Economic Integration in Quest of Law: Chinese Experience" (in English), *Economic Law Forum* co-organised by the Centre for Chinese and Comparative Law of City University of Hong Kong, the Corporations Unit of the Queensland University of Technology and the Centre for National Corporate Law Research, University of Canberra in September 1994, Canberra, Australia.
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14. "The Newly Established Arbitration System in China" (in English), *Conference on Dispute Resolution in Asia's Emerging Economics*, organised by the Vietnam International Arbitration Centre, Inter-Pacific Bar Association in January 1996, Ho-Chih-Ming, Vietnam.
15. "The Investment Laws of Hong Kong after 1997 - Integration with and Influence of China" (in English), *International Symposium on "Democratisation in the 1990's*, organised by Nagoya University School of Law in Sept 1996, Nagoya, Japan.
16. "The International Economic Law Revisited" (in Chinese), *Annual Conference of Chinese Society of International Law* in November 1996, Beijing, China.
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19. "Current Issues of Arbitration in China" (in English), Hong Kong Law Society on May 1997, Hong Kong.
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22. "State Sovereignty and One Country Two Systems" (in English), seminar organised by Ritsumeikan University on 12 September 1997, Kyoto, Japan.

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30. “The Dispute Settlement System of WTO” and “The Role of Arbitrators in Investment Dispute Settlement” (in English), *The 7th Geneva Arbitration Forum*, sponsored by The Journal of International Arbitration, The Journal of World Trade and The Journal of World Intellectual Property on 2-3 December 1998, Geneva, Switzerland.

31. “International Commercial Dispute Resolution” and “WTO and Rule of Law”, presentations delivered at the Training Programme organised by the Shanghai Judges’ Training Centre on 1-4 April 1999, Shanghai, China.
32. “Aftermath of the Asian Financial Crisis and Restructuring of International Financial Systems”, presentation delivered at the Nankai University in accepting appointment as Visiting Professor on 5-6 April 1999, Tianjin, China.
33. “The Future Trend of Economic Law of the Mainland of China” (in Chinese), *Conference on Opportunities and Challenges under the New Economic Environment in the Mainland of China*, organised by the Chinese National Federation of Industries on 5 May 1999, Taiwan.
34. “The New Contract Law of the Mainland and Its Significance to the Investments from Taiwan” (in Chinese), Seminar on Legal Affairs organised by Straits Exchange Foundation on 20 August 1999, Taiwan.
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37. “Economic Integration and Globalisation of Rule of Law”, speech delivered at Shenzhen University on 22 December 1999, Shenzhen, China.
38. “China’s Admission to WTO and Restructuring of Investment Laws”, paper delivered at the Conference on China’s WTO Membership and Commercial Relations Across the Strait, organised by Commercial University on 28 December 1999, Taiwan.
39. “Economic Globalisation and the Legal Reform of China”, lecture given at Law School, Aix-Marseille University of Law, Economics and Science on 24 March 2000, Aix, France.

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41. “WTO Membership and China’s Rule of Law”, lecture delivered at Taizhou Open University on 28 April 2000, Taizhou, Zhejiang, China.
42. “China’s Strategies Facing the WTO Membership”, lecture delivered at Wenzhou Municipal Party Committee on 29 April 2000, Wenzhou, Zhejiang, China.
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44. “Globalised Economy in Quest for Globalisation of the Rule of Law”, presentation at the Annual Conference of the Chinese Society of International Economic Law on 25-28 October 2000, Beijing, China.
45. “The WTO Impact on China’s Rule of Law System”, paper delivered at the Conference on WTO and Opening-up of the West joint held by City University of Hong Kong Law School and North-west University of Political Science and Law, 17-18 November 2000, Xian, China.
46. “Globalisation of Law in the Globalised World Economy”, public lecture delivered at the North-west University of Political Science and Law on 18 November 2000, Xian, China.
47. “Chinese Attitude Toward International Investment Dispute Resolution”, The 8th Geneva Global Arbitration Forum held on 6-7 December 2000, Geneva, Switzerland.
48. “WTO Membership and the Rule of Law in China”, Symposium on the Legal Issues Relating to China’s Entry into the WTO organized by the National Judges College of the Supreme People’s Court of China on 21-22 February 2001, Guangdong.

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53. "WTO Membership and Legal Reform in China", *XIIth World Productivity Congress* on 6 November 2001, Hong Kong, China.
54. "The Impact of WTO Membership on the Relations Between the Mainland of China and Hong Kong", *International Conference on WTO and Legal Reforms in China*, organized by the Shenzhen University on 17 December 2001, Shenzhen, China.
55. "WTO Membership v. Chinese Market Economy and Rule of Law", lecture given at the Hunan Normal University on 23 December 2002, Changsha, Hunan, China.
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62. "Globalization of Trade Law Through WTO", International Economic Law and China in Its Economic Transition, jointly organized by Chinese Society of International Economic Law and Xiamen University School of Law on 4-5 November 2004, Xiamen, China.

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64. "Economic Exchanges between the Mainland and Taiwan under Globalization", School of Law, Hunan Normal University in August, 2005, Feng Huang City, Hunan.

65. "Globalization and Regional Arrangements", Institute of Social Sciences, The University of Tokyo in October 2005, Tokyo, Japan.

66. "Prospects and Difficulties of Doha Round", Seminar on The Hong Kong Ministerial Meeting, School of Law in December 2005, City University of Hong Kong.

67. "Globalization and FTA between the Four Parts of China", Asia WTO Research Network in April 2006, Taipei, Taiwan.

68. “Legal Issues Relating to the Establishment of a Greater China FTA”, The Strait Legal Forum (Third) in August 2006, Fuzhou, China.
69. “WTO at Crossroads – From Hong Kong to Cancún”, Asian WTO Research Network bi-annual meeting on 25-26 November 2006, Bangkok, Thailand.
70. “Enforcement of Foreign Arbitral Awards in China”, 12th Geneva Global Arbitration Forum on 7-8 December 2006, Geneva, Switzerland.
71. “WTO’s Contribution to China and China’s Contribution to the WTO”, 12th Geneva Global Arbitration Forum on 7-8 December 2006, Geneva, Switzerland.
72. “Redefining Sovereignty in the Globalized World” (Part I and II), lecture delivered at the United Nations for its Video Library on, 14-16 April 2008, New York.
73. “Chinese Contribution to the International Investment Law”, talk given at Yale Law School on 17 April 2008, New Haven, USA.
74. “Legal Education and Globalization”, “Hong Kong Legal Development after 1997” and “Hong Kong Legal Education after 1997”, papers delivered at Forum on Globalization and Legal Education organized by College of Law of National Chengchi University, held between 16-17 July 2008 in Taiwan.
75. “International Trade Law”, invited lectures for the International Law Fellowship Programme organized by United Nations Institute for Training and Research from 21-24 July 2008 in The Hague, Netherlands.
76. “Dispute Resolution in International Investment Law”, Harvard Law School, 22 April 2009.
77. “International Trade Law”, invited lectures for the International Law Fellowship Programme organized by United Nations Institute for Training and Research from 21-24 July 2009 in The Hague, Netherlands.
78. “International Investment Law: An Appraisal from the Perspective of the New Haven School of International Law”, International Conference on the New Haven School of Jurisprudence: An Appraisal of its Contribution to Contemporary World

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79. “Current Status and Future of Mediation”, International Conference on Mediation organized by Kyushu University, Fukuoka, Japan in November 2010.

80. “Characteristics and Future of Contemporary International Investment Law”, talk at Columbia Law School, New York, April 2011.

81. “Impact of International Trade Law on Sovereignty”, American Society of International Law annual meeting, Washington, D.C., April 2011.

82. “Characteristics, Difficulties and Future of Contemporary International Economic Law”, talk at Law Faculty of Vienna University, May 2011.

83. “New Haven School Jurisprudence and Traditional Chinese Culture”, International Conference on New Haven School Theory and Practice co-organized by School of Law, City University of Hong Kong and Yale Law School, Hong Kong, October 2011.

84. “Chinese Tradition of Mediation and International Investment Law”, International Conference on Mediation in Asia organized by Law School of Korea University, Seoul, Korea, February 2012.

85. “Contemporary Features of International Investment Law”, Pan-European University, Bratislava, Slovak Republic, March 2012.

86. “WTO and Internationalization of Trade System”, Commonwealth Asia Pacific Regional Law Conference, Sydney, April 2012.

Community Services:

- **Titular Member**, International Academy of Comparative Law
- **Chairman**, National Committee (HK) of the International Academy of Comparative Law
- **Lecture** for a special course at The Hague Academy of International Law (2010)
- **Distinguished Professor of Law**, Hunan Normal University, Hunan, China
- **Chairman**, Hong Kong WTO Research Institute
- Adjudicator, The Immigration Tribunal of Hong Kong (2005-2010)
- Member, Telecommunications (Competition Provisions) Appeal Board, Hong Kong
- Vice President, Chinese Society of International Economic Law, China
- Senior Advisor, WTO Shanghai Research Centre of China

- Arbitrator, Hong Kong International Arbitration Centre
- Arbitrator, China International Economic and Trade Arbitration Commission (CIETAC), Beijing, China
- Arbitrator, Panel of Arbitrators of Korean Commercial Arbitration Board
- Arbitrator, Chinese Arbitration Association, Taipei
- Honorary Advisor, Commissioner of Administrative Complaints of Hong Kong
- Advisor, China WTO Tribute, Ministry of Commerce of China

Languages: Fluent in Chinese and English

Annex B

to the Expert Report of Professor Guiguo Wang



LAO PEOPLE'S DEMOCRATIC REPUBLIC

Peace Independence Democracy Unity Prosperity

Ministry of Foreign Affairs

00058

No. _____ /AE.TD.4

The Ministry of Foreign Affairs of the Lao People's Democratic Republic presents its compliments to the Embassy of the People's Republic of China and, with reference to the meeting between His Excellency Mr. Alounkeo Kittikhoun, Vice-Minister of Foreign Affairs and His Excellency Mr. Guan Huabing, Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the Lao People's Democratic Republic on January 3rd, 2014 and the meeting between the Director General of the Department of Treaties and Law, Ministry of Foreign Affairs with the Counselor, Deputy Chief of Mission of the Embassy of the People's Republic of China on December 27th, 2013, has the honour to seek views of the Government of the People's Republic of China regarding the status of the Agreement between the Government of the Lao People's Democratic Republic and the Government of the People's Republic of China Concerning the Encouragement and Reciprocal Protection of Investment signed on January 31st, 1993 (the Agreement) in relation to Macau Special Administrative Region.

The Ministry of Foreign Affairs has the further honour to inform the Embassy that the Lao Government is of the view that the Agreement does not extend to Macau Special Administrative Region for the reasons based on the People's Republic of China's policy of one country, two systems, its constitutional and legal framework, the Basic Law of Macau Special Administrative Region as well as the fact that the Agreement itself is silent on its extension to Macau Special Administrative Region, which returned to the sovereignty of the People's Republic of China in 1999, six years after the signing of the Agreement.

It would be highly appreciated if the Embassy would communicate this request to the agencies concerned of the People's Republic of China and could provide a response in due course.

The Ministry of Foreign Affairs of the Lao People's Democratic Republic avails itself of this opportunity to renew to the Embassy of the People's Republic of China the assurances of its highest consideration. *R*

Vientiane, 7 January 2014

The Embassy of the People's Republic of China

Vientiane



Annex C

to the Expert Report of Professor Guiguo Wang



中 华 人 民 共 和 国 大 使 馆

第 003/14 号

中华人民共和国大使馆向老挝人民民主共和国外交部致意，并谨就外交部 00058/AE.TD.4 号照会答复如下：

根据《中华人民共和国澳门特别行政区基本法》，经中央人民政府具体授权，澳门特别行政区政府可自行与外国和地区签订和履行投资协定；中央人民政府缔结的双边投资协定原则上不适用于澳门特别行政区，除非在征询特别行政区政府意见、并同有关缔约方协商后另行做出安排。

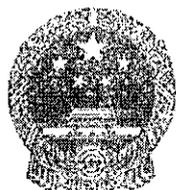
鉴此，1993 年 1 月 31 日在万象签订的《中华人民共和国政府和老挝人民民主共和国政府关于鼓励和相互保护投资协定》不适用于澳门特别行政区，除非中老双方将来另行作出安排。

顺致最崇高的敬意。

中国大使馆（印）

二〇一四年一月九日于万象



TRANSLATION**EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA**

No. 003/14

The Embassy of the People's Republic of China present our compliments to the Ministry of Foreign Affairs of the People's Democratic Republic of Laos, and our reply to the Ministry of Foreign Affairs Note No. 00058/AE. TD. 4 is as follows:

In accordance with the «Basic Law of the Macau Special Administrative Region of the People's Republic of China», the Government of Macau Special Administrative Region, may, with the authorisation of the Central People's Government conclude and implement investment agreements on its own with foreign states and regions; in principle the bilateral investment agreements concluded by the Central People's Government are not applicable to the Macau Special Administrative Region, unless the opinion of the Special Administrative Region Government has been sought, and separate arrangements have been made after consultation with the contracting party.

In view of the foregoing, «The Agreement between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic Concerning the Encouragement and Reciprocal Protection of Investments» concluded in Vientiane on 31 January 1993 is not applicable to

the Macau Special Administrative Region unless both China and Laos make separate arrangements in the future.

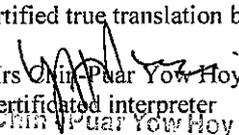
We avail ourselves of this opportunity to express to you the assurances of our highest consideration.

Embassy of China (Seal)

[Seal of the Embassy of the People's Republic of China in the People's Democratic Republic of Laos is affixed]

9 January 2014 in Vientiane

Certified true translation by:


Mrs Chan Puar Yow Hoy, 03 FEB 2014
a certificated interpreter
Chan Puar Yow Hoy

(Logo of the Embassy of the People's Republic of China)

Embassy of the People's Republic of China

No. 003/14

The Embassy of the People's Republic of China hereby replies to the note (ref 00058/AB.TD.4) received from the Ministry of Foreign Affairs of Lao People's Democratic Republic (Lao PDR) as follows:

According to the Basic Law of the Macao Special Administrative Region (MCSAR), subject to specific authorization by the Central People's Government, the government of the MCSAR may by itself enter into and fulfil investment agreements with foreign and regional entities; bilateral investment agreements entered into by the Central People's Government are in principle not applicable to the MCSAR save where otherwise arranged after consultation with the government of the MCSAR and negotiations with the parties to the agreement.

Consequently, the Agreement between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic on Encouragement and Mutual Protection of Investments concluded in Vientiane on 31 January, 1993 is not applicable to the MCSAR unless agreed otherwise between both parties hereafter.

With our highest regards,

(seal of the Embassy of the People's Republic of China
in the Lao People's Democratic Republic)

January 9, 2014, Vientiane

Annex D

to the Expert Report of Professor Guiguo Wang



中华人民共和国驻外外交
人员法 Law of the People's Republic of China on
Diplomatic Personnel Stationed Abroad

发文日期: 2009-10-31	Promulgation date: 2009-10-31
地域: 全国	Effective region: NATIONAL
颁布机关: 全国人民代表 大会常务委员会	Promulgator: Standing Committee of the National People's Congress
文号: 中华人民共和国主 席令第 19 号	Document no: Order of the President of the People's Republic of China No. 19
时效性: 现行有效	Effectiveness: Effective
生效日期: 2010-01-01	Effective date: 2010-01-01
所属分类: 外交 (外交 外事->外交)	Category: Diplomacy (Diplomacy & Foreign Affairs- >Diplomacy)

中华人民共和国驻外外交
人员法 Law of the People's Republic of China on Diplomatic
Personnel Stationed Abroad

中华人民共和国主席令第
19 号 Order of the President of the People's Republic of
China No. 19

2009 年 10 月 31 日 October 31, 2009

《中华人民共和国驻
外外交人员法》已由中华
人民共和国第十一届全国
人民代表大会常务委员会
第十一次会议于 2009 年
10 月 31 日通过, 现予公
布, 自 2010 年 1 月 1 日
起施行。

The Law of the People's Republic of China on
Diplomatic Personnel Stationed Abroad, which was
adopted at the 11th meeting of the Standing
Committee of the 11th National People's Congress
of the People's Republic of China on October 31,
2009, is hereby promulgated and shall come into
force on January 1, 2010.

中华人民共和国主席
胡锦涛 President of the People's Republic of China: Hu
Jintao

中华人民共和国驻外
外交人员法 Law of the People's Republic of China on Diplomatic
Personnel Stationed Abroad

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第三章 职务和衔级	Chapter III Positions and Titles
第四章 馆 长	Chapter IV Heads of Mission
第五章 派遣、召回 和调回	Chapter V Dispatch, Recall and Call Back Chapter VI Assessment, Training and Communication
第六章 考核、培训 和交流	Chapter VII Incentives and Penalties Chapter VIII Salaries and Welfare Benefits

第七章	奖励和惩戒	Chapter IX Spouses and Children
第八章	工资和福利	Chapter X Supplementary Provisions
第九章	配偶和子女	
第十章	附 则	

第一章	总 则	Chapter I General Provisions
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<p>第一条 为了建设高素质 的驻外外交人员队伍， 保证驻外外交机构依法 履行职责，规范驻外外 交人员的管理，保障驻 外外交人员的合法权益， 根据宪法和公务员法， 制定本法。</p>	<p>Article 1 This Law has been formulated in accordance with the Constitutional Law and the Civil Servant Law in order to build a team of high-quality diplomatic personnel stationed abroad, to ensure that diplomatic institutions located abroad perform their duties in accordance with law, to regulate the management of diplomatic personnel stationed abroad, and to protect the legal rights and interests of diplomatic personnel stationed abroad.</p>
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<p>第二条 本法所称驻 外外交人员，是指在中 华人民共和国驻外外交 机构中从事外交、领事 等工作，使用驻外行政 编制，具有外交衔级 的人员。</p> <p>本法所称驻外外交 机构，是指中华人民 共和国驻外国的使馆、 领馆以及常驻联合国 等政府间国际组织的 代表团等代表机构。</p> <p>驻外外交人员的义 务、权利和管理，适 用本法。本法未作规 定的，适用公务员法 的规定。</p>	<p>Article 2 For the purpose of this Law, the term diplomatic personnel stationed abroad means individuals engaged in diplomatic and consular work in diplomatic institutions of the People's Republic of China located abroad, fall under the foreign administrative system, and have diplomatic titles. For the purpose of this Law, the term diplomatic institutions located abroad means embassies and consulates of the People's Republic of China located abroad and representative institutions of the People's Republic of China located in inter-government international organizations, such as representative groups at the United Nations. This Law shall govern the obligations, rights and management of diplomatic personnel stationed abroad. Matters not covered by this Law shall be governed by the Civil Servant Law.</p>
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<p>第三条 驻外外交人 员依法履行职责，受 法律保护。</p>	<p>Article 3 The lawful conduct of diplomatic personnel stationed abroad in performing their duties shall be protected by law.</p>
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<p>第四条 外交部统一 领导驻外外交机构的 工作，会同其他派出 部门对驻外外交人员 实施管理。</p>	<p>Article 4 The Ministry of Foreign Affairs shall lead all work activities of diplomatic institutions located abroad and shall manage diplomatic personnel stationed abroad in conjunction with other dispatch departments.</p>
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第二章	职责、条件、义务和权利	Chapter II Duties, Conditions, Obligations and Rights
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第五条	驻外外交人	Article 5 Diplomatic personnel shall perform the
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员应当根据职务和工作分工，履行下列职责：

- （一）维护国家主权、安全、荣誉和利益；
- （二）贯彻执行国家外交方针政策；
- （三）代表国家提出外交交涉；
- （四）发展中国与驻在国之间的关系，参与国际组织活动，促进双边和多边友好交流与合作；
- （五）维护中国公民和法人在国外的正当权益；
- （六）报告驻在国情况和有关地区、国际形势；
- （七）介绍中国情况和内外政策，增进驻在国和世界对中国的了解；
- （八）履行其他外交或者领事职责。

特命全权大使是中华人民共和国在驻在国的代表。

following duties according to their positions and work responsibilities:

- (1) Protecting the sovereignty, security, honor and interests of the nation;
 - (2) Implementing national diplomatic guidelines and policies;
 - (3) Putting forward diplomatic proposals on behalf of the nation;
 - (4) Developing relations between China and the host state, participating in the activities of international organizations, and promoting friendly bilateral and multilateral exchange and cooperation;
 - (5) Protecting the legitimate rights and interests of Chinese citizens and legal persons abroad;
 - (6) Reporting on conditions in the host state and on relevant regional and international circumstances;
 - (7) Explaining Chinese conditions and domestic and foreign policies to improve the understanding of China in the host state and around the world; and
 - (8) Performing other diplomatic or consular duties.
- The specially appointed plenipotentiary ambassador shall represent the People's Republic of China in the host state.

第六条 驻外外交人员应当具备下列条件：

- （一）具有中华人民共和国国籍；
- （二）年满二十三周岁；
- （三）拥护中华人民共和国宪法；
- （四）具有良好的政治素质和品行；
- （五）具有胜任工作所需的专业知识、工作能力和语言能力；
- （六）具有常驻国外所要求的身体条件、心理素质 and 适应能力；
- （七）法律规定的其他条件。

Article 6 Diplomatic personnel stationed abroad shall satisfy the following conditions:

- (1) Be nationals of the People's Republic of China;
- (2) Be no less than 23 years old;
- (3) Support the Constitution of the People's Republic of China;
- (4) Have good political credentials and be of sound moral character;
- (5) Have the professional knowledge, work skills and language ability necessary for holding the position;
- (6) Have the physical attributes, psychological qualities and adaptability necessary for being stationed abroad permanently; and
- (7) Other conditions specified by law.

第七条 有下列情形之一的，不得任用为驻外外交人员：

(一) 曾因犯罪受过刑事处罚的；

(二) 曾被开除公职的；

(三) 曾被国家机关辞退的；

(四) 持有外国长期或者永久居留许可的；

(五) 配偶具有外国国籍、持有外国长期或者永久居留许可的；

(六) 不得任用为驻外外交人员的其他情形。

Article 7 No person to whom any of the following circumstances apply shall be appointed as a diplomatic staff member stationed abroad:

- (1) Where he/she has previously been subject to criminal sanctions for committing a crime;
- (2) Where he/she has previously been dismissed from any public post;
- (3) Where he/she has previously been discharged by any state organ;
- (4) Where he/she holds a foreign long-term or permanent residence certificate;
- (5) Where his/her spouse is a foreign national or holds a foreign long-term or permanent residence certificate; or
- (6) In any other circumstances in which he/she is prohibited from taking up an appointment as a diplomatic staff member stationed abroad.

第八条 驻外外交人员应当履行下列义务：

- (一) 忠于祖国和人民，维护国家尊严；
- (二) 忠于中华人民共和国宪法和法律，尊重驻在国的法律和风俗习惯；
- (三) 忠于职守，勤勉尽责，完成各项工作任务；
- (四) 服从派出部门的调遣，遵守驻外外交机构规章制度和工作纪律；
- (五) 严守国家秘密和工作秘密；
- (六) 不得在驻外工作期间辞职；
- (七) 按照规定向驻外外交机构和派出部门报告个人重大事项；
- (八) 法律规定的其他义务。

Article 8 Diplomatic personnel stationed abroad shall perform the following obligations:

- (1) To be loyal to the nation and the people and protect national dignity;
- (2) To be loyal to the Constitutional Law of the People's Republic of China and other Chinese laws and to respect the laws and customs of the host state;
- (3) To observe his/her duties and be diligent and responsible in completing all work tasks;
- (4) To obey instructions given for assignments by the dispatch department and comply with the rules, regulations and work disciplinary requirements of diplomatic institutions located abroad;
- (5) To maintain the strict confidentiality of national and work secrets;
- (6) To refrain from resigning while working abroad;
- (7) To report on significant personal affairs to the diplomatic institution located abroad and the dispatch department according to applicable provisions; and
- (8) Other obligations specified by law.

第九条 驻外外交人员享有下列权利：

- (一) 获得履行职责应当具有的工作条件；

Article 9 Diplomatic personnel stationed abroad shall enjoy the following rights:

- (1) The right to enjoy the working conditions needed to perform their duties;
- (2) The right to a salary, welfare benefits and

- (二) 获得与常驻国外工作、生活相适应的工资福利保险待遇;
- (三) 在驻外工作期间不被辞退;
- (四) 派遣前和驻外工作期间参加培训;
- (五) 法律规定的其他权利。

第十条 驻外外交人员依照中华人民共和国缔结或者参加的国际条约,在驻外工作期间享有相应的特权和豁免。

驻外外交人员不得滥用特权和豁免,未经批准不得放弃特权和豁免。

Article 10 Diplomatic personnel stationed abroad shall enjoy corresponding privileges and immunities while working abroad in accordance with international treaties for which the People's Republic of China is a signatory or participant. Diplomatic personnel stationed abroad shall not abuse their privileges or immunities and shall not waive any privilege or immunity without approval.

第三章 职务和衔级 Chapter III Positions and Titles

第十一条 驻外外交人员的职务分为外交职务和领事职务。

外交职务分为:特命全权大使、代表、副代表、公使、公使衔参赞、参赞、一等秘书、二等秘书、三等秘书、随员。

领事职务分为:总领事、副总领事、领事、副领事、领事随员。

Article 11 The positions of diplomatic personnel stationed abroad are classified into diplomatic positions and consular positions. Diplomatic positions are classified into specially appointed plenipotentiary ambassador, ambassador, deputy ambassador, minister, counselor with the title of minister, counselor, chief secretary, second secretary, third secretary, and attache. Consular positions are classified into consul general, deputy consul general, consul, deputy consul, and consul attache.

第十二条 驻外外交人员实行外交衔级制度。

外交衔级设七级:大使衔、公使衔、参赞衔、一等秘书衔、二等秘书衔、三等秘书衔、随员衔。

驻外外交人员的外交衔级,根据其在驻外外交机构中担任的职务、公务员职务级别和外交工作需要确定。

Article 12 The diplomatic title system shall apply to diplomatic personnel stationed abroad. Seven diplomatic titles shall be established: ambassador, minister, counselor, chief secretary, second secretary, third secretary, and attache. The diplomatic titles of diplomatic personnel stationed abroad shall be determined on the basis of their position in the diplomatic institution located abroad, the grade of their civil servant position, and the needs of diplomatic work.

第十三条 外交职务 Article 13 The corresponding relationships between

<p>与外交衔级的基本对应关系为：</p> <p>（一）特命全权大使：大使衔；</p> <p>（二）代表、副代表：大使衔、公使衔、参赞衔；</p> <p>（三）公使、公使参赞：公使衔；</p> <p>（四）参赞：参赞衔；</p> <p>（五）一等秘书：一等秘书衔；</p> <p>（六）二等秘书：二等秘书衔；</p> <p>（七）三等秘书：三等秘书衔；</p> <p>（八）随员：随员衔。</p>	<p>diplomatic positions and diplomatic titles are basically as follows:</p> <p>(1) Specially appointed plenipotentiary ambassador: title of ambassador;</p> <p>(2) Ambassador, deputy ambassador: title of ambassador, title of minister or counselor;</p> <p>(3) Minister, counselor with the title of minister: title of minister;</p> <p>(4) Counselor: title of counselor;</p> <p>(5) Chief secretary: title of chief secretary;</p> <p>(6) Second secretary: title of second secretary;</p> <p>(7) Third secretary: title of third secretary; and</p> <p>(8) Attache: title of attache.</p>
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<p>第十四条 领事职务与外交衔级的基本对应关系为：</p> <p>（一）总领事：大使衔、公使衔、参赞衔；</p> <p>（二）副总领事：参赞衔；</p> <p>（三）领事：参赞衔、一等秘书衔、二等秘书衔；</p> <p>（四）副领事：三等秘书衔、随员衔；</p> <p>（五）领事随员：随员衔。</p>	<p>Article 14 The corresponding relationships between consular positions and diplomatic titles are basically as follows:</p> <p>(1) Consul general: title of ambassador, minister, or counselor;</p> <p>(2) Deputy consul general: title of counselor;</p> <p>(3) Consul: title of counselor, chief secretary, or second secretary;</p> <p>(4) Deputy consul: title of third secretary or attache; and</p> <p>(5) Consul attache: title of attache.</p>
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<p>第十五条 驻外外交人员的职务和外交衔级与公务员职务级别的对应关系另行规定。</p>	<p>Article 15 The corresponding relationships between the positions and diplomatic titles of diplomatic personnel stationed abroad and the grades of their civil servant positions shall be subject to separately formulated provisions.</p>
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<p>第十六条 驻外外交人员的职务按照下列权限决定：</p> <p>（一）特命全权大使和代表、副代表为特命全</p>	<p>Article 16 The positions of diplomatic personnel stationed abroad shall be determined on the basis of the following powers:</p> <p>(1) Specially appointed plenipotentiary ambassadors and ambassadors or deputy ambassadors holding the position of a specially</p>
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权大使的，由全国人民代表大会常务委员会决定；

(二) 前项之外的代表、副代表，由国务院决定；

(三) 总领事，由外交部决定；

(四) 公使、公使衔参赞、参赞、副总领事以及其他驻外外交人员的职务，由外交部或者其他派出部门决定；其中，三等秘书、副领事以下职务，在驻外工作期间由驻外外交机构决定。

appointed plenipotentiary ambassador shall be determined by the Standing Committee of the National People's Congress;

(2) Ambassadors and deputy ambassadors other than those described in the proceeding item shall be determined by the State Council;

(3) Consuls general shall be determined by the Ministry of Foreign Affairs;

(4) Ministers, counselors with the title of minister, counselors, deputy consuls general and diplomatic personnel stationed abroad in other positions shall be determined by the Ministry of Foreign Affairs or its dispatched departments, among which positions below the level of third secretary and deputy consul shall be determined by the diplomatic institution located abroad while such personnel are working abroad.

第十七条 外交衔级按照下列权限批准和授予：

(一) 大使衔，由国务院总理批准授予；

(二) 公使衔、参赞衔，由外交部或者其他派出部门批准，外交部部长授予；

(三) 一等秘书衔、二等秘书衔，派遣时由派出部门批准和授予，驻外工作期间由派出部门根据驻外外交机构的意见批准和授予；

(四) 三等秘书衔、随员衔，派遣时由派出部门批准和授予，驻外工作期间由驻外外交机构批准和授予。

Article 17 Diplomatic titles shall be approved and granted on the basis of the following powers:

(1) The title of ambassador shall be approved and granted by the Premier of the State Council;

(2) The titles of minister and counselor shall be approved by the Ministry of Foreign Affairs or its dispatched departments and granted by the Foreign Minister;

(3) The titles of chief secretary and second secretary shall be approved and granted by the dispatch department at the time of dispatch; while the relevant individual is working abroad, such titles shall be approved and granted by the dispatch department on the basis of the opinion of the diplomatic institution located abroad;

(4) The titles of third secretary and attache shall be approved and granted by the dispatch department at the time of dispatch; while the relevant individual is working abroad, such titles shall be approved and granted by the diplomatic institution located abroad.

第十八条 驻外外交人员晋升三等秘书、副领事以及相应的衔级，按照规定的晋升条件、期限，分别依照本法第十六条、第十七条规定的权限逐级晋升；经考核不具备晋升

Article 18 Diplomatic personnel stationed abroad shall be promoted level by level to the respective positions of third secretary, deputy consul and positions with corresponding titles on the basis of specified conditions and periods for such promotions in accordance with the powers specified in Articles 16 and 17 hereof; where an individual is assessed as not meeting the conditions for

条件的，根据驻外外交机构的意见，经派出部门批准，延期晋升。

驻外外交人员晋升二等秘书、一等秘书、参赞、公使衔参赞、公使或者领事、副总领事以及相应的衔级，根据晋升条件、期限和驻外外交机构提出的晋升意见，分别依照本法第十六条、第十七条规定的权限，逐级择优晋升。

驻外外交人员晋升职务和衔级的条件、期限另行规定。

promotion, promotion shall be delayed subject to approval by the dispatch department and in accordance with the opinion of the diplomatic institution located abroad.

Diplomatic personnel stationed abroad shall be promoted level by level to the respective positions of second secretary, counselor, counselor with the title of minister, minister, consul or deputy consul general and positions with corresponding titles on the basis of conditions and periods for such promotions and opinions on promotions put forward by the diplomatic institution located abroad on merit in accordance with the powers specified in Articles 16 and 17 hereof.

Provisions on conditions and periods for the promotion of diplomatic personnel stationed abroad to different titles and positions shall be formulated separately.

第十九条 驻外外交人员在受处分期间，其职务和衔级不予晋升。

Article 19 Diplomatic personnel stationed abroad shall not be promoted to a new position or title while subject to sanctions.

第二十条 驻外外交人员受到降级、撤职处分的，应当按照规定降低衔级。降低衔级不适用于随员衔。

Article 20 Diplomatic personnel stationed abroad who are sanctioned by way of demotion or removal from their post shall have their title downgraded according to applicable provisions. Title downgrades shall not apply to the title of attache.

驻外外交人员离任回国，其衔级相应终止。从事外交工作确有需要的，可以保留。具体办法由外交部会同国务院有关部门另行规定。

Diplomatic personnel who leave their post and return to China shall have their title cancelled accordingly. Where their participation in diplomatic work is absolutely necessary, they may retain their title. Specific measures shall be separately formulated by the Ministry of Foreign Affairs together with relevant departments of the State Council.

第四章 馆 长

Chapter IV Heads of Mission

第二十一条 馆长是驻外外交机构的行政首长。特命全权大使为大使馆的馆长。代表为常驻联合国等政府间国际组织的代表机构的馆长。总领事为总领事馆的馆长。领事为领事馆的馆长。

Article 21 Heads of mission are the chief administrative officers of diplomatic institutions located abroad. The specially appointed plenipotentiary ambassador shall be the head of mission of an embassy. The representative shall be the head of mission of a representative institution in an inter-governmental international organization such as the United Nations. The consul general shall be the head of mission of a consulate general. The consul shall be the head of mission of a

驻外外交机构实行馆长负责制。馆长统一领导

驻外外交机构的各项工作。
consulate.
The head of mission responsibility system shall be adopted by diplomatic institutions located abroad. Heads of mission shall lead all the work activities of diplomatic institutions located abroad.

第二十二條 館長缺位或者因故不能執行職務時，由被指定的人員代理館長行使職責。
Article 22 Where a head of mission position is vacant or the head of mission is unable to perform his or her duties, a person shall be appointed to perform the head of mission's duties on his or her behalf.

第二十三條 館長应当向派出部門提交到任和離任的書面報告。
館長应当按期回國述職。
Article 23 Heads of mission shall provide written reports to the dispatch department when they are appointed to and leave their post. Head of missions shall return to China on a regular basis to report on their work.

第五章 派遣、召回和調回
Chapter V Dispatch, Recall and Call Back

第二十四條 特命全權大使和代表、副代表為特命全權大使的，由中華人民共和國主席根據全國人民代表大會常務委員會的決定派遣和召回。
前款以外的代表、副代表，由國務院或者派出部門派遣和調回。
其他駐外外交人員，由外交部或者其他派出部門派遣和調回。
Article 24 Specially appointed plenipotentiary ambassadors and ambassadors or deputy ambassadors holding the position of specially appointed plenipotentiary ambassador shall be dispatched and recalled by the Chairman of the People's Republic of China in accordance with decisions of the Standing Committee of the National People's Congress. Ambassadors and deputy ambassadors other than those specified in the proceeding paragraph shall be dispatched and called back by the State Council or the dispatch department. Other diplomatic personnel stationed abroad shall be dispatched and called back by the Ministry of Foreign Affairs or other dispatch departments.

第二十五條 駐外外交人員實行任期制度。根據工作需要，經派出部門批准，駐外外交人員的任期期限可以適當縮短或者延長。
Article 25 A periodic appointment system shall apply to diplomatic personnel stationed abroad. The periods for which diplomatic personnel stationed abroad are appointed to their posts may be shortened or extended as appropriate in accordance with work requirements and subject to the approval of the dispatch department.

第二十六條 駐外外交人員有下列情形之一，應當提前調回：
(一) 另有工作安排的；
Article 26 Diplomatic personnel stationed abroad to whom any of the following circumstances apply shall be called back ahead of schedule:
(1) Where they are assigned other work;
(2) Where they are unable to perform their duties;

- (二) 不能履行职责的;
- (三) 触犯法律或者严重违纪的;
- (四) 配偶取得外国国籍、外国长期或者永久居留许可的;
- (五) 不宜继续在驻外外交机构工作的其他情形。
- (3) Where they violate they law or commit a serious disciplinary offence;
- (4) Where their spouse becomes a foreign national or acquires a foreign long-term or permanent residence certificate; or
- (5) In other circumstances which render the individual unfit to continue working in a diplomatic institution located abroad.

第二十七条 国家可以根据需要紧急召回、调回或者撤出相关驻外外交机构的部分人员或者全部人员。

Article 27 Where necessary, the nation may urgently recall, call back or evacuate some or all personnel in relevant diplomatic institutions located abroad.

第六章 考核、培训和交流

Chapter VI Assessment, Training and Communication

第二十八条 对驻外外交人员的考核分为平时考核和定期考核，由驻外外交机构或者派出部门按照国家规定组织实施。

对驻外外交人员的考核，以其承担的职责和工作任务为基本依据，全面考核德、能、勤、绩、廉，重点考核工作实绩。

考核的结果作为调整驻外外交人员职务、衔级、级别、工资以及对驻外外交人员进行奖励、培训等的依据。

Article 28 Assessments of diplomatic personnel stationed abroad shall be classified into ordinary assessments and regular assessments, which shall be organized and carried out by diplomatic institutions located abroad or dispatch departments in accordance with state provisions.

Assessments of diplomatic personnel stationed abroad shall be fundamentally based on duties and work tasks in an all-round assessment of the ethics, capabilities, diligence, performance, and probity of such personnel and shall focus on actual work performance.

Assessment results shall be used as the basis for adjusting the positions, titles, grades and salaries of and for giving incentives and training to diplomatic personnel stationed abroad.

第二十九条 派遣前和驻外工作期间，根据工作职责的要求，应当对驻外外交人员进行任职和专业培训。

Article 29 Before dispatch and while working abroad, position-specific and professional training shall be conducted for diplomatic personnel stationed abroad in accordance with work duty requirements.

第三十条 驻外外交人员应当在驻外外交机构之间进行任职交流；根据工作需要，也可以在派出部门或者其他机关之间进

Article 30 Diplomatic personnel stationed abroad shall participate in position exchanges between diplomatic institutions located abroad; position exchanges may also be arranged between dispatch departments or other departments according to

行任职交流。	work requirements.
第三十一条 驻外外交人员的培训情况和任职交流经历，列入考核内容。	Article 31 The training and position exchange experiences of diplomatic personnel stationed abroad shall be included within the scope of assessments.
第七章 奖励和惩戒	Chapter VII Incentives and Penalties
<p>第三十二条 驻外外交机构或者驻外外交人员有下列情形之一的，依法给予奖励：</p> <p>（一）为维护国家主权、安全、荣誉和利益作出重大贡献的；</p> <p>（二）为维护中国公民和法人在国外的人身、财产安全或者其他正当权益作出突出贡献的；</p> <p>（三）在应对重大突发事件中作出重大贡献的；</p> <p>（四）在战乱等特定艰苦环境中有关突出事迹的；</p> <p>（五）为保护国家秘密作出突出贡献的；</p> <p>（六）遵守纪律，廉洁奉公，作风正派，办事公道，模范作用突出的；</p> <p>（七）尽职尽责，工作实绩突出的；</p> <p>（八）有其他突出表现应当给予奖励的。</p>	<p>Article 32 Diplomatic institutions located abroad to which or diplomatic personnel stationed abroad to whom any of the following circumstances apply shall be granted incentives according to law:</p> <p>(1) Where they make a significant contribution to protecting the sovereignty, security, honor and interests of the nation;</p> <p>(2) Where they make an outstanding contribution to protecting the personal safety of Chinese citizens or legal persons abroad, the safety of their property, or other legitimate rights or interests of the same;</p> <p>(3) Where they make a significant contribution to the resolution of serious emergencies;</p> <p>(4) Where they provide outstanding service in war or other specified difficult environments;</p> <p>(5) Where they make an outstanding contribution to protecting national secrets;</p> <p>(6) Where they obey disciplinary requirements, are clear and diligent, honest and upright, and fair and just in handling their affairs, and set an outstanding example;</p> <p>(7) Where they are diligent and responsible and perform to an outstanding level in their work; or</p> <p>(8) Where they perform to an outstanding level in other respects worth incentivizing.</p>
<p>第三十三条 驻外外交人员有下列行为之一的，依法给予相应的处分；构成犯罪的，依法追究刑事责任：</p> <p>（一）损害国家主权、安全、荣誉和利益的；</p> <p>（二）擅自脱离驻外外交机构的；</p>	<p>Article 33 Appropriate sanctions shall be lawfully imposed on diplomatic personnel stationed abroad to whom any of the following circumstances apply; where the circumstances constitute a crime, criminal liability shall be investigated according to law:</p> <p>(1) Where they damage the sovereignty, security, honor or interests of the nation;</p> <p>(2) Where they leave a diplomatic institution located abroad without approval;</p> <p>(3) Where they divulge state or work secrets;</p>

<p>(三) 泄露国家秘密或者工作秘密的;</p> <p>(四) 利用职务之便为自己或者他人谋取私利的;</p> <p>(五) 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的;</p> <p>(六) 玩忽职守, 贻误工作的;</p> <p>(七) 不服从调遣, 拒绝赴派往的岗位工作的;</p> <p>(八) 有其他违法或者违纪行为的。</p>	<p>(4) Where they serve their own or others' private interests by taking advantage of their position;</p> <p>(5) Where they engage or participate in for-profit activities or hold a concurrent post in an enterprise or other for-profit entity;</p> <p>(6) Where they neglect their duties or are incompetent in their work;</p> <p>(7) Where they disobey assignment instructions by refusing to take up a post to which they are assigned; or</p> <p>(8) Where they otherwise act illegally or in breach of requirements.</p>
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<p>第三十四条 外交部或者其他派出部门依照法定的权限和程序对驻外外交机构进行奖励, 对驻外外交人员给予奖励或者惩戒。</p>	<p>Article 34 The Ministry of Foreign Affairs or other dispatch departments shall grant incentives to diplomatic personnel stationed abroad in accordance with their legal powers and procedures to incentivize or penalize such personnel.</p>
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第八章 工资和福利 Chapter VIII Salaries and Welfare Benefits

<p>第三十五条 驻外外交人员实行职务、衔级与级别相结合的驻外工资制度。</p>	<p>Article 35 A diplomatic salary system that integrates position, title and grade shall be implemented for diplomatic personnel stationed abroad.</p>
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<p>第三十六条 国家建立驻外外交人员工资调整机制, 适时调整驻外外交人员的工资和生活待遇。</p>	<p>Article 36 The nation shall establish a salary adjustment mechanism for diplomatic personnel stationed abroad to allow for the salaries and living benefits of such personnel to be adjusted as appropriate.</p>
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<p>第三十七条 驻外外交人员按照国家规定享受津贴、补贴。</p>	<p>Article 37 Diplomatic personnel stationed abroad shall be granted allowances and subsidies in accordance with state provisions.</p>
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<p>第三十八条 国家为驻外外交人员提供必要的医疗保障和安全措施, 并按照规定提供必要的人身意外伤害保险。</p>	<p>Article 38 The nation shall provide necessary medical guarantees and security measures to diplomatic personnel stationed abroad and provide necessary personal accident insurance in accordance with relevant provisions.</p>
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<p>第三十九条 驻外外交人员享受国家规定的带</p>	<p>Article 39 Diplomatic personnel stationed abroad shall be entitled to paid annual leave and length of</p>
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薪年假和任期假。 service leave as specified by the state.

第九章 配偶和子女 Chapter IX Spouses and Children

第四十条 驻外外交人员办理结婚手续前，应当按照规定如实向派出部门报告结婚对象的身份等情况。 Article 40 Before going through marriage formalities, diplomatic personnel stationed abroad shall truthfully report the identity and other details of their marriage partner to the dispatch department in accordance with applicable provisions.

驻外外交人员离婚，应当及时向派出部门报告。 Diplomatic personnel stationed abroad who divorce shall notify the dispatch department in a timely manner.

第四十一条 驻外外交人员的配偶随任，应当经派出部门批准。 Article 41 Diplomatic personnel stationed abroad whose spouses are attached for employment shall seek the approval of the dispatch department. Where the appointed terms of diplomatic personnel stationed abroad come to an end or they are called back ahead of schedule, their spouses attached for employment shall terminate the attachment simultaneously.

驻外外交人员任期结束或者提前调回的，随任配偶应当同时结束随任。

第四十二条 驻外外交人员配偶随任期间，根据驻外外交人员的职务和衔级、任职年限和驻在国生活条件，享受规定的休假待遇。 Article 42 During the attachment period, spouses of diplomatic personnel stationed abroad shall be entitled to specified leave benefits on the basis of their position, title, years of service and living conditions in the host state.

第四十三条 驻外外交人员配偶为国家机关、事业单位在编人员，国有企业、国有独资公司、国有资本控股公司人员或者现役军人的，随任期间和结束随任回国后在原单位的工作安排，按照国家规定办理；原单位不得因其随任将其开除、辞退或者收取补偿金、管理费用等费用。 Article 43 For spouses of diplomatic personnel stationed abroad who are on the staff of state organs or public institutions, are employees of wholly state-owned enterprises, wholly state-owned companies, or state-capital holding companies, or are in active service, work arrangements with their original employers shall be handled in accordance with state provisions during the attachment period and after returning to China when the attachment ends; the original employer shall not remove or dismiss such spouses or collect compensation, management fees or other fees for their attachment.

第四十四条 驻外外交人员配偶未随任的，经派出部门批准，可以赴驻外外交机构探亲，按照规定享受相应的探亲假、旅费和补贴。 Article 44 Spouses of diplomatic personnel stationed abroad who are not attached for employment may, subject to the approval of the dispatch department, go to the diplomatic institution located abroad to visit such diplomatic personnel and may enjoy corresponding home

leave, travel expenses and subsidies according to applicable provisions.

第四十五条 驻外外交人员的未成年子女，经派出部门批准，可以赴驻外外交机构随居或者探亲。

Article 45 Subject to the approval of the dispatch department, minor children of diplomatic personnel stationed abroad may go to the diplomatic institution located abroad to live with or visit such diplomatic personnel.

国家采取多种措施，保障驻外外交人员的未成年子女依法享有受教育的权利。

The nation shall adopt various measures to guarantee minor children of diplomatic personnel stationed abroad their legal right to education.

第四十六条 随任、随居和探亲的驻外外交人员配偶、子女，应当遵守驻外外交机构规章制度，尊重驻在国的法律和风俗习惯。

Article 46 Spouses and children of diplomatic personnel stationed abroad who are attached for employment, live with, or visit such diplomatic personnel shall comply with the rules and regulations of the diplomatic institution located abroad and respect the laws and customs of the host state.

第十章 附 则

Chapter X Supplementary Provisions

第四十七条 驻外外交机构武官参照本法管理，具体办法由中央军事委员会制定。

Article 47 Military attaches of diplomatic institutions located abroad shall be managed by reference to this Law, for which specific measures shall be formulated by the Central Military Commission.

第四十八条 本法自2010年1月1日起施行。

Article 48 This Law shall come into effect on January 1, 2010.

**TRANSLATION OF ARTICLES 2, 5, 21 AND 24 OF THE LAW OF THE
PEOPLE'S REPUBLIC OF CHINA ON DIPLOMATIC PERSONNEL
STATIONED ABROAD**

Article 2: The term “diplomatic personnel stationed abroad” stated in this Law refers to those personnel who perform diplomatic and consular work at overseas diplomatic institutions of the People’s Republic of China, are using the administrative staffing quotas for personnel stationed abroad and possess diplomatic titles and ranks.

The term “overseas diplomatic institution” stated in this Law refers to overseas embassies and consulates of the People’s Republic of China and representative institutions of the People’s Republic of China located in inter-governmental international organisations, such as permanent missions to the United Nations.

This Law shall govern the obligations, rights, and management of the diplomatic personnel stationed abroad. For matters not covered under this Law, the provisions of the Civil Servant Law shall apply.

Article 5: Diplomatic personnel stationed aboard shall perform the following duties according to their positions and division of work responsibilities:

1. Safeguard national sovereignty, security, honour and interests;
2. Implement foreign policies and guidelines of the state;
3. Lodge diplomatic representations on behalf of the state;
4. Promote the relationship between China and the host country, participate in the activities of international organisations, and advance bilateral and multilateral friendly exchanges and cooperation;

5. Safeguard the lawful rights and interests of Chinese citizens and legal persons in foreign countries;
6. Report the state of affairs of the host country and relevant regional and international situations;
7. Give briefings on China's conditions and domestic and foreign policies, improve the understanding which the host country and the rest of the world has of China;
8. Perform other diplomatic or consular duties.

The ambassador extraordinary and plenipotentiary is the representative of the People's Republic of China in the host country.

Article 21: The chief of mission is the chief executive of the overseas diplomatic institution. An ambassador extraordinary and plenipotentiary is the chief of mission of an embassy. A representative is the chief of mission to an inter-governmental international organisation, such as the permanent mission to the United Nations. A consul general is the chief of mission of a consulate-general. A consul is the chief of mission of a consulate.

Diplomatic institutions abroad shall implement the system where the chief of mission is accountable. The chief of mission shall exercise unified leadership over the various aspects of work of the diplomatic institutions abroad.

Article 24: The President of the People's Republic of China shall send or recall ambassadors extraordinary and plenipotentiary and representatives, and deputy representatives who are acting as ambassadors extraordinary and plenipotentiary in accordance with the decision of the Standing Committee of the National People's Congress.

Representatives and deputy representatives (other than those specified in the preceding paragraph) shall be sent or transferred by the State Council or the sending departments.

The other diplomatic personnel stationed abroad shall be sent or transferred by the Ministry of Foreign Affairs or other sending departments.

Certified true translation by:

Mrs Chin Puar Yow Hoy, - 1 APR 2014
a certificated interpreter

Chin - Puar Yow Hoy

Annex E

to the Expert Report of Professor Guiguo Wang

Vienna Convention on Diplomatic Relations and Optional Protocols

DONE AT VIENNA, ON 18 APRIL 1961

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article I

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
- (b) the "members of the mission" are the head of the mission and the members of the staff of the mission;
- (c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
- (e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;

(h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist inter alia in:

(a) representing the sending State in the receiving State;

(b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) negotiating with the Government of the receiving State;

(d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

(e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the agrément of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of agrément.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a charge d'affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attaches, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.
2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:
 - (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
 - (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
 - (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
 - (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.
2. Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.
2. The receiving State may equally, within similar bounds and on a nondiscriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.
2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

Article 14

1. Heads of mission are divided into three classes, namely:
 - (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
 - (b) that of envoys, ministers and internuncios accredited to Heads of State;
 - (c) that of charges d'affaires accredited to Ministers for Foreign Affairs.
2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.
2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.
3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a charge d'affaires ad interim shall act provisionally as head of the mission. The name of the charge d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including

diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:
 - (a) that they are not nationals of or permanently resident in the receiving State; and
 - (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.
5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the mission;

(b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, *inter alia*:

(a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

(b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving

State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;

(b) of the date on which the present Convention will enter into force, in accordance with Article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS, CONCERNING ACQUISITION OF NATIONALITY. DONE AT VIENNA, ON 18 APRIL 1961

The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations, hereinafter referred to as "the Convention", adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

Expressing their wish to establish rules between them concerning acquisition of nationality by the members of their diplomatic missions and of the families forming part of the household of those members,

Have agreed as follows:

Article I

For the purpose of the present Protocol, the expression " members of the mission " shall have the meaning assigned to it in Article 1, sub-paragraph (b), of the Convention, namely " the head of the mission and the members of the staff of the mission".

Article II

Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

Article III

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article IV

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article V

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article VII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with Article VI.

Article VIII

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in Article III.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS, CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES. DONE AT VIENNA, ON 18 APRIL 1961

The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations, hereinafter referred to as "the Convention", adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of

Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two

months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality,¹ and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles V, VI and VII;

(b) of declarations made in accordance with Article IV of the present

Protocol;

(c) of the date on which the present Protocol will enter into force, in accordance with Article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in Article V.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

Annex F

to the Expert Report of Professor Guiguo Wang


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[\[葡文版本\]](#)

中華人民共和國澳門特別行政區基本法

(1993年3月31日第八屆全國人民代表大會第一次會議通過—1993年3月31日中華人民共和國主席令第3號公佈自1999年12月20日起實施)

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序言

澳門，包括澳門半島、氹仔島和路環島，自古以來就是中國的領土，十六世紀中葉以後被葡萄牙逐步佔領。一九八七年四月十三日，中葡兩國政府簽署了關於澳門問題的聯合聲明，確認中華人民共和國政府於一九九九年十二月二十日恢復對澳門行使主權，從而實現了長期以來中國人民收回澳門的共同願望。

為了維護國家的統一和領土完整，有利於澳門的社會穩定和經濟發展，考慮到澳門的歷史和現實情況，國家決定，在對澳門恢復行使主權時，根據中華人民共和國憲法第三十一條的規定，設立澳門特別行政區，並按照“一個國家，兩種制度”的方針，不在澳門實行社會主義的制度和政策。國家對澳門的基本方針政策，已由中國政府在中葡聯合聲明中予以闡明。

根據中華人民共和國憲法，全國人民代表大會特制定中華人民共和國澳門特別行政區基本法，規定澳門特別行政區實行的制度，以保障國家對澳門的基本方針政策的實施。

第一章

總則

第一條

澳門特別行政區是中華人民共和國不可分離的部分。

第二條

中華人民共和國全國人民代表大會授權澳門特別行政區依照本法的規定實行高度自治，享有行政管理權、立法權、獨立的司法權和終審權。

第三條

澳門特別行政區的行政機關和立法機關由澳門特別行政區永久性居民依照本法有關規定組成。

第四條

澳門特別行政區依法保障澳門特別行政區居民和其他人的權利和自由。

第五條

澳門特別行政區不實行社會主義的制度和政策，保持原有的資本主義制度和生活方式，五十年不變。

第六條

澳門特別行政區以法律保護私有財產權。

第七條

澳門特別行政區境內的土地和自然資源，除在澳門特別行政區成立前已依法確認的私有土地外，屬於國家所有，由澳門特別行政區政府負責管理、使用、開發、出租或批給個人、法人使用或開發，其收入全部歸澳門特別行政區政府支配。

第八條

澳門原有的法律、法令、行政法規和其他規範性文件，除同本法相抵觸或經澳門特別行政區的立法機關或其他有關機關依照法定程序作出修改者外，予以保留。

第九條

澳門特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用葡文，葡文也是正式語文。

第十條

澳門特別行政區除懸掛和使用中華人民共和國國旗和國徽外，還可懸掛和使用澳門特別行政區區旗和區徽。

澳門特別行政區的區旗是繪有五星、蓮花、大橋、海水圖案的綠色旗幟。

澳門特別行政區的區徽，中間是五星、蓮花、大橋、海水，周圍寫有“中華人民共和國澳門特別行政區”和葡文“澳門”。

第十一條

根據中華人民共和國憲法第三十一條，澳門特別行政區的制度和政策，包括社會、經濟制度，有關保障居民的基本權利和自由的制度，行政管理、立法和司法方面的制度，以及有關政策，均以本法的規定為依據。

澳門特別行政區的任何法律、法令、行政法規和其他規範性文件均不得同本法相抵觸。

第二章

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第十二條

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第十三條

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中華人民共和國外交部在澳門設立機構處理外交事務。

中央人民政府授權澳門特別行政區依照本法自行處理有關的對外事務。

第十四條

中央人民政府負責管理澳門特別行政區的防務。

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第十五條

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第十六條

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第十七條

澳門特別行政區享有立法權。

澳門特別行政區的立法機關制定的法律須報全國人民代表大會常務委員會備案。備案不影響該法律的生效。

全國人民代表大會常務委員會在徵詢其所屬的澳門特別行政區基本法委員會的意見後，如認為澳門特別行政區立法機關制定的任何法律不符合本法關於中央管理的事務及中央和澳門特別行政區關係的條款，可將有關法律發回，但不作修改。經全國人民代表大會常務委員會發回的法律立即失效。該法律的失效，除澳門特別行政區的法律另有規定外，無溯及力。

第十八條

在澳門特別行政區實行的法律為本法以及本法第八條規定的澳門原有法律和澳門特別行政區立法機關制定的法律。

全國性法律除列於本法附件三者外，不在澳門特別行政區實施。凡列於本法附件三的法律，由澳門特別行政區在當地公佈或立法實施。

全國人民代表大會常務委員會在徵詢其所屬的澳門特別行政區基本法委員會和澳門特別行政區政府的意見後，可對列於本法附件三的法律作出增減。列入附件三的法律應限於有關國防、外交和其他依照本法規定不屬於澳門特別行政區自治範圍的法律。

在全國人民代表大會常務委員會決定宣佈戰爭狀態或因澳門特別行政區內發生澳門特別行政區政府不能控制的危及國家統一或安全的動亂而決定澳門特別行政區進入緊急狀態時，中央人民政府可發佈命令將有關全國性法律在澳門特別行政區實施。

第十九條

澳門特別行政區享有獨立的司法權和終審權。

澳門特別行政區法院除繼續保持澳門原有法律制度和原則對法院審判權所作的限制外，對澳門特別行政區所有的案件均有審判權。

澳門特別行政區法院對國防、外交等國家行為無管轄權。澳門特別行政區法院在審理案件中遇有涉及國防、外交等國家行為的事實問題，應取得行政長官就該等問題發出的證明文件，上述文件對法院有約束力。行政長官在發出證明文件前，須取得中央人民政府的證明書。

第二十條

澳門特別行政區可享有全國人民代表大會、全國人民代表大會常務委員會或中央人民政府授予的其他權力。

第二十一條

澳門特別行政區居民中的中國公民依法參與國家事務的管理。

根據全國人民代表大會確定的代表名額和代表產生辦法，由澳門特別行政區居民中的中國公民在澳門選出澳門特別行政區的全國人民代表大會代表，參加最高國家權力機關的工作。

第二十二條

中央人民政府所屬各部門、各省、自治區、直轄市均不得干預澳門特別行政區依照本法自行管理的事務。

中央各部門、各省、自治區、直轄市如需在澳門特別行政區設立機構，須徵得澳門特別行政區政府同意並經中央人民政府批准。

中央各部門、各省、自治區、直轄市在澳門特別行政區設立的一切機構及其人員均須遵守澳門特別行政區的法律。

各省、自治區、直轄市的人進入澳門特別行政區須辦理批准手續，其中進入澳門特別行政區定居的人數由中央人民政府主管部門徵求澳門特別行政區政府的意見後確定。

澳門特別行政區可在北京設立辦事機構。

第二十三條

澳門特別行政區應自行立法禁止任何叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密的行為，禁止外國的政治性組織或團體在澳門特別行政區進行政治活動，禁止澳門特別行政區的政治性組織或團體與外國的政治性組織或團體建立聯繫。

第三章

居民的基本權利和義務

第二十四條

澳門特別行政區居民，簡稱澳門居民，包括永久性居民和非永久性居民。

澳門特別行政區永久性居民為：

- (一) 在澳門特別行政區成立以前或以後在澳門出生的中國公民及其在澳門以外所生的中國籍子女；
- (二) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上的中國公民及在其成為永久性居民後在澳門以外所生的中國籍子女；
- (三) 在澳門特別行政區成立以前或以後在澳門出生並以澳門為永久居住地的葡萄牙人；
- (四) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上並以澳門為永久居住地的葡萄牙人；
- (五) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上並以澳門為永久居住地的其他人；
- (六) 第（五）項所列永久性居民在澳門特別行政區成立以前或以後在澳門出生的未滿十八周歲的子女。

以上居民在澳門特別行政區享有居留權並有資格領取澳門特別行政區永久性居民身份證。

澳門特別行政區非永久性居民為：有資格依照澳門特別行政區法律領取澳門居民身份證，但沒有居留權的人。

第二十五條

澳門居民在法律面前一律平等，不因國籍、血統、種族、性別、語言、宗教、政治或思想信仰、文化程度、經濟狀況或社會條件而受到歧視。

第二十六條

澳門特別行政區永久性居民依法享有選舉權和被選舉權。

第二十七條

澳門居民享有言論、新聞、出版的自由，結社、集會、游行、示威的自由，組織和參加工會、罷工的權利和自由。

第二十八條

澳門居民的人身自由不受侵犯。

澳門居民不受任意或非法的逮捕、拘留、監禁。對任意或非法的拘留、監禁，居民有權向法院申請頒發人身保護令。

禁止非法搜查居民的身體、剝奪或者限制居民的人身自由。

禁止對居民施行酷刑或予以非人道的對待。

第二十九條

澳門居民除其行為依照當時法律明文規定為犯罪和應受懲處外，不受刑罰處罰。

澳門居民在被指控犯罪時，享有盡早接受法院審判的權利，在法院判罪之前均假定無罪。

第三十條

澳門居民的人格尊嚴不受侵犯。禁止用任何方法對居民進行侮辱、誹謗和誣告陷害。

澳門居民享有個人的名譽權、私人生活和家庭生活的隱私權。

第三十一條

澳門居民的住宅和其他房屋不受侵犯。禁止任意或非法搜查、侵入居民的住宅和其他房屋。

第三十二條

澳門居民的通訊自由和通訊秘密受法律保護。除因公共安全和追查刑事犯罪的需要，由有關機關依照法律規定對通訊進行檢查外，任何部門或個人不得以任何理由侵犯居民的通訊自由和通訊秘密。

第三十三條

澳門居民有在澳門特別行政區境內遷徙的自由，有移居其他國家和地區的自由。澳門居民有旅行和出入境的自由，有依照法律取得各種旅行證件的權利。有效旅行證件持有人，除非受到法律制止，可自由離開澳門特別行政區，無需特別批准。

第三十四條

澳門居民有信仰的自由。

澳門居民有宗教信仰的自由，有公開傳教和舉行、參加宗教活動的自由。

第三十五條

澳門居民有選擇職業和工作的自由。

第三十六條

澳門居民有權訴諸法律，向法院提起訴訟，得到律師的幫助以保護自己的合法權益，以及獲得司法補救。

澳門居民有權對行政部門和行政人員的行為向法院提起訴訟。

第三十七條

澳門居民有從事教育、學術研究、文學藝術創作和其他文化活動的自由。

第三十八條

澳門居民的婚姻自由、成立家庭和自願生育的權利受法律保護。

婦女的合法權益受澳門特別行政區的保護。

未成年人、老年人和殘疾人受澳門特別行政區的關懷和保護。

第三十九條

澳門居民有依法享受社會福利的權利。勞工的福利待遇和退休保障受法律保護。

第四十條

《公民權利和政治權利國際公約》、《經濟、社會與文化權利的國際公約》和國際勞工公約適用於澳門的有關規定繼續有效，通過澳門特別行政區的法律予以實施。

澳門居民享有的權利和自由，除依法規定外不得限制，此種限制不得與本條第一款規定抵觸。

第四十一條

澳門居民享有澳門特別行政區法律保障的其他權利和自由。

第四十二條

在澳門的葡萄牙後裔居民的利益依法受澳門特別行政區的保護，他們的習俗和文化傳統應受尊重。

第四十三條

在澳門特別行政區境內的澳門居民以外的其他人，依法享有本章規定的澳門居民的權利和自由。

第四十四條

澳門居民和在澳門的其他人有遵守澳門特別行政區實行的法律的義務。

第四章

政治體制

第一節

行政長官

第四十五條

澳門特別行政區行政長官是澳門特別行政區的首長，代表澳門特別行政區。

澳門特別行政區行政長官依照本法規定對中央人民政府和澳門特別行政區負責。

第四十六條

澳門特別行政區行政長官由年滿四十周歲，在澳門通常居住連續滿二十年的澳門特別行政區永久性居民中的中國公民擔任。

第四十七條

澳門特別行政區行政長官在當地通過選舉或協商產生，由中央人民政府任命。

行政長官的產生辦法由附件一《澳門特別行政區行政長官的產生辦法》規定。

第四十八條

澳門特別行政區行政長官任期五年，可連任一次。

第四十九條

澳門特別行政區行政長官在任職期內不得具有外國居留權，不得從事私人贏利活動。行政長官就任時應向澳門特別行政區終審法院院長申報財產，記錄在案。

第五十條

澳門特別行政區行政長官行使下列職權：

- (一) 領導澳門特別行政區政府；
- (二) 負責執行本法和依照本法適用於澳門特別行政區的其他法律；
- (三) 簽署立法會通過的法案，公佈法律；
簽署立法會通過的財政預算案，將財政預算、決算報中央人民政府備案；
- (四) 決定政府政策，發佈行政命令；
- (五) 制定行政法規並頒佈執行；
- (六) 提名並報請中央人民政府任命下列主要官員：各司司長、廉政專員、審計長、警察部門主要負責人和海關主要負責人；建議中央人民政府免除上述官員職務；
- (七) 委任部分立法會議員；

- (八) 任免行政會委員；
- (九) 依照法定程序任免各級法院院長和法官，任免檢察官；
- (十) 依照法定程序提名並報請中央人民政府任命檢察長，建議中央人民政府免除檢察長的職務；
- (十一) 依照法定程序任免公職人員；
- (十二) 執行中央人民政府就本法規定的有關事務發出的指令；
- (十三) 代表澳門特別行政區政府處理中央授權的對外事務和其他事務；
- (十四) 批准向立法會提出有關財政收入或支出的動議；
- (十五) 根據國家和澳門特別行政區的安全或重大公共利益的需要，決定政府官員或其他負責政府公務的人員是否向立法會或其所屬的委員會作證和提供證據；
- (十六) 依法頒授澳門特別行政區獎章和榮譽稱號；
- (十七) 依法赦免或減輕刑事罪犯的刑罰；
- (十八) 處理請願、申訴事項。

第五十一條

澳門特別行政區行政長官如認為立法會通過的法案不符合澳門特別行政區的整體利益，可在九十日內提出書面理由並將法案發回立法會重議。立法會如以不少於全體議員三分之二多數再次通過原案，行政長官必須在三十日內簽署公佈或依照本法第五十二條的規定處理。

第五十二條

澳門特別行政區行政長官遇有下列情況之一時，可解散立法會：

- (一) 行政長官拒絕簽署立法會再次通過的法案；
- (二) 立法會拒絕通過政府提出的財政預算案或行政長官認為關係到澳門特別行政區整體利益的法案，經協商仍不能取得一致意見。

行政長官在解散立法會前，須徵詢行政會的意見，解散時應向公眾說明理由。

行政長官在其一任任期內只能解散立法會一次。

第五十三條

澳門特別行政區行政長官在立法會未通過政府提出的財政預算案時，可按上一財政年度的開支標準批准臨時短期撥款。

第五十四條

澳門特別行政區行政長官如有下列情況之一者必須辭職：

- (一) 因嚴重疾病或其他原因無力履行職務；
- (二) 因兩次拒絕簽署立法會通過的法案而解散立法會，重選的立法會仍以全體議員三分之二多數通過所爭議的原案，而行政長官在三十日內拒絕簽署；
- (三) 因立法會拒絕通過財政預算案或關係到澳門特別行政區整體利益的法案而解散立法會，重選的立法會仍拒絕通過所爭議的原案。

第五十五條

澳門特別行政區行政長官短期不能履行職務時，由各司司長按各司的排列順序臨時代理其職務。各司的排列順序由法律規定。

行政長官出缺時，應在一百二十日內依照本法第四十七條的規定產生新的行政長官。行政長官出缺期間的職務代理，依照本條第一款規定辦理，並報中央人民政府批准。代理行政長官應遵守本法第四十九條的規定。

第五十六條

澳門特別行政區行政會是協助行政長官決策的機構。

第五十七條

澳門特別行政區行政會的委員由行政長官從政府主要官員、立法會議員和社會人士中委任，其任免由行政長官決定。行政會委員的任期不超過委任他的行政長官的任期，但在新的行政長官就任前，原行政會委員暫時留任。

澳門特別行政區行政會委員由澳門特別行政區永久性居民中的中國公民擔任。

行政會委員的人數為七至十一人。行政長官認為必要時可邀請有關人士列席行政會會議。

第五十八條

澳門特別行政區行政會由行政長官主持。行政會的會議每月至少舉行一次。行政長官在作出重要決策、向立法會提交法案、制定行政法規和解散立法會前，須徵詢行政會的意見，但人事任免、紀律制裁和緊急情況下採取的措施除外。

行政長官如不採納行政會多數委員的意見，應將具體理由記錄在案。

第五十九條

澳門特別行政區設立廉政公署，獨立工作。廉政專員對行政長官負責。

第六十條

澳門特別行政區設立審計署，獨立工作。審計長對行政長官負責。

第二節

行政機關

第六十一條

澳門特別行政區政府是澳門特別行政區的行政機關。

第六十二條

澳門特別行政區政府的首長是澳門特別行政區行政長官。澳門特別行政區政府設司、局、廳、處。

第六十三條

澳門特別行政區政府的主要官員由在澳門通常居住連續滿十五年的澳門特別行政區永久性居民中的中國公民擔任。

澳門特別行政區主要官員就任時應向澳門特別行政區終審法院院長申報財產，記錄在案。

第六十四條

澳門特別行政區政府行使下列職權：

- (一) 制定並執行政策；
- (二) 管理各項行政事務；
- (三) 辦理本法規定的中央人民政府授權的對外事務；
- (四) 編制並提出財政預算、決算；
- (五) 提出法案、議案，草擬行政法規；
- (六) 委派官員列席立法會會議聽取意見或代表政府發言。

第六十五條

澳門特別行政區政府必須遵守法律，對澳門特別行政區立法會負責；執行立法會通過並已生效的法律；定期向立法會作施政報告；答覆立法會議員的質詢。

第六十六條

澳門特別行政區行政機關可根據需要設立諮詢組織。

第三節

立法機關

第六十七條

澳門特別行政區立法會是澳門特別行政區的立法機關。

第六十八條

澳門特別行政區立法會議員由澳門特別行政區永久性居民擔任。

立法會多數議員由選舉產生。

立法會的產生辦法由附件二《澳門特別行政區立法會的產生辦法》規定。

立法會議員就任時應依法申報經濟狀況。

第六十九條

澳門特別行政區立法會除第一屆另有規定外，每屆任期四年。

第七十條

澳門特別行政區立法會如經行政長官依照本法規定解散，須於九十日內依照本法第六十八條的規定重新產生。

第七十一條

澳門特別行政區立法會行使下列職權：

- (一) 依照本法規定和法定程序制定、修改、暫停實施和廢除法律；
- (二) 審核、通過政府提出的財政預算案；審議政府提出的預算執行情況報告；
- (三) 根據政府提案決定稅收，批准由政府承擔的債務；
- (四) 聽取行政長官的施政報告並進行辯論；
- (五) 就公共利益問題進行辯論；
- (六) 接受澳門居民申訴並作出處理；
- (七) 如立法會全體議員三分之一聯合動議，指控行政長官有嚴重違法或瀆職行為而不辭職，經立法會通過決議，可委托終審法院院長負責組成獨立的調查委員會進行調查。調查委員會如認為有足夠證據構成上述指控，立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定；
- (八) 在行使上述各項職權時，如有需要，可傳召和要求有關人士作證和提供證據。

第七十二條

澳門特別行政區立法會設主席、副主席各一人。主席、副主席由立法會議員互選產生。

澳門特別行政區立法會主席、副主席由在澳門通常居住連續滿十五年的澳門特別行政區永久性居民中的中國公民擔任。

第七十三條

澳門特別行政區立法會主席缺席時由副主席代理。

澳門特別行政區立法會主席或副主席出缺時，另行選舉。

第七十四條

澳門特別行政區立法會主席行使下列職權：

- (一) 主持會議；
- (二) 決定議程，應行政長官的要求將政府提出的議案優先列入議程；
- (三) 決定開會日期；
- (四) 在休會期間可召開特別會議；
- (五) 召開緊急會議或應行政長官的要求召開緊急會議；
- (六) 立法會議事規則所規定的其他職權。

第七十五條

澳門特別行政區立法會議員依照本法規定和法定程序提出議案。凡不涉及公共收支、政治體制或政府運作的議案，可由立法會議員個別或聯名提出。凡涉及政府政策的議案，在提出前必須得到行政長官的書面同意。

第七十六條

澳門特別行政區立法會議員有權依照法定程序對政府的工作提出質詢。

[請查閱：《對政府工作的質詢程序》](#)

第七十七條

澳門特別行政區立法會舉行會議的法定人數為不少於全體議員的二分之一。除本法另有規定外，立法會的法案、議案由全體議員過半數通過。

立法會議事規則由立法會自行制定，但不得與本法相抵觸。

第七十八條

澳門特別行政區立法會通過的法案，須經行政長官簽署、公佈，方能生效。

第七十九條

澳門特別行政區立法會議員在立法會會議上的發言和表決，不受法律追究。

第八十條

澳門特別行政區立法會議員非經立法會許可不受逮捕，但現行犯不在此限。

第八十一條

澳門特別行政區立法會議員如有下列情況之一，經立法會決定，即喪失其立法會議員的資格：

- (一) 因嚴重疾病或其他原因無力履行職務；
- (二) 擔任法律規定不得兼任的職務；
- (三) 未得到立法會主席同意，連續五次或間斷十五次缺席會議而無合理解釋；
- (四) 違反立法會議員誓言；
- (五) 在澳門特別行政區區內或區外犯有刑事罪行，被判處監禁三十日以上。

第四節

司法機關

第八十二條

澳門特別行政區法院行使審判權。

第八十三條

澳門特別行政區法院獨立進行審判，祇服從法律，不受任何干涉。

第八十四條

澳門特別行政區設立初級法院、中級法院和終審法院。

澳門特別行政區終審權屬於澳門特別行政區終審法院。

澳門特別行政區法院的組織、職權和運作由法律規定。

第八十五條

澳門特別行政區初級法院可根據需要設立若干專門法庭。

原刑事起訴法庭的制度繼續保留。

第八十六條

澳門特別行政區設立行政法院。行政法院是管轄行政訴訟和稅務訴訟的法院。不服行政法院裁決者，可向中級法院上訴。

第八十七條

澳門特別行政區各級法院的法官，根據當地法官、律師和知名人士組成的獨立委員會的推薦，由行政長官任命。法官的選用以其專業資格為標準，符合標準的外籍法官也可聘用。

法官祇有在無力履行其職責或行為與其所任職務不相稱的情況下，行政長官才可根據終審法院院長任命的不少於三名當地法官組成的審議庭的建議，予以免職。

終審法院法官的免職由行政長官根據澳門特別行政區立法會議員組成的審議委員會的建議決定。

終審法院法官的任命和免職須報全國人民代表大會常務委員會備案。

第八十八條

澳門特別行政區各級法院的院長由行政長官從法官中選任。

終審法院院長由澳門特別行政區永久性居民中的中國公民擔任。

終審法院院長的任命和免職須報全國人民代表大會常務委員會備案。

第八十九條

澳門特別行政區法官依法進行審判，不聽從任何命令或指示，但本法第十九條第三款規定的情況除外。

法官履行審判職責的行為不受法律追究。

法官在任職期間，不得兼任其他公職或任何私人職務，也不得在政治性團體中擔任任何職務。

第九十條

澳門特別行政區檢察院獨立行使法律賦予的檢察職能，不受任何干涉。

澳門特別行政區檢察長由澳門特別行政區永久性居民中的中國公民擔任，由行政長官提名，報中央人民政府任命。

檢察官經檢察長提名，由行政長官任命。

檢察院的組織、職權和運作由法律規定。

第九十一條

原在澳門實行的司法輔助人員的任免制度予以保留。

第九十二條

澳門特別行政區政府可參照原在澳門實行的辦法，作出有關當地和外來的律師在澳門特別行政區執業的規定。

第九十三條

澳門特別行政區可與全國其他地區的司法機關通過協商依法進行司法方面的聯繫和相互提供協助。

第九十四條

在中央人民政府協助和授權下，澳門特別行政區可與外國就司法互助關係作出適當安排。

第五節

市政機構

第九十五條

澳門特別行政區可設立非政權性的市政機構。市政機構受政府委托為居民提供文化、康樂、環境衛生等方面的服務，並就有關上述事務向澳門特別行政區政府提供諮詢意見。

第九十六條

市政機構的職權和組成由法律規定。

第六節

公務人員

第九十七條

澳門特別行政區的公務人員必須是澳門特別行政區永久性居民。本法第九十八條和九十九條規定的公務人員，以及澳門特別行政區聘用的某些專業技術人員和初級公務人員除外。

第九十八條

澳門特別行政區成立時，原在澳門任職的公務人員，包括警務人員和司法輔助人員，均可留用，繼續工作，其薪金、津貼、福利待遇不低於原來的標準，原來享有的年資予以保留。

依照澳門原有法律享有退休金和贍養費待遇的留用公務人員，在澳門特別行政區成立後退休的，不論其所屬國籍或居住地點，澳門特別行政區向他們或其家屬支付不低於原來標準的應得的退休金和贍養費。

第九十九條

澳門特別行政區可任用原澳門公務人員中的或持有澳門特別行政區永久性居民身份證的葡籍和其他外籍人士擔任各級公務人員，但本法另有規定者除外。

澳門特別行政區有關部門還可聘請葡籍和其他外籍人士擔任顧問和專業技術職務。

上述人員祇能以個人身份受聘，並對澳門特別行政區負責。

第一百條

公務人員應根據其本人的資格、經驗和才能予以任用和提昇。澳門原有關於公務人員的錄用、紀律、提昇和正常晉級制度基本不變，但得根據澳門社會的發展加以改進。

第七節

宣誓效忠

第一百零一條

澳門特別行政區行政長官、主要官員、行政會委員、立法會議員、法官和檢察官，必須擁護中華人民共和國澳門特別行政區基本法，盡忠職守，廉潔奉公，效忠中華人民共和國澳門特別行政區，並依法宣誓。

第一百零二條

澳門特別行政區行政長官、主要官員、立法會主席、終審法院院長、檢察長在就職時，除按本法第一百零一條的規定宣誓外，還必須宣誓效忠中華人民共和國。

第五章

經濟

第一百零三條

澳門特別行政區依法保護私人 and 法人財產的取得、使用、處置和繼承的權利，以及依法徵用私人 and 法人財產時被徵用財產的所有人得到補償的權利。

徵用財產的補償應相當於該財產當時的實際價值，可自由兌換，不得無故遲延支付。

企業所有權和外來投資均受法律保護。

第一百零四條

澳門特別行政區保持財政獨立。

澳門特別行政區財政收入全部由澳門特別行政區自行支配，不上繳中央人民政府。

中央人民政府不在澳門特別行政區徵稅。

第一百零五條

澳門特別行政區的財政預算以量入為出為原則，力求收支平衡，避免赤字，並與本地生產總值的增長率相適應。

第一百零六條

澳門特別行政區實行獨立的稅收制度。

澳門特別行政區參照原在澳門實行的低稅政策，自行立法規定稅種、稅率、稅收寬免和其他稅務事項。專營稅制由法律另作規定。

第一百零七條

澳門特別行政區的貨幣金融制度由法律規定。

澳門特別行政區政府自行制定貨幣金融政策，保障金融市場和各種金融機構的經營自由，並依法進行管理和監督。

第一百零八條

澳門元為澳門特別行政區的法定貨幣，繼續流通。

澳門貨幣發行權屬於澳門特別行政區政府。澳門貨幣的發行須有百分之百的準備金。澳門貨幣的發行制度和準備金制度，由法律規定。

澳門特別行政區政府可授權指定銀行行使或繼續行使發行澳門貨幣的代理職能。

第一百零九條

澳門特別行政區不實行外匯管制政策。澳門元自由兌換。

澳門特別行政區的外匯儲備由澳門特別行政區政府依法管理和支配。

澳門特別行政區政府保障資金的流動和進出自由。

第一百一十條

澳門特別行政區保持自由港地位，除法律另有規定外，不徵收關稅。

第一百一十一條

澳門特別行政區實行自由貿易政策，保障貨物、無形財產和資本的流動自由。

第一百一十二條

澳門特別行政區為單獨的關稅地區。

澳門特別行政區可以“中國澳門”的名義參加《關稅和貿易總協定》、關於國際紡織品貿易安排等有關國際組織和國際貿易協定，包括優惠貿易安排。

澳門特別行政區取得的和以前取得仍繼續有效的出口配額、關稅優惠和其他類似安排，全由澳門特別行政區享有。

第一百一十三條

澳門特別行政區根據當時的產地規則，可對產品簽發產地來源證。

第一百一十四條

澳門特別行政區依法保護工商企業的自由經營，自行制定工商業的發展政策。

澳門特別行政區改善經濟環境和提供法律保障，以促進工商業的發展，鼓勵投資和技術進步，並開發新產業和新市場。

第一百一十五條

澳門特別行政區根據經濟發展的情況，自行制定勞工政策，完善勞工法律。

澳門特別行政區設立由政府、僱主團體、僱員團體的代表組成的諮詢性的協調組織。

第一百一十六條

澳門特別行政區保持和完善原在澳門實行的航運經營和管理體制，自行制定航運政策。

澳門特別行政區經中央人民政府授權可進行船舶登記，並依照澳門特別行政區的法律以“中國澳門”的名義頒發有關證件。

除外國軍用船隻進入澳門特別行政區須經中央人民政府特別許可外，其他船舶可依照澳門特別行政區的法律進出其港口。

澳門特別行政區的私營的航運及與航運有關的企業和碼頭可繼續自由經營。

第一百一十七條

澳門特別行政區政府經中央人民政府具體授權可自行制定民用航空的各項管理制度。

第一百一十八條

澳門特別行政區根據本地整體利益自行制定旅游娛樂業的政策。

第一百一十九條

澳門特別行政區政府依法實行環境保護。

第一百二十條

澳門特別行政區依法承認和保護澳門特別行政區成立前已批出或決定的年期超過一九九九年十二月十九日的合法土地契約和與土地契約有關的一切權利。

澳門特別行政區成立後新批或續批土地，按照澳門特別行政區有關的土地法律及政策處理。

第六章

文化和社會事務

第一百二十一條

澳門特別行政區政府自行制定教育政策，包括教育體制和管理、教學語言、經費分配、考試制度、承認學歷和學位等政策，推動教育的發展。

澳門特別行政區政府依法推行義務教育。
社會團體和私人可依法舉辦各種教育事業。

第一百二十二條

澳門原有各類學校均可繼續開辦。澳門特別行政區各類學校均有辦學的自主性，依法享有教學自由和學術自由。
各類學校可以繼續從澳門特別行政區以外招聘教職員和選用教材。學生享有選擇院校和在澳門特別行政區以外求學的自由。

第一百二十三條

澳門特別行政區政府自行制定促進醫療衛生服務和發展中西醫藥的政策。社會團體和私人可依法提供各種醫療衛生服務。

第一百二十四條

澳門特別行政區政府自行制定科學技術政策，依法保護科學技術的研究成果、專利和發明創造。

澳門特別行政區政府自行確定適用於澳門的各類科學技術標準和規格。

第一百二十五條

澳門特別行政區政府自行制定文化政策，包括文學藝術、廣播、電影、電視等政策。

澳門特別行政區政府依法保護作者的文學藝術及其他的創作成果和合法權益。

澳門特別行政區政府依法保護名勝、古蹟和其他歷史文物，並保護文物所有者的合法權益。

第一百二十六條

澳門特別行政區政府自行制定新聞、出版政策。

第一百二十七條

澳門特別行政區政府自行制定體育政策。民間體育團體可依法繼續存在和發展。

第一百二十八條

澳門特別行政區政府根據宗教信仰自由的原則，不干預宗教組織的內部事務，不干預宗教組織和教徒同澳門以外地區的宗教組織和教徒保持及發展關係，不限制與澳門特別行政區法律沒有抵觸的宗教活動。

宗教組織可依法開辦宗教院校和其他學校、醫院和福利機構以及提供其他社會服務。宗教組織開辦的學校可以繼續提供宗教教育，包括開設宗教課程。

宗教組織依法享有財產的取得、使用、處置、繼承以及接受捐獻的權利。宗教組織在財產方面的原有權益依法受到保護。

第一百二十九條

澳門特別行政區政府自行確定專業制度，根據公平合理的原則，制定有關評審和頒授各種專業和執業資格的辦法。

在澳門特別行政區成立以前已經取得專業資格和執業資格者，根據澳門特別行政區的有關規定可保留原有的資格。

澳門特別行政區政府根據有關規定承認在澳門特別行政區成立以前已被承認的專業和專業團體，並可根據社會發展需要，經諮詢有關方面的意見，承認新的專業和專業團體。

第一百三十條

澳門特別行政區政府在原有社會福利制度的基礎上，根據經濟條件和社會需要自行制定有關社會福利的發展和改進的政策。

第一百三十一條

澳門特別行政區的社會服務團體，在不抵觸法律的情況下，可以自行決定其服務方式。

第一百三十二條

澳門特別行政區政府根據需要和可能逐步改善原在澳門實行的對教育、科學、技術、文化、體育、康樂、醫療衛生、社會福利、社會工作等方面的民間組織的資助政策。

第一百三十三條

澳門特別行政區的教育、科學、技術、文化、新聞、出版、體育、康樂、專業、醫療衛生、勞工、婦女、青年、歸僑、社會福利、社會工作等方面的民間團體和宗教組織同全國其他地區相應的團體和組織的關係，以互不隸屬、互不干涉、互相尊重的原則為基礎。

第一百三十四條

澳門特別行政區的教育、科學、技術、文化、新聞、出版、體育、康樂、專業、醫療衛生、勞工、婦女、青年、歸僑、社會福利、社會工作等方面的民間團體和宗教組織可同世界各國、各地區及國際的有關團體和組織保持和發展關係，各該團體和組織可根據需要冠用“中國澳門”的名義，參與有關活動。

第七章

對外事務

第一百三十五條

澳門特別行政區政府的代表，可作為中華人民共和國政府代表團的成員，參加由中央人民政府進行的同澳門特別行政區直接有關的外交談判。

第一百三十六條

澳門特別行政區可在經濟、貿易、金融、航運、通訊、旅游、文化、科技、體育等適當領域以“中國澳門”的名義，單獨地同世界各國、各地區及有關國際組織保持和發展關係，簽訂和履行有關協議。

第一百三十七條

對以國家為單位參加的、同澳門特別行政區有關的、適當領域的國際組織和國際會議，澳門特別行政區政府可派遣代表作為中華人民共和國代表團的成員或以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以“中國澳門”的名義發表意見。

澳門特別行政區可以“中國澳門”的名義參加不以國家為單位參加的國際組織和國際會議。

對中華人民共和國已參加而澳門也以某種形式參加的國際組織，中央人民政府將根據情況和澳門特別行政區的需要採取措施，使澳門特別行政區以適當形式繼續保持在這些組織中的地位。

對中華人民共和國尚未參加而澳門已以某種形式參加的國際組織，中央人民政府將根據情況和需要使澳門特別行政區以適當形式繼續參加這些組織。

第一百三十八條

中華人民共和國締結的國際協議，中央人民政府可根據情況和澳門特別行政區的需要，在徵詢澳門特別行政區政府的意見後，決定是否適用於澳門特別行政區。

中華人民共和國尚未參加但已適用於澳門的國際協議仍可繼續適用。中央人民政府根據情況和需要授權或協助澳門特別行政區政府作出適當安排，使其他與其有關的國際協議適用於澳門特別行政區。

第一百三十九條

中央人民政府授權澳門特別行政區政府依照法律給持有澳門特別行政區永久性居民身份證的中國公民簽發中華人民共和國澳門特別行政區護照，給在澳門特別行政區的其他合法居留者簽發中華人民共和國澳門特別行政區的其他旅行證件。上述護照和旅行證件，前往各國和各地區有效，並載明持有人有返回澳門特別行政區的權利。

對世界各國或各地區的人入境、逗留和離境，澳門特別行政區政府可實行出入境管制。

第一百四十條

中央人民政府協助或授權澳門特別行政區政府同有關國家和地區談判和簽訂互免簽證協議。

第一百四十一條

澳門特別行政區可根據需要在外國設立官方或半官方的經濟和貿易機構，報中央人民政府備案。

第一百四十二條

外國在澳門特別行政區設立領事機構或其他官方、半官方機構，須經中央人民政府批准。

已同中華人民共和國建立正式外交關係的國家在澳門設立的領事機構和其他官方機構，可予保留。

尚未同中華人民共和國建立正式外交關係的國家在澳門設立的領事機構和其他官方機構，可根據情況予以保留或改為半官方機構。

尚未為中華人民共和國承認的國家，祇能在澳門特別行政區設立民間機構。

第八章

本法的解釋和修改

第一百四十三條

本法的解釋權屬於全國人民代表大會常務委員會。

全國人民代表大會常務委員會授權澳門特別行政區法院在審理案件時對本法關於澳門特別行政區自治範圍內的條款自行解釋。

澳門特別行政區法院在審理案件時對本法的其他條款也可解釋。但如澳門特別行政區法院在審理案件時需要對本法關於中央人民政府管理的事務或中央和澳門特別行政區關係的條款進行解釋，而該條款的解釋又影響到案件的判決，在對該案件作出不可上訴的終局判決前，應由澳門特別行政區終審法院提請全國人民代表大會常務委員會對有關條款作出解釋。如全國人民代表大會常務委員會作出解釋，澳門特別行政區法院在引用該條款時，應以全國人民代表大會常務委員會的解釋為準。但在此以前作出的判決不受影響。

全國人民代表大會常務委員會在對本法進行解釋前，徵詢其所屬的澳門特別行政區基本法委員會的意見。

第一百四十四條

本法的修改權屬於全國人民代表大會。

本法的修改提案權屬於全國人民代表大會常務委員會、國務院和澳門特別行政區。澳門特別行政區的修改議案，須經澳門特別行政區的全國人民代表大會代表三分之二多數、澳門特別行政區立法會全體議員三分之二多數和澳門特別行政區行政長官同意後，交由澳門特別行政區出席全國人民代表大會的代表團向全國人民代表大會提出。

本法的修改議案在列入全國人民代表大會的議程前、先由澳門特別行政區基本法委員會研究並提出意見。

本法的任何修改，均不得同中華人民共和國對澳門既定的基本方針政策相抵觸。

第九章

附則

第一百四十五條

澳門特別行政區成立時，澳門原有法律除由全國人民代表大會常務委員會宣佈為同本法抵觸者外，採用為澳門特別行政區法律，如以後發現有的法律與本法抵觸，可依照本法規定和法定程序修改或停止生效。

根據澳門原有法律取得效力的文件、證件、契約及其所包含的權利和義務，在不抵觸本法的前提下繼續有效，受澳門特別行政區的承認和保護。

原澳門政府所簽訂的有效期超過一九九九年十二月十九日的契約，除中央人民政府授權的機構已公開宣佈為不符合中葡聯合聲明關於過渡時期安排的規定，須經澳門特別行政區政府重新審查者外，繼續有效。

附件一

澳門特別行政區行政長官的產生辦法

一、行政長官由一個具有廣泛代表性的選舉委員會依照本法選出，由中央人民政府任命。

二、選舉委員會委員共300人，由下列各界人士組成：

工商、金融界	100人
文化、教育、專業等界	80人
勞工、社會服務、宗教等界	80人
立法會議員的代表、市政機構成員的代表、澳門地區全國人大代表、澳門地區全國政協委員的代表	40人

選舉委員會每屆任期五年。

三、各個界別的劃分，以及每個界別中何種組織可以產生選舉委員會委員的名額，由澳門特別行政區根據民主、開放的原則制定選舉法加以規定。

各界別法定團體根據選舉法規定的分配名額和選舉辦法自行選出選舉委員會委員。

選舉委員會委員以個人身份投票。

四、不少於50名的選舉委員會委員可聯合提名行政長官候選人。每名委員祇可提出一名候選人。

五、選舉委員會根據提名的名單，經一人一票無記名投票選出行政長官候任人。具體選舉辦法由選舉法規定。

六、第一任行政長官按照《全國人民代表大會關於澳門特別行政區第一屆政府、立法會和司法機關產生辦法的決定》產生。

七、二零零九年及以後行政長官的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批准。

中華人民共和國澳門特別行政區基本法附件一澳門特別行政區行政長官的產生辦法修正案*

(2012年6月30日第十一屆全國人民代表大會常務委員會第二十七次會議批准)

一、2014年選舉第四任行政長官人選的選舉委員會共400人，由下列各界人士組成：

工商、金融界	120人
文化、教育、專業等界	115人
勞工、社會服務、宗教等界	115人
立法會議員的代表、市政機構成員的代表、澳門地區全國人大代表、澳門地區全國政協委員的代表	50人

選舉委員會每屆任期五年。

二、不少於66名的選舉委員會委員可聯合提名行政長官候選人。每名委員只可提出一名候選人。

三、第五任及以後各任行政長官產生辦法，在依照法定程序作出進一步修改前，按本修正案的規定執行。

* 請查閱：

- **第21/2012號行政長官公告** - 命令公佈“全國人民代表大會常務委員會關於《中華人民共和國澳門特別行政區基本法》附件一第七條和附件二第三條的解釋”。
- **第22/2012號行政長官公告** - 命令公佈《全國人民代表大會常務委員會關於澳門特別行政區2013年立法會產生辦法和2014年行政長官產生辦法有關問題的決定》。
- **第39/2012號行政長官公告** - 命令公佈全國人民代表大會常務委員會關於批准《中華人民共和國澳門特別行政區基本法附件一澳門特別行政區行政長官的產生辦法修正案》的決定，及中華人民共和國澳門特別行政區基本法附件一澳門特別行政區行政長官的產生辦法修正案。
- **第1/2012號決議** - 通過《中華人民共和國澳門特別行政區基本法附件一澳門特別行政區行政長官的產生辦法修正案（草案）》。

附件二

澳門特別行政區立法會的產生辦法

一、澳門特別行政區第一屆立法會按照《全國人民代表大會關於澳門特別行政區第一屆政府、立法會和司法機關產生辦法的決定》產生。

第二屆立法會由27人組成，其中：

直接選舉的議員
間接選舉的議員
委任的議員

第三屆及以後各屆立法會由29人組成，其中：

直接選舉的議員
間接選舉的議員
委任的議員

12人
10人
7人

二、議員的具體選舉辦法，由澳門特別行政區政府提出並經立法會通過的選舉法加以規定。

三、二零零九年及以後澳門特別行政區立法會的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案。

中華人民共和國澳門特別行政區基本法附件二澳門特別行政區立法會的產生辦法修正案*

(2012年6月30日第十一屆全國人民代表大會常務委員會第二十七次會議予以備案)

一、2013年第五屆立法會由33人組成，其中：

直接選舉的議員	14人
間接選舉的議員	12人
委任的議員	7人

二、第六屆及以後各屆立法會的產生辦法，在依照法定程序作出進一步修改前，按本修正案的規定執行。

* 請查閱：

- [第21/2012號行政長官公告](#) - 命令公佈“全國人民代表大會常務委員會關於《中華人民共和國澳門特別行政區基本法》附件一第七條和附件二第三條的解釋”。
- [第22/2012號行政長官公告](#) - 命令公佈《全國人民代表大會常務委員會關於澳門特別行政區2013年立法會產生辦法和2014年行政長官產生辦法有關問題的決定》。
- [第40/2012號行政長官公告](#) - 命令公佈全國人民代表大會常務委員會公告，及中華人民共和國澳門特別行政區基本法附件二澳門特別行政區立法會的產生辦法修正案。
- [第2/2012號決議](#) - 通過《中華人民共和國澳門特別行政區基本法附件二澳門特別行政區立法會的產生辦法修正案（草案）》。

附件三

在澳門特別行政區實施的全國性法律

下列全國性法律，自一九九九年十二月二十日起由澳門特別行政區在當地公佈或立法實施。

- 一、《關於中華人民共和國國都、紀年、國歌、國旗的決議》；
- 二、《關於中華人民共和國國慶日的決議》；
- 三、《中華人民共和國國籍法》；
- 四、《中華人民共和國外交特權與豁免條例》；
- 五、《中華人民共和國領事特權與豁免條例》；
- 六、《中華人民共和國國旗法》；
- 七、《中華人民共和國國徽法》；
- 八、《中華人民共和國領海及毗連區法》；

- 九、《中華人民共和國專屬經濟區和大陸架法》；
- 十、《中華人民共和國澳門特別行政區駐軍法》；
- 十一、《中華人民共和國外國中央銀行財產司法強制措施豁免法》。^{*}

^{*} 已更改 - 請查閱：第10/2006號行政長官公告

中華人民共和國澳門特別行政區區旗圖案



中華人民共和國澳門特別行政區區徽圖案



第5/1999號行政長官公告

[葡文版本]

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 澳門官印局街
 電話:(853) 2857 3822 - 圖文傳真:(853) 2859 6802
 電子郵件:info@io.gov.mo



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Annex G

to the Expert Report of Professor Guiguo Wang



[\[Chinese version\]](#) [\[Portuguese version\]](#)

Basic Law of the Macao Special Administrative Region of the People's Republic of China

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

(Unofficial Translation, For Reference Only)

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Decree of the President of the People's Republic of China No. 3

I hereby promulgate the Basic Law of the Macao Special Administrative Region of the People's Republic of China, including Annex I, Method for the Selection of the Chief Executive of the Macao Special Administrative Region, Annex II, Method for the Formation of the Legislative Council of the Macao Special Administrative Region, Annex III, National Laws to Be Applied in the Macao Special Administrative Region, and designs of the regional flag and regional emblem of the Macao Special Administrative Region, which was adopted at the First Session of the Eighth National People's Congress of the People's Republic of China on 31 March 1993 and shall be put into effect as of 20 December 1999.

Jiang Zemin

President of the People's Republic of China

31 March 1993

Preamble

Macao, including the Macao Peninsula, Taipa Island and Coloane Island, has been part of the territory of China since ancient times; it was gradually occupied by Portugal after the mid 16th century. On 13 April 1987, the Chinese and Portuguese Governments signed the Joint Declaration on the Question of Macao, affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999, thus fulfilling the long cherished common aspiration of the Chinese people for the recovery of Macao. Upholding national unity and territorial integrity, contributing to social stability and economic development, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Macao, a Macao Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "one country, two systems", the socialist system and policies will not be practiced in Macao. The basic policies of the People's Republic of China regarding Macao have been elaborated by the Chinese Government in the Sino-Portuguese Joint Declaration. In accordance with the Constitution of the People's Republic of China, the National People's Congress hereby enacts the Basic Law of the Macao Special Administrative Region of the People's Republic of China, prescribing the systems to be practiced in the Macao Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Macao.

Chapter I General Principles

Article 1 The Macao Special Administrative Region is an inalienable part of the People's Republic of China.

Article 2 The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

Article 3 The executive authorities and legislature of the Macao Special Administrative Region shall be composed of permanent residents of Macao in accordance with the relevant provisions of this Law.

Article 4 The Macao Special Administrative Region shall safeguard the rights and freedoms of the residents of the Macao Special Administrative Region and of other persons in the Region in accordance with law.

Article 5 The socialist system and policies shall not be practiced in the Macao Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

Article 6 The right of private ownership of property shall be protected by law in the Macao Special Administrative Region.

Article 7 The land and natural resources within the Macao Special Administrative Region shall be State property, except for the private land recognized as such according to the laws in force before the establishment of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals or legal persons for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.

Article 8 The laws, decrees, administrative regulations and other normative acts previously in force in Macao shall be maintained, except for any that contravenes this Law, or subject to any amendment by the legislature or other relevant organs of the Macao Special Administrative Region in accordance with legal procedures.

Article 9 In addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macao Special Administrative Region .

Article 10 Apart from displaying the national flag and national emblem of the People's Republic of China, the Macao Special Administrative Region may also use a regional flag and regional emblem. The regional flag of the Macao Special Administrative Region is a green flag with five stars, lotus flower, bridge and sea water. The regional emblem of the Macao Special Administrative Region is composed of five stars, lotus flower, bridge and sea water encircled by the words "Macao Special Administrative Region of the People's Republic of China" in Chinese and "MACAO" in Portuguese.

Article 11 In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practiced in the Macao Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law. No law, decree, administrative regulations and normative acts of the Macao Special Administrative Region shall contravene this Law.

Chapter II Relationship between the Central Authorities and the Macao Special Administrative Region

Article 12 The Macao Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

Article 13 The Central People's Government shall be responsible for the foreign affairs relating to the Macao Special Administrative Region. The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Macao to deal with foreign affairs . The Central People's Government authorizes the Macao Special Administrative Region to conduct relevant external affairs, on its own, in accordance with this Law.

Article 14 The Central People's Government shall be responsible for the defense of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region shall be responsible for the maintenance of public order in the Region.

Article 15 The Central People's Government shall appoint or remove the Chief Executive, the principal officials of the government and the Procurator General of the Macao Special Administrative Region in accordance with the relevant provisions of this Law.

Article 16 The Macao Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

Article 17 The Macao Special Administrative Region shall be vested with legislative power. Laws enacted by the legislature of the Macao Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws. If the Standing committee of the National People ' s Congress, after consulting the Committee for the Basic Law of the Macao Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the

relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.

Article 18 The laws in force in the Macao Special Administrative Region shall be this Law, the laws previously in force in Macao as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region. National laws shall not be applied in the Macao Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Macao Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law. In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Macao Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.

Article 19 The Macao Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. The courts of the Macao Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Macao shall be maintained. The courts of the Macao Special Administrative Region shall have no jurisdiction over acts of state such as defense and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defense and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

Article 20 The Macao Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.

Article 21 Chinese citizens who are residents of the Macao Special Administrative Region shall be entitled to participate in the management of state affairs according to law. In accordance with the assigned number of seats and the selection method specified by the National People's Congress, the Chinese citizens among the residents of the Macao Special Administrative Region shall locally elect deputies of the Region to the National People's Congress to participate in the work of the highest organ of state power.

Article 22 No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Macao Special Administrative Region administers, on its own, in accordance with this Law. If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Macao Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government. All offices set up in the Macao Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region. For entry into the Macao Special Administrative Region, people from other provinces, autonomous regions or municipalities directly under the Central Government must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region. The Macao Special Administrative Region may establish an office in Beijing.

Article 23 The Macao Special Administrative Region shall enact laws, on its own, to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

Chapter III Fundamental Rights and Duties of the Residents

Article 24 Residents Of the Macao Special Administrative Region ("Macao residents") shall include

permanent residents and non-permanent residents. The permanent residents of the Macao Special Administrative Region shall be:

- (1) Chinese citizens born in Macao before or after the establishment of the Macao Special Administrative Region and their children of Chinese nationality born outside Macao;
- (2) Chinese citizens who have ordinarily resided in Macao for a continuous period of not less than seven years before or after the establishment of the Macao Special Administrative Region and their children of Chinese nationality born outside Macao after they have become permanent residents;
- (3) The Portuguese who were born in Macao and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (4) The Portuguese who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (5) Other persons who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (6) Persons under 18 years of age born in Macao of those residents listed in category (5) before or after the establishment of the Macao Special Administrative Region. The above mentioned residents shall have the right of abode in the Macao Special Administrative Region and shall be qualified to obtain permanent identity cards. The non-permanent residents of the Macao Special Administrative Region shall be persons who are qualified to obtain Macao identity cards in accordance with the laws of the Region but have no right of abode.

Article 25 All Macao residents shall be equal before the law, and shall be free from discrimination, irrespective of their nationality descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions.

Article 26 Permanent residents of the Macao Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

Article 27 Macao residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, Of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 28 The freedom of the person of Macao residents shall be inviolable. No Macao resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. In case of arbitrary or unlawful detention or imprisonment, Macao residents have the right to apply to the court for the issuance of a writ of habeas corpus. Unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. Torture or inhuman treatment of any resident shall be prohibited.

Article 29 Macao residents shall not be punished by law, unless their acts constitute a crime and they shall be punished for it as expressly prescribed by law at the time. When charged with criminal offences, Macao residents shall enjoy the right to an early court trial and shall be presumed innocent before convicted.

Article 30 The human dignity of Macao residents shall be inviolable. Humiliation, slander and false accusation against residents in any form shall be prohibited. Macao residents shall enjoy the right to personal reputation and the privacy of their private and family life.

Article 31 The homes and other premises of Macao residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited.

Article 32 The freedom and privacy of communication of Macao residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with the provisions of the law to meet the needs of public security or of investigation into criminal offences.

Article 33 Macao residents shall have freedom of movement within the Macao Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region and shall have the right to obtain travel documents in accordance with law. Unless restrained by law, holders of valid travel documents shall be free to leave the Region without special authorization.

Article 34 Macao residents shall have freedom of conscience. Macao residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.

Article 35 Macao residents shall have freedom of choice of occupation and work.

Article 36 Macao residents shall have the right to resort to law and to have access to the courts, to lawyers' help for protection of their lawful rights and interests, and to judicial remedies. Macao residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

Article 37 Macao residents shall have freedom to engage in education, academic research, literary and artistic creation, and other cultural activities.

Article 38 The freedom of marriage of Macao residents and their right to form and raise a family freely shall be protected by law. The legitimate rights and interests of women shall be protected by the Macao Special Administrative Region. The minors, the aged and the disabled shall be taken care of and protected by the Macao Special Administrative Region.

Article 39 Macao residents shall have the right to social welfare in accordance with law. The welfare benefits and retirement security of the labour force shall be protected by law.

Article 40 The provisions of International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region. The rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the first paragraph of this Article.

Article 41 Macao residents shall enjoy the other rights and freedoms safeguarded by the laws of the Macao Special Administrative Region.

Article 42 The interests of the residents of Portuguese descent in Macao shall be protected by the Macao Special Administrative Region in accordance with law, and their customs and cultural traditions shall be respected.

Article 43 Persons in the Macao Special Administrative Region other than Macao residents shall, in accordance with law, enjoy the rights and freedoms of Macao residents prescribed in this Chapter.

Article 44 Macao residents and other persons in Macao shall have the obligation to abide by the laws in force in the Macao Special Administrative Region.

Chapter IV Political Structure

Section 1

The Chief Executive

Article 45 The Chief Executive of the Macao Special Administrative Region shall be the head of the Macao Special Administrative Region and shall represent the Region. The Chief Executive of the Macao Special Administrative Region shall be accountable to the Central People's Government and the Macao Special Administrative Region in accordance with the provisions of this Law.

Article 46 The Chief Executive of the Macao Special Administrative Region shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region and has ordinarily resided in Macao for a continuous period of not less than 20 years.

Article 47 The Chief Executive of the Macao Special Administrative Region shall be selected by

election or through consultations held locally and be appointed by the Central People's Government. The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Macao Special Administrative Region".

Article 48 The term of office of the Chief Executive of the Macao Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms.

Article 49 The Chief Executive of the Macao Special Administrative Region, during his or her term of office, shall have no right of abode in any foreign country and shall not engage in any activities for his or her personal gains. The Chief Executive, on assuming office, shall declare his or her assets to the President of the Court of Final Appeal of the Macao Special Administrative Region. This declaration shall be put on record.

Article 50 The Chief Executive of the Macao Special Administrative Region shall exercise the following powers and functions:

- (1) To lead the government of the Region;
- (2) To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Macao Special Administrative Region;
- (3) To sign bills passed by the Legislative Council and to promulgate laws; To sign budgets passed by the Legislative Council and report the budgets and final accounts to the Central People's Government for the record;
- (4) To decide on government policies and to issue executive orders;
- (5) To formulate the administrative regulations and promulgate them for implementation;
- (6) To nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries of Departments, Commissioner against Corruptions, Director of Audit, the leading members of the Police and the customs and excise; and to recommend to the Central People's Government the removal of the above mentioned officials;
- (7) To appoint part of the members of the Legislative Council;
- (8) To appoint or remove members of the Executive Council;
- (9) To appoint or remove presidents and judges of the courts at all levels and procurators in accordance with legal procedures;
- (10) To nominate and report to the Central People's Government for appointment of the Procurator-General and recommend to the Central People's Government the removal of the Procurator-General in accordance with legal procedures;
- (11) To appoint or remove holders of public office in accordance with legal procedures;
- (12) To implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law;
- (13) To conduct, on behalf of the Government of the Macao Special Administrative Region, external affairs and Other affairs as authorized by the Central Authorities;
- (14) To approve the introduction of motions regarding revenues or expenditure to the Legislative Council;
- (15) To decide, in the light of security and vital interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees;
- (16) To confer medals and titles of honor of the Macao Special Administrative Region in accordance with law;

(17) To pardon persons convicted of criminal offences or commute their penalties in accordance with law; and

(18) To handle petitions and complaints.

Article 51 If the Chief Executive of the Macao Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may give his or her reasons in writing and return it to the Legislative Council within 90 days for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive must sign and promulgate it within 30 days or act in accordance with the provisions of Article 52 of this Law.

Article 52 The Chief Executive of the Macao Special Administrative Region may dissolve the Legislative Council under any of the following circumstances:

(1) The Chief Executive refuses to sign a bill passed the second time by the Legislative Council; and

(2) The Legislative Council refuses to pass a budget introduced by the government or any other bills which he or she considers concern the overall interests of the Region, and after consultations, consensus still cannot be reached. Before dissolving the Legislative Council, the Chief Executive must consult the Executive Council and he or she shall explain the reason for it to the public. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.

Article 53 If the Legislative Council of the Macao Special Administrative Region fails to pass the budget introduced by the government, the Chief Executive may approve provisional short term appropriations according to the level of expenditure of the previous fiscal year.

Article 54 The Chief Executive of the Macao Special Administrative Region must resign under any of the following circumstances:

(1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;

(2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it within 30 days; and

(3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other bill concerning the overall interests of the Macao Special Administrative Region, the newly elected Legislative Council still refuses to pass the original bill in dispute.

Article 55 If the Chief Executive of the Macao Special Administrative Region is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the secretaries of the departments in the order of precedence, which shall be stipulated by law. In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within 120 days in accordance with the provisions of Article 47 of this Law. During the period of vacancy, his or her duties shall be assumed according to the provisions of paragraph 1 of this Article and the choice of the acting Chief Executive shall be reported to the Central People's Government for approval. The acting Chief Executive shall abide by the provisions of Article 49 of this Law.

Article 56 The Executive Council of the Macao Special Administrative Region shall be an organ for assisting the Chief Executive in policy making.

Article 57 Members of the Executive Council of the Macao Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them. Members of the original Executive Council shall remain in office until the new Chief Executive is selected. Members of the Executive Council of the Macao Special Administrative Region shall be Chinese citizens who are permanent residents of the Region. The Executive Council shall be composed of seven to eleven persons. The Chief Executive may, as he or she deems necessary, invite other persons concerned to sit in on meetings of the Council.

Article 58 The Executive Council of the Macao Special Administrative Region shall be presided over by the Chief Executive. The meeting of the Executive Council shall be held at least once each month. Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, formulating administrative regulations, or dissolving the Legislative Council. If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

Article 59 A Commission against Corruption shall be established in the Macao Special Administrative Region. It shall function independently and its Commissioner shall be accountable to the Chief Executive.

Article 60 A Commission of Audit shall be established in the Macao Special Administrative Region. It shall function independently and its Director shall be accountable to the Chief Executive.

Section 2

The Executive Authorities

Article 61 The Government of the Macao Special Administrative Region shall be the executive authorities of the Region.

Article 62 The head of the Government of the Macao Special Administrative Region shall be the Chief Executive of the Region. General secretariats, directorates of services, departments and divisions shall be established in the Government of the Macao Special Administrative Region.

Article 63 The principal officials of the Macao Special Administrative Region shall be Chinese citizens who are permanent residents of the Region and have ordinarily resided in Macao for a continuous period of not less than 15 years. The principal officials of the Macao Special Administrative Region, at the time of assuming office, shall declare their property to the President of the Court of Final Appeal of the Macao Special Administrative Region for the record.

Article 64 The Government of the Macao Special Administrative Region shall exercise the following powers and functions:

- (1) To formulate and implement policies;
- (2) To conduct administrative affairs;
- (3) To conduct external affairs as authorized by the Central People's Government under this Law;
- (4) To draw up and introduce budgets and final accounts;
- (5) To introduce bills and motions and to draft administrative regulations; and
- (6) To designate officials to sit in on the meetings of the Legislative Council to hear opinions or speak on behalf of the government.

Article 65 The Government of the Macao Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; and it shall answer questions raised by members of the Council.

Article 66 The Executive authorities of the Macao Special Administrative Region may, when necessary, establish advisory bodies.

Section 3

The Legislature

Article 67 The Legislative Council of the Macao Special Administrative Region shall be the legislature of the Region.

Article 68 The Legislative Council of the Macao Special Administrative Region shall be composed of permanent residents of the Region. The majority of its members shall be elected. The method for forming the Legislative Council is prescribed in Annex II: Method for the Formation of the Legislative Council of the Macao Special Administrative Region. Members of the Legislative Council, upon assuming office, shall declare their financial situation in accordance with legal procedures.

Article 69 The term of office of the Legislative Council of the Macao Special Administrative Region shall be four years, except for the first term which shall be stipulated otherwise.

Article 70 If the Legislative Council of the Macao Special Administrative Region is dissolved by the Chief Executive in accordance with the provisions of this Law, it must, within 90 days, be reconstituted in accordance with Article 68 of this Law.

Article 71 The Legislative Council of the Macao Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend, suspend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government; and examine the report on audit introduced by the government;
- (3) To decide on taxation according to government motions and approve debts to be undertaken by the government;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To debate any issue concerning public interests;
- (6) To receive and handle complaints from Macao residents;
- (7) If a motion initiated jointly by one-third of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, by a resolution give a mandate to the President of the Court of Final Appeal to form an independent investigation committee to carry out investigation. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (8) To summon, as required when exercising the above mentioned powers and functions, persons concerned to testify or give evidence.

Article 72 The Legislative Council of the Macao Special Administrative Region shall have a President and a Vice President who shall be elected by and from among the members of the Legislative Council. The President and Vice President of the Legislative Council shall be Chinese citizens who are permanent residents of the Region and have ordinarily resided in Macao for a continuous period of not less than 15 years.

Article 73 In case of absence of the President of the Legislative Council of the Macao Special Administrative Region, the Vice President shall act as President. In the event that the office of President or of Vice President of the Legislative Council becomes vacant, new President or Vice President shall be elected.

Article 74 The President of the Legislative Council of the Macao Special Administrative Region shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on the agenda, giving priority to government bills for inclusion in the agenda upon the request of the Chief Executive;
- (3) To decide on the dates of meetings;

- (4) To call special sessions during the recess;
- (5) To call emergency sessions on his or her own or upon the request of the Chief Executive; and
- (6) To exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council.

Article 75 Members of the Legislative Council of the Macao Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.

Article 76 Members of the Legislative Council of the Macao Special Administrative Region shall have the right to raise questions about the government work in accordance with legal procedures.

Article 77 The quorum for the meeting of the Legislative Council of the Macao Special Administrative Region shall be not less than one half of all its members. Except otherwise prescribed by this Law, bills and motions shall be passed by more than half of all the members of the Council. The rules of procedure of the Legislative Council shall be made by the Council, on its own, provided that they do not contravene this Law.

Article 78 A bill passed by the Legislative Council of the Macao Special Administrative Region may take effect only after it is signed and promulgated by the Chief Executive.

Article 79 Members of the Legislative Council of the Macao Special Administrative Region shall be immune from legal action in respect of their statements and voting at meetings of the Council.

Article 80 Members of the Legislative Council of the Macao Special Administrative Region, excluding active criminals, shall not be subjected to arrest without the permission of the Council.

Article 81 The President of the Legislative Council of the Macao Special Administrative Region shall declare, according to the decision of the Council, that a member of the Council is no longer qualified for the office under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When he or she assumes posts which he or she is not permitted by law to hold concurrently;
- (3) When he or she, with no valid reason, is absent from meetings for five consecutive times or for 15 times intermittently without the consent of the President of the Legislative Council;
- (4) When he or she breaches his or her oath; and
- (5) When he or she is convicted and sentenced to imprisonment for more than 30 days for a criminal offence committed within or outside the Region.

Section 4

The Judiciary

Article 82 The courts of the Macao Special Administrative Region shall exercise the judicial power.

Article 83 The courts of the Macao Special Administrative Region shall exercise judicial power independently. They shall be subordinated to nothing but law and shall not be subject to any interference.

Article 84 The primary courts, intermediate courts and Court of Final Appeal shall be established in the Macao Special Administrative Region. The power of final adjudication of the Macao Special Administrative Region shall be vested in the Court of Final Appeal of the Region. The structure, powers and functions as well as operation of the courts of the Macao Special Administrative Region shall be prescribed by law.

Article 85 The primary courts of the Macao Special Administrative Region may, when necessary, establish special courts. The previous system concerning criminal prosecution shall be maintained.

Article 86 An administrative court shall be established in the Macao Special Administrative Region. It is the court which shall have jurisdiction over administrative and tax cases. If a party refuses to accept a judgment by the administrative court, he or she shall have the right to file an appeal with an intermediate court.

Article 87 Judges of the courts of the Macao Special Administrative Region at all levels shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, lawyers and eminent persons. Judges shall be chosen on the basis of their professional qualifications. Qualified judges of foreign nationality may also be employed. A judge may only be removed for inability to discharge his or her functions, or for behavior incompatible with his or her post, by the Chief Executive on the recommendation of a tribunal appointed by the President of the Court of Final Appeal and consisting of not fewer than three local judges. The removal of the judges of the Court of Final Appeal shall be decided on by the Chief Executive upon the recommendation of a review committee consisting of members of the Legislative Council of the Macao Special Administrative Region. The appointment and removal of the judges of the Court of Final Appeal shall be reported to the Standing Committee of the National People's Congress for the record.

Article 88 The presidents of courts of the Macao Special Administrative Region at all levels shall be chosen from among judges and appointed by the Chief Executive. The President of the Court of Final Appeal of the Macao Special Administrative Region shall be a Chinese citizen who is a permanent resident of the Region. The appointment and removal of the President of the Court of Final Appeal shall be reported to the Standing Committee of the National People's Congress for the record.

Article 89 The judges of the Macao Special Administrative Region shall exercise judicial power according to law, instead of according to any order or instruction, except in the situation as prescribed in paragraph 3 of Article 19 of this Law. Judges shall be immune from legal action for discharging his or her judicial functions. During the term of his or her office, a judge shall not concurrently assume other public or private posts, nor shall he or she assume any post in organizations of a political nature.

Article 90 The procuratorates of the Macao Special Administrative Region shall exercise procuratorial functions as vested by law, independently and free from any interference. The Procurator-General of the Macao Special Administrative Region shall be a Chinese citizen who is a permanent resident of the Region, shall be nominated by the Chief Executive and appointed by the Central People's Government. Procurators shall be nominated by the Procurator-General and appointed by the Chief Executive. The structure, powers and functions as well as operation of the procuratorates shall be prescribed by law.

Article 91 The system previously in force in Macao for appointment and removal of supporting members of the judiciary shall be maintained.

Article 92 On the basis of the system previously operating in Macao, the Government of the Macao Special Administrative Region may make provisions for local lawyers and lawyers from outside Macao to practise in the Region.

Article 93 The Macao Special Administrative Region may, through consultations and in accordance with law, maintain judicial relations with the judicial organs of other parts of the country, and they may render assistance to each other.

Article 94 With the assistance or authorization of the Central People's Government, the Macao Special Administrative Region may make appropriate arrangements with foreign states for reciprocal judicial assistance.

Section 5

Municipal Organs

Article 95 Municipal organizations which are not organs of political power may be established in the Macao Special Administrative Region. Entrusted by the government of the Region, they shall provide services in such fields as culture, recreation and environmental sanitation, and shall be consulted by the government of the Region on the above mentioned affairs.

Article 96 The functions, powers and structure of the municipal organizations shall be prescribed by law.

Section 6

Public Servants

Article 97 Public servants serving in the Macao Special Administrative Region must be permanent residents of the Region, except for those as prescribed by Articles 98 and 99 of this Law and except for technical personnel of certain professions and junior public servants recruited by the Government of the Macao Special Administrative Region.

Article 98 Upon the establishment of the Macao Special Administrative Region, public servants including the police and supporting members of the judiciary previously serving in Macao may all remain in employment, continue service and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before. The Government of the Macao Special Administrative Region shall pay to the above mentioned public servants who are entitled to pensions and allowances under the laws previously in force in Macao and who remain in employment and retire after the establishment of the Macao Special Administrative Region, or to their dependents, all pensions and allowances due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 99 The Government of the Macao Special Administrative Region may employ Portuguese and other foreign nationals previously serving in the public service in Macao, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, unless otherwise provided by this Law. The relevant government departments of the Macao Special Administrative Region may also employ Portuguese and other foreign nationals as advisers or to fill professional and technical posts. These individuals shall be employed only in their individual capacities and shall be responsible to the Government of the Macao Special Administrative Region.

Article 100 The appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Macao's previous system of employment, discipline, advanced and regular promotion may basically remain unchanged, but may be improved along with the development of the Macao society.

Section 7

Swearing Allegiance

Article 101 The Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges and procurators in the Macao Special Administrative Region must uphold the Basic Law of the Macao Special Administrative Region of the People's Republic of China, devote themselves to their duties, be honest in performing official duties, swear allegiance to the Macao Special Administrative Region and take an oath to this effect in accordance with law.

Article 102 When assuming office, the Chief Executive, principal Officials, President of the Court of Final Appeal and Procurator-General of the Macao Special Administrative Region must swear allegiance to the People's Republic of China, apart from taking the oath under Article 101.

Chapter V Economy

Article 103 The Macao Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. The ownership of enterprises and the investments from outside the Region shall be protected by law.

Article 104 The Macao Special Administrative Region shall have independent finances. All the financial revenues of the Macao Special Administrative Region shall be managed and controlled by the Region itself and shall not be handed over to the Central People's Government. The Central People's Government shall not levy taxes in the Macao Special Administrative Region.

Article 105 The Macao Special Administrative Region shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.

Article 106 The Macao Special Administrative Region shall practise an independent taxation system. The Macao Special Administrative Region shall, taking the low tax policy previously pursued in Macao as reference, enact laws, on its own, concerning types of taxes, tax rates, tax reductions, allowances and expenditures, and other matters of taxation. The taxation system for franchised businesses shall be otherwise prescribed by law.

Article 107 The monetary and financial systems of the Macao Special Administrative Region shall be prescribed by law. The Government of the Macao Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial markets and all kinds of financial institutions, and regulate and supervise them in accordance with law.

Article 108 The Macao Pataca, as the legal tender in the Macao Special Administrative Region, shall continue to circulate. The authority to issue Macao currency shall be vested in the Government of the Macao Special Administrative Region. The issue of Macao currency must be backed by a 100 per cent reserve fund. The system regarding the issue of Macao currency and the reserve fund system shall be prescribed by law. The Government of the Macao Special Administrative Region may authorize designated banks to perform or continue to perform the function of its agents in the issuance of Macao currency.

Article 109 No foreign exchange control policies shall be applied in the Macao Special Administrative Region. The Macao Pataca shall be freely convertible. The foreign exchange reserve of the Macao Special Administrative Region shall be managed and controlled by the Government of the Macao Special Administrative Region according to law. The Government of the Macao Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

Article 110 The Macao Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law.

Article 111 The Macao Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

Article 112 The Macao Special Administrative Region shall be a separate customs territory. The Macao Special Administrative Region may, using the name "Macao, China", participate in relevant international organizations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements, which are obtained or made by the Macao Special Administrative Region or which were obtained or made but remain valid, shall be enjoyed exclusively by the Region.

Article 113 The Macao Special Administrative Region may issue its own certificates of origin for products in accordance with prevailing rules of origin.

Article 114 The Macao Special Administrative Region shall, in accordance with law, protect the free operation of industrial and commercial enterprises and make its own policies on the development of industry and commerce. The Government of the Macao Special Administrative Region shall improve the economic environment and provide legal guarantees for promoting the development of industry and commerce and for encouraging investments, technological progress and development of new industries and new markets.

Article 115 The Macao Special Administrative Region, in the light of its economic development, shall make labour policy and improve labour law on its own. The Macao Special Administrative Region shall establish consultative co-ordination organisations composed of representatives from the government, the employers' organizations and the employees' organizations.

Article 116 The Macao Special Administrative Region shall maintain and improve Macao's previous systems of shipping management and shipping regulation, and make shipping policy on its own. The Macao Special Administrative Region shall be authorized by the Central People's Government to maintain a shipping register and issue related certificates under its legislation, using the name "Macao, China". With the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Macao Special Administrative

Region in accordance with the laws of the Region. Private shipping businesses and shipping-related businesses and terminals in the Macao Special Administrative Region may continue to operate freely.

Article 117 The Government of the Macao Special Administrative Region may, with the authorization of the Central People's Government, formulate, on its own, various systems for the civil aviation management.

Article 118 The Macao Special Administrative Region shall, on its own, make policies on tourism and recreation in the light of its overall interests.

Article 119 The Macao Special Administrative Region shall carry out the protection of environment in accordance with law.

Article 120 The Macao Special Administrative Region shall, in accordance with law, recognize and protect all the lawful leases of land granted or decided upon before the establishment of the Macao Special Administrative Region which extend beyond 19 December 1999, and all rights in relation to such leases. The grant or renewal of land leases after the establishment of the Macao Special Administrative Region shall be dealt with in accordance with the relevant land laws and policies of the Region.

Chapter VI Culture and Social Affairs

Article 121 The Government of the Macao Special Administrative Region shall, on its own, formulate policies on education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the recognition of educational qualifications and the system of academic awards so as to promote educational development. The Government of the Macao Special Administrative Region shall, in accordance with law, gradually institute a compulsory education system. Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds.

Article 122 The existing educational institutions of all kinds in Macao may continue to operate. All educational institutions in the Macao Special Administrative Region shall enjoy their autonomy and teaching and academic freedom in accordance with law. Educational institutions of all kinds may continue to recruit staff and use teaching materials from outside the Macao Special Administrative Region. Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Macao Special Administrative Region.

Article 123 The Government of the Macao Special Administrative Region shall, on its own, formulate policies to improve medical and health services and to develop Western and traditional Chinese medicine. Community organizations and individuals may provide various medical and health services in accordance with law.

Article 124 The Government of the Macao Special Administrative Region shall, on its own, formulate policies on science and technology and protect by law achievements in scientific and technological research, patents, discoveries and inventions. The Government of the Macao Special Administrative Region shall, on its own, decide on the scientific and technological standards and specifications applicable in Macao.

Article 125 The Government of the Macao Special Administrative Region shall, on its own, formulate policies on culture, including literature, art, broadcasting, film and television programs. The Government of the Macao Special Administrative Region shall protect by law the achievements and the lawful rights and interests of authors in their literary, artistic and other creation. The Government of the Macao Special Administrative Region shall protect by law scenic spots, historical sites and other historical relics as well as the lawful rights and interests of the owners of antiques.

Article 126 The Government of the Macao Special Administrative Region shall, on its own, formulate policies on press and publication.

Article 127 The Government of the Macao Special Administrative Region shall, on its own, formulate policies on sports. Non-governmental sports organizations may continue to exist and develop in accordance with law.

Article 128 The Government of the Macao Special Administrative Region, consistent with the principle of religious freedom, shall not interfere in the internal affairs of religious organizations or in the efforts of

religious organizations and believers in Macao to maintain and develop relations with their counterparts outside Macao, or restrict religious activities which do not contravene the laws of the Region. Religious organizations may, in accordance with law, run seminaries and other schools, hospitals and welfare institutions and to provide other social services. Schools run by religious organizations may continue to provide religious education, including courses in religion. Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive donations. Their previous property rights and interests shall be protected by law.

Article 129 The Government of the Macao Special Administrative Region shall, on its own, establish a system concerning the professions and, based on impartiality and rationality, formulate provisions for assessing professional qualifications or qualifications for practice in the various professions and issuing corresponding certificates. Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Macao Special Administrative Region may retain their previous qualifications in accordance with the relevant regulations of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region shall, in accordance with the relevant regulations, recognize the professions and the professional organizations recognized prior to the establishment of the Region and may, as required by social development and in consultation with the parties concerned, recognize new professions and professional organizations.

Article 130 On the basis of the previous social welfare system, the Government of the Macao Special Administrative Region shall, on its own, formulate policies on the development and improvement of the social welfare system in the light of the economic conditions and social needs.

Article 131 Local organizations providing social services in the Macao Special Administrative Region may, on their own, decide their forms of service, providing that the law is not contravened.

Article 132 The Government of the Macao Special Administrative Region shall, when necessary and possible, gradually improve the policy previously practiced in Macao in respect of subventions for non-governmental organizations in fields such as education, science, technology, culture, sports, recreation, medicine and health, social welfare and social work.

Article 133 The relationship between non-governmental organizations in fields such as education, science, technology, culture, news media, publication, sports, recreation, the professions, medicine and health, labor, women, youth, returned overseas nationals, social welfare and social work as well as religious organizations in the Macao Special Administrative Region and their counterparts in other parts of the country shall be based on the principles of non-subordination, non-interference and mutual respect.

Article 134 Non-governmental organizations in fields such as education science, technology, culture, news media, publication, sports, recreation, the professions, medicine and health, labor, women, youth, returned overseas nationals, social welfare and social work as well as religious organizations in the Macao Special Administrative Region may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations. They may, as required, use the name "Macao, China" in the relevant activities.

Chapter VII External Affairs

Article 135 Representatives of the Government of the Macao Special Administrative Region may, as members of delegations of the Government of the People's Republic of China, participate in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government.

Article 136 The Macao Special Administrative Region may, on its own, using the name "Macao, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural, science and technology, and sports fields.

Article 137 Representatives of the Government of the Macao Special Administrative Region may, as members of delegations of the People's Republic of China, participate in international organizations or conferences in appropriate fields limited to states and affecting the Region, or may attend in such other capacity as may be permitted by the Central People's Government and the international organizations or conference Concerneds and may express their views, using the name "Macao,

China". The Macao Special Administrative Region may, using the name "Macao, China", participate in international organizations and conferences not limited to states. The Central People's Government shall, in accordance with the circumstances and needs of the Region, take measures to ensure that the Macao Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organizations of which the People's Republic of China is a member and in which Macao participates in one capacity or another. The Central People's Government shall, in accordance with the circumstances and needs of the Region, facilitate the continued participation of the Macao Special Administrative Region in an appropriate capacity in those international organizations in which Macao is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Article 138 The application to the Macao Special Administrative Region of international agreements to which the People's Republic of China is a member or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region. International agreements to which the People's Republic of China is not a party but which are implemented in Macao may continue to be implemented in the Macao Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.

Article 139 The Central People's Government shall authorize the Government of the Macao Special Administrative Region to issue, in accordance with law, passports of the Macao Special Administrative Region of the People's Republic of China to all Chinese citizens who hold permanent identity cards of the Region, and travel documents of the Macao Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Region. The above passports and travel documents shall be valid for all states and regions and shall record the holder's right to return to the Region. The Government of the Macao Special Administrative Region may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states or regions.

Article 140 The Central People's Government shall assist or authorize the Government of the Macao Special Administrative Region to negotiate and conclude visa abolition agreements with relevant foreign states or regions.

Article 141 The Macao Special Administrative Region may, as necessary, establish official or semi-official economic and trade missions in foreign countries and shall report the establishment of such missions to the Central People's Government for the record.

Article 142 The establishment of foreign consular and other official or semi-official missions in the Macao Special Administrative Region shall require the approval of the Central People's Government. Consular and other official missions established in Macao by states which have formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions established in Macao by states which have no formal diplomatic relations with the People's Republic of China may either remain or change to semi-official missions. States not recognized by the People's Republic of China may only establish non-governmental institutions in the Region.

Chapter VIII Interpretation and Amendment of the Basic Law

Article 143 The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress. The Standing Committee of the National People's Congress shall authorize the courts of the Macao Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region. The courts of the Macao Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments in the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected. The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Macao Special Administrative Region before giving an interpretation of this Law.

Article 144 The power of amendment of this Law shall be vested in the National People's Congress. The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council, and the Macao Special Administrative Region. Amendment bills from the Macao Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region. Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Macao Special Administrative Region shall study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Macao.

Chapter IX Supplementary Provisions

Article 145 Upon the establishment of the Macao Special Administrative Region, the laws previously in force in Macao shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the provisions of this Law and legal procedure. Documents, certificates and contracts valid under the laws previously in force in Macao, and the rights and obligations provided for in such documents, certificates or contracts shall continue to be valid and be recognized and protected by the Macao Special Administrative Region, provided that they do not contravene this Law. The contracts signed by the Portuguese Macao Government whose terms of validity extend beyond 19 December 1999 shall continue to be valid except those which a body authorized by the Central People's Government publicly declares to be inconsistent with the provisions about transitional arrangements contained in the Sino-Portuguese Joint Declaration and which need to be re-examined by the Government of the Macao Special Administrative Region.

Annex I

Method for the Selection of the Chief Executive of the Macao Special Administrative Region

1. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government.

2. The Election Committee shall be composed of 300 members from the following sectors:

Industrial, commercial and financial sectors: 100

Cultural and educational sectors and other professions: 80

Labour, social services, religious and other sectors: 80

Representatives of members of the Legislative Council, representatives of members of the municipal organs, Macao deputies to the National People's Congress, and representatives of Macao members of the National Committee of the Chinese People's Political Consultative Conference: 40

The term of office of the Election Committee shall be five years.

3. The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Macao Special Administrative Region in accordance with the principles of democracy and openness. Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election methods as prescribed by the electoral law. Members of the Election Committee shall vote in their individual capacities.

4. Candidates for the office of Chief Executive may be nominated jointly by not less than 50 members of the Election Committee. Each member may nominate only one candidate.

5. The Election Committee shall, on the basis of the list of the nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.

6. The first Chief Executive shall be selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government, the First Legislative Council and the First Judiciary of the Macao Special Administrative Region".

7. If there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2009, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

Annex II

Method for the Formation of the Legislative Council of the Macao Special Administrative Region

1. In the first term, the Legislative Council shall be formed in accordance with the " Decision of the National People's Congress on the Method for the Formation of the First Government, the First Legislative Council and the First Judiciary of the Macao Special Administrative Region".

The Legislative Council in the second term shall be composed of 27:

Members directly returned: 10

Members indirectly returned: 10

Appointed members: 7

The Legislative Council in the third and subsequent terms shall be composed of 29:

Members directly returned: 12

Members indirectly returned: 10

Appointed members: 7

2. The method for electing members of the Legislative Council shall be specified by an electoral law introduced by the Government of the Macao Special Administrative Region and passed by the Legislative Council.

3. If there is a need to change the method for forming the Legislative Council of the Macao Special Administrative Region in and after 2009, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Annex III

National Laws to Be Applied in the Macao Special Administrative Region

The following national laws shall be applied locally with effect from 20 December 1999 by way of promulgation or legislation by the Macao Special Administrative Region:

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China
2. Resolution on the National Day of the People's Republic of China
3. Nationality Law of the People's Republic of China
4. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities
5. Regulations of the People's Republic of China Concerning Consular Privileges and Immunities
6. Law on the National Flag of the People's Republic of China

7. Law on the National Emblem of the People's Republic of China
 8. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone
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Decision of the National People's Congress on the Basic Law of the Macao Special Administrative Region of the People's Republic of China

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

The Eighth National People's Congress at its First Session adopts the Basic Law of the Macao Special Administrative Region of the People's Republic of China, including Annex I, "Method for the Selection of the Chief Executive of the Macao Special Administrative Region", Annex II, " Method for the Formation of the Legislative Council of the Macao Special Administrative Region", Annex III, " National Laws to Be Applied in the Macao Special Administrative Region", and the designs of the regional flag and regional emblem of the Macao Special Administrative Region. Article 31 of the Constitution of the People's Republic of China provides: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The Basic Law of the Macao Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China in the light of the specific conditions of Macao. The systems, policies and laws to be instituted after the establishment of the Macao Special Administrative Region shall be based on the Basic Law of the Macao Special Administrative Region.

The Basic Law of the Macao Special Administrative Region of the People's Republic of China shall be put into effect as of 20 December 1999.

Decision of the National People's Congress on the Establishment of the Macao Special Administrative Region of the People's Republic of China

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

In accordance with the provisions of Article 31 and subparagraph 13 of Article 62 of the Constitution of the People's Republic of China, the Eighth National People's Congress decides at its First Session: 1. that the Macao Special Administrative Region is to be established as of 20 December 1999; and 2. that the area of the Macao Special Administrative Region covers the Macao Peninsula, Taipa Island and Coloane Island. The map of the administrative division of the Macao Special Administrative Region will be published by the State Council separately.

Decision of the National People's Congress on the Method for the Formation of the First Government, the First Legislative Council and the First Judiciary of the Macao Special Administrative Region

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

1. The First Government, the First Legislative Council and the First Judiciary shall be formed in accordance with the principles of state sovereignty and smooth transition.
2. The National People's Congress shall establish a Preparatory Committee for the Macao Special Administrative Region, which shall be responsible for preparing the establishment of the Region and shall prescribe the specific method for forming the First Government, the First Legislative Council and the First Judiciary in accordance with this Decision. The Preparatory Committee shall be composed of mainland members and of Macao members who shall constitute not less than 50 per cent of its membership. Its chairman and members shall be appointed by the Standing Committee of the National People's Congress.
3. The Preparatory Committee for the Macao Special Administrative Region shall be responsible for preparing the establishment of the Selection Committee for the First Government of the Macao

Special Administrative Region ("the Selection Committee").

The Selection Committee shall be composed entirely of permanent residents of Macao and must be broadly representative. It shall include Macao deputies to the National People's Congress, representatives of Macao members of the National Committee of the Chinese People's Political Consultative Conference, persons with practical experience who have served in Macao's executive, legislative and advisory organs prior to the establishment of the Macao Special Administrative Region, and persons representative of various strata and sectors of society.

The Selection Committee shall be composed of 200 members, among whom:

Industrial, commercial and financial sectors: 60

Cultural and educational sectors and other professions: 50

Labour, social services, religious and other sectors: 50

Former political figures, Macao deputies to the National People's Congress, and representatives of the Macao members of the National Committee of the Chinese People's Political Consultative Conference: 40

4. The Selection Committee shall recommend the candidate for the first Chief Executive through local consultations or through nomination and election after consultation, and report the recommended candidate to the Central People's Government for appointment. The term of office of the first Chief Executive shall be the same as the regular term.

5. The Chief Executive of the Macao Special Administrative Region shall be responsible for preparing the formation of the First Government of the Region in accordance with this Law.

6. The First Legislative Council of the Macao Special Administrative Region shall be composed of 23 members, with 8 members returned through direct elections, 8 members returned through indirect elections, and 7 members appointed by the Chief Executive. If the composition of the last Macao Legislative Council before the establishment of the Macao Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of the Macao Special Administrative Region, those of the elected members who uphold the Basic Law of the Macao Special Administrative Region of the People's Republic of China and pledge allegiance to the Macao Special Administrative Region of the People's Republic of China, and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the First Legislative Council of the Region. Any vacancy in the First Legislative Council of the Region shall be filled by a decision of the Preparatory Committee.

The term of office of members of the First Legislative Council of the Macao Special Administrative Region shall last until 15 October 2001.

7. The Preparatory Committee of the Macao Special Administrative Region shall be responsible for organizing the Court of the Macao Special Administrative Region in accordance with the Basic Law of the Region.

Decision of the National People's Congress on Approving the Proposal by the Drafting Committee for the Basic Law of the Macao Special Administrative Region on the Establishment of the Committee for the Basic Law of the Macao Special Administrative Region under the Standing Committee of the National People's Congress

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

The Eighth National People's Congress decides at its First Session:

1. to approve the Proposal by the Drafting Committee for the Basic Law of the Macao Special Administrative Region on the Establishment of the Committee for the Basic Law of the Macao Special Administrative Region under the Standing Committee of the National People's Congress; and

2. to establish the Committee for the Basic Law, of the Macao Special Administrative Region under the Standing Committee of the National People's Congress when the Basic Law of the Macao Special Administrative Region of the People's Republic of China is put into effect.

Appendix

Proposal by the Drafting Committee for the Basic Law of the Macao Special Administrative Region on the Establishment of the Committee for the Basic Law of the Macao Special Administrative Region under the Standing Committee of the National People's Congress

1. Name: The Committee for the Basic Law of the Macao Special Administrative Region under the Standing Committee of the National People's Congress.
 2. Affiliation: To be a working committee under the Standing Committee of the National People's Congress.
 3. Function: To study questions arising from the implementation of Articles 17, 18, 143 and 144 of the Basic Law of the Macao Special Administrative Region and submit its views thereon to the Standing Committee of the National People's Congress.
 4. Composition: Ten members, five from the mainland and five from Macao, including persons from the legal profession, appointed by the Standing Committee of the National People's Congress for a term of office of five years. Macao members shall be Chinese citizens who are permanent residents of the Macao Special Administrative Region with no right of abode in any foreign country and shall be nominated jointly by the Chief Executive, President of the Legislative Council and President of the Court of Final Appeal of the Region for appointment by the Standing Committee of the National People's Congress.
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The design of the regional flag of the Macao Special Administrative Region of the People's Republic of China



The design of the regional emblem of the Macao Special Administrative Region of the People's Republic of China



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Annex H

to the Expert Report of Professor Guiguo Wang

**TRANSLATION OF ARTICLES 13, 18, 136 AND 138, AND ANNEX III TO
BASIC LAW OF THE MACAO SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA**

Article 13: The Central People's Government shall be responsible for the foreign affairs pertaining to the Macao Special Administrative Region. The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Macao to deal with foreign affairs. The Central People's Government authorises the Macao Special Administrative Region to deal with relevant external affairs by itself in accordance with this Law.

Article 18: The laws in force in the Macao Special Administrative Region shall be this Law, the laws originally in force in Macao as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Macao Special Administrative Region.

National laws shall not be implemented in the Macao Special Administrative Region except for those listed in Annex III to this Law. The laws listed in Annex III shall be implemented locally by way of promulgation or legislation by the Macao Special Administrative Region.

The Standing Committee of the National People's Congress may add or delete from the list of laws set out in Annex III to this Law after consultation with its Committee for the Basic Law of the Macao Special Administrative Region and the government of the Macao Special Administrative Region. The laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other laws specified by this Law to be outside the limits of the autonomy of the Macao Special Administrative Region.

In the event the Standing Committee of the National People's Congress decides to declare a state of war or, due to unrest within the Macao Special Administrative Region which jeopardises national unity or security and is beyond the control of the government of the Macao Special Administrative Region, decides that the Macao Special Administrative Region shall enter into a state of emergency, the Central People's Government may issue an order for the implementation of relevant national laws in the Macao Special Administrative Region.

Article 136: The Macao Special Administrative Region may use the name "Macao, China" to maintain and promote relations and conclude and implement agreements independently with foreign states and regions and relevant international organisations in the appropriate fields, such as economics, trade, finance, shipping, communications, tourism, culture, science and technology, and sports.

Article 138: The application of international agreements concluded by the People's Republic of China to the Macao Special Administrative Region shall be decided by the Central People's Government in accordance with the circumstances and the needs of the Macao Special Administrative Region and after the views of the government of the Macao Special Administrative Region have been sought.

International agreements to which the People's Republic of China is not a party but have been applicable to Macao may continue to be applicable to Macao. The Central People's Government shall, based on the circumstances and where necessary, authorise or assist the government of the Macao Special Administrative Region in making appropriate arrangements for the application of

other relevant international agreements in the Macao Special Administrative Region.

ANNEX III
National Laws to be Implemented in the Macao Special Administrative Region

The following national laws shall be implemented locally with effect from 20 December 1999 by way of promulgation or legislation by the Macao Special Administrative Region:

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China;
2. Resolution on the National Day of the People's Republic of China;
3. Nationality Law of the People's Republic of China;
4. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities;
5. Regulations of the People's Republic of China Concerning Consular Privileges and Immunities;
6. Law on the National Flag of the People's Republic of China;
7. Law on the National Emblem of the People's Republic of China;
8. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone;
9. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf;

10. Garrison Law of the Macao Special Administrative Region of the People's Republic of China;

11. Law of the People's Republic of China on the Immunity of Judicial Compulsory Measures against the Properties of Foreign Central Banks.*

*Has been amended – please refer to the Notice of the Chief Executive No.10/2006.

Certified true translation by:

 - 3 APR 2014
Mrs Chin-Puar Yow Hoy,
a certificated interpreter
Chin - Puar Yow Hoy

Annex I

to the Expert Report of Professor Guiguo Wang



中华人民共和国民法通则 General Principles of Civil Law of the People's Republic of China

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中华人民共和国民法通则 General Principles of Civil Law of the People's Republic of China

主席令[1986]第 43 号 Order of the President [1986] No. 37

1986 年 4 月 12 日 April 12, 1986

《中华人民共和国民法通则》已由中华人民共和国第六届全国人民代表大会第四次会议于一九八六年四月十二日通过，现予公布，自一九八七年一月一日起施行。

The General Principles of Civil Law of the People's Republic of China were adopted at the 4th session of the 6th National People's Congress on April 12, 1986, are hereby promulgated and shall come into effect as of January 1, 1987.

中华人民共和国主席
李先念 President of the People's Republic of China: Li Xiannian

《中华人民共和国民法通则》 General Principles of Civil Law of the People's Republic of China

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第一章	基 本	Chapter I Basic Principles
原 则		

第一条	为了保障公 民、法人的合法的民事权 益，正确调整民事关系， 适应社会主义现代化建设 事业发展的需要，根据宪 法和我国实际情况，总结 民事活动的实践经验，制 定本法。	Article 1 To safeguard the legitimate rights and interests of citizens and legal persons, to correctly regulate civil relations and to meet the requirements of the development of socialist modernization, this Law is formulated in accordance with the Constitution and the actualities of China and the practical experience in civil activities drawn.
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第二条	中华人民共 和国民法调整平等主体的 公民之间、法人之间、公	Article 2 The civil legislation of the People's Republic of China regulates the property and personal relations between the subjects with equal
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民和法人之间的财产关系和人身关系。 status, namely, between citizens, between legal persons, and between citizens and legal persons.

第三条 当事人在民事活动中的地位平等。 Article 3 Parties are equal in a civil activity.

第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。 Article 4 Civil activities respect the principles of voluntary participation, equity, valuable consideration and good faith.

第五条 公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。 Article 5 The legitimate rights and interests of citizens and legal persons in civil matters are protected by law and may not be violated by any organization or individual.

第六条 民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。 Article 6 Civil activities must respect the law or, where there are no relevant provisions in the law, State policies.

第七条 民事活动应当尊重社会公德，不得损害社会公共利益，破坏国家经济计划，扰乱社会经济秩序。 Article 7 Civil activities shall respect social morals and shall not harm the public interest, damage State economic plans or disrupt social and economic order.

第八条 在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。 Article 8 Unless otherwise provided by law, the laws of the People's Republic of China apply to civil activities carried out within the territory of the People's Republic of China.

本法关于公民的规定，适用于在中华人民共和国领域内的外国人、无国籍人，法律另有规定的除外。 Unless otherwise provided by law, the provisions of this Law with regard to citizens apply to foreign nationals and stateless persons within the territory of the People's Republic of China.

第二章 公民 (自然人) Chapter II Citizens (Natural Persons)

第一节 民事权利能力和民事行为能力 Section One Capacity for Rights and Capacity for Acts

第九条 公民从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。 Article 9 Commencing at the time of birth and ceasing at the time of death, citizens have capacity for rights and, according to law, enjoy the rights, and bear the obligations, in civil matters.

第十条 公民的民事权利能力一律平等。 Article 10 The capacities for rights of all citizens are equal.

第十一条 十八周岁以上的公民是成年人，具有完全民事行为能力，可以独立进行民事活动，是完全民事行为能力人。

十六周岁以上不满十八周岁的公民，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

Article 11 A citizen having attained the age of eighteen is a majority, has full capacity for acts and may independently engage in civil activities. He is a person of full capacity for acts.

A citizen of sixteen or more years of age who has not attained the age of eighteen and whose main source of livelihood is income obtained from his own work is deemed to be a person of full capacity for acts.

第十二条 十周岁以上的未成年人是限制民事行为能力人，可以进行与他的年龄、智力相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人，由他的法定代理人代理民事活动。

Article 12 A minor of ten or more years of age is a person of limited capacity for acts and may engage in civil activities commensurate with his age and intellect. In other civil activities he is to be represented by his legal agent or obtain the consent of the legal agent.

A minor under the age of ten years is a person of no capacity for acts. Civil activities are to be carried out on his behalf by his legal agent.

第十三条 不能辨认自己行为的精神病人是无民事行为能力人，由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人，可以进行与他的精神健康状况相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

Article 13 A mental patient incapable of discretion in his own acts has no capacity for acts and is to be represented in his civil activities by his legal agent. A mental patient not completely capable of discretion in his own acts is a person of limited capacity for acts and may engage in civil activities commensurate with his state of mental health. In other civil activities he shall be represented by his legal agent, or has obtained the consent of his legal agent.

第十四条 无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

Article 14 The guardian of any person of limited or no capacity for acts is that person's legal agent.

第十五条 公民以他的户籍所在地的居住地为住所，经常居住地与住所

Article 15 The place of permanent residence of a citizen is his domicile. Where a person's place of habitual residence and his place of permanent residence are not the same, the place of habitual

不一致的，经常居住地视为住所。

residence is his domicile.

第二节 监 护 Section Two Guardianship

第十六条 未成年人的父母是未成年人的监护人。

Article 16 The parents of a minor are the guardians of that minor.

未成年人的父母已经死亡或者没有监护能力的，由下列人员中有监护能力的人担任监护人：

If the parents of a minor are deceased or are incapable of guardianship, guardianship shall be undertaken by any of the following persons who are capable of guardianship:

(一) 祖父母、外祖父母；

1. Grandparents (paternal or maternal);

(二) 兄、姐；

2. Elder brothers, elder sisters; and

(三) 关系密切的其他亲属、朋友愿意承担监护责任，经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

3. Other relatives or friends with a close relationship to the minor who are willing to accept guardianship, with the approval of the units of the minor's parents or of the neighborhood or village committee of the locality of domicile of the minor.

对担任监护人有争议的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

In the event of a dispute with regard to guardianship, the units of the parents of the minor or the neighborhood or village committee of the locality of domicile of the minor shall appoint a guardian from among the close relatives of the minor. If legal proceedings are instituted as a result of a disagreement with the appointment, the People's Court shall issue a ruling.

没有第一款、第二款规定的监护人的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

In the absence of guardians as provided in Paragraphs 1 and 2 hereof, the units of the minor's parents or the neighborhood or village committee or department of civil administration of the locality of domicile of the minor shall accept guardianship.

第十七条 无民事行为能力或者限制民事行为能力的精神病人，由下列人员担任监护人：

Article 17 In the case of a mental patient with no or limited capacity for acts, the following persons may act as the guardian of the mental patient in the specified order:

(一) 配偶；

1. Spouse;

(二) 父母；

2. Parents;

(三) 成年子女；

3. Children who have attained majority;

(四) 其他近亲属；

4. Other close relatives; and

(五) 关系密切的其他亲属、朋友愿意承担监护责任，经精神病人的所

5. other relatives or friends with a close relationship to the mental patient who are willing to accept guardianship and who have the consent of the mental patient's unit or of the neighborhood or

在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款规定的监护人的，由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条 监护人应当履行监护职责，保护被监护人的人身、财产及其他合法权益，除为被监护人的利益外，不得处理被监护人的财产。

监护人依法履行监护的权利，受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的，应当承担民事责任；给被监护人造成财产损失的，应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请，撤销监护人的资格。

第十九条 精神病人的利害关系人，可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的，根据他健康恢复的状况，经本人或者利害关系人申请，人民法院可以宣告他为限制民事行为能力人或者完

village committee of the locality in which the mental patient is domiciled.

In the event of a dispute with regard to guardianship, the unit of the mental patient or the neighborhood or village committee of the locality in which the mental patient is domiciled shall appoint a guardian from among the close relatives of the mental patient. If legal proceedings are instituted as a result of a disagreement with the appointment, the People's Court shall render a ruling.

In the absence of a guardian as provided in Paragraph 1 hereof, the mental patient's unit or the neighborhood or village committee or department of civil administration of the locality of domicile of the mental patient shall accept guardianship.

Article 18 A guardian shall perform his guardianship duties and protect the person, property and other legitimate rights and interests of his ward, and may not dispose of the ward's property unless for the interests of the ward.

A guardian is protected by law in his exercise, according to the law, of his guardianship rights. Should a guardian not perform his guardianship duties or should he violate the legitimate rights and interests of his ward, he shall bear responsibility, and shall compensate for the loss caused to the property of the ward if any. The People's Court may disqualify the guardian upon application by a relevant person or unit.

Article 19 An interested party may apply to the People's Court to have a mental patient declared a person of limited or no capacity for acts.

A person declared by the People's Court to be a person of limited or no capacity for acts may have full or limited capacity for acts proclaimed by the People's Court, depending on that person's state of recovery and on the basis of an application by the person himself or by an interested party.

全民事行为能力人。

第三节 宣告失踪和宣告死亡

Section Three Declaration of Disappearance or Death

第二十条 公民下落不明满二年的，利害关系人可以向人民法院申请宣告他为失踪人。

Article 20 If the whereabouts of a citizen remain unknown for a full two years, an interested party may apply to the People's Court to have the citizen declared missing.

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

If the citizen's whereabouts are unknown during a war, the period for which his whereabouts are unknown shall be calculated from the date of conclusion of the war.

第二十一条 失踪人的财产由他的配偶、父母、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的，没有以上规定的人或者以上规定的人无能力代管的，由人民法院指定的人代管。

Article 21 The property of a missing person is to be administered by the person's spouse, parents, children having attaining majority or other close relative or friend. In the event of a dispute with regard to administration, or in the absence of a person as provided above or where a person provided above is incapable of administering the property, the People's Court is to appoint an administrator.

失踪人所欠税款、债务和应付的其他费用，由代管人从失踪人的财产中支付。

Taxes owed, debts and other moneys due by the missing person are to be paid by the administrator from the property of the missing person.

第二十二条 被宣告失踪的人重新出现或者确知他的下落，经本人或者利害关系人申请，人民法院应当撤销对他的失踪宣告。

Article 22 If a person who has been declared missing reappears or if his whereabouts are ascertained, the People's Court shall, upon application by the person himself or by an interested party, cancel the declaration of his disappearance.

第二十三条 公民有下列情形之一的，利害关系人可以向人民法院申请宣告他死亡：

Article 23 An interested party may apply to the People's Court to have a citizen declared dead if

(一) 下落不明满四年的；

1. The person's whereabouts are unknown for a full four years; or

(二) 因意外事故下落不明，从事故发生之日起满二年的。

2. The person has remained untraceable as a result of an accident for a full two years from the date of occurrence of the accident.

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

If disappearance occurs during a war, the period for which the person's whereabouts are unknown shall be calculated from the date of conclusion of the war.

第二十四条 被宣告

Article 24 If a person declared dead reappears or if

死亡的人重新出现或者确知他没有死亡，经本人或者利害关系人申请，人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

it is ascertained that the person has not died, the People's Court shall, upon application by the person himself or by an interested party, cancel the declaration of his death.

Juristic acts carried out by a person with capacity for acts during a period in which the person is declared dead are valid.

第二十五条 被撤销死亡宣告的人有权请求返还财产。依照继承法取得他的财产的公民或者组织，应当返还原物；原物不存在的，给予适当补偿。

Article 25 A person, the declaration of whose death has been cancelled, has the right to request return of his property. Any citizen or organization which has acquired the person's property in accordance with inheritance laws shall return the original property or, if the original property no longer exists, shall make appropriate compensation.

第四节 个体工商户，农村承包经营户

Section Four Individual Businesses and Rural Contracting Households

第二十六条 公民在法律允许范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

Article 26 A citizen who, within the scope permitted by the law and following examination, approval and registration legally, engages in industrial or commercial business is an individual business, and may adopt a business name.

第二十七条 农村集体经济组织的成员，在法律允许范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

Article 27 A member of a collective rural economic organization who, within the scope permitted by the law, engages in commodity business in accordance with the provisions of a contract is a rural contracting household.

第二十八条 个体工商户，农村承包经营户的合法权益，受法律保护。

Article 28 The legitimate rights and interests of individual businesses and rural contracting households are protected by law.

第二十九条 个体工商户，农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

Article 29 The debts of an individual business or rural contracting household shall, where operation is by an individual, be undertaken with the property of the individual or, where operation is by a household, be undertaken with the property of the household.

第五节 个人合伙

Section Five Partnership between Individuals

第三十条 个人合伙是指两个以上公民按照协议，各自提供资金、实

Article 30 Partnership between individuals refers to two or more citizens operating in partnership or working together in accordance with an agreement, with each contributing such things as funds,

物、技术等，合伙经营、共同劳动。

第三十一条 合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

Article 31 The partners shall conclude a written agreement on such matters as amount of capital contribution, distribution of profits, assignment of debts, entry into and withdrawal from the partnership, and termination of the partnership.

第三十二条 合伙人投入的财产，由合伙人统一管理和使用。合伙经营积累的财产，归合伙人共有。

Article 32 Property invested by the partners is to be administered and used jointly by the partners. Property accumulated through the operation of a partnership is owned jointly by the partners.

第三十三条 个人合伙可以起字号，依法经核准登记，在核准登记的经营范围內从事经营。

Article 33 A partnership between individuals may adopt a business name and, following examination, approval and registration according to the law, may operate within the scope of business approved and registered.

第三十四条 个人合伙的经营活动，由合伙人共同决定，合伙人有执行或监督的权利。合伙人可以推举负责人。合伙负责人和其他人员的经营活 动，由全体合伙人承担民事责任。

Article 34 The operation of a partnership between individuals is to be decided jointly by the partners. The partners have both executive and supervisory rights. The partners in a partnership may elect a managing partner. Civil liability for the operation of the managing partner and other personnel is borne jointly by all the partners.

第三十五条 合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

Article 35 The debts of a partnership are to be discharged by the partners with their respective property, according to their capital contribution proportion or the terms of an agreement. The partners are to bear joint and several liability for the debts of their partnership, unless otherwise provided by law. Any partner whose repayment of a debt of the partnership exceeds his personal liability has the right to seek compensation from the other partners.

第三章 法人 Chapter III Legal Persons

第一节 一般规定 Section One General Provisions

第三十六条 法人是具有民事权利能力和民事行为能力，依法独立享有

Article 36 A legal person is an organization which possesses capacity for rights and capacity for acts which, according to the law, independently enjoys

<p>民事权利和承担民事义务的组织。</p>	<p>the rights, and assumes the obligations, in civil matters.</p>
<p>法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。</p>	<p>The capacity for rights and capacity for acts of a legal person arise from the time of establishment of the legal person and cease to exist upon the termination of the legal person.</p>
<p>第三十七条 法人应当具备下列条件： （一）依法成立； （二） 有必要的财产或者经费； （三） 有自己的名称、组织机构和场所； （四） 能够独立承担民事责任。</p>	<p>Article 37 A legal person shall meet the following conditions: 1. It shall be established legally; 2. It shall possess necessary property or funds; 3. It shall have its own name, organizational structure and premises; and 4. It shall be capable of independently bearing civil liability.</p>
<p>第三十八条 依照法律或者法人组织章程规定，代表法人行使职权的负责人，是法人的法定代表人。</p>	<p>Article 38 A person who, in accordance with the law or the articles of association of the legal person, is responsible for representing the legal person in the exercise of its duties and functions is the legal representative of the legal person.</p>
<p>第三十九条 法人以它的主要办事机构所在地为住所。</p>	<p>Article 39 The location of the principal office of a legal person is the domicile of the legal person.</p>
<p>第四十条 法人终止，应当依法进行清算，停止清算范围外的活动。</p>	<p>Article 40 Upon termination, a legal person shall carry out liquidation and cease activities which are beyond the scope of the liquidation.</p>
<p>第二节 企 业 法 人</p>	<p>Section Two Corporations</p>
<p>第四十一条 全民所有制企业、集体所有制企业有符合国家规定的资金数额，有组织章程、组织机构和场所，能够独立承担民事责任，经主管机关核准登记，取得法人资格。</p>	<p>Article 41 Enterprises under the ownership of the whole people or under collective ownership which have funds in conformity with State regulations, which have articles of association, an organizational structure and premises, and which are capable of independently assuming civil liability obtain legal personality upon examination, approval and registration by the competent authority.</p>
<p>在中华人民共和国领域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，具备法人条件的，依法经工商行政管理机关核准登记，取得中</p>	<p>Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures and wholly foreign-owned enterprises established within the territory of the People's Republic of China which meet the conditions of a legal person obtain legal personality following examination, approval and registration according to the law by the industrial and</p>

国法人资格。 commercial administrative authorities.

第四十二条 企业法人应当在核准登记的经营范围内从事经营。 Article 42 A corporation shall operate within its approved and registered scope of business.

第四十三条 企业对它的法定代表人和其他工作人员的经营行为，承担民事责任。 Article 43 A corporation shall assume civil liability for the operation of its legal representative or other employees.

第四十四条 企业法人分立、合并上或有其他重要事项变更，应当向登记机关办理登记并公告。 Article 44 Division, merger or any other change in major matters of a corporation shall be registered with and announced by the registration authority. Following division or merger of a corporation, its rights and obligations shall be enjoyed and assumed by the subsequently formed corporation.

企业法人分立、合并，它的权利和义务由变更后的法人享有和承担。

第四十五条 企业法人由于下列原因之一终止： Article 45 A corporation terminates for:

1. legal cancellation;
2. dissolution;
3. legal declaration of bankruptcy; or
4. any other reason.

(一) 依法被撤销;

(二) 解散;

(三) 依法宣告破产;

(四) 其他原因。

第四十六条 企业法人终止，应当向登记机关办理注销登记并公告。 Article 46 A corporation terminated shall be deregistered and announced by the registration authority.

第四十七条 企业法人解散，应当成立清算组织，进行清算。 Article 47 Upon dissolution of a corporation, a liquidation group shall be established to carry out liquidation.

企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。 If a corporation has been cancelled or declared bankrupt, the competent authority or People's Court shall organize the relevant authorities and personnel to form a liquidation group to carry out liquidation.

第四十八条 全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经 Article 48 A corporation under the ownership of the whole people assumes civil liability with the property provided to it by the State for operation and management. A corporation under collective ownership assumes civil liability with the property of the enterprise. A corporation under Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or whole foreign ownership assumes civil

营企业法人和外资企业法
人以企业所有的财产承担
民事责任，法律另有规定的
除外。

第四十九条 企业法
人有下列情形之一的，除
法人承担责任外，对法定
代表人可以给予行政处
分、罚款，构成犯罪的，
依法追究刑事责任：

(一) 超出登记机关
核准登记的经营范围从事
非法经营的；

(二) 向登记机关、
税务机关隐瞒真实情况、
弄虚作假的；

(三) 抽逃资金、隐
匿财产逃避债务的；

(四) 解散、被撤
销、被宣告破产后，擅自
处理财产的；

(五) 变更、终止时
不及时申请办理登记和公
告，使利害关系人遭受重
大损失的；

(六) 从事法律禁
止的其他活动，损害国家
利益或者社会公共利益
的。

liability with all the property of its enterprise, unless otherwise provided by the law.

Article 49 Should any of the following circumstances apply to a corporation, it shall assume liability and, in addition, its legal representative may be subject to administrative sanction or a fine; if a crime is constituted, criminal liability shall be prosecuted legally:

1. carrying out illegal operation beyond the scope of business approved and registered by the registration authority;

2. concealing the facts from the registration or tax authorities, or practicing fraud;

3. secretly withdrawing funds or hiding property for evading debts;

4. disposing of property without authorization following dissolution, cancellation or declaration of bankruptcy;

5. failing to apply immediately for the registration and announcement of a change or of termination, causing an interested party to sustain substantial loss; and

6. engaging in other activities prohibited by law, causing damage to the State or public interest.

第三节 机关、事业 单位和社会团体法人

Section Three State Organs, Public Institutions and Associations as Legal Persons

第五十条 有独立经
费的机关从成立之日起，
具有法人资格。

具备法人条件的事业
单位、社会团体，依法不
需要办理法人登记的，从
成立之日起，具有法人资
格；依法需要办理法人登
记的，经核准登记，取得
法人资格。

Article 50 A State organ with independent funds obtains legal personality from the date of its establishment.

An institution or association which meets the conditions of a legal person obtains legal personality from the date of its establishment where registration as a legal person is not required; otherwise, it obtains legal personality following examination, approval and registration.

第四节 联 营

Section Four Joint Operations

<p>第五十一条 企业之间或者企业、事业单位之间联营，组成新的经济实体，独立承担民事责任，具备法人条件的，经主管机关核准登记，取得法人资格。</p>	<p>Article 51 A new economic entity resulting from a joint operation between enterprises or between an enterprise and an institution, which independently assumes civil liability and which meets the conditions of a legal person, obtains legal personality following examination, approval and registration by the competent authority.</p>
<p>第五十二条 企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。</p>	<p>Article 52 Where a joint operation between enterprises or an enterprise and an institution is managed jointly but does not meet the conditions of a legal person, each party to the joint operation, in accordance with its capital contribution proportion or the terms of an agreement, assumes civil liability with its respective property or with the operated and managed property. Where joint and several liability is to be borne according to law or the terms of an agreement, the parties assume joint and several liability.</p>
<p>第五十三条 企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。</p>	<p>Article 53 Where a joint operation between enterprises or an enterprise and an institution is managed independently in accordance with the provisions of a contract, its rights and obligations are to be provided by the contract and each party is to assume its own civil liability.</p>
<p>第四章 民事法律行为和代理</p>	<p>Chapter IV Juristic Acts and Agency</p>
<p>第一节 民事法律行为</p>	<p>Section One Juristic Acts</p>
<p>第五十四条 民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。</p>	<p>Article 54 Juristic acts are the legitimate acts of a citizen or legal person in creating, modifying or terminating the rights and obligations in civil matters.</p>
<p>第五十五条 民事法律行为应当具备下列条件： （一） 行为人具有相应的民事行为能力； （二） 意思表示真实； （三） 不违反法律或者社会公共利益。</p>	<p>Article 55 A juristic act shall meet the following conditions: 1. the actor has the appropriate capacity for acts; 2. the manifestation of intention is true; and 3. it does not violate the law or the public interest.</p>
<p>第五十六条 民事法</p>	<p>Article 56 A juristic act may be in written, oral or</p>

律行为可以采用书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

any other form. Where the law provides for a particular form, such provision shall apply.

第五十七条 民事法律行为从成立时起具有法律约束力。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

Article 57 A juristic act is legally binding from the time it originates. An actor may not rescind or modify an act without reference to the law or without obtaining the consent of the other party.

第五十八条 下列民事行为无效：

Article 58 The following civil acts are void:

(一) 无民事行为能力人实施的；

1. those performed by a person without capacity for acts;

(二) 限制民事行为能力人依法不能独立实施的；

2. those which, according to the law, may not be performed independently by a person with limited capacity for acts;

(三) 一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；

3. those performed by way of one party cheating, coercing or taking advantage of the other party's precarious situation, thereby causing the other party to act against his true intention;

(四) 恶意串通，损害国家、集体或者第三人利益的；

4. those performed in malicious collusion, harming the interests of the State, collective or a third party;

(五) 违反法律或者社会公共利益的；

5. those which violate the law or the public interest;

(六) 经济合同违反国家指令性计划的；

6. economic contracts which contravene State planning directives; and

(七) 以合法形式掩盖非法目的的；

7. those which conceal illegal aims in a legal form.

无效的民事行为，从行为开始起就没有法律约束力。

Void civil acts are void ab initio.

第五十九条 下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

Article 59 One of the parties has the right to request the People's Court or an arbitration institute to modify or rescind the following acts:

(一) 行为人对行为内容有重大误解的；

1. an act where the actor seriously misunderstands the content of the act; and

(二) 显失公平的。

2. an act where there is a clear loss of fairness.

被撤销的民事行为从行为开始起无效。

Rescinded civil acts are void ab initio.

第六十条 民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

Article 60 Where part of a civil act becomes void, without affecting the validity of its other parts, the other parts remain valid.

第六十一条 民事行为被确认为无效或者被撤销后，当事人因该行为取得的财产，应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，双方都有过错的，应当各自承担相应的责任。

Article 61 After a civil act is determined void or is rescinded, the party concerned shall return the property obtained as a result of the act to the party which has suffered a loss. The party at fault shall compensate the other party for any resulting loss. Where both parties are at fault, each shall bear respective liability.

双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

Where both parties collude in a civil act, harming the interest of the State or collective or any other third party, both parties shall be required to hand over the property they have acquired, ownership of which shall revert to the State or collective, or return it to the third party.

第六十二条 民事法律行为可以附条件，附条件的民事法律行为在符合所附条件时生效。

Article 62 Conditions may be attached to juristic acts. Juristic acts with conditions attached become valid upon meeting such conditions.

第二节 代理 Section Two Agency

第六十三条 公民、法人可以通过代理人实施民事法律行为。

Article 63 Citizens and legal persons may perform juristic acts through their agent.

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。

An agent shall, within the scope of his agency, perform juristic acts in the name of the principal. The principal is to assume civil liability for the agency acts of the agent.

依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

Juristic acts which, according to law or express agreement between the parties, must be performed by the principal may not be performed by an agent.

第六十四条 代理包括委托代理、法定代理和指定代理。

Article 64 Agencies include authorized agency, legal agency and designated agency.

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定

An authorized agent exercises his agency rights upon the principal's appointment. A legal agent exercises his agency rights by the law and a designated agent exercises his agency rights upon appointment by the People's Court or appointing

定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

第六十五条 民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。

书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或盖章。

委托书授权不明的，被代理人应当向第三人承担民事责任，代理人负连带责任。

第六十六条 没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。

代理人不履行职责而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通、损害被代理人的利益的，由代理人和第三人负连带责任。

第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

第六十七条 代理人知道被委托代理的事项违

unit.

Article 65 The authorized agency for a juristic act may be in written or oral form. Where the law provides for written form, such provision shall apply.

The power of attorney for an authorized agency in written form shall clearly state the personal or business name of the agent, the matters, authority and duration of agency and shall bear the signature or seal of the principal.

If the authorization is not clear in the power of attorney, the principal shall bear civil liability toward any third parties, and the agent shall bear joint and several liability.

Article 66 A principal assumes civil liability for acts without agency rights, beyond agency rights or after termination of agency power only after ratifying the acts. The actor assumes civil liability for acts not ratified by the principal. The principal's failure to deny a civil act which he is aware of being performed in his name by another person is to be deemed to be done with the principal's consent. If an agent does not fulfill his duties and thereby causes damage to the principal, he shall assume civil liability.

If an agent and a third party collude to harm the interests of the principal, the agent and the third party shall bear joint and several liability.

If a third party performs a civil act with an actor while aware that the actor is without or beyond agency rights or that agency rights terminate, causing damage to another person, the third party and the actor shall bear joint and several liability.

Article 67 If an agent knows that the matters in which he is authorized to act as agent are illegal

法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人和代理人负连带责任。

and nevertheless carries out his agency acts or if a principal is aware that the agency acts of an agent are illegal and fails to object, the principal and the agent shall bear joint and several liability.

第六十八条 委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

Article 68 If an authorized agent needs to delegate a sub-agent for the interests of a principal, he shall obtain the prior consent of the principal. If he does not obtain the prior consent of the principal, he shall promptly notify the principal ex post. In the event that the principal does not agree, the agent shall bear civil liability for the acts of his sub-agent, except where the sub-agent has been delegated under emergency conditions for protecting the interests of the principal.

第六十九条 有下列情形之一的，委托代理终止：

- (一) 代理期间届满或者代理事务完成；
- (二) 被代理人取消委托或者代理人辞去委托；
- (三) 代理人死亡；
- (四) 代理人丧失民事行为能力；
- (五) 作为被代理人或者代理人的法人终止。

Article 69 An authorized agency terminates if:

1. the period of agency expires or the matters authorized to the agent is completed;
2. the principal cancels the authorization or the agent resigns from the authorization;
3. the agent deceases;
4. the agent loses his capacity for acts; or
5. the legal person acting as the principal or the agent terminates.

第七十条 有下列情形之一的，法定代理或者指定代理终止：

- (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；

Article 70 A legal agency or designated agency terminates if:

1. the principal obtains or resumes his capacity for acts;
2. the principal or agent deceases;
3. the agent loses his capacity for acts;
4. the People's Court or designating unit cancels the designated agency; or
5. the guardianship relationship between a principal and an agent distinguishes due to any other reason.

(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	Chapter V Rights in Civil Matters
第一节 财产所有权和与财产所有权有关的财产权	Section One Property Ownership and Related Property Rights
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。	Article 71 Property ownership refers to the rights of an owner, according to the law, to possess, use, benefit from and dispose of his own property.
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。	Article 72 Property ownership may not be acquired in violation of the law. The ownership of property acquired by contract or any other legal means is transferred upon its delivery, unless otherwise provided by the law or by agreement between the parties.
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。	Article 73 State property is owned by the whole people. State property is sacred and inviolable. It is prohibited for any organization or individual to occupy, loot, privately divide, withhold or damage State property.
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	Article 74 The property of a collective organization of the working people belongs to the collective, including: 1. land, forests, mountains, grasslands, wastelands, siltbanks, etc., provided by law as being owned by the collective; 2. property of collective economic organizations; 3. buildings, reservoirs, irrigation and water conservation installations and educational, scientific, cultural, health and sports facilities, etc., which are owned by the collective; and 4. other property owned by the collective. Land owned by a collective is owned collectively by the village peasants in accordance with the law, and is operated and managed by an agricultural collective economic organization such as the village agricultural production cooperative or by the village committee. Land which is already owned by a

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、破怀或者非法查封、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、破怀或者非法查封、扣押、冻结、没收。

第七十六条 公民依法享有财产继承权。

第七十七条 社会团体包括宗教团体的合法财产受法律保护。

第七十八条 财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的

township peasants' collective economic organization may be collectively owned by the township peasants.

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

Article 76 Citizens enjoy the right of property inheritance legally.

Article 77 The lawful property of associations, including religious associations, is protected by law.

Article 78 Property may be owned jointly by two or more citizens or legal persons.

Co-ownership is divided into co-ownership by share and co-ownership-in-common. Co-owners by share enjoy rights and bear obligations in the joint property according to their respective shares. Co-owners-in-common enjoy rights and bear obligations in the joint property.

Every co-owner of property owned by share has the right to demand the separation or assignment of his share. When selling a share, however, the other co-owners shall have a pre-emptive right of purchase on equal terms.

权利。

第七十九条 所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

第八十条 国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

第八十一条 国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。

Article 79 Buried or hidden objects, the ownership of which is unclear, belong to the State. Units taking over such objects shall commend or reward the unit or individual which hands in the objects. Lost articles, flotsam or lost domestic animals which are found shall be returned to their owner who shall compensate the finder for any costs incurred in doing so.

Article 80 Land owned by the State may, in accordance with the law, be used by a unit under ownership of the whole people or be designated for use by a collectively-owned unit. The State protects the right to use and benefit from the land. The unit using the land is obliged to administer, protect and reasonably use the land.

The legal right of a citizen or collective to manage under contract land which is owned by a collective or the State and used by a collective is protected by law. The rights and obligations of both parties to the contract shall be stipulated in the contract legally.

Land may not be traded, leased, mortgaged or otherwise illegally transferred.

Article 81 Natural resources such as forests, mountains, grasslands, wastelands, siltbanks and waters which are owned by the State may, in accordance with the law, be used by a unit under the ownership of the whole people or be designated for use by a collectively-owned unit. The State protects the right to use and benefit from such resources. The unit utilizing the resource is obliged to administer, protect and reasonably use the resource.

Mineral resources owned by the State may, in accordance with the law, be exploited by a unit under the ownership of the whole people or by a collectively-owned unit. They may also, in accordance with the law, be extracted by a citizen. The state protects lawful mining rights.

公民、集体依法对集体所有的或者国家所有由集体使用森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。

承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原，荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

The lawful rights of citizens and collectives to manage under contract collectively-owned or State-owned, collectively-used forests, mountains, grasslands, wastelands, siltbanks and waters are protected by law.

The rights and obligations of both contracting parties are stipulated in the contract legally. Mineral deposits and rivers owned by the State, the forest-land, mountains, grasslands, wastelands and siltbanks owned by the State and provided by law as being owned by a collective may not be illegally traded, leased, mortgaged or otherwise illegally transferred.

第八十二条 全民所有制企业对国家授予它经营管理的财产依法享有经营权，受法律保护。

Article 82 The lawful right of an enterprise under the ownership of the whole people to operate property of which the operation and management are authorized by the State is protected by law.

第八十三条 不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。

Article 83 Neighbors on real estate shall correctly resolve their relationships with regard to such matters as damming of water, drainage, access, ventilation and natural lighting according to the principles of facilitating production, making life easier, unity and mutual assistance and equality and fairness. Should one party obstruct or cause loss to his neighbor, he shall cease the infringement, remove the obstacle and compensate for the loss.

第二节 债权

Section Two Creditors' Rights

第八十四条 债是按照合同的约定或者依照法律的规定，在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人，负有义务的人是债务人。

Article 84 Debt is the particular relationship involving rights and obligations created between parties according to a contract or the law. The party which enjoys rights is the creditor and the party which bears obligations is the debtor. A creditor has the right to demand that a debtor fulfils its obligations according to a contract or the law.

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

第八十五条 合同是 Article 85 A contract is an agreement between

当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

parties which creates, modifies or terminates a civil relationship. A contract established legally is protected by law.

第八十六条 债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

Article 86 If there are two or more creditors, each is entitled to rights in accordance with its specified share. If there are two or more debtors, each shall bear obligations in accordance with its specified share.

第八十七条 债权人或者债务人一方人数为二人以上的，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

Article 87 If the number of creditors or the number of debtors is two or more, then, in accordance with the provisions of the law or agreement between the parties, each creditor enjoying joint rights has the right to demand fulfillment of obligations by the debtor. Each debtor bearing joint liability shall be obliged to fully discharge the debt. The party which has fulfilled the obligation has the right to demand that the other debtors under joint liability pay the portion they should bear.

第八十八条 合同的当事人应当按照合同的约定，全部履行自己的义务。

Article 88 The parties to a contract shall fully discharge their obligations as stipulated by the contract.

合同中有关质量、期限、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

If the contract stipulations concerning quality, duration, location or price are unclear and cannot be determined by reference to relevant articles in the contract and if the parties, moreover, are unable to reach agreement through discussion, the following provisions shall apply:

(一) 质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

1. If the quality requirements are unclear, the contract shall be performed in accordance with State quality standards. In the absence of State quality standards, it shall be performed in accordance with usual standards.

(二) 履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

2. If the term of duration is unclear, the debtor may fulfill its obligations to the creditor at any time. The creditor may also demand at any time that the debtor fulfill its obligations, but shall allow the other party the necessary preparatory time.

(三) 履行地点不明

3. If the place of performance is unclear and the payment of money is involved, performance shall be in the place where the party receiving the payment is located. If the place of performance is

确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

(四) 价格约定不明确，按照国家规定的价格履行；没有国家规定价格的，参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的，完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的，当事人都有使用的权利。

第八十九条 依照法律的规定或者按照当事人的约定，可以采用下列方式担保债务的履行：

(一) 保证人向债权人保证债务人履行债务，债务人不履行债务的，按照约定由保证人履行或者承担连带责任；保证人履行债务后，有权向债务人追偿。

(二) 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的，债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

(三) 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行债务的，无权要求返还定金；接受定金的一方不履行债务的，应当双倍返还定金。

(四) 按照合同约定

unclear in other respects, performance shall be in the place where the party fulfilling the obligation is located.

4. If the agreement with regard to price is unclear, the contract shall be performed in accordance with a price set by the State. In the absence of a State-set price, the contract shall be performed with reference to the market price or the price of a similar item or the standard of payment for a similar category of labor.

If a contract does not contain an agreement with regard to patent application rights, the party which accomplishes a discovery or invention is entitled to the right to apply for patent.

If a contract does not contain an agreement with regard to rights to use scientific or technical results, the parties are entitled to such rights.

Article 89 In accordance with the provisions of the law or as agreed between the parties, the following methods may be adopted to guarantee the discharge of a debt:

1. If a guarantor has guaranteed to a creditor the discharge by a debtor of a debt and the debtor fails to discharge such debt, the guarantor shall, in accordance with the agreement, fulfill the obligation or bear joint and several liability. After it fulfils the obligation, the guarantor has the right to seek compensation from the debtor.

2. A debtor or third party may provide certain assets as security. If the debtor fails to discharge its debt, the creditor has the right to receive priority in payment by, according to the provisions of the law, converting the security to its value or by selling the secured assets.

3. One party may, within the scope provided by law, pay earnest money to the other party. Following discharge of the debt by the debtor, the earnest money shall be deducted from the price or refunded. If the party which paid the earnest money fails to discharge the debt, it shall have no right to demand the refund of the earnest money. If the party which accepted the earnest money fails to fulfill its obligations, it shall repay double the original earnest money.

4. If one party possesses, in accordance with a contract, the property of another party and the other party fails to pay the sum of money agreed in

一方占有对方的财产，对方不按照合同给付应付款项超过约定期限的，占有人有权留置该财产，依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

the contract within the time agreed, the party in possession of the property has the right to retain the property and, according to law, to receive priority in payment by converting the property to its value or by selling the property.

第九十条 合法的借贷关系受法律保护。

Article 90 Lawful creditor-debtor relationships are protected by law.

第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

Article 91 If one party to a contract assigns, in full or in part, its rights and obligations under the contract to a third party, it must obtain the agreement of the other party to the contract and may not seek to make a profit. Any contract which, according to the law, had to be approved by the State must be re-approved by the original approval authority, except where otherwise provided by law or the contract.

第九十二条 没有合法根据，取得不当利益，造成他人损失的，应当将取得的不当利益返还受损失的人。

Article 92 If improper benefits are obtained without legal basis and loss is caused to another party, the illegally gained profits must be returned to the party which suffered such loss.

第九十三条 没有法定的或者约定的义务，为避免他人利益受损失进行管理或者服务的，有权要求受益人偿付由此而支付的必要费用。

Article 93 If a party undertakes management or a service without a legal or agreed obligation in order to avoid harm to the interests of another party, it has the right to demand from the benefiting party compensation for the necessary expenses incurred thereby.

第三节 知识产权

Section Three Intellectual Property Rights

第九十四条 公民、法人享有著作权（版权），依法有署名、发表、出版、获得报酬等权利。

Article 94 Citizens and legal persons enjoy rights of authorship (copyright). According to law, they have such rights as those to sign, issue, publish and be remunerated.

第九十五条 公民、法人依法取得的专利权受法律保护。

Article 95 Patent rights obtained according to the law by citizens or legal persons are protected by law.

第九十六条 法人、

Article 96 The exclusive right to use a trademark

个体工商户、个人合伙依法取得商标专用权受法律保护。
obtained, according to the law, by a legal person, individual business or a partnership between individuals is protected by law.

第九十七条 公民对自己的发现享有发现权。发现人有权申请领取发现证书、奖金或者其他奖励。
Article 97 Citizens enjoy the right of discovery with regard to their own discoveries. A discoverer has the right to apply for and obtain a certificate of discovery, a monetary award or other award. Citizens have the right, with regard to their own inventions or other scientific and technical achievements, to apply for and obtain a certificate of honor, monetary award or other award.

公民对自己的发明或者其他科技成果, 有权申请领取荣誉证书、奖金或者其他奖励。
Citizens have the right, with regard to their own inventions or other scientific and technical achievements, to apply for and obtain a certificate of honor, monetary award or other award.

第四节 人身权 Section Four Personal Rights

第九十八条 公民享有生命健康权。
Article 98 Citizens enjoy the right to life and to health.

第九十九条 公民享有姓名权, 有权决定、使用和依照规定改变自己的姓名, 禁止他人干涉、盗用、假冒。
Article 99 Citizens enjoy the right to a name and have the right to determine, use and, in accordance with regulations, to change their own names. It is prohibited for a person to interfere with, fraudulently use or to pass himself off under another citizen's name.

法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。
Legal persons, individual businesses and partnerships between individuals enjoy the right to a business name. Corporations, individual businesses and partnerships between individuals have the right to use and, in accordance with the law, to transfer their own business names.

第一百条 公民享有肖像权, 未经本人同意, 不得以营利为目的使用公民的肖像。
Article 100 Citizens enjoy the right of portrait. A citizen's portrait may not be used for the purpose of obtaining a profit without the permission of the citizen himself.

第一百零一条 公民、法人享有名誉权, 公民的人格尊严受法律保护, 禁止用侮辱、诽谤等方式损害公民、法人的名誉。
Article 101 Citizens and legal persons enjoy the right of reputation. The human dignity of citizens is protected by law. It is prohibited to harm the reputation of a citizen or legal person by such means as insult or libel.

第一百零二条 公民、法人享有荣誉权, 禁止非法剥夺公民、法人的荣誉称号。
Article 102 Citizens and legal persons enjoy the right to honor. It is prohibited to illegally strip a citizen or legal person of an honorary title.

第一百零三条 公民 Article 103 Citizens enjoy marriage autonomy.

享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

Mercenary marriages, arranged marriages and other acts which interfere with freedom in marriage are prohibited.

第一百零四条 婚姻、家庭、老人、母亲和儿童受法律保护。残疾人的合法权益受法律保护。

Article 104 Marriage, the home, old people, mothers and children are protected by law. The legitimate rights and interests of disabled persons are protected by law.

第一百零五条 妇女享有同男子平等的民事权利。

Article 105 Women enjoy rights in civil matters equal to those of men.

第六章 民事责任 Chapter VI Civil Liability

第一节 一般规定 Section One General Provisions

第一百零六条 公民、法人违反合同或者不履行其他义务的，应当承担民事责任。公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的应当承担民事责任。没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

Article 106 A citizen or legal person who violates a contract or fails to fulfill other obligations shall assume civil liability. A citizen or legal person who through his own fault infringes upon State or collective property or upon another person's property, or harms another person, shall assume civil liability. If he is not at fault but the law stipulates that he shall assume civil liability, he shall assume such liability.

第一百零七条 因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

Article 107 If a contract is unable to be performed, or damage is caused to another person, for reasons of force majeure, civil liability is not borne unless otherwise provided by the law.

第一百零八条 债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

Article 108 Debts shall be fully discharged. If a debtor is temporarily unable to repay a debt, he may, with the consent of the creditor or as a result of a ruling by the People's Court, repay the debt in installments. If he is capable of repaying the debt but refuses to do so, the People's Court shall issue a verdict to enforce the repayment.

第一百零九条 因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔

Article 109 If a person suffers damage as a result of preventing or stopping an infringement upon State or collective property or upon the property or body of another person, the person committing the infringement shall be liable to compensate. The

偿责任，受益人也可以给予适当的补偿。

beneficiary may also provide appropriate compensation.

第一百一十条 对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。

Article 110 If it is necessary to investigate and determine administrative liability with regard to a citizen or legal person bearing civil liability, such administrative liability shall be investigated and determined. If a criminal offence is constituted, the criminal liability of the citizen or of the legal representative of the legal person shall be investigated and determined.

第二节 违反合同的民事责任

Section Two Civil Liability for Breach of Contract

第一百一十一条 当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

Article 111 If one party fails to fulfill its contractual obligations or if the performance of such contractual obligations fails to comply with the agreed conditions, the other party has the right to demand performance or to take remedial measures and also has the right to claim compensation for loss.

第一百一十二条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

Article 112 The liability for compensation of a party in breach of contract shall correspond to the loss incurred as a result by the other party.

当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

The parties may agree in the contract that if one party breaches the contract it shall pay a fixed amount to the other party as a default payment. The parties may also agree in the contract on a method of calculation of compensation for breach of contract.

第一百一十三条 当事人双方都违反合同的，应当分别承担各自应负的民事责任。

Article 113 In the case of breach of a contract by both parties to the contract, each party shall bear its respective civil liability.

第一百一十四条 当事人一方因另一方违反合同受到损失的，应当及时采取措施防止损失的扩大；没有及时采取措施致使损失扩大的，无权就扩大的损失要求赔偿。

Article 114 If one party suffers loss as a result of breach of contract by the other party, it shall take immediate measures to prevent the loss from extending. If it fails to take immediate measures and the loss does extend, it shall have no right to claim compensation for the additional loss.

第一百一十五条 合

Article 115 Modification or termination of a contract

同的变更或者解除，不影响当事人要求赔偿损失的权利。

does not affect the rights of the parties to claim compensation for loss.

第一百一十六条 当事人一方由于上级机关的原因，不能履行合同义务的，应当按照合同约定向另一方赔偿损失或者采取其补救措施，再由上级机关对它因此受到的损失负责处理。

Article 116 If a party is unable to fulfill its contractual obligations as a result of the acts of a higher authority, it shall, as agreed in the contract, compensate the other party or adopt other remedial measures, following which the higher authority shall be responsible for handling the loss so incurred.

第三节 侵权的民事责任

Section Three Civil Liability for Infringement

第一百一十七条 侵占国家的、集体的财产或者他人财产的，应当返还财产，不能返还财产的，应当折价赔偿。

Article 117 If State or collective property or the property of another person is seized, it shall be returned. If the property is unable to be returned, monetary compensation of an equivalent value shall be paid.

损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。

If State or collective property or the property of another person is damaged, such property shall be restored to its original state or monetary compensation of an equivalent value shall be paid. Should the victim sustain further serious loss as a result, the infringer shall also pay compensation for such loss.

受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

第一百一十八条 公民、法人的著作权（版权），专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

Article 118 If a citizen's or legal person's right of authorship (copyright), patent right, right to the exclusive use of a trademark, right of discovery, right of invention or other right pertaining to scientific or technical achievements is infringed upon in the form of plagiarism, falsification or imitation, the citizen or legal person has the right to demand that the infringement be stopped, the effects of the infringement eliminated and loss compensated for.

第一百一十九条 侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

Article 119 In the case of violation of a citizen's person causing bodily injury, compensation shall be paid for medical costs, reduced income due to time off work and the living allowance of a disabled person, etc. If death is caused, costs such as the funeral expenses of the deceased and the necessary living costs of those who were dependants of the deceased prior to his death shall

be paid.

第一百二十条 公民的姓名权、肖像权、名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

Article 120 If a citizen's right to a name, right of portrait, right of reputation or right of honor is infringed upon, he has the right to demand that the infringement be stopped, that his reputation be restored, that the effects of the infringement be eliminated and an apology be made, and may also claim compensation for loss.

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

If a legal person's right to a business name, right of reputation or right of honor is infringed upon, the provisions of the preceding paragraph shall apply.

第一百二十一条 国家机关或者国家机关工作人员在执行职务，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

Article 121 If a State organ or any functionary of a State organ in the exercise of his duties infringes the legitimate rights or interests of a citizen or legal person, causing damage, civil liability shall be assumed.

第一百二十二条 因产品质量不合格造成他人财产、人身损害的，产品制造者、销售者应当依法承担民事责任。运输者仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

Article 122 If damage is caused to another person's property or body as a result of a substandard product, the manufacturer and the seller of the product shall assume civil liability legally. If responsibility lies with a carrier or a storer, the manufacturer and seller have the right to claim compensation for loss.

第一百二十三条 从事高空、高压、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的，应当承担民事责任；如果能够证明损害是由受害人故意造成的，不承担民事责任。

Article 123 Civil liability shall be assumed if harm is caused to another person in the course of work which involves a high degree of danger to the surrounding environment, such as the operation of high-altitude, high-pressure, inflammable, explosive, poisonous, radioactive or high-speed transport tools; if it can be proved that the harm is deliberately caused by the victim, civil liability shall not be borne.

第一百二十四条 违反国家保护环境防止污染的规定，污染环境造成他人损害的，应当依法承担民事责任。

Article 124 If State provisions on environmental protection and prevention of pollution are violated, resulting in pollution of the environment and harm to another person, civil liability shall be assumed according to the law.

第一百二十五条 在公共场所、道旁或者通道上挖坑、修缮安装地下设

Article 125 If holes are dug or underground installations repaired or installed in a public place, roadside or thoroughfare without installing clear

施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。

signs and adopting safety measures, resulting in damage to another person, the construction workers shall assume civil liability.

第一百二十六条 建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

Article 126 If a building or other installation or an object placed on or suspended from a building collapses, comes loose or falls, causing damage to another person, the owner or manager shall assume civil liability, unless it can be proven that he was not personally at fault.

第一百二十七条 饲养的动物造成他人损害的，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

Article 127 If a domestic animal causes damage to another person, the owner or keeper of the animal shall bear civil liability. If the damage results from the fault of the victim, the owner or keeper of the animal shall not bear civil liability. If the damage results from the fault of a third person, the third person shall bear civil liability.

第一百二十八条 因正当防卫造成损害的，不承担民事责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

Article 128 Civil liability is not to be borne for damage caused in self-defense. If self-defense exceeds the necessary limits, causing unnecessary damage, appropriate civil liability shall be assumed.

第一百二十九条 因紧急避险造成损害的，由引起险情发生的人承担民事责任。如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

Article 129 If damage is caused in the course of the urgent avoidance of danger, the person who caused the situation of danger shall assume civil liability. If the danger arose from natural causes, the person urgently avoiding the danger shall not bear civil liability, or shall bear appropriate civil liability. If a person urgently avoiding danger takes inappropriate or excessive measures to do so, causing unnecessary damage, he shall bear appropriate civil liability.

第一百三十条 二人以上共同侵权造成他人损

Article 130 If two or more persons jointly infringe upon another person's rights, thereby causing him

害的，应当承担连带责任。 damage, they shall bear joint and several liability.

第一百三十一条 受害人对于损害的发生也有过错的，可以减轻侵害人的民事责任。 Article 131 If the victim is also at fault with regard to damages caused, the infringer's civil liability may be reduced.

第一百三十二条 当事人对造成损害都没有过错的，可以根据实际情况，由当事人分担民事责任。 Article 132 If none of the parties is at fault with regard to damages caused, the civil liability may be divided among them in accordance with the actual circumstances.

第一百三十三条 无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担民事责任。监护人尽了监护责任的，可以适当减轻他的民事责任。 Article 133 If a person with limited or no capacity for acts causes damage to another person, his guardian shall assume civil liability. If the guardian has fully discharged his guardianship, his civil liability may be reduced appropriately. If a person with limited or no capacity for acts who owns property causes damage to another person, compensation shall be paid from the person's own property. Any shortfall shall be paid, as appropriate, by the guardian unless the guardian is a unit.

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

第四节 承担民事责任的方式 Section Four Methods of Bearing Civil Liability

第一百三十四条 承担民事责任的方式主要有： Article 134 The main methods of assuming civil liability are:

- (一) 停止侵害;
 - (二) 排除妨碍;
 - (三) 消除危险;
 - (四) 返还财产;
 - (五) 恢复原状;
 - (六) 修理、重作、更换;
 - (七) 赔偿损失;
 - (八) 支付违约金;
 - (九) 消除影响、恢复名誉;
 - (十) 赔礼道歉。
1. stopping the infringement;
 2. removing the obstacle;
 3. eliminating the danger;
 4. returning the property;
 5. restoring to original condition or state;
 6. repairing, reconstructing or replacing;
 7. compensating for loss;
 8. making a default payment;
 9. eradicating effects, restoring reputation; and
 10. making an apology.
- The above methods of assuming civil liability may be applied separately or in combination. When trying a case, the People's Court may, in addition to applying the above provisions, issue a

以上承担民事责任的方式，可以单独适用，也可以合并适用。

人民法院审理民事案件，除适用上述规定外，还可以予以训诫、责令具结悔过，收缴进行非法活动的财物和非法所得，并可以依照法律规定处以罚款、拘留。

reprimand, order the signing of a statement of repentance, take over the property involved in any illegal activities and of any illegally obtained income and may also impose a fine or detain the person concerned in accordance with the provisions of the law.

第七章 诉讼时效

Chapter VII Limitation of Actions

第一百三十五条 向人民法院请求保护民事权利的诉讼时效期间为二年，法律另有规定的除外。

Article 135 The period of limitation of actions on a request to the People's Court for the protection of rights in civil matters is two years, unless otherwise provided by the law.

第一百三十六条 下列的诉讼时效期间为一年：

(一) 身体受到伤害要求赔偿的；
(二) 出售质量不合格的商品未声明的；
(三) 延付或者拒付租金的；
(四) 寄存财物被丢失或者损毁的。

Article 136 The period of limitation of actions shall be one year if:

1. A claim is made for compensation for bodily harm;
2. Sale of a substandard item is not declared to be such;
3. Payment of rent delays or refuses; and
4. A deposited article is lost or damaged.

第一百三十七条 诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

Article 137 The period of limitation of actions commences from the time it is known, or should have been known, that a right was infringed upon. If more than twenty years have passed, however, since the date of the infringement of the right, the People's Court shall not offer any protection. The People's Court may, under special circumstances, extend the period of limitation of actions.

第一百三十八条 超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

Article 138 A party who is willing to perform its obligations after the period of limitation of actions expires is not subject to the limitation of actions.

第一百三十九条 在诉讼时效期间的最后六个月内，因不可抗力或者其

Article 139 If, within the final six months of the period of limitation of actions, the right to request protection of rights in civil matters is unable to be

他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

exercised due to force majeure or other obstacles, the limitation of actions is suspended. The period of limitation of actions resumes from the time when the suspension of the limitation of actions is eliminated.

第一百四十条 诉讼时效因提起诉讼、当事人一方提出要求或者同意履行义务而中断。从中断时起，诉讼时效期间重新计算。

Article 140 The limitation of actions is interrupted if legal proceedings are instituted or if a party demands or agrees to the fulfillment of its obligations. Calculation of the period of limitation of actions commences anew from the time of interruption.

第一百四十一条 法律对诉讼时效另有规定的，依照法律规定。

Article 141 If the limitation of actions is otherwise provided by law, such provisions are applied.

第八章 涉外民事关系的法律适用

Chapter VIII Application of the Law to Foreign-Related Civil Relations

第一百四十二条 涉外民事关系的法律适用，依照本章的规定确定。

Article 142 The application of the law to foreign-related civil relations is determined by the provisions of this Chapter.

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

Where the provisions of an international treaty which the People's Republic of China has concluded or has acceded to differ from civil laws of the People's Republic of China, the provisions of the international treaty shall apply, with the exception of those articles to which the People's Republic of China has declared its reservation.

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

Where the law of the People's Republic of China and international treaties concluded or acceded to by the People's Republic of China do not contain provisions in relation to civil matters involving foreigners, international practice may be applied.

第一百四十三条 中华人民共和国公民定居国外的，他的民事行为能力可以适用定居国法律。

Article 143 In the case of a citizen of the People's Republic of China who has settled in a foreign country, the law of the country in which he has settled may be applied with regard to his capacity for acts.

第一百四十四条 不动产的所有权，适用不动产所在地法律。

Article 144 The ownership of real estate is subject to the law of the place where the real estate is located.

第一百四十五条 涉外合同的当事人可以选择处理合同争议所适用的法

Article 145 Unless otherwise provided by law, the parties to a foreign-related contract may choose the law applicable to the handling of disputes arising

<p>律，法律另有规定的除外。</p> <p>涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。</p>	<p>from the contract.</p> <p>If the parties to a foreign-related contract have not made a choice, the law of the country of closest connection to the contract is applied.</p>
<p>第一百四十六条 侵权行为的损害赔偿，适用侵权行为地法律。当事人双方国籍相同或者在同一国家有住所的，也可以适用当事人本国法律或者住所地法律。</p> <p>中华人民共和国法律不认为在中华人民共和国领域外发生的行为是侵权行为的，不作为侵权行为处理。</p>	<p>Article 146 With regard to compensation for damages resulting from an infringement of rights, the law of the place where the infringement occurred is applied. If both parties are nationals of the same country or domiciled in the same country, the law of their own country or of their place of domicile may also be applied.</p> <p>Acts which occur outside the territory of the People's Republic of China and which the law of the People's Republic of China does not recognize as acts of infringement of rights shall not be dealt with as such.</p>
<p>第一百四十七条 中华人民共和国公民和外国人结婚适用婚姻缔结地法律，离婚适用受理案件的法院所在地法律。</p>	<p>Article 147 A marriage between a citizen of the People's Republic of China and a foreign national is subject to the law of the place of the marriage is concluded, and divorce is subject to the law of the place where the court handling the case is located.</p>
<p>第一百四十八条 扶养适用与被扶养人有最密切联系的国家的法律。</p>	<p>Article 148 With regard to the support of dependants, the law of the country of closest connection to the dependant is applied.</p>
<p>第一百四十九条 遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。</p>	<p>Article 149 With regard to the legal inheritance of property, the law of the place where the deceased was domiciled at the time of the death applies to personal property, while the law of the place where real estate is situated applies to such real estate.</p>
<p>第一百五十条 依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。</p>	<p>Article 150 Where this Chapter provides for the application of the law of a foreign country or of international practice, such provisions may not be contrary to the public interest of the People's Republic of China.</p>
<p>第九章 附 则</p>	<p>Chapter IX Supplementary Provisions</p>
<p>第一百五十一条 民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特</p>	<p>Article 151 The people's congress of an ethnic minority autonomous area may, in accordance with the principles of the provisions of this Law, and incorporating the special characteristics of the local minorities, formulate adaptive or supplementary</p>

“以外”，不包括本数。 number itself.

第一百五十六条 本法自 1987 年 1 月 1 日起施行。
Article 156 This Law comes into force on January 1, 1987.

Annex J

to the Expert Report of Professor Guiguo Wang

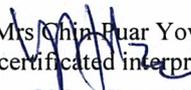
**TRANSLATION OF ARTICLE 142 OF THE GENERAL PRINCIPLES OF
THE CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA**

Article 142: The application of law in foreign related civil relations shall be determined by the provisions of this Chapter.

Where the provisions of an international treaty concluded or acceded to by the People's Republic of China differ from the provisions of the Civil Law of the People's Republic of China, the provisions of the international treaty shall apply, except for those provisions where the People's Republic of China has declared its reservations.

Where it is not provided for under the laws of the People's Republic of China or under the international treaty concluded or acceded to by the People's Republic of China, international practice may be applied.

Certified true translation by:


- 1 APR 2014
Mrs Chin-Puar Yow Hoy,
a certificated interpreter
Chin-Puar Yow Hoy

Annex K

to the Expert Report of Professor Guiguo Wang



中华人民共和国民事诉讼法 (2012 年修订) Civil Procedure Law of the People's Republic of China (Revised in 2012)

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中华人民共和国民事诉讼法 (2012 年修订) Civil Procedure Law of the People's Republic of China (Revised in 2012)

中华人民共和国主席令第 59 号 Order of the President of the People's Republic of China No.59

2012 年 8 月 31 日 August 31, 2012

(1991 年 4 月 9 日第七届全国人民代表大会第四次会议通过 Adopted at the fourth Session of the seventh National People's Congress on April 9, 1991 and amended for the first time in accordance with the Decision on Amending the Civil Procedure Law of the People's Republic of China of the 30th session of the Standing Committee of the National People's Congress on October 28, 2007 and amended for the second time in accordance with the Decision on Amending the Civil Procedure Law of the People's Republic of China of the 28th session of the Standing Committee of the National People's Congress on August 31, 2012.

根据 2007 年 10 月 28 日第十届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第一次修正
根据 2012 年 8 月 31 日第十一届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第二次修正)

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第一章 任务、适用 范围和基本原则	Chapter I Purpose, Scope of Application and Basic Principles
第一条 中华人民共 和国民事诉讼法以宪法为 根据, 结合我国民事审判 工作的经验和实际情况制 定。	Article 1 The Civil Procedure Law of the People's Republic of China is formulated on the basis of the Constitution and in combination of the experience and actual circumstances of the trial of civil cases in China.
第二条 中华人民共 和国民事诉讼法的任务, 是保护当事人行使诉讼权 利, 保证人民法院查明事 实, 分清是非, 正确适用 法律, 及时审理民事案 件, 确认民事权利义务关 系, 制裁民事违法行为, 保护当事人的合法权益,	Article 2 The purpose of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "the Law") is to protect the parties' exercise of their procedural rights, to ensure that the people's courts ascertain facts clearly, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm civil rights and obligations, impose sanctions for civil offences, protect the lawful rights and interests of the parties, educate citizens to observe the law

教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进行。

conscientiously, maintain the social and economic order and safeguard the smooth progress of socialist construction and development.

第三条 人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

Article 3 In dealing with the civil actions arising from disputes on property and personal relations between citizens, legal persons or other organizations and among citizens, legal persons and other organizations, the people's courts shall apply the provisions of the Law.

第四条 凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

Article 4 All those who are engaged in civil actions within the territory of the People's Republic of China shall abide by the Law.

第五条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

Article 5 Aliens, stateless persons and foreign enterprises and organizations that institute or respond to proceedings in a people's court shall have the same procedural rights and obligations as citizens, legal persons and other organizations of the People's Republic of China.

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

If the courts of a foreign country impose restrictions on the civil procedural rights of citizens, legal persons and other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall implement the principle of reciprocity in respect of the civil procedural rights of citizens, enterprises and organizations of that foreign country.

第六条 民事案件的审判权由人民法院行使。人民法院依照法律规定对民事案件独立进行审判，不受行政机关、社会团体和个人的干涉。

Article 6 Jurisdiction over civil cases shall be exercised by the people's courts. The people's courts shall try civil cases independently in accordance with the law, and shall be subject to no interference by any administrative authority, social organization or individual.

第七条 人民法院审理民事案件，必须以事实为根据，以法律为准绳。

Article 7 In trying civil cases, the people's courts shall take the facts as the basis and the law as the standard.

第八条 民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

Article 8 The parties to a civil action shall have equal procedural rights. In trying civil cases, the people's courts shall safeguard and facilitate the parties' exercise of their procedural rights, and shall treat the parties equally in the application of law.

第九条 人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

Article 9 In trying civil cases, the people's courts shall carry out mediation on a voluntary and lawful basis, failing which, a judgment shall be rendered forthwith.

第十条 人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

Article 10 In trying civil cases, the people's courts shall, in accordance with the law, implement the systems of panel hearing, withdrawal, public trial and two-tier trial.

第十一条 各民族公民都有用本民族语言、文字进行民事诉讼的权利。在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

Article 11 Citizens of all ethnic groups shall have the right to use their native spoken and written languages in civil proceedings. In areas inhabited predominantly by a minority ethnic group or by several minority ethnic groups, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local ethnic groups. The people's courts shall provide interpretation and translation for participants in an action who are not familiar with the spoken or written languages commonly used by the local ethnic groups.

第十二条 人民法院审理民事案件时，当事人有权进行辩论。

Article 12 In the trial of civil cases by people's courts, the parties shall have the right to argue for themselves.

第十三条 民事诉讼应当遵循诚实信用原则。当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

Article 13 Civil proceedings shall follow the principle of good faith. The parties shall have the right, within the scope stipulated by the law, to deal with their own civil and procedural rights.

第十四条 人民检察院有权对民事诉讼实行法律监督。

Article 14 The people's procuratorates have the right to exercise legal supervision over civil proceedings.

第十五条 机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

Article 15 If the rights and interests of the State, a collective body or an individual are infringed, the government authorities, enterprises and public institutions may support the injured unit or individual in instituting proceedings in the people's courts.

第十六条 民族自治地方的人民代表大会根据宪法和本法的原则，结合

Article 16 The people's congresses of the autonomous regions of the ethnic groups may formulate flexible or supplementary provisions in

当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

accordance with the principles of the Constitution and the Law, and taking into account the specific circumstances of local ethnic groups. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the National People's Congress for approval. Provisions made by autonomous prefectures and autonomous counties shall be submitted to the standing committee of the people's congress of the respective provinces or autonomous regions for approval, and to the Standing Committee of the National People's Congress for filing.

第二章 管辖

Chapter II Jurisdiction

第一节 级别管辖

Section 1 Court-Level Jurisdictions

第十七条 基层人民法院管辖第一审民事案件，但本法另有规定的除外。

Article 17 Unless otherwise stipulated in the Law, basic people's courts shall have jurisdiction as courts of first instance over all civil cases.

第十八条 中级人民法院管辖下列第一审民事案件：

Article 18 Intermediate people's courts shall have jurisdiction as courts of first instance over the following types of civil cases:

- (一) 重大涉外案件；
- (二) 在本辖区有重大影响的案件；
- (三) 最高人民法院确定由中级人民法院管辖的案件。

1. major cases involving foreign parties;
2. cases with significant impact in the areas over which the courts exercise jurisdiction; and
3. cases determined by the Supreme People's Court to come under the jurisdiction of the intermediate people's courts.

第十九条 高级人民法院管辖在本辖区有重大影响的第一审民事案件。

Article 19 Higher people's courts shall have jurisdiction as courts of first instance over civil cases with significant impact in the areas over which they exercise jurisdiction.

第二十条 最高人民法院管辖下列第一审民事案件：

Article 20 The Supreme People's Court shall have jurisdiction as the court of first instance over the following types of civil cases:

- (一) 在全国有重大影响的案件；
- (二) 认为应当由本院审理的案件。

1. cases with significant impact on the whole country; and
2. cases that the Supreme People's Court deems it should try itself.

第二节 地域管辖

Section 2 Territorial Jurisdictions

第二十一条 对公民提起的民事诉讼，由被告住所地人民法院管辖；被

Article 21 A civil action instituted against a citizen shall come under the jurisdiction of the people's court in the place where the defendant is

告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管辖。

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

domiciled; if the defendant's place of domicile is different from the place of his or her habitual residence, the people's court in the place of his or her habitual residence shall have jurisdiction.

A civil action instituted against a legal person or any other organization shall come under the jurisdiction of the people's court in the place where the defendant is domiciled.

If the places of domicile or habitual residence of several defendants in the same lawsuit come under the jurisdiction of two or more people's courts, each of those people's courts shall have jurisdiction.

第二十二条 下列民事诉讼，由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

（一）对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；

（二）对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

（三）对被采取强制性教育措施的人提起的诉讼；

（四）对被监禁的人提起的诉讼。

Article 22 The following civil actions shall come under the jurisdiction of the people's court of the place where the plaintiff is domiciled; if the plaintiff's place of domicile is different from the place of his or her habitual residence, the people's court in the place of his or her habitual residence shall have jurisdiction:

1. actions concerning personal relationships instituted against persons not residing within the territory of the People's Republic of China;

2. actions concerning personal relationships instituted against persons whose whereabouts are unknown or who have been declared missing;

3. actions instituted against persons who are undergoing compulsory correction; and

4. actions instituted against persons who are imprisoned.

第二十三条 因合同纠纷提起的诉讼，由被告住所地或者合同履行地人民法院管辖。

Article 23 An action involving a contractual dispute shall come under the jurisdiction of the people's court of the place where the defendant is domiciled or where the contract is performed.

第二十四条 因保险合同纠纷提起的诉讼，由被告住所地或者保险标的物所在地人民法院管辖。

Article 24 An action involving a dispute over an insurance contract shall come under the jurisdiction of the people's court of the place where the defendant is domiciled or where the insured object is located.

第二十五条 因票据纠纷提起的诉讼，由票据支付地或者被告住所地人民法院管辖。

Article 25 An action involving a negotiable instrument shall come under the jurisdiction of the people's court of the place where payment on the instrument was made or where the defendant is domiciled.

第二十六条 因公司设立、确认股东资格、分

Article 26 Proceedings initiated in connection with disputes over the incorporation of a company,

配利润、解散等纠纷提起的诉讼，由公司住所地人民法院管辖。

confirmation of the eligibility of shareholder(s) of the company, profit distribution or dissolution of the company shall be under the jurisdiction of the people's court at the domicile of the company.

第二十七条 因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼，由运输始发地、目的地或者被告住所地人民法院管辖。

Article 27 An action involving a dispute over a contract for railway, road, water or air transportation or combined transportation shall come under the jurisdiction of the people's court of the place of departure or place of destination or of the place where the defendant is domiciled.

第二十八条 因侵权行为提起的诉讼，由侵权行为地或者被告住所地人民法院管辖。

Article 28 An action involving a tort shall come under the jurisdiction of the people's court of the place where the tort was committed or where the defendant is domiciled.

第二十九条 因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼，由事故发生地或者车辆、船舶最先到达地、航空器最先降落地或者被告住所地人民法院管辖。

Article 29 An action involving a claim for damages arising from a railway, road, water or aviation accident shall come under the jurisdiction of the people's court of the place where the accident took place, where the vehicle or vessel first arrived, where the aircraft first landed or where the defendant is domiciled.

第三十条 因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼，由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

Article 30 An action involving a claim for damages arising from a collision of vessels or other maritime accident shall come under the jurisdiction of the people's court of the place where the collision took place, where the vessel in collision first docked, where the vessel at fault was detained or where the defendant is domiciled.

第三十一条 因海难救助费用提起的诉讼，由救助地或者被救助船舶最先到达地人民法院管辖。

Article 31 An action involving maritime salvage expenses shall come under the jurisdiction of the people's court of the salvage took place or of the place where the salvaged ship first docked.

第三十二条 因共同海损提起的诉讼，由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

Article 32 An action involving general average shall come under the jurisdiction of the people's court of the place where the ship first docked, where the general average was adjusted or where the voyage ended.

第三十三条 下列案件，由本条规定的人民法院专属管辖：
（一）因不动产纠纷提起的诉讼，由不动产所在地

Article 33 The following cases shall come under the exclusive jurisdiction of the people's courts specified in this Article:
1. an action involving a dispute over immovable property shall come under the jurisdiction of the

人民法院管辖；

(二) 因港口作业中发生纠纷提起的诉讼，由港口所在地人民法院管辖；

(三) 因继承遗产纠纷提起的诉讼，由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

people's court of the place where the immovable property is located;

2. an action involving a dispute arising from port operations shall come under the jurisdiction of the people's court of the place where the port is located; and

3. an action involving a dispute over an inheritance shall come under the jurisdiction of the people's court of the place of domicile at the time of death of the person whose property is inherited or where the major portion of the estate is located.

第三十四条 合同或者其他财产权益纠纷的当事人可以书面协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地等与争议有实际联系的地点的人民法院管辖，但不得违反本法对级别管辖和专属管辖的规定。

Article 34 The parties to a contractual dispute or any other property dispute may agree in writing to be subject to the jurisdiction of the people's court at the place having connection with the dispute, such as where the defendant is domiciled, where the contract is performed, where the contract is signed, where the plaintiff is domiciled or where the subject matter is located, etc., provided that such agreement does not violate the provisions of the Law regarding court-level jurisdictions and exclusive jurisdictions.

第三十五条 两个以上人民法院都有管辖权的诉讼，原告可以向其中一个人民法院起诉；原告向两个以上有管辖权的人民法院起诉的，由最先立案的人民法院管辖。

Article 35 When two or more people's courts have jurisdiction over an action, the plaintiff may institute his or her action in one of those people's courts; if the plaintiff institutes the action in two or more people's courts with jurisdiction over the action, the people's court that first puts the case on its trial docket shall have jurisdiction.

第三节 移送管辖和指定管辖

Section 3 Referral and Designation of Jurisdictions

第三十六条 人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移送。

Article 36 If a people's court discovers that a case it has accepted is not within its jurisdiction, it shall refer the case to the people's court with jurisdiction, which shall accept the case. If a people's court to which a case is referred considers that the case does not come under its jurisdiction in accordance with regulations, it shall report to the superior people's court for designation of jurisdiction and shall not further refer the case at its own discretion.

第三十七条 有管辖权的人民法院由于特殊原因，不能行使管辖权的，

Article 37 If a people's court with jurisdiction over the case is unable to exercise jurisdiction due to special reasons, the superior people's court shall

由上级人民法院指定管辖。
 人民法院之间因管辖权发生争议，由争议双方协商解决；协商解决不了的，报请它们的共同上级人民法院指定管辖。

designate jurisdiction.

A dispute over jurisdiction between people's courts shall be resolved by the disputing courts through consultation. If the dispute cannot be resolved through consultation, it shall be submitted to the people's court that is the mutual superior people's court of the disputing courts for the designation of jurisdiction.

第三十八条 上级人民法院有权审理下级人民法院管辖的第一审民事案件；确有必要将本院管辖的第一审民事案件交下级人民法院审理的，应当报请其上级人民法院批准。下级人民法院对它所管辖的第一审民事案件，认为需要由上级人民法院审理的，可以报请上级人民法院审理。

Article 38 A superior people's court shall have the right to try first instance civil cases of an inferior people's court; where it is necessary for a people's court as the court of first instance to transfer a civil case to an inferior court, the people's court shall apply to its superior people's court for approval. If an inferior people's court deems it necessary for a civil case of first instance under its jurisdiction to be tried by a superior people's court, it may request such people's court to try the case.

第三章 审判组织

Chapter III Judicial Organizations

第三十九条 人民法院审理第一审民事案件，由审判员、陪审员共同组成合议庭或者由审判员组成合议庭。合议庭的成员人数，必须是单数。
 适用简易程序审理的民事案件，由审判员一人独任审理。
 陪审员在执行陪审职务时，与审判员有同等的权利义务。

Article 39 When trying a civil case of the first instance, a people's court shall form a collegiate bench consisting of both judges and jurors or of judges alone. A collegiate bench must have an odd number of members.

Civil cases to which the summary procedure is applied shall be tried by a single judge alone. When performing their duties as jurors, the jurors shall have the same powers and obligations as the judges.

第四十条 人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。
 发回重审的案件，原审人民法院应当按照第一审程序另行组成合议庭。
 审理再审案件，原来是第一审的，按照第一审程序

Article 40 When trying a civil case of the second instance, a people's court shall form a collegiate bench of judges. The collegiate bench must have an odd number of members.

When trying a case remanded for retrial, the people's court that originally tried the case shall form a new collegiate bench in accordance with the procedure at first instance.

If a case to be retried was originally tried at first instance, a new collegiate bench shall be formed in accordance with the procedure at first instance; if

另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

the case was originally tried at second instance or was removed to a superior people's court for trial, a new collegiate bench shall be formed in accordance with the procedure at second instance.

第四十一条 合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

Article 41 The court president or the presiding judge shall designate a judge to serve as the presiding judge of the collegiate bench; if the court president or the presiding judge participates in the trial and , he or she shall serve as the presiding judge.

第四十二条 合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

Article 42 When deliberating a case, a collegiate bench shall observe the rule of majority. The deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegiate bench. Dissenting opinions in the deliberations must be faithfully recorded in the transcript.

第四十三条 审判人员应当依法秉公办案。审判人员不得接受当事人及其诉讼代理人请客送礼。审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

Article 43 Judicial officers shall handle all cases impartially and in accordance with the law. Judicial officers may not accept invitations to meals or gifts from the parties or their agents ad litem. Any member of the judicial officers who is involved in corruption, accepts bribes, engages in malpractice for personal benefits or makes a judgment that perverts the law, shall be investigated for legal liability; if a criminal offence is constituted, such person's criminal liability shall be pursued according to the law.

第四章 回避

Chapter IV Withdrawal

第四十四条 审判人员有下列情形之一的，应当自行回避，当事人有权用口头或者书面方式申请他们回避：

Article 44 Any member of the judicial officers under any of the following circumstances shall withdraw from the case, and a party shall also have the right to request, orally or in writing, for the withdrawal of such a judicial officer from the case:

（一）是本案当事人或者当事人、诉讼代理人近亲属的；

1. the judicial officer is a party or a close relative of a party or an agent ad litem to the case;
2. the judicial officer is an interested party in the case; or

（二）与本案有利害关系的；

3. the judicial officer has some other relationship with a party or agent ad litem to the case, which may affect the impartial trial of the case.

（三）与本案当事人、诉讼代理人有其他关系，可能影响对案件公正审理的。

Where a member of the judicial officers accepts any gift or meal invitation from any party or agent ad litem to the case, or he or she meets with the party or agent in violation of the relevant provisions, the

审判人员接受当事人、诉

讼代理人请客送礼，或者违反规定会见当事人、诉讼代理人，当事人有权要求他们回避。审判人员有前款规定的行为的，应当依法追究法律责任。前款规定，适用于书记员、翻译人员、鉴定人、勘验人。

parties shall have the right to request for the withdrawal of such judicial officer from the case. Any member of the judicial officers that commits any of the violations stipulated in the preceding paragraph shall have his or her legal liabilities investigated for according to the law. The above provisions shall also apply to clerks, interpreters, experts and inspectors.

第四十五条 当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

Article 45 When requesting for the withdrawal of a member of the judicial officers, a party shall explain the reasons and shall raise the request at the beginning of the trial; if the reason for the request becomes known after the trial has commenced, the request may also be raised prior to the conclusion of the court arguments. Pending a decision on withdrawal by the people's court, the member of the personnel requested to be withdrawn shall temporarily suspend his or her participation in the work for the case, unless the circumstances of the case require urgent measures.

第四十六条 院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。

Article 46 The withdrawal of a court president serving as presiding judge shall be decided on by the judicial committee. The withdrawal of judicial officers shall be decided on by the court president. The withdrawal of other persons shall be decided on by the presiding judge.

第四十七条 人民法院对当事人提出的回避申请，应当在申请提出的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

Article 47 The decision by a people's court on a request for withdrawal raised by a party shall be made orally or in writing within three days after the request was raised. If the applicant disagrees with the decision, he or she may apply for review once upon receipt of the decision. During the period of review, the person requested to be withdrawn shall not suspend his or her participation in the work for the case. The decision by a people's court on an application for review shall be made within three days and the applicant shall be notified of the decision.

第五章 诉讼参加人

Chapter V Participants in Legal Actions

第一节 当事人

Section 1 Parties

<p>第四十八条 公民、法人和其他组织可以作为民事诉讼的当事人。法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。</p>	<p>Article 48 Any citizen, legal person or other organization may be a party to a civil action. Legal persons shall be represented in litigation by their legal representatives. Other organizations shall be represented in litigation by their officers in charge.</p>
<p>第四十九条 当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料的范围和办法由最高人民法院规定。当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。</p>	<p>Article 49 Parties shall have the right to appoint agents, to request for the withdrawal of judicial officers, to collect and present evidence, to engage in arguments in court, to request for mediation, to file appeals and to apply for execution. Parties may have access to the materials relating to the case, and make copies thereof and other legal documents relating to the case. The scope and method of accessing and copying materials relating to the case shall be determined by the Supreme People's Court. Parties to a case must exercise their procedural rights in accordance with the law, observe litigation procedures, and perform the terms of written judgments, rulings or mediation statements that have become legally effective.</p>
<p>第五十条 双方当事人可以自行和解。</p>	<p>Article 50 Two parties to a case may reach a settlement on their own.</p>
<p>第五十一条 原告可以放弃或者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。</p>	<p>Article 51 A plaintiff may relinquish or modify his or her claims. A defendant may admit or rebut the claims and shall have the right to institute a counterclaim.</p>
<p>第五十二条 当事人一方或者双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼人发生法律效力；对诉讼标的没有共同</p>	<p>Article 52 If one party or both parties consist of two or more persons, the object of the action is the same or of the same category and the people's court considers that the case can be tried as a joint action, the case shall be tried as a joint action, subject to the consent of the parties. If the persons constituting a party to a joint action have common rights and obligations with respect to the object of the action, and a procedural act by one member of the party is recognized by the other members of the party, such act shall be binding on all the other members of the party. If the persons constituting a party to a joint action do not have common rights and obligations with respect to the</p>

权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生效力。

object of action, a procedural act by one of those persons shall not be binding on the other members of the party.

第五十三条 当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

Article 53 A joint action in which one party consists of numerous persons may be brought by a representative elected by such persons. The procedural acts of such representative shall be binding on all members of the party he or she represents. However, the representative's modification or relinquishment of claims, or recognition of the other party's claims or involvement in mediation shall be subject to the consents of the parties he or she represents.

第五十四条 诉讼标的是同一种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

Article 54 If the object of the action is of the same category and a party consists of numerous persons, and upon institution of the action the number of persons is not determined yet, the people's court may issue a public notice stating the particulars of the case and the claims and requesting that the claimants register with the people's court within a certain period of time.

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

Claimants who have registered with the people's court may elect a representative to engage in litigation; if no such representative can be elected, the people's court may discuss with the registered claimants in determining on such representative. The procedural acts of a representative shall be binding on the party he or she represents. However, the representative's modification or withdrawal of claims, or recognition of the other party's claims or involvement in mediation shall require the consent of the party he or she represents.

人民法院作出的判决、裁定，对参加登记的全体权利人发生效力。未参加登记的权利人在诉讼时效期间提起诉讼的，适用该判决、裁定。

Judgments or rulings rendered by a people's court shall be binding on all the claimants who have registered with the court. Such judgments or rulings shall apply to claimants who have not registered with the court but who institute actions during the limitation period.

第五十五条 对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机

Article 55 Legally designated institutions and relevant organizations may initiate proceedings at the people's court against conducts jeopardizing public interest such as causing pollution to the

关和有关组织可以向人民法院提起诉讼。

environment or damaging the legitimate rights or interests of consumers at large.

第五十六条 对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

Article 56 If a third party considers that it has an independent claim against the object of an action of two parties, the third party shall have the right to institute an action.

对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。前两款规定的第三人，因不能归责于本人的事由未参加诉讼，但有证据证明发生法律效力的判决、裁定、调解书的部分或者全部内容错误，损害其民事权益的，可以自知道或者应当知道其民事权益受到损害之日起六个月内，向作出该判决、裁定、调解书的人民法院提起诉讼。人民法院经审理，诉讼请求成立的，应当改变或者撤销原判决、裁定、调解书；诉讼请求不成立的，驳回诉讼请求。

If a third party has no independent claim against the object of an action of two parties but the outcome of the case will affect his or her legal interests, he or she may apply to join in the action, or the people's court shall notify him or her requesting his or her participation. If the people's court judges that a third party shall bear civil liability, such third party shall have the same procedural rights and obligations as those of a party to the case.

Where a third party stipulated in the preceding two paragraphs fails to participate in the lawsuit due to cause(s) other than such third party, but nonetheless has evidence providing that a legally effective judgment, ruling or mediation statement is partially or wholly incorrect in its contents and hence damages the civil rights and interests of the third party, such third party may, within six months after becoming aware or is reasonably assumed to have become aware of such damage to his or her civil rights and interests, institute legal proceedings at the people's court that issues the judgment, ruling or mediation statement. If the people's court finds that the claims are tenable, it shall alter or revoke such judgment, ruling or mediation statement; if the claims of the third party are untenable, the people's court shall reject the claims of the third party.

第二节 诉讼代理人

Section 2 Agents Ad Litem

第五十七条 无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

Article 57 A person with no capacity to engage in litigation shall be represented in an action by his or her guardians, who shall act as his or her statutory agents. If the statutory agents shift onto one another the responsibility to act as agents, the people's court shall appoint one of them to represent the principal in the action.

第五十八条 当事人、法定代理人可以委托一至二人作为诉讼代理

Article 58 A party or statutory agent may appoint one or two persons to act as his or her agent ad litem(s).

人。

下列人员可以被委托为诉讼代理人：

（一）律师、基层法律服务工作者；

（二）当事人的近亲属或者工作人员；

（三）当事人所在社区、单位以及有关社会团体推荐的公民。

The following persons may be entrusted as agents ad litem of a party to a lawsuit:

1. lawyers and basic legal service workers;

2. close relatives or employees of the party to the case;

3. citizens recommended by the community where the party resides, the employer of the party or any other social organization concerned.

第五十九条 委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉，必须有委托人的特别授权。

侨居在外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

Article 59 When a person appoints another person to represent him or her in an action, he or she shall submit to the people's court a power of attorney bearing his or her signature or seal.

A power of attorney must specify the subject matter and limits of authority granted. An agent ad litem shall possess special authorization from his or her principal to admit, waive or modify claims, to compromise, to file a counterclaim or to lodge an appeal on behalf of his or her principal.

A power of attorney sent from abroad or delivered under the care of others by a citizen of the People's Republic of China residing abroad must be certified by the embassy or a consulate of the People's Republic of China in that country. If there is no embassy or consulate of the People's Republic of China in that country, the power of attorney shall be certified by an embassy or a consulate in that country of a third country that has diplomatic relations with the People's Republic of China, and then transferred for authentication to the embassy or a consulate of the People's Republic of China in that third country, or by a local patriotic overseas Chinese organization.

第六十条 诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

Article 60 If a party modifies or revokes the authority granted to its agent ad litem, it shall inform the people's court in writing and the people's court shall inform the other party.

第六十一条 代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和

Article 61 Lawyers and other agents ad litem who serve as persons ad litem to a case shall have the right to investigate and collect evidence, and may have access to the materials relating to the case. The scope and method of accessing materials relating to the case shall be determined by the

办法由最高人民法院规定。	Supreme People's Court.
第六十二条 离婚案件有诉讼代理人的,本人除不能表达意思的以外,仍应出庭;确因特殊情况无法出庭的,必须向人民法院提交书面意见。	Article 62 Where a party to a divorce case is represented by an agent ad litem, the party shall still appear in court, unless he or she is incapable of expressing himself or herself. A party who is truly unable to appear in court due to special reasons shall present his or her opinion in writing to the people's court.
第六章 证据	Chapter VI Evidence
第六十三条 证据包括: (一) 当事人的陈述; (二) 书证; (三) 物证; (四) 视听资料; (五) 电子数据; (六) 证人证言; (七) 鉴定意见; (八) 勘验笔录。 证据必须查证属实,才能作为认定事实的根据。	Article 63 Evidence shall comprise the following categories: 1. statements of the parties; 2. documentary evidence; 3. physical evidence; 4. audio-visual materials; 5. electronic data; 6. testimony of witnesses; 7. expert opinions; and 8. records of inspections and examinations. Any of the above-mentioned evidence must be verified before it can be taken as a basis for ascertaining facts.
第六十四条 当事人对自己提出的主张,有责任提供证据。 当事人及其诉讼代理人因客观原因不能自行收集的,证据,或者人民法院认为审理案件需要的证据,人民法院应当调查收集。 人民法院应当按照法定程序,全面地、客观地审查核实证据。	Article 64 A party shall be responsible for providing evidence in support of his or her allegations. Where a party and his or her agent ad litem are unable to collect evidence on their own for reasons beyond their control, or where the people's court deems that the evidence is necessary for the trial of the case, the people's court shall investigate and collect the evidence. The people's court shall thoroughly and objectively investigate and verify evidence in accordance with legal procedures.
第六十五条 当事人对自己提出的主张应当及时提供证据。 人民法院根据当事人的主张和案件审理情况,确定当事人应当提供的证据及其期限。当事人在该期限内提供证据确有困难的,可以向人民法院申请延长	Article 65 A party shall provide evidence in a timely manner for his or her claims. The people's court shall, based on the claims of the parties to the case and the circumstances of the hearing of the case, determine the evidence that a party is required to provide and the corresponding time limit. Where it is difficult for a party to provide such evidence within the time limit prescribed, the party may apply to the people's court for an extension of time. The people's court may grant an

期限，人民法院根据当事人的申请适当延长。当事人逾期提供证据的，人民法院应当责令其说明理由；拒不说明理由或者理由不成立的，人民法院根据不同情形可以不予采纳该证据，或者采纳该证据但予以训诫、罚款。

appropriate extension of time based on the application of the party. Where a party fails to provide the required evidence within the prescribed time limit, the people's court shall order the party to provide reasons for such failure; where the party refuses to provide reasons, or the reason provided is not tenable, the people's court may, in accordance with the actual circumstances, either reject the evidence or accept the evidence but with a reprimand or fine imposed on the party.

第六十六条 人民法院收到当事人提交的证据材料，应当出具收据，写明证据名称、页数、份数、原件或者复印件以及收到时间等，并由经办人员签名或者盖章。

Article 66 When a people's court receives the evidence provided by a party, it shall issue a receipt, stating the name, number of pages and copies, whether the evidence is an original or duplicate as well as the time and date of receipt, and shall be signed or sealed by the officer in charge.

第六十七条 人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

Article 67 The people's court shall have the right to investigate and take evidence from the relevant units or individuals, and such units or individuals shall not refuse to cooperate. The people's court shall examine and determine the authenticity and validity of documentary evidence provided by relevant units and individuals.

第六十八条 证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

Article 68 Evidence shall be presented in court and cross-examined by the parties. Evidence involving State secrets, trade secrets or private matters of individuals shall be kept confidential. If it needs to be presented in court, such evidence shall not be presented in a public court session.

第六十九条 经过法定程序公证证明的法律事实和文书，人民法院应当作为认定事实的根据，但有相反证据足以推翻公证证明的除外。

Article 69 The people's court shall admit legal facts and documents that are notarized in accordance with applicable legal procedures as its basis for ascertaining facts, unless there is evidence to the contrary sufficient to invalidate the notarization.

第七十条 书证应当提交原件。物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录

Article 70 Documentary evidence shall be presented in its original form. When presenting physical evidence, the original object shall be presented. If it is truly difficult to present the original document or object, then reproductions, photographs,

本。
提交外文书证，必须附有中文译本。

duplicates or extracts of the original may be presented.
When documentary evidence in a foreign language is to be submitted, it must be accompanied by a Chinese translation.

第七十一条 人民法院对视听资料，应当辨别真伪，并结合本案的其他证据，审查确定能否作为认定事实的根据。

Article 71 The people's court shall verify the authenticity of audio-visual materials and determine, in the light of other evidence in the case, whether they can be taken as a basis for ascertaining facts.

第七十二条 凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。不能正确表达意思的人，不能作证。

Article 72 All units and individuals that have knowledge of the circumstances of a case shall be obliged to give testimony in court. The persons in charge of the relevant units shall support the witnesses in testifying.
An individual that is incapable of expressing oneself accurately shall not be allowed to give testimony.

第七十三条 经人民法院通知，证人应当出庭作证。有下列情形之一的，经人民法院许可，可以通过书面证言、视听传输技术或者视听资料等方式作证：

Article 73 A witness shall testify in court upon notification by a people's court. A witness may testify by way of written testimony, via audio-visual transmission technology or by audio-visual testimony if he or she is:

- (一) 因健康原因不能出庭的；
- (二) 因路途遥远，交通不便不能出庭的；
- (三) 因自然灾害等不可抗力不能出庭的；
- (四) 其他有正当理由不能出庭的。

1. unable to appear in court due to health reasons;
2. unable to appear in court due to geographical distance or inconvenient transport;
3. unable to appear in court due to force majeure such as natural disasters; and
4. unable to appear in court due to any other legitimate reasons.

第七十四条 证人因履行出庭作证义务而支出的交通、住宿、就餐等必要费用以及误工损失，由败诉一方当事人负担。当事人申请证人作证的，由该当事人先行垫付；当事人没有申请，人民法院通知证人作证的，由人民法院先行垫付。

Article 74 The necessary costs and expenses incurred by a witness in connection with the fulfillment of an obligation to give testimony in court, including for transport, accommodation and meals, as well as loss of salary or wage, shall be borne by the losing party of the case. Where a party applies for testimony given by a witness, the abovementioned costs and expenses shall be advanced by the party; where the people's court notifies a witness to give testimony without the application by any party, the costs and expenses shall be advanced by the people's court.

第七十五条 人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

Article 75 The people's court shall investigate and determine, in the light of other evidence of the case, whether the statements of a party can be taken as a basis for ascertaining facts. Refusal by a party to make a statement shall not affect the ascertainment of the facts of the case by the people's court on the basis of the evidence of the case.

第七十六条 当事人可以就查明事实的专门性问题向人民法院申请鉴定。当事人申请鉴定的，由双方当事人协商确定具备资格的鉴定人；协商不成的，由人民法院指定。当事人未申请鉴定，人民法院对专门性问题认为需要鉴定的，应当委托具备资格的鉴定人进行鉴定。

Article 76 A party may apply to a people's court for the examination of a specialized issue for the verification of a fact. When a party so applies, both parties shall determine a qualified expert through negotiation; where such negotiation fails, the people's court shall designate an expert. Where parties do not apply for examination but the people's court deems it necessary to examine a specialized issue, it shall appoint a qualified expert to conduct the examination.

第七十七条 鉴定人有权了解进行鉴定所需要的案件材料，必要时可以询问当事人、证人。鉴定人应当提出书面鉴定意见，在鉴定书上签名或者盖章。

Article 77 An expert has the right to consult the materials necessary for the examination and may question parties and witnesses where necessary. The expert shall issue a written expert opinion duly signed or sealed by that expert.

第七十八条 当事人对鉴定意见有异议或者人民法院认为鉴定人有必要出庭的，鉴定人应当出庭作证。经人民法院通知，鉴定人拒不出庭作证的，鉴定意见不得作为认定事实的根据；支付鉴定费用的当事人可以要求返还鉴定费用。

Article 78 Where a party objects to the expert opinion or where the people's court deems it necessary, the expert shall testify in court. Where upon notification by the people's court, the expert refuses to testify in court, the written expert opinion of the expert shall not be adopted as a factual basis for the case, and the party that bears the costs and expenses in connection with the examination may require the reimbursement of the costs and expenses incurred for the expert opinion.

第七十九条 当事人可以申请人民法院通知有专门知识的人出庭，就鉴定人作出的鉴定意见或者专业问题提出意见。

Article 79 A party may apply to a people's court to notify person(s) with specialized expertise to appear in court and provide opinions on an expert's opinions or specialized issues.

第八十条 勘验物证 Article 80 When carrying out an inspection of

或者现场，勘验人必须出示人民法院的证件，并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场，拒不到场的，不影响勘验的进行。有关单位和个人根据人民法院的通知，有义务保护现场，协助勘验工作。勘验人应当将勘验情况和结果制作笔录，由勘验人、当事人和被邀参加人签名或者盖章。

physical evidence or a site, the inspector must show the identification document issued by the people's court and invite local basic-level organizations or the units of the parties to send representatives to participate in the examination. Parties to the case or an adult member of parties' family shall be present. Such person's refusal to attend on the scene shall not affect the conduct of the examination.

Upon notification by the people's court, relevant units and individuals shall be obliged to protect the site and to assist the examination work.

An inspector shall prepare a written record of the circumstances and results of the examination, which shall be signed or sealed by the inspector, the parties to the case and the invited participants.

第八十一条 在证据可能灭失或者以后难以取得的情况下，当事人可以在诉讼过程中向人民法院申请保全证据，人民法院也可以主动采取保全措施。

Article 81 Where it is likely that evidence may be destroyed, lost or become difficult to obtain later on, a party may apply to the people's court in the course of the lawsuit for the preservation of the evidence. The people's court may also take initiative to preserve such evidence.

因情况紧急，在证据可能灭失或者以后难以取得的情况下，利害关系人可以在提起诉讼或者申请仲裁前向证据所在地、被申请人住所地或者对案件有管辖权的人民法院申请保全证据。

In the case of an emergency event where it is likely that an evidence may be destroyed, lost or become difficult to obtain later on, an interested party may, prior to instituting a lawsuit or applying for arbitration, apply to the people's court of the place where the evidence is located or of the domicile of the party against which the application is made, or the people's court with jurisdiction over the case, to preserve the evidence.

证据保全的其他程序，参照适用本法第九章保全的有关规定。

The provisions in Chapter IX of the Law concerning evidence preservation shall apply mutatis mutandis to other procedures concerning evidence preservation.

第七章 期间、送达

Chapter VII Time Periods and Service

第一节 期间

Section 1 Time Periods

第八十二条 期间包括法定期间和人民法院指定的期间。

Article 82 Time periods include statutory time periods and time periods designated by the people's courts.

期间以时、日、月、年计算。期间开始的时和日，不计算在期间内。

Time periods shall be calculated in hours, days, months and years. The hour and day from which a time period commences shall not be counted within such time period.

期间届满的最后一日是节假日的，以节假日后的第

If the expiration date of a time period falls on a

一日为期间届满的日期。期间不包括在途时间，诉讼文书在期满前交邮的，不算过期。

holiday, the day immediately following the holiday shall be the expiration date.
A time period shall not include transit time.
Procedural documents mailed before the expiration of the time period shall not be deemed overdue.

第八十三条 当事人因不可抗拒的事由或者其他正当理由耽误期限的，在障碍消除后的十日内，可以申请顺延期限，是否准许，由人民法院决定。

Article 83 If a party exceeds a time limit due to an event of force majeure or for other legitimate reasons, the party may apply for an extension of the time period within ten days after the removal of the obstacles. The application for extension of time shall be subject to the approval by the people's court.

第二节 送达

Section 2 Service

第八十四条 送达诉讼文书必须有送达回证，由受送达人在送达回证上记明收到日期，签名或者盖章。受送达人在送达回证上的签收日期为送达日期。

Article 84 Service of any procedural document must be evidenced by an acknowledgement of service. The person served shall clearly state the date of receipt on the acknowledgement of service, and affix his or her signature or seal to it. The date of the signature for receipt as entered on the acknowledgement of service by the person served shall be the date of service.

第八十五条 送达诉讼文书，应当直接送交受送达人。受送达人是公民的，本人不在交他的同住成年家属签收；受送达人是法人或者其他组织的，应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收；受送达人有诉讼代理人的，可以送交其代理人签收；受送达人已向人民法院指定代收人的，送交代收人签收。受送达人的同住成年家属，法人或者其他组织的负责收件的人，诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

Article 85 A procedural document shall be served directly on the person to be served. If the person to be served is a citizen, the document shall, in case of his or her absence, be delivered to an adult member of his or her family living with him or her, who shall sign for the same. If the person to be served is a legal person or other organizations, the document shall be signed for receipt by the legal representative of the legal person or by the officer in charge of the organization, or by the legal person's or organization's person in charge of receiving documents. If the person to be served has an agent ad litem, the document may be served on his or her agent ad litem who shall sign for the same. If the person to be served has notified the people's court of his or her designation of an agent to receive documents on his or her behalf, the document may be served on the agent, who shall sign for the same. The date of the signature for receipt as entered on the acknowledgement of service by an adult family member of the person to be served who is living with such person, by the legal person's or organization's person in charge of receiving documents, by the agent ad litem or the agent

designated to receive documents shall be the date of service.

第八十六条 受送达人或者他的同住成年家属拒绝接收诉讼文书的，送达人可以邀请有关基层组织或者所在单位的代表到场，说明情况，在送达回证上记明拒收事由和日期，由送达人、见证人签名或者盖章，把诉讼文书留在受送达人的住所；也可以把诉讼文书留在受送达人的住所，并采用拍照、录像等方式记录送达过程，即视为送达。

Article 86 If a party on which a procedural document is served or any of his or her adult family members living with such party refuses to accept the document, the person serving the document may invite representatives of the relevant basic-level organization or the unit of the party to be served to come to the scene, explain the situation to them, and record the date and reasons of the refusal on the acknowledgement of service. After the person serving the document and the witnesses affixed their signatures or seals on the acknowledgement of service, the document may be left at the domicile of the party and the service process shall be recorded by means such as photography or video-taping, after which the service shall be deemed served.

第八十七条 经受送达人同意，人民法院可以采用传真、电子邮件等能够确认其收悉的方式送达诉讼文书，但判决书、裁定书、调解书除外。采用前款方式送达的，以传真、电子邮件等到达受送达人特定系统的日期为送达日期。

Article 87 Subject to the consent of the person on which a procedural document is to be served, the document may be served by way of facsimile, electronic mail or any other means through which the receipt of the document may be acknowledged, with the exception of judgments, rulings and mediation statements. Where a procedural document is served by any of the means listed in the preceding paragraph, the date the faxed or e-mailed document reached the designated system of the party shall be deemed the date of service.

第八十八条 直接送达诉讼文书有困难的，可以委托其他人民法院代为送达，或者邮寄送达。邮寄送达的，以回执上注明的收件日期为送达日期。

Article 88 If direct service of a procedural service proves difficult, service of the document may be entrusted to another people's court or effected by post. If a document is served by post, the date as stated on the receipt shall be the date of service.

第八十九条 受送达人是军人的，通过其所在部队团以上单位的政治机关转交。

Article 89 If the person to be served is a military person, the document shall be forwarded to him or her by the political organ of or above his or her regiment.

第九十条 受送达人被监禁的，通过其所在监所转交。受送达人被采取强制性教

Article 90 Where a person on whom a document is to be served is imprisoned, the document shall be sent to the prison authority in which the person is held for onward transmission to the recipient.

育措施的，通过其所在强制性教育机构转交。

Where the person on whom a document is to be served is undergoing compulsory correction, the document shall be sent to the compulsory correctional facility in which the person is situated for onward transmission to the person.

第九十一条 代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

Article 91 A forwarding authority or unit must, immediately upon receiving a procedural document, deliver the document to the person to be served, who shall sign the same. The date of signature for receipt as entered on the acknowledgement of service shall be the date of service.

第九十二条 受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过六十日，即视为送达。公告送达，应当在案卷中记明原因和经过。

Article 92 If the whereabouts of the person to be served are unknown, or if a document cannot be served by any other method provided for in this Section, the document shall be served by public announcement. The document shall be deemed to have been served when 60 days have elapsed since the date of the public announcement. Where service is effected by public announcement, the reason for doing so and the steps taken shall be recorded in the case file.

第八章 调解

Chapter VIII Mediation

第九十三条 人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

Article 93 In trying civil cases, a people's court shall distinguish right from wrong and conduct mediation in accordance with the principle of voluntary participation of the parties and on the basis of clear facts.

第九十四条 人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进行。人民法院进行调解，可以用简便方式通知当事人、证人到庭。

Article 94 Mediation conducted by a people's court may be presided over by a single judge or by a collegiate bench. Mediation shall be conducted locally whenever possible. When conducting mediation, a people's court may use a simplified method to notify the parties and witnesses to appear in court.

第九十五条 人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

Article 95 When conducting mediation, a people's court may request for the assistance of relevant units and individuals. The units and individuals invited shall assist the people's court in the mediation.

第九十六条 调解达成协议，必须双方自愿，

Article 96 A mediation agreement shall be reached by the parties voluntarily, and shall not be coerced. The contents of a mediation agreement shall not

不得强迫。调解协议的内容不得违反法律规定。

第九十七条 调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。
调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。调解书经双方当事人签收后，即具有法律效力。

violate the law.

Article 97 When a mediation agreement is reached, the people's court shall prepare a written mediation statement, stating the claims, the facts of the case and the result of the mediation.

The written mediation statement shall be signed by the judicial officers and the court clerk, be affixed with the seal of the people's court and shall be served on both parties.

A written mediation statement shall come into force immediately upon signatures by both parties.

第九十八条 下列案件调解达成协议，人民法院可以不制作调解书：

（一）调解和好的离婚案件；

（二）调解维持收养关系的案件；

（三）能够即时履行的案件；

（四）其他不需要制作调解书的案件。

对不需要制作调解书的协议，应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，即具有法律效力。

Article 98 The people's court need not prepare a written mediation statement in the following types of cases when an agreement is reached through mediation:

1. divorce cases in which the parties have become reconciled through mediation;

2. cases in which an adoptive relationship has been maintained through mediation;

3. cases in which the agreements can be performed immediately; and

4. other cases that do not require written mediation statements.

An agreement that does not require a written mediation statement shall be set down in the written record and shall come into force immediately upon signatures or seals by both parties, the judicial officers and the court clerk.

第九十九条 调解未达成协议或者调解书送达前一方反悔的，人民法院应当及时判决。

Article 99 If no agreement is reached through mediation or if one party repudiates the agreement prior to service of the mediation settlement, the people's court shall promptly make a judgment.

第九章 保全和先予执行

Chapter IX Preservation and Preliminary Execution

第一百条 人民法院对于可能因当事人一方的行为或者其他原因，使判决难以执行或者造成当事人其他损害的案件，根据对方当事人的申请，可以裁定对其财产进行保全、责令其作出一定行为或者

Article 100 In the event that the judgment on the case may become impossible to enforce or such judgment may cause damage to a party because of the conduct of the other party to the case or because of any other reason, the people's court may, upon the request of the said party, order the preservation of the property of the other party, specific performance or injunction; in the absence of such request, the people's court may, where it

禁止其作出一定行为；当事人没有提出申请的，人民法院在必要时也可以裁定采取保全措施。

人民法院采取保全措施，可以责令申请人提供担保，申请人不提供担保的，裁定驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。

deems necessary, may also order property preservation measures.

When a people's court adopts any preservation measure, it may order the applicant to provide security; where the party refuses to provide such security, the court shall reject the application.

When a people's court receives an application for preservation in an emergency, it shall decide within 48 hours after the receipt of the application; if the court accepts the application, such measures shall come into force immediately.

第一百零一条 利害关系人因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害的，可以在提起诉讼或者申请仲裁前向被保全财产所在地、被申请人住所地或者对案件有管辖权的人民法院申请采取保全措施。申请人应当提供担保，不提供担保的，裁定驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。申请人在人民法院采取保全措施后三十日内不依法提起诉讼或者申请仲裁的，人民法院应当解除保全。

Article 101 Where an interested party whose legitimate rights and interests, due to an emergency, would suffer irreparable damage if the party fails to petition for property preservation promptly, may, before instituting a lawsuit or applying for arbitration, apply to the people's court at the locality of the property, the domicile of the party on which the application is made, or the people's court with jurisdiction over the case, for the property preservation measures. The applicant shall provide security for such application; where the party fails to provide such security, the court shall reject the application.

When a people's court receives an application for preservation, it shall decide within 48 hours after the receipt of the application; if the court accepts the application, the preservation measures shall come into force immediately.

Where the applicant fails to institute lawsuit or apply for arbitration in accordance with the law within 30 days after the people's court adopts preservation measures, the people's court shall revoke the preservation order.

第一百零二条 保全限于请求的范围，或者与本案有关的财物。

Article 102 Preservation shall be limited to the scope under the application or to the property related to the case in question.

第一百零三条 财产保全采取查封、扣押、冻结或者法律规定的其他方法。人民法院保全财产后，应当立即通知被保全

Article 103 Property preservation may be in the form of seizure, detainment, freezing of property or by any other means prescribed by the law. When a people's court grants property preservation, it shall promptly notify the party whose property is subject to preservation.

财产的人。
财产已被查封、冻结的，
不得重复查封、冻结。

Property that has already been seized or frozen may not be seized or frozen again.

第一百零四条 财产
纠纷案件，被申请人提供
担保的，人民法院应当裁
定解除保全。

Article 104 If the person against whom the application is made provides security in a case concerning property dispute, the people's court shall cease the preservation order.

第一百零五条 申请
有错误的，申请人应当赔
偿被申请人因保全所遭受
的损失。

Article 105 If an application is made wrongfully, the applicant shall compensate the person against whom the application is made for any loss incurred as a result of the preservation of property.

第一百零六条 人民
法院对下列案件，根据当
事人的申请，可以裁定先
予执行：

Article 106 Upon the request of a party, a people's court may make a ruling for preliminary execution in the following cases:

- (一) 追索赡养费、扶养费、抚育费、抚恤金、医疗费用的；
- (二) 追索劳动报酬的；
- (三) 因情况紧急需要先予执行的。

1. those involving claims for overdue alimony, maintenance, child support, pensions for the disabled or the family of the deceased, or medical expenses;
2. those involving claims for remuneration for labour; and
3. those involving urgent circumstances that require preliminary execution.

第一百零七条 人民
法院裁定先予执行的，应
当符合下列条件：

Article 107 Cases in which a people's court makes a ruling for preliminary execution shall meet the following conditions

- (一) 当事人之间权利义务关系明确，不先予执行将严重影响申请人的生活或者生产经营的；
- (二) 被申请人有履行能力。

1. The relationship of rights and obligations between the parties is evident and, without preliminary execution, the life, production activities or business operations of the applicant would be seriously affected; and
2. The person against whom the application is made is capable of performing the ruling for preliminary execution.

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。申请人败诉的，应当赔偿被申请人因先予执行遭受的财产损失。

The people's court may order the applicant to provide security. If the applicant fails to provide security, his application shall be rejected. The applicant losing the action shall compensate the person against whom the application is made for any loss of property incurred from the preliminary execution.

第一百零八条 当事
人对保全或者先予执行的
裁定不服的，可以申请复
议一次。复议期间不停止

Article 108 If a party is dissatisfied with a ruling for preservation of property or preliminary execution, he may apply once for review. Execution of the ruling shall not be suspended during the period of

裁定的执行。

review.

第十章 对妨害民事诉讼的强制措施

Chapter X Compulsory Measures against Obstruction of Civil Actions

第一百零九条 人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

Article 109 If a defendant who shall appear in court has been served a summons twice but refuses to appear in court without proper causes, the people's court may summon him by means of arrest.

第一百一十条 诉讼参与人和其他人应当遵守法庭规则。

Article 110 Participants in actions and other persons shall comply with court rules.

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

Persons who violate court rules may be reprimanded, ordered to leave the court, fined or detained by the people's court.

人民法院对哄闹、冲击法庭，侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

Persons who seriously disrupt court order by making noises or creating uproar in the courtroom, or by insulting, slandering, threatening, or battering judicial officers, shall be prosecuted by the people's court in accordance with the law. If the offence is minor one, such offender may be fined or detained.

第一百一十一条 诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

Article 111 If a participant in an action or another person commits any of the following acts, the people's court may fine him or detain him according to the seriousness of the case; if the act constitutes a crime, the person shall be prosecuted in accordance with the law:

（一）伪造、毁灭重要证据，妨碍人民法院审理案件的；

1. forging or destroying important evidence, thereby obstructing the trial of the case by the people's court;

（二）以暴力、威胁、贿买方法阻止证人作证或者指使、贿买、胁迫他人作伪证的；

2. using violence, threats or subornation to prevent a witness from giving testimony, or instigating, suborning, or coercing others to commit perjury;

（三）隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；

3. concealing, removing, selling off or destroying property that has been sealed up or distrained, or that has been inventoried and placed in his custody by order, or moving assets that have been frozen;

（四）对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、

4. insulting, slandering, falsely incriminating, battering or retaliating against judicial personnel, participants in the action, witnesses, interpreters, experts, inspectors, or personnel assisting in execution;

5. using violence, threats or other methods to obstruct judicial personnel from performing their

协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；

（五）以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；

（六）拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

duties; or

6. refusing to perform a legally effective judgment or ruling of the people's court.

Where a unit commits any of the acts listed in the preceding paragraph, the people's court may impose a fine or period of detention on the head of the unit or the person directly responsible for the act. If the act constitutes a criminal offence, such person shall be prosecuted according to law.

第一百一十二条 当事人之间恶意串通，企图通过诉讼、调解等方式侵害他人合法权益的，人民法院应当驳回其请求，并根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

Article 112 Where more than two parties to a case maliciously collaborate among themselves for the purpose of infringing the legitimate rights and interests of any other party by making use of initiating lawsuits or mediation, the people's court shall reject the claims of such parties and order a fine or detention against such parties depending on the circumstances; where the violation on the part of the parties is suspected to constitute a crime, such parties shall be subject to criminal prosecution in accordance with the law.

第一百一十三条 被执行人与他人恶意串通，通过诉讼、仲裁、调解等方式逃避履行法律文书确定的义务的，人民法院应当根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

Article 113 Where the party subject to enforcement maliciously collaborates with any other party to evade any of its legal obligations specified in the legal documents by way of lawsuit, arbitration or mediation, the people's court shall order a fine or detention against such parties depending on the circumstances; where the violation of the parties is suspected of constituting a crime, such parties shall be subject to criminal prosecution in accordance with the law.

第一百一十四条 有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，并可以予以罚款：

（一）有关单位拒绝或者妨碍人民法院调查取证

Article 114 If any of the following units under an obligation to assist in investigation and execution commits any of the listed acts, the people's court may, in addition to ordering it to perform its assistance obligation, impose a fine:

1. relevant units that refuse to cooperate with or that obstruct the investigation or collection of evidence by the people's court;
2. where units concerned refuse to provide

的；

(二) 有关单位接到人民法院协助执行通知书后，拒不协助查询、扣押、冻结、划拨、变价财产的；

(三) 有关单位接到人民法院协助执行通知书后，拒不协助扣留被执行人的收入、办理有关财产权证照转移手续、转交有关票证、证照或者其他财产的；

(四) 其他拒绝协助执行的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款；对仍不履行协助义务的，可以予以拘留；并可以向监察机关或者有关机关提出予以纪律处分的司法建议。

assistance in connection with the inquiry, seizure, freeze, transfer or appraisal of property after receiving the notice of the people's court requiring such assistance;

3. relevant units that, after receiving a notice from the people's court to assist in execution, refuse to assist in withholding the revenue of the person subject to execution, or in transferring the relevant title deeds, or in passing on the relevant negotiable instruments, certificates, or other property; or
4. other units that refuse to assist in execution.

A people's court may fine the principally responsible person or any other person directly responsible for an unit that commits any of the acts described in the preceding paragraph; the people's court may detain any person that refuses to carry out his duty to assist and submit a judicial proposal to the supervisory authorities or other relevant authorities suggesting the imposition of disciplinary sanctions.

第一百一十五条 对个人的罚款金额，为人民币十万元以下。对单位的罚款金额，为人民币五万元以上一百万元以下。拘留的期限，为十五日以下。

被拘留的人，由人民法院交公安机关看管。在拘留期间，被拘留人承认并改正错误的，人民法院可以决定提前解除拘留。

Article 115 A fine imposed against an individual shall be less than CNY100,000. A fine imposed against a unit shall be more than CNY50,000 and less than CNY1 million.

A period of detention shall not be longer than 15 days.

The people's court shall deliver detainees to the custody of the public security authority. If a detainee admits and corrects his wrongdoings during the period of detention, the people's court may decide to grant an early release.

第一百一十六条 拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

Article 116 Summoning a person by means of arrest, the imposition of a fine and detention shall be subject to approval by the court presidents.

Summoning a person by means of arrest shall require the issue of an arrest warrant.

Written decisions shall be issued for the imposition of fines and detention. If an offender is dissatisfied with a decision, he may apply once to the immediate superior people's court for review.

Execution of the decision shall not be suspended

during the period of review.

第一百一十七条 采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的，应当依法追究刑事责任，或者予以拘留、罚款。

Article 117 Decisions on the adoption of compulsory measures against obstruction of civil actions must be made by the people's court. Any unit or individual that seeks performance of an obligation by illegal detention of a person or by illegal, private distraintment of another's property shall be prosecuted in accordance with the law, or shall be detained or fined.

第十一章 诉讼费用

Chapter XI Litigation Costs

第一百一十八条 当事人进行民事诉讼，应当按照规定交纳案件受理费。财产案件除交纳案件受理费外，并按照规定交纳其他诉讼费用。当事人交纳诉讼费用确有困难的，可以按照规定向人民法院申请缓交、减交或者免交。收取诉讼费用的办法另行制定。

Article 118 Parties engaged in civil litigation shall pay a case acceptance fee in accordance with regulations. In property cases, the parties shall also pay other litigation costs in addition to the case acceptance fee. If a party truly has difficulty in paying litigation costs, it may, in accordance with regulations, apply to the people's court for deferment, reduction or exemption of payment. The methods for charging costs shall be formulated separately.

第二编 审判程序

Division Two Trial Procedure

第十二章 第一审普通程序

Chapter XII Ordinary Procedure at First Instance

第一节 起诉和受理

Section 1 Institution and Acceptance of Actions

第一百一十九条 起诉必须符合下列条件：
（一）原告是与本案有直接利害关系的公民、法人和其他组织；
（二）有明确的被告；
（三）有具体的诉讼请求和事实、理由；
（四）属于人民法院受理民事诉讼的范围和受诉人民法院管辖。

Article 119 To institute an action, the following conditions must be satisfied:
1. the plaintiff must be a citizen, legal person or other organization with a direct interest in the case;
2. there must be a specific defendant;
3. there must be a specific claim and a specific factual basis and grounds; and
4. the action must fall within the range of civil actions accepted by the people's courts and within the jurisdiction of the people's court with which it is filed.

第一百二十条 起诉应当向人民法院递交起诉状，并按照被告人数提出

Article 120 When instituting an action, a statement of claim shall be submitted to the people's court, copies of which shall be provided according to the

<p>副本。</p> <p>书写起诉状确有困难的，可以口头起诉，由人民法院记入笔录，并告知对方当事人。</p>	<p>number of defendants.</p> <p>If a plaintiff truly has difficulty in writing a statement of claim, he may lodge the claim verbally. The people's court shall transcribe such verbal complaint and notify the opposing party.</p>
<p>第一百二十一条 起诉状应当记明下列事项：</p> <p>（一）原告的姓名、性别、年龄、民族、职业、工作单位、住所、联系方式，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务、联系方式；</p> <p>（二）被告的姓名、性别、工作单位、住所等信息，法人或者其他组织的名称、住所等信息；</p> <p>（三）诉讼请求和所根据的事实与理由；</p> <p>（四）证据和证据来源，证人姓名和住所。</p>	<p>Article 121 A statement of claim shall specify the following:</p> <ol style="list-style-type: none"> 1. the plaintiff's name, gender, age, ethnicity, occupation, employer, domicile and contact information; in the event that the plaintiff is a legal person or an organization of any other form, the name and domicile of the legal person or organization, the name, title and contact information of the legal representative or principally responsible person thereof shall be provided; 2. the defendant's name, gender, employer and domicile; in the event that the defendant is a legal person or an organization of any other form, its name and domicile shall be provided; 3. the claim and its supporting facts and grounds; and 4. evidence and the source thereof, and the names and domiciles of witnesses.
<p>第一百二十二条 当事人起诉到人民法院的民事纠纷，适宜调解的，先行调解，但当事人拒绝调解的除外。</p>	<p>Article 122 Where mediation is appropriate in a civil lawsuit instituted by a party to a people's court, the parties should first go through mediation, provided that the parties to the dispute rejects mediation.</p>
<p>第一百二十三条 人民法院应当保障当事人依照法律规定享有的起诉权利。对符合本法第一百十九条的起诉，必须受理。符合起诉条件的，应当在七日内立案，并通知当事人；不符合起诉条件的，应当在七日内作出裁定书，不予受理；原告对裁定不服的，可以提起上诉。</p>	<p>Article 123 The people's courts shall safeguard a party's right to institute an action in accordance with law. A people's court shall accept the action prescribed in Article 119 of the Law. If the people's court finds it satisfies the conditions for the institution of actions, the people's court shall place the action on its trial docket within seven days and notify the parties. If the people's court finds it does not satisfy the conditions for the institution of actions, the people's court shall rule within seven days not to accept the action. The plaintiff may appeal against such ruling if he is dissatisfied with the ruling.</p>
<p>第一百二十四条 人民法院对下列起诉，分别情形，予以处理：</p>	<p>Article 124 The people's courts shall handle the following actions according to the specific circumstances of the individual case:</p> <ol style="list-style-type: none"> 1. where an action falls within the scope of cases

- (一) 依照行政诉讼法的规定, 属于行政诉讼受案范围的, 告知原告提起行政诉讼;
- (二) 依照法律规定, 双方当事人达成书面仲裁协议申请仲裁、不得向人民法院起诉的, 告知原告向仲裁机构申请仲裁;
- (三) 依照法律规定, 应当由其他机关处理的争议, 告知原告向有关机关申请解决;
- (四) 对不属于本院管辖的案件, 告知原告向有管辖权的人民法院起诉;
- (五) 对判决、裁定、调解书已经发生法律效力的案件, 当事人又起诉的, 告知原告申请再审, 但人民法院准许撤诉的裁定除外;
- (六) 依照法律规定, 在一定期限内不得起诉的案件, 在不得起诉的期限内起诉的, 不予受理;
- (七) 判决不准离婚和调解和好的离婚案件, 判决、调解维持收养关系的案件, 没有新情况、新理由, 原告在六个月内又起诉的, 不予受理。
- that may be accepted as administrative actions under the Law of the People's Republic of China on Administrative Proceedings, the plaintiff shall be notified that he should institute administrative action;
2. if the parties to a contract dispute have voluntarily and lawfully concluded a written arbitration agreement stipulating that disputes must be taken to an arbitration institution and that an action may not be initiated in the people's court, the plaintiff shall be notified that he should apply for arbitration to the arbitration institution;
3. if the law provides that the dispute shall be handled by another authority, the plaintiff shall be notified that he should apply for settlement of the dispute to the relevant authority;
4. if the action does not come under the jurisdiction of the court with which it is filed, the plaintiff shall be notified that he should file the action with the people's court with jurisdiction;
5. if a party to a case in which the judgment or ruling has become legally effective files a new action for the same case, the plaintiff shall be notified that the case will be handled as a petition for a review, provided that the ruling in question is a ruling by the people's court permitting withdrawal of the action;
6. if the law provides that no actions may be filed within a specified period and the action is filed within such period, it shall not be accepted; and
7. in divorce cases, where a judgment has been made denying divorce or where the parties have become reconciled after mediation, and in cases where a judgment has been made to maintain an adoptive relationship or an adoptive relationship is maintained upon mediation, a new action filed for the same case by the plaintiff within six months shall not be accepted without new developments or grounds.

第二节 审理前的准备

Section 2 Pretrial Preparations

第一百二十五条 人民法院应当在立案之日起五日内将起诉状副本发送被告, 被告应当在收到之日起十五日内提出答辩

Article 125 The people's court shall deliver a copy of a statement of claim to the defendant within five days after the claim is filed; the defendant shall file a statement of defence within 15 days after receiving the copy of the statement of claim. The

状。答辩状应当记明被告的姓名、性别、年龄、民族、职业、工作单位、住所、联系方式；法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务、联系方式。人民法院应当在收到答辩状之日起五日内将答辩状副本发送原告。被告不提出答辩状的，不影响人民法院审理。

statement of defence shall contain the name, gender, age, ethnicity, occupation, employer, domicile and contact information of the defendant; in the event that the defendant is a legal person or an organization of any other form, the name and domicile of the legal person or organization, the name, title and contact information of the legal representative or principally responsible person thereof shall also be specified; The people's court shall deliver a copy of the statement of defence to the plaintiff within five days from the date when it receives the same.

Failure by the defendant to provide a statement of defence does not affect the hearing of the case by the people's court.

第一百二十六条 人民法院对决定受理的案件，应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务，或者口头告知。

Article 126 In cases that it has decided to accept, a people's court shall advise the parties orally, or in the notice of acceptance of the case and the notice of response to the action, of their procedural rights and obligations.

第一百二十七条 人民法院受理案件后，当事人对管辖权有异议的，应当在提交答辩状期间提出。人民法院对当事人提出的异议，应当审查。异议成立的，裁定将案件移送有管辖权的人民法院；异议不成立的，裁定驳回。当事人未提出管辖异议，并应诉答辩的，视为受诉人民法院有管辖权，但违反级别管辖和专属管辖规定的除外。

Article 127 If a party objects to the jurisdiction over a case after its acceptance by a people's court, the party shall raise the objection during the time limit for filing the statement of defence. The people's court shall examine such objection. If the objection is tenable, the people's court shall rule that the case be referred to the people's court with jurisdiction over the case; if the objection is untenable, it shall be overruled.

Where the party does not raise any objection to the jurisdiction of the case and responds to the claim and enters defense, the party shall be deemed to have agreed that the people's court accepting the case has jurisdiction over the case, unless it is in violation of the provisions regarding jurisdiction by level and exclusive jurisdiction.

第一百二十八条 合议庭组成人员确定后，应当在三日内告知当事人。

Article 128 The parties shall be notified within three days after the members of the collegiate bench have been determined.

第一百二十九条 审判人员必须认真审核诉讼材料，调查收集必要的证据。

Article 129 Judicial officers must conscientiously examine the materials relating to the action and investigate and collect the necessary evidence.

第一百三十条 人民法院派出人员进行调查时，应当向被调查人出示证件。调查笔录经被调查人校阅后，由被调查人、调查人签名或者盖章。

Article 130 Personnel sent by a people's court to conduct an investigation shall show their credentials to the person under investigation. The written record of the investigation shall be checked by the person under investigation, which shall be signed or sealed by the person under investigation and the investigator.

第一百三十一条 人民法院在必要时可以委托外地人民法院调查。委托调查，必须提出明确的项目和要求。受委托人民法院可以主动补充调查。受委托人民法院收到委托书后，应当在三十日内完成调查。因故不能完成的，应当在上述期限内函告委托人民法院。

Article 131 When necessary, a people's court may entrust a people's court in another locality with an investigation. When entrusting such other people's court, the entrusting people's court must clearly set out the matter to be investigated and its requirements. The entrusted people's court may conduct supplementary investigations on its own initiative. An entrusted people's court shall complete its investigation within 30 days after receipt of the letter of entrustment. If it cannot complete the investigation for reasons, it shall notify the entrusting people's court in writing within the above time limit.

第一百三十二条 必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当通知其参加诉讼。

Article 132 If a party who must participate in a joint action fails to participate in the same, the people's court shall notify him of participation in the action.

第一百三十三条 人民法院对受理的案件，分别情形，予以处理：

(一) 当事人没有争议，符合督促程序规定条件的，可以转入督促程序；

(二) 开庭前可以调解的，采取调解方式及时解决纠纷；

(三) 根据案件情况，确定适用简易程序或者普通程序；

(四) 需要开庭审理的，通过要求当事人交换证据等方式，明确争议焦点。

Article 133 The people's courts shall handle the accepted cases according to the specific circumstances of the individual case:

1. If the parties do not raise any objection, and the case meets the requirements prescribed in procedure for the recovery of debts, the procedure for the recovery of debts may be initiated on the case;
2. If mediation is appropriate for a case before the hearing of the case begins, the dispute shall be settled through mediation in a timely manner;
3. Based on the circumstances of the case, determine whether to apply the summary procedure or ordinary procedure; and
4. If it is necessary to hold a hearing, the focus of dispute in the case shall be determined by ordering the parties to exchange evidence.

第三节 开庭审理 Section 3 Trial in Court

第一百三十四条 人 Article 134 People's courts shall try civil cases in

民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

public, except for those involving State secrets or private matters of individuals or otherwise stipulated in the law. Divorce cases and cases that involve trade secrets may be tried in camera if a party so requests.

第一百三十五条 人
民法院审理民事案件，根据需要进行巡回审理，就地办案。

Article 135 In trying civil cases, the people's courts shall conduct circuit trials to handle cases on the spot when necessary.

第一百三十六条 人
民法院审理民事案件，应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的，应当公告当事人姓名、案由和开庭的时间、地点。

Article 136 When trying a civil case, the people's court shall notify the parties and other participants in the action three days prior to the hearing. If the case is to be tried in public, the names of the parties, the cause of action and the time and place of the hearing shall be publicly announced.

第一百三十七条 开
庭审理前，书记员应当查明当事人和其他诉讼参与人是否到庭，宣布法庭纪律。开庭审理时，由审判长核对当事人，宣布案由，宣布审判人员、书记员名单，告知当事人有关的诉讼权利义务，询问当事人是否提出回避申请。

Article 137 Before holding a trial hearing, the court clerk shall ascertain the presence of the parties and the other participants in the action and announce the discipline of the court. At the opening of a trial hearing, the presiding judge shall check the parties present, announce the cause of action, the names of the judicial officers and the name of the court clerk, advise the parties of their procedural rights and obligations and inquire whether the parties wish to challenge any judicial officers.

第一百三十八条 法
庭调查按照下列顺序进行：
（一）当事人陈述；
（二）告知证人的权利义务，证人作证，宣读未到庭的证人证言；
（三）出示书证、物证、视听资料和电子数据；
（四）宣读鉴定意见；
（五）宣读勘验笔录。

Article 138 Investigation in court shall be conducted in the following order:
1. presentation of statements by the parties;
2. advising witnesses of their rights and obligations, giving testimony by the witnesses and reading out the depositions of absent witnesses;
3. presentation of documentary evidence, physical evidence, audio-visual data and electronic data;
4. reading out expert opinions; and
5. reading out the record of the inquest.

第一百三十九条 当

Article 139 The parties may produce new evidence

事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

in court.

With the permission of the court, the parties may question the witnesses, experts and inspectors.

Any request by the parties for a new investigation, expert examination or inquest shall be subject to the approval by the people's court.

第一百四十条 原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

Article 140 If the plaintiff presents an additional claim, or the defendant brings a counterclaim or a third party presents a claim related to the case, such claim or counterclaim may be tried together.

第一百四十一条 法庭辩论按照下列顺序进行：

（一）原告及其诉讼代理人发言；

（二）被告及其诉讼代理人答辩；

（三）第三人及其诉讼代理人发言或者答辩；

（四）互相辩论。

法庭辩论终结，由审判长按照原告、被告、第三人的先后顺序征询各方最后意见。

Article 141 Court debates shall be conducted in the following order:

1. presentation of oral statements by the plaintiff and his agent ad litem;

2. presentation of oral response by the defendant and his agent ad litem;

3. presentation of oral statement or response by the third party and his agent ad litem;

4. debate between the parties.

At the conclusion of the court debate, the presiding judge shall first ask the plaintiff, then the defendant and finally the third party to make their final comments.

第一百四十二条 法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

Article 142 At the conclusion of the court debate, a judgment shall be made according to law. If possible, mediation may be conducted prior to making a judgment. If mediation is unsuccessful, a judgment shall promptly be made.

第一百四十三条 原告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

Article 143 If a plaintiff has been served a summons but refuses without proper cause to appear in court, or if a plaintiff leaves the courtroom during the trial without the court's permission, he may be deemed to have withdrawn his suit and, if the defendant has brought a counterclaim, a judgment by default may be made.

第一百四十四条 被告经传票传唤，无正当理由

Article 144 If a defendant has been served a summons, but refuses without proper cause to

由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

appear in court or if a defendant leaves the courtroom during the trial without the court's permission, a judgment by default may be made.

第一百四十五条 宣判前，原告申请撤诉的，是否准许，由人民法院裁定。人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

Article 145 If a plaintiff applies for withdrawal of action before judgment is pronounced, the people's court shall decide on whether or not to grant approval.

If the withdrawal of action has been denied by an order of the people's court, and the plaintiff, having been served a summons, refuses without proper cause to appear in court, a judgment by default may be made.

第一百四十六条 有下列情形之一的，可以延期开庭审理：

Article 146 A trial hearing may be adjourned in any of the following circumstances:

（一）必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；

1. the parties or other participants in the action required to appear in court fail to do so with proper cause;

（二）当事人临时提出回避申请的；

2. a party extemporarily challenges judicial officers;

3. it is necessary to summon new witnesses to court, collect new evidence, make a new expert examination or inquest, or make a supplementary investigation; or

（三）需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；

4. other circumstances that require adjournment have arisen.

（四）其他应当延期的情形。

第一百四十七条 书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

Article 147 The court clerk shall make a written record of all the activities during a trial hearing, which shall be signed by him and the judicial officers.

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

The court record shall be read out in court or the parties and other participants in the action may be notified to read the court record in court or within five days. If the parties or other participants in the action consider that there are omissions or errors in the record of their statements, they shall have the right to apply for addition or correction. If such addition or correction is not made, the application shall be recorded in the case file.

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

The court record shall be signed or sealed by the parties and other participants in the action. Any refusal to do so shall be recorded in a note to be attached to the file.

<p>第一百四十八条 人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。</p>	<p>Article 148 People's courts shall publicly pronounce their judgments in all cases, whether tried in public or in camera. If a judgment is pronounced in court, the written judgment shall be dispatched within ten days. If a judgment is pronounced on a fixed date, the written judgment shall be issued immediately after the pronouncement. Upon pronouncement of a judgment, the parties must be advised of their right to appeal, the time limit for appeal and the court with which an appeal should be lodged. Upon pronouncement of a divorce judgment, the parties must be advised that they may not remarry before the judgment becomes legally effective.</p>
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<p>第一百四十九条 人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民法院批准。</p>	<p>Article 149 when handling a case to which ordinary procedure is applicable, a people's court shall conclude the case within six months from the date of placing the case on file. Where an extension is required under special circumstances, a six-month extension may be given subject to the approval of the president of the court. Any further extension shall be reported to the people's court of higher level for approval.</p>
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<p>第四节 诉讼中止和终结</p>	<p>Section 4 Suspension and Termination of Actions</p>
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<p>第一百五十条 有下列情形之一的，中止诉讼：</p> <p>（一）一方当事人死亡，需要等待继承人表明是否参加诉讼的；</p> <p>（二）一方当事人丧失诉讼行为能力，尚未确定法定代理人的；</p> <p>（三）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；</p> <p>（四）一方当事人因不可抗拒的事由，不能参加诉讼的；</p> <p>（五）本案必须以另一案的审理结果为依据，而另</p>	<p>Article 150 An action shall be suspended in any of the following circumstances:</p> <ol style="list-style-type: none"> 1. one of the parties dies and it is necessary to wait for his successor to state whether he wishes to participate in the action; 2. one of the parties has lost the capacity to engage in litigation, and his statutory agent has not been determined yet; 3. the legal person or other organization acting as one of the parties has terminated, and the successor to its rights and obligations has not been determined yet; 4. one of the parties is unable to participate in the action due to an event of force majeure; 5. the case in question is dependent upon the outcome of the trial of another case that has not been concluded; or 6. other circumstances require the suspension of proceedings. <p>Proceedings shall be resumed after the cause of</p>
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一案尚未审结的；
 （六）其他应当中止诉讼的情形。
 中止诉讼的原因消除后，恢复诉讼。

suspension has been eliminated.

第一百五十一条 有下列情形之一的，终结诉讼：

（一）原告死亡，没有继承人，或者继承人放弃诉讼权利的；

（二）被告死亡，没有遗产，也没有应当承担义务的人的；

（三）离婚案件一方当事人死亡的；

（四）追索赡养费、扶养费、抚育费以及解除收养关系案件的一方当事人死亡的。

Article 151 An action shall be terminated in any of the following circumstances:

1. the plaintiff dies without a successor, or the successor waives his procedural rights;

2. the defendant dies without estate and without a person to succeed to his obligations;

3. one of the parties in a divorce case dies; or

4. one of the parties in a case involving claims for overdue alimony, maintenance, child support or the termination of an adoptive relationship dies.

第五节 判决和裁定

Section 5 Judgment and Ruling

第一百五十二条 判决书应当写明判决结果和作出该判决的理由。判决书内容包括：

（一）案由、诉讼请求、争议的事实和理由；

（二）判决认定的事实和理由、适用的法律和理由；

（三）判决结果和诉讼费用的负担；

（四）上诉期间和上诉的法院。

判决书由审判人员、书记员署名，加盖人民法院印章。

Article 152 A written judgment shall clearly state the decision and the reasons supporting the judgment. The contents of the written judgment shall include:

1. the cause of action, the claims, the facts and grounds of the dispute;

2. the facts and grounds as found in the judgment, and the applicable laws and reasons;

3. the result of the judgment and the apportionment of litigation costs; and

4. the time limit for appeal and the court with which an appeal should be lodged.

A written judgment shall be signed by the judicial officers and the court clerk, and the seal of the people's court shall be affixed to it.

第一百五十三条 人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。

Article 153 If some of the facts of a case being tried are evident already, the people's court may make a judgment on those facts first.

第一百五十四条 裁

Article 154 Rulings shall be applicable to the

<p>定适用于下列范围：</p> <p>（一）不予受理；</p> <p>（二）对管辖权有异议的；</p> <p>（三）驳回起诉；</p> <p>（四）保全和先予执行；</p> <p>（五）准许或者不准许撤诉；</p> <p>（六）中止或者终结诉讼；</p> <p>（七）补正判决书中的笔误；</p> <p>（八）中止或者终结执行；</p> <p>（九）撤销或者不予执行仲裁裁决；</p> <p>（十）不予执行公证机关赋予强制执行效力的债权文书；</p> <p>（十一）其他需要裁定解决的事项。</p> <p>对前款第一项至第三项裁定，可以上诉。</p> <p>裁定书应当写明裁定结果和作出该裁定的理由。裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。</p>	<p>following:</p> <ol style="list-style-type: none"> 1. refusal to entertain a case; 2. objection to the jurisdiction of a court; 3. dismissal of a complaint; 4. property preservation and preliminary execution; 5. approval or disapproval of withdrawal of an action; 6. suspension or termination of an action; 7. correction of clerical errors in a written judgment; 8. suspension or termination of execution; 9. cancellation of or refusal to enforce an arbitration award; 10. refusal to enforce a document on creditor's rights that has been rendered enforceable by a notary agency; and 11. other matters to be settled by a ruling. <p>An appeal may be filed against a ruling on the matters under Item 1 to Item 3 of the preceding paragraph.</p> <p>A written ruling shall specify the results and the reasons for the ruling. The written ruling shall be signed by the adjudicatory personnel and the court clerk, and affixed with the seal of the people's court. An oral ruling shall be entered into the written records.</p>
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<p>第一百五十五条 最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。</p>	<p>Article 155 Judgments and rulings made by the Supreme People's Court, and judgments and rulings that may not be appealed against according to the law or that have not been appealed against within the prescribed time limit, shall be legally effective.</p>
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<p>第一百五十六条 公众可以查阅发生法律效力判决书、裁定书，但涉及国家秘密、商业秘密和个人隐私的内容除外。</p>	<p>Article 156 The general public may have access to the effective written legal judgments and rulings, except for those involving state secrets, trade secrets or personal privacy.</p>
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<p>第十三章 简易程序</p>	<p>Chapter XIII Summary Procedure</p>
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<p>第一百五十七条 基</p>	<p>Article 157 Where a basic people's courts and a tribunal dispatched by it try simple civil cases in</p>
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层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

基层人民法院和它派出的法庭审理前款规定以外的民事案件，当事人双方也可以约定适用简易程序。

第一百五十八条 对简单的民事案件，原告可以口头起诉。当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百五十九条 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式传唤当事人和证人、送达诉讼文书、审理案件，但应当保障当事人陈述意见的权利。

第一百六十条 简单的民事案件由审判员一人独任审理，并不受本法第一百三十六条、第一百三十八条、第一百四十一条规定的限制。

第一百六十一条 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

第一百六十二条 基层人民法院和它派出的法庭审理符合本法第一百五十七条第一款规定的简单的民事案件，标的额为各省、自治区、直辖市上年

which the facts are evident, the relationship of rights and obligations is definite and the disputes are minor, the provisions of this Chapter shall apply.

Where a basic people's court or a tribunal dispatched by it hears civil cases other than those stipulated under the preceding paragraph, the parties may also agree on the application of summary procedure.

Article 158 In simple civil cases, the plaintiff may institute actions verbally.

Both parties may simultaneously appear before a basic people's court or a tribunal dispatched by it to request settlement of their dispute. The basic people's court or the tribunal dispatched by it may try the case immediately or set a date for trial.

Article 159 When trying a simple civil case, a basic people's court or a tribunal dispatched by it may adopt a simplified and convenient method to summon the parties and witnesses, serve the lawsuit documents and conduct the trial, provided that the parties' rights to be heard shall be protected.

Article 160 Simple civil cases shall be tried by a single judge alone, which shall not be subject to the restriction of Articles 136, 138 and 141 of the Law.

Article 161 When trying a case by applying summary procedure, a people's court shall conclude the case within three months from the date of placing it on the docket.

Article 162 When trying a simple civil case prescribed in Item 1 of Article 157 of the Law, the subject amount of which is below thirty percent of the average annual salary of the employees of all provinces, autonomous regions, municipalities directly under the Central Government in the previous year, the basic people's court or the

度就业人员年平均工资百分之三十以下的，实行一审终审。

tribunal dispatched by it may apply the system under which the ruling in the first instance shall be final.

第一百六十三条 人民法院在审理过程中，发现案件不宜适用简易程序的，裁定转为普通程序。

Article 163 Where in hearing a case, the people's court finds that it is inappropriate to apply the summary procedure to the case, it may rule to evoke the regular procedure.

第十四章 第二审程序

Chapter XIV Procedure at Second Instance

第一百六十四条 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

Article 164 If a party disagrees with a first instance judgment made by a local people's court, the party shall have the right to lodge an appeal with the immediate superior people's court within 15 days from the date on which the written judgment was served.

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

If a party disagrees with a first instance ruling made by a local people's court, the party shall have the right to lodge an appeal with the immediate superior people's court within ten days from the date on which the written ruling was served.

第一百六十五条 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

Article 165 To lodge an appeal, an appeal petition shall be submitted. The contents of an appeal petition shall include the names of the parties, the names of the legal persons and their legal representatives or the names of other organizations and their principally responsible persons; the name of the people's court that originally tried the case, the file number of the case and the cause of action; and the claims and grounds of the appeal.

第一百六十六条 上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

Article 166 An appeal petition shall be submitted through the people's court that originally tried the case, copies of which shall be provided according to the number of persons in the other party or of the representatives thereof.

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

If a party appeals directly to a people's court of second instance, such court shall transfer the appeal petition to the people's court that originally tried the case within five days.

第一百六十七条 原审人民法院收到上诉状，应当在五日内将上诉状副

Article 167 Within five days after receiving an appeal petition, the people's court that originally tried the case shall serve the copy of the appeal

本送达对方当事人，对方当事人收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百六十八条 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百六十九条 第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷、调查和询问当事人，对没有提出新的事实、证据或者理由，合议庭认为不需要开庭审理的，可以不开庭审理。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百七十条 第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决、裁定认定事实清楚，适用法律正确的，以判决、裁定方式驳回上诉，维持原判决、裁定；

（二）原判决、裁定认定事实错误或者适用法律错误的，以判决、裁定方式依法改判、撤销或者变

petition on the other party, who shall, within 15 days from the date of receipt, submit a statement of defence. The people's court shall, within five days after receiving the statement of defence, serve a copy of the statement on the appellant. Failure on the part of the other party to submit a statement of defence shall not affect the trial of the case by the people's court.

Within five days after receiving the appeal petition and the statement of defence, the people's court that originally tried the case shall deliver the same to the people's court of second instance together with the entire case file and all the evidence.

Article 168 A people's court of second instance shall investigate the relevant facts and the applicable law pertaining to the appeal.

Article 169 During the hearing of an appeal, the people's court of the second instance shall form a collegiate bench for the hearing. Where, upon reviewing the case files, conducting investigations and questioning the parties, no new facts, evidences or reasons are submitted, the collegiate bench may decide not to hold a hearing if it deems unnecessary.

A people's court of second instance may try an appeal case in its own court or in the place where the case originated or where the people's court that originally tried the case is located.

Article 170 After an appeal hearing, a people's court of the second instance shall decide according to the following circumstances:

1. where the original judgment or ruling is supported by clear facts and correct application of law, a judgment or ruling shall be made to dismiss the appeal and uphold the original judgment or ruling;
2. where the verification of facts or application of law are erroneous in the original judgment or ruling, a judgment or ruling amending, revoking or modifying the original judgment or ruling shall be made in accordance with law;
3. where the verification of fundamental facts is not

更；

(三) 原判决认定基本事实不清的, 裁定撤销原判决, 发回原审人民法院重审, 或者查清事实后改判;

(四) 原判决遗漏当事人或者违法缺席判决等严重违反法定程序的, 裁定撤销原判决, 发回原审人民法院重审。

原审人民法院对发回重审的案件作出判决后, 当事人提起上诉的, 第二审人民法院不得再次发回重审。

clearly ascertained in the original judgment, a ruling shall be made to revoke the original judgment, return the case to the people's court that originally tried the case for retrial, or amend the judgment after the facts have been clearly ascertained; and 4. where the original judgment seriously violates the statutory procedure, such as omitting a party or illegally entering a default judgment, a ruling shall be made to dismiss the original judgment and return the case to the original people's court for retrial.

Where, after the original people's court makes a judgment for the case remanded for retrial, any of the parties thereto files an appeal, the people's court of the second instance may not remand the case again for retrial.

第一百七十一条 第二审人民法院对不服第一审人民法院裁定的上诉案件的处理, 一律使用裁定。

Article 171 In handling an appeal against a ruling made by a people's court of first instance, the people's court of second instance shall in all cases use rulings.

第一百七十二条 第二审人民法院审理上诉案件, 可以进行调解。调解达成协议, 应当制作调解书, 由审判人员、书记员署名, 加盖人民法院印章。调解书送达后, 原审人民法院的判决即视为撤销。

Article 172 In trying an appeal case, a people's court of second instance may conduct mediation. If an agreement is reached upon mediation, a written mediation statement shall be prepared. Such written mediation statement shall be signed by the judicial officers and the court clerk, and the seal of the people's court shall be affixed to it. Immediately upon service of the written mediation statement, the judgment of the people's court that originally tried the case shall be deemed to have been quashed.

第一百七十三条 第二审人民法院判决宣告前, 上诉人申请撤回上诉的, 是否准许, 由第二审人民法院裁定。

Article 173 If an appellant applies for withdrawal of his appeal prior to the pronouncement of judgment by the people's court of second instance, the people's court of second instance shall make a ruling on whether to approve the application.

第一百七十四条 第二审人民法院审理上诉案件, 除依照本章规定外, 适用第一审普通程序。

Article 174 In trying an appeal case, the people's court of second instance shall, in addition to complying with the provisions of this Chapter, apply the ordinary procedure at first instance.

第一百七十五条 第二审人民法院的判决、裁

Article 175 The judgments and rulings of the people's court of second instance shall be final.

定，是终审的判决、裁定。

第一百七十六条 人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

Article 176 In trying a case of an appeal against a judgment, a people's court shall conclude the case within three months from the date of putting it on its trial docket as a case of the second instance. Any extension of the time limit necessitated by special circumstances shall be subject to approval by the president of the court. In trying a case of an appeal against a ruling, a people's court shall make a final ruling within 30 days from the date of putting it on its trial docket as a case of the second instance.

第十五章 特别程序

Chapter XV Special Procedure

第一节 一般规定

Section 1 General Provisions

第一百七十七条 人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件、认定财产无主案件、确认调解协议案件和实现担保物权案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

Article 177 When the people's court tries cases concerning voter's qualification, declaration of a person as missing or dead, determination of a citizen as having no capacity for civil acts or as having limited capacity for civil acts, or determination of ownerless property, confirmation of mediation agreement and the enforcement of real rights for security, this Chapter shall apply. Regarding matters not covered in this Chapter, the relevant provisions of the Law and other laws shall apply.

第一百七十八条 依照本程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

Article 178 Where a case is tried in accordance with the procedure set forth in this Chapter, the judgment of first instance shall be the final judgment. The trial of cases concerning voter qualifications or major or difficult cases shall be conducted by a collegiate bench of judges. Other cases shall be tried by a single judge alone.

第一百七十九条 人民法院在依照本程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

Article 179 If, in the course of trying a case in accordance with the procedure set forth in this Chapter, a people's court discovers that the case involves a dispute over civil rights and interests, it shall rule to terminate the special procedure, and inform the interested parties that they may institute a separate action.

第一百八十条 人民法院适用特别程序审理的

Article 180 A people's court shall conclude a case tried according to special procedure within 30 days

案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

from the date of entering it on its trial docket or within 30 days from the expiration of the time limit set forth in the public notice. Any extension of the time limit necessitated by special circumstances shall be subject to approval by the president of the court in question, except for cases concerning voter qualifications.

第二节 选民资格案件 Section 2 Cases Concerning Voter Qualifications

第一百八十一条 公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

Article 181 If a citizen disagrees with the decision of an election committee on his petition concerning his qualifications to be a voter, he may institute an action at the basic people's court of his election district five days before election day.

第一百八十二条 人民法院受理选民资格案件后，必须在选举日前审结。审理时，起诉人、选举委员会的代表和有关公民必须参加。人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

Article 182 After accepting a case concerning voter qualifications, a people's court must conclude the trial before election day. The suitor, representatives of the election committee and the citizens concerned must attend the trial. The written judgment of the people's court shall be served on the election committee and the suitor before election day, and the citizens concerned shall be notified of the judgment.

第三节 宣告失踪、宣告死亡案件 Section 3 Cases Concerning the Declaration of a Person as Missing or Dead

第一百八十三条 公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

Article 183 Where the whereabouts of a citizen has been unknown for two years, and an interested party applies for declaration of the citizen to be missing, the application shall be filed with the basic people's court of the place where the missing person is domiciled. The application shall clearly state the facts and time of the disappearance and the request, which shall be accompanied by a written certificate concerning the disappearance of the said citizen issued by a public security authority or other relevant authorities.

第一百八十四条 公民下落不明满四年，或者因意外事故下落不明满二

Article 184 Where the whereabouts of a citizen has been unknown for four years, or has been unknown for two years as a result of an accident, or has

年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

been unknown as a result of an accident which, as certified by the relevant authorities, the citizen could not have survived, if an interested party applies for declaration of the citizen to be dead, the application shall be filed with the basic people's court of the place where the missing citizen is domiciled.

The application shall clearly state the facts and time of the disappearance and the request, which shall be accompanied by a written certificate concerning the disappearance of the said citizen issued by a public security authority or other relevant authorities.

第一百八十五条 人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

Article 185 After accepting a case concerning the declaration of a citizen as missing or dead, a people's court shall issue a public notice in search of the citizen whose whereabouts is unknown. The period for the notice of declaration of a person as missing shall be three months, and the period for the notice of declaration of a person as dead shall be one year. If the whereabouts of a citizen is unknown as a result of an accident which, as certified by the relevant authorities, the citizen could not have survived, the period of notice for the declaration of the citizen as death shall be three months.

Upon the expiration of the time limit of the public notice, the people's court shall, depending on whether the facts about the disappearance or death of the person have been confirmed, make a judgment declaring the person missing or dead or make a judgment to reject the application for such a declaration.

第一百八十六条 被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

Article 186 If a citizen who has been declared missing or dead reappears, the people's court shall, upon the application of that person or an interested party, make a new judgment to quash the original judgment.

第四节 认定公民无民事行为能力、限制民事行为能力案件

Section 4 Cases Concerning the Determination of a Citizen as Having No Capacity for Civil Acts or as Having Limited Capacity for Civil Acts

第一百八十七条 申请认定公民无民事行为能力或者限制民事行为能

Article 187 An application for determining a citizen as having no capacity for civil acts or as having limited capacity for civil acts shall be filed by a close

力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

relative of the citizen or another interested party with the basic people's court of the place where the citizen is domiciled.

The application shall clearly state the facts and grounds on which the citizen's incompetence for civil acts or limited capacity for civil acts is asserted.

第一百八十八条 人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定意见的，应当对鉴定意见进行审查。

Article 188 After accepting such an application, the people's court shall, when necessary, carry out an expert examination of the citizen who is requested to be declared as having no capacity for civil acts or having limited capacity for civil acts. If the applicant has already provided an expert opinion, the people's court shall examine such expert opinion.

第一百八十九条 人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康情况许可的，还应当询问本人的意见。人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

Article 189 When a people's court tries a case for determining a citizen as having no capacity for civil acts or as having limited capacity for civil acts, a close relative of the citizen, with the exception of the applicant, shall be his agent ad litem. If the close relatives shift onto one another the responsibility to act as agent ad litem, the people's court shall appoint one of them as the agent ad litem. If the health of the citizen permits, his opinion shall also be solicited.

If, by trying the case, the people's court determines that the application is based on facts, it shall make a judgment determining the citizen to have no capacity for civil acts or to have limited capacity for civil acts. If the people's court determines that the application is not based on facts, it shall make a judgment to reject the application.

第一百九十条 人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请，证实该公民无民事行为能力或者限制民事行为能力的原因为已经消除的，应当作出新判决，撤销原判决。

Article 190 If, upon the application of a citizen who has been determined to have no capacity for civil acts or to have limited capacity for civil acts or upon the application of such citizen's guardian, a people's court verifies that the cause of such citizen's incompetence for civil acts or limited capacity for civil acts has been eliminated, it shall make a new judgment to quash the original judgment.

第五节 认定财产无

Section 5 Cases Concerning the Determination of Property as Ownerless

主案件

第一百九十一条 申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

Article 191 An application for determining a property as ownerless shall be filed by a citizen, legal person or other organization with the basic people's court of the place where the property is located.

The application shall clearly state the type and quantity of the property and the grounds on which the request for determination of the property as ownerless is made.

第一百九十二条 人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

Article 192 After accepting such an application, the people's court shall, upon examination and verification, issue a public notice requesting that the property be claimed. If no one claims the property within one year from the issue of the public notice, the people's court shall make a judgment determining that the property is ownerless, whereupon the property shall become the property of the State or the collective.

第一百九十三条 判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

Article 193 If, after a property has been determined ownerless by judgment, the owner of the property or the successor thereto appears, the owner or the successor may file a claim to the property within the limitation of action as specified in the General Principles of Civil Law of the People's Republic of China. The people's court shall, after examination and verification, make a new judgment to quash the original judgment.

第六节 确认调解协议案件

Section 6 Cases Concerning the Confirmation of Mediation Agreement

第一百九十四条 申请司法确认调解协议，由双方当事人依照人民调解法等法律，自调解协议生效之日起三十日内，共同向调解组织所在地基层人民法院提出。

Article 194 For an application for judicial confirmation of a mediation agreement, the parties shall, in accordance with the People's Mediation Law and other applicable laws and within 30 days upon effectiveness of the material mediation agreement, jointly file an application with the basic people's court where the mediation institution is located.

第一百九十五条 人民法院受理申请后，经审查，符合法律规定的，裁定调解协议有效，一方当事人拒绝履行或者未全部履行的，对方当事人可以

Article 195 After the acceptance of the application, if the application complies with the legal requirements upon examination, the people's court shall affirm that the mediation agreement is valid; if any party thereto refuses to perform or fails to fully perform the agreement, the other parties thereto may apply to the people's court for enforcement; if

向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以通过调解方式变更原调解协议或者达成新的调解协议，也可以向人民法院提起诉讼。

the application fails to comply with the legal requirements, the court shall reject the application, and the parties thereto may modify the original mediation agreement by way of mediation or draft a new mediation agreement; they may also file a lawsuit with the people's court.

第七节 实现担保物权案件

Section 7 Cases Concerning Enforcement of Real Rights for Security

第一百九十六条 申请实现担保物权，由担保物权人以及其他有权请求实现担保物权的人依照物权法等法律，向担保财产所在地或者担保物权登记地基层人民法院提出。

Article 196 For the application for enforcement of real rights for security, the owner of real rights and other parties with the enforcement rights may, in accordance with the Real Rights Law and other laws, file an application with the basic people's court where the secured property is located or the secured real rights is registered.

第一百九十七条 人民法院受理申请后，经审查，符合法律规定的，裁定拍卖、变卖担保财产，当事人依据该裁定可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以向人民法院提起诉讼。

Article 197 After the acceptance of the application, if the application complies with the legal requirements upon examination, the people's court may issue a ruling to the auction or sale of the secured property, and the parties thereto may apply to the people's court for enforcement pursuant to the ruling. If the application fails to comply with the legal requirements, the court shall reject the application, and the parties thereto may file a lawsuit with the people's court.

第十六章 审判监督程序

Chapter XVI Procedure for Trial Supervision

第一百九十八条 各级人民法院院长对本院已经发生法律效力的判决、裁定、调解书，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

Article 198 If the presidents of people's courts at any level finds any verified error in a legally effective judgment, ruling or mediation statement and deems it necessary to have the case retried, they shall refer the case to the judicial committee for discussion and decision.

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定、调解书，上级人民法院对下级人民法院已经发生法律效力的判决、裁定、调解书，发现确有错误的，有权提审或者指令下级人民

If the Supreme People's Court discovers any verified error in a legally effective judgment, ruling or mediation statement issued by a local people's court at any level, or if a people's court at a higher level finds any verified error in a legally effective judgment, ruling or mediation statement issued by a subordinate people's court, it shall have the right to bring up the case for trial or instruct a subordinate people's court to conduct a retrial of the case.

法院再审。

第一百九十九条 当事人对已经发生法律效力

Article 199 Any party that considers a legally effective judgment or ruling to be wrong may apply to the immediate superior people's court for retrial; as for the case where one party comprises of a large number of individuals or both parties thereto are citizens, the parties may apply for retrial of the case to the original people's court. Nevertheless, the application for retrial does not mean that the enforcement of the judgment or ruling is suspended.

第二百条 当事人的申请符合下列情形之一的，人民法院应当再审：

Article 200 Where an application for retrial by a party falls under any of the following circumstances, the people's court shall conduct a retry:

（一）有新的证据，足以推翻原判决、裁定的；

1. there is new evidence that is sufficient to overturn the original judgment or ruling;

（二）原判决、裁定认定的基本事实缺乏证据证明的；

2. the evidence used as a basis for ascertaining the essential facts in the original judgment or ruling was insufficient;

（三）原判决、裁定认定事实的主要证据是伪造的；

3. the main evidence used as a basis for ascertaining the facts in the original judgment or ruling was falsified;

（四）原判决、裁定认定事实的主要证据未经质证的；

4. the main evidence used as a basis for ascertaining the facts in the original judgment or ruling was not cross-examined;

（五）对审理案件需要的主要证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

5. With regard to the main evidence necessary for the trial, if the party concerned is unable to collect the evidence personally due to objective reasons, and the people's court fails to investigate or collect such evidence after the party submits a written application to the people's court to investigate and collect such evidence;

（六）原判决、裁定适用法律确有错误的；

6. an error was found in the application of the law in the original judgment or ruling;

（七）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

7. the judicial organization was not composed in accordance with the law or a member of the judicial officers who should have withdrawn in accordance with the law did not do so;

（八）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

8. in the event that the statutory agent of a party with no capacity to bring a case failed to act as an agent in the relevant case or where a party required to participate in the case failed to do so for reasons for which the party or his or her litigation agent is not responsible;

（九）违反法律规定，剥

夺当事人辩论权利的；

(十) 未经传票传唤，缺席判决的；

(十一) 原判决、裁定遗漏或者超出诉讼请求的；

(十二) 据以作出原判决、裁定的法律文书被撤销或者变更的；

(十三) 审判人员审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的。

9. where the party was deprived of his or her right to argue the case in breach of the law;

10. where a default judgment was entered without serving a summons;

11. where the original judgment or ruling omitted or exceeded the claims sought in the case;

12. the legal documentation on which the original judgment or ruling is based has been cancelled or amended; or

13. where any member of the judicial officers commits malpractice in trying a case, such as embezzlement, bribery, engagement in malpractice for personal benefits, or rendering of a judgment that perverts the law.

第二百零一条 当事人对已经发生法律效力调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

Article 201 For a legally effective mediation statement, a party may apply for a retrial if it can present evidence that the mediation violates the principle of voluntary participation or that the content of the mediation agreement violates the law. If the people's court finds the evidence to be true upon examination, it shall retry the case.

第二百零二条 当事人对已经发生法律效力解除婚姻关系的判决、调解书，不得申请再审。

Article 202 A party may not apply for retrial of a case where a legally effective judgment or mediation statement has been made to dissolve a marriage.

第二百零三条 当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

Article 203 Any party that applies for a retrial shall submit retrial request and other relevant materials. The people's court shall give a copy of the retrial request to the other party within five days from the date on which it is received. The other party shall submit a written response within 15 days from the date on which it receives the copy of the retrial request; the other party's failure to submit a written response shall not affect the review of the case by the people's court. The people's court may require the applicant and the other party to submit additional relevant materials and may inquire about relevant issues.

第二百零四条 人民法院应当自收到再审申请书之日起三个月内审查，

Article 204 The people's court shall carry out the examination within three months upon receipt of the retrial request. Where the circumstances of the case meet the applicable provisions of the Law, a

符合本法规定的，裁定再审；不符合本法规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理，但当事人依照本法第一百九十九条的规定选择向基层人民法院申请再审的除外。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第二百零五条 当事人申请再审，应当在判决、裁定发生法律效力后六个月内提出；有本法第二百条第一项、第三项、第十二项、第十三项规定情形的，自知道或者应当知道之日起六个月内提出。

第二百零六条 按照审判监督程序决定再审的案件，裁定中止原判决、裁定、调解书的执行，但追索赡养费、扶养费、抚育费、抚恤金、医疗费用、劳动报酬等案件，可以不中止执行。

第二百零七条 人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力的判决、裁定是由第二审法院作出的，按照第二审程序审

retrial shall be ordered; where the circumstances of the case fail to meet the applicable provisions herein, the application shall be rejected. Any extension of time limit due to special circumstances shall be subject to the approval by the president of the court.

A case that is to be retried upon the application by a party thereto shall be tried by an intermediate people's court or by a people's court at a higher level, unless the party opts to apply to the basic people's court for retrial in accordance with the provisions in Article 199 herein. Where the Supreme People's Court or the Higher People's Court finds that the case should be retried, the case may be retried by that court or assigned to another people's court or returned to the people's court that made the original judgment or ruling for retrial.

Article 205 A party shall apply for a retrial within six months after the date on which the judgment or ruling becomes legally effective; in any of the circumstances described in Items 1, 3, 12 and 13 of Article 200 of the Law, a retrial application may be submitted within six months after the date on which the party becomes aware or is reasonably believed to become aware of the relevant facts.

Article 206 When an order is made to retry a case in accordance with the procedure for trial supervision, a ruling shall be made to suspend the enforcement of the original judgment, ruling or mediation statement, with the exception of cases of claims of alimony, maintenance fee, child support, pension, medical expenses, and labor remuneration.

Article 207 Where a case is to be retried by a people's court in accordance with the procedure for trial supervision, if the legally effective judgment or ruling was made by a court of first instance, the case shall be retried in accordance with the procedure at first instance, and the parties may appeal against the judgment or ruling made. If the legally effective judgment or ruling was made by a court of second instance, it shall be retried in accordance with the procedure at second instance, and the judgment or ruling made shall be legally

理，所作的判决、裁定，是发生法律效力判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。人民法院审理再审案件，应当另行组成合议庭。

effective. If the case was removed for trial by a people's court at a higher level in accordance with the procedure for trial supervision, it shall be tried in accordance with the procedure at second instance, and the judgment or ruling made shall be legally effective.

When retrying cases, the people's court shall form a new collegiate bench.

第二百零八条 最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第二百条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第二百条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，可以向同级人民法院提出检察建议，并报上级人民检察院备案；也可以提请上级人民检察院向同级人民法院提出抗诉。

各级人民检察院对审判监督程序以外的其他审判程序中审判人员的违法行为，有权向同级人民法院提出检察建议。

Article 208 Where the Supreme People's Procuratorate finds that a legally effective judgment or ruling made by a people's court at any level falls under any of the circumstances described in Article 200 of the Law or where a superior people's procuratorate finds that a legally effective judgment or ruling made by a subordinate people's court falls under any of the circumstances described in Article 200 of the Law; or the Supreme People's Procuratorate or a superior people's procuratorate finds that a mediation statement is against the interests of the State or the public, the Supreme People's Procuratorate or the superior people's procuratorate shall lodge an objection thereto.

Where a local people's procuratorate at any level finds that a legally effective judgment or ruling made by the people's court at the same level falls under any of the circumstances described in Article 200 of the Law, or finds that a mediation statement is against the interests of the State or the public, it shall lodge a procuratorial proposal to the people's court at the same level and file the proposal to its immediate superior people's procuratorate for record, or refer the case to its immediate superior people's procuratorate to lodge an objection with the people's court at the same level.

Where a people's procuratorate at any level discovers that a member of the judicial officers commits any violation during the trial procedure that is beyond the scope of the trial supervision procedure, it could submit a procuratorial proposal to the people's court at the same level.

第二百零九条 有下列情形之一的，当事人可以向人民检察院申请检察建议或者抗诉：

Article 209 Under any one of the following circumstances, a party may apply to the competent people's procuratorate for a procuratorial proposal or objection:

1. where the people's court rejects the retrial

(一) 人民法院驳回再审申请的;
 (二) 人民法院逾期未对再审申请作出裁定的;
 (三) 再审判决、裁定有明显错误的。

人民检察院对当事人的申请应当在三个月内进行审查,作出提出或者不予提出检察建议或者抗诉的决定。当事人不得再次向人民检察院申请检察建议或者抗诉。

application;
 2. where the people's court does not issue a ruling over the retrial application within the specified time limit; or
 3. where the judgment or ruling of the retrial is obviously erroneous.

The people's procuratorate shall examine the retrial application within three months after the receipt thereof and decide whether to make a procuratorial proposal or objection, after which the parties are not allowed to apply to the people's procuratorate for a procuratorial proposal or objection again.

第二百一十条 人民检察院因履行法律监督职责提出检察建议或者抗诉的需要,可以向当事人或者案外人调查核实有关情况。

Article 210 Where a people's procuratorate in exercising legal supervision lodges a procuratorial proposal or objection, it may interview the parties to the case or any person that is not a party to the case to investigate and verify the relevant facts.

第二百一十一条 人民检察院提出抗诉的案 件,接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定;有本法第二百条第一项至第五项规定情形之一的,可以交下一级人民法院再审,但经该下一级人民法院再审的除外。

Article 211 In the event that a people's procuratorate files an objection, the people's court that accepts the objection shall order a retrial within 30 days after the date on which it receives the Objection Letter; under any of the circumstances described in Items 1 to 5 of Article 200 of the Law, the people's court shall transfer the case to a competent immediate subordinate people's court, unless the case has been retried by the immediate subordinate people's court.

第二百一十二条 人民检察院决定对人民法院的判决、裁定、调解书提出抗诉的,应当制作抗诉书。

Article 212 When a people's procuratorate decides to lodge an objection against a judgment, ruling or mediation statement made by a people's court, it shall prepare a written objection.

第二百一十三条 人民检察院提出抗诉的案 件,人民法院再审时,应当通知人民检察院派员出席法庭。

Article 213 When retrying a case that is protested against by a people's procuratorate, a people's court shall notify the people's procuratorate that it should send personnel to appear in court.

第十七章 督促程序

Chapter XVII Procedure for the Recovery of Debts

第二百一十四条 债权人请求债务人给付金钱

Article 214 When a creditor requests payment of money or delivery of a negotiable instrument from

钱、有价证券，符合下列条件的，可以向有管辖权的基层人民法院申请支付令：

（一）债权人与债务人没有其他债务纠纷的；
（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

a debtor, he may apply to the basic people's court with jurisdiction for a payment order provided that:

1. the creditor and the debtor are not involved in any other dispute over obligations; and
2. the payment order can be served on the debtor. The written application shall clearly state the requested amount of money or quantity of the negotiable instruments and the facts and evidence on the basis of which the application is made.

第二百一十五条 债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

Article 215 A people's court shall, within five days after a creditor has submitted his application, notify the creditor whether it has accepted the case.

第二百一十六条 人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

Article 216 After accepting an application for a payment order, a people's court, having found the relationship of debtor and creditor to be definite and lawful upon examination of the facts and evidence presented by the creditor, shall issue a payment order to the debtor within 15 days from the date of acceptance of the application. If the application is untenable, a ruling shall be made to reject it.

The debtor shall, within 15 days from the date of receipt of the payment order, settle his debt or submit a written objection to the people's court. If the debtor neither submits an objection nor performs the payment order within the time limit specified in the preceding paragraph, the creditor may apply to the people's court for execution.

第二百一十七条 人民法院收到债务人提出的书面异议后，经审查，异议成立的，应当裁定终结督促程序，支付令自行失效。支付令失效的，转入诉讼程序，但申请支付令的一方当事人不同意提起诉讼的除外。

Article 217 After receiving a written objection submitted by the debtor, if the objection is tenable upon examination, the people's court shall issue a ruling to terminate the procedure for debt recovery, whereupon the payment order shall automatically become null and void.

Where the payment order becomes null and void, the case shall enter the litigation procedure, unless the party applying for the payment order disagrees to institute an action.

第十八章 公示催告

Chapter XVIII Procedure for Public Invitation to Assert Claims

程序

第二百一十八条 按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

Article 218 The holder of a negotiable instrument transferable by endorsement may, if the instrument is stolen, lost, or destroyed, apply for a public invitation to assert claims to the basic people's court of the place where payment on the negotiable instrument is to be made. This Chapter shall apply to other matters for which, according to the law, applications may be submitted for a public invitation to assert claims.

An applicant shall submit to the people's court a written application, clearly stating the main particulars of the negotiable instrument such as its face amount, drawer, holder and endorser, and the reasons and facts pertaining to the application.

第二百一十九条 人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

Article 219 When a people's court decides to accept an application, it shall simultaneously notify the drawee that he should suspend payment, and within three days issue a public notice to invite interested parties to assert their claims. The period of the public invitation to assert claims shall be decided by the people's court according to the circumstances, provided that it shall not be less than 60 days.

第二百二十条 支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。公示催告期间，转让票据权利的行为无效。

Article 220 Upon receipt of a notice from the people's court to suspend payment, the drawee shall act accordingly until the conclusion of the procedure for public invitation to assert claims. During the period of the public invitation to assert claims, any act relating to the assignment of rights in the negotiable instrument shall be invalid.

第二百二十一条 利害关系人应当在公示催告期间向人民法院申报。人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。申请人或者申报人可以向人民法院起诉。

Article 221 Interested parties as claimants shall submit an application to the people's court during the period of the public invitation to assert claims. After receiving an application from an interested party, the people's court shall rule to conclude the procedure for public invitation to assert claims, and shall notify the applicant and the drawee. The applicant or the claimant may institute an action in the people's court.

第二百二十二条 没有人申报的，人民法院应当根据申请人的申请，作

Article 222 If no one asserts claims, the people's court shall make a judgment to declare the negotiable instrument void according to the

出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

application of the applicant. Judgment shall be announced in a public notice, and the drawee shall be notified of it. From the date of public pronouncement of the judgment, the applicant shall have the right to claim payment from the drawee.

第二百二十三条 利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

Article 223 If an interested party was unable for proper cause to report to the people's court prior to judgment, he shall, within one year from the day he knew or ought to have known of the public announcement of the judgment, institute an action at the people's court that made the judgment.

第三编 执行程序

Division Three Execution Procedures

第十九章 一般规定

Chapter XIX General Provisions

第二百二十四条 发生法律效力民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。法律规定由人民法院执行的其他法律文书，由被执行人住所地或者被执行的财产所在地人民法院执行。

Article 224 A legally effective civil judgment or ruling, or that portion of a legally effective criminal judgment or ruling that pertains to property, shall be enforced by the people's court of first instance or the people's court at the same level as the people's court where the property subject to execution is located. Other legal documents that shall be enforced by the people's courts as provided for by law shall be enforced by the people's court of the place where the person subject to execution is domiciled or where the property subject to execution is located.

第二百二十五条 当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

Article 225 Any party or interested party may submit a written objection to the people's court responsible for executing a judgment if he or she considers execution of the judgment to be contrary to the provisions of the law. Where any party or interested party raises a written objection, the people's court shall examine the circumstances of the case within 15 days from the date on which it receives the written objection. Where the objection is tenable, a ruling shall be made that the judgment be quashed or amended; where the objection is untenable, it shall be overruled. Where the party or interested party concerned disagrees with the ruling, he or she may make an application for review to the immediate superior people's court within ten days from the date on which he or she

receives the ruling.

第二百二十六条 人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。

Article 226 Where the people's court does not execute a judgment within six months from the date on which it receives an application for execution, the applicant may make an application for execution to the immediate superior people's court. After examining the case, the immediate superior court may order the original people's court to execute the judgment within a specified period of time, may determine to execute the judgment itself, or may instruct another people's court to execute the judgment.

第二百二十七条 执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不服，认为原判决、裁定错误的，依照审判监督程序办理；与原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

Article 227 Where, in the course of executing a judgment, a person who is not a party to the case raises a written objection to the execution of the judgment against the subject matter, the people's court shall examine the objection within 15 days after receiving it. Where the objection is tenable, the court shall rule that execution be suspended; where the objection is untenable, the court shall rule that it be rejected. Where the person who is not a party to the case or any party to the case is not satisfied with the ruling and considers the original judgment or ruling to be erroneous, the case shall be handled in accordance with the procedure for trial supervision; where the original judgment or ruling is considered to be irrelevant, the relevant party may lodge a case with the people's court within 15 days after receiving the ruling.

第二百二十八条 执行工作由执行员进行。采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。人民法院根据需要可以设立执行机构。

Article 228 Execution shall be carried out by execution officers. An execution officer shall show his credentials when taking enforcement measures. After execution is completed, a record shall be made of its particulars, which shall be signed or sealed by the persons present. The people's court may establish execution authorities as needed.

第二百二十九条 被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件

Article 229 If the person or the property subject to execution is in another locality, the people's court of that locality may be entrusted with execution. The entrusted people's court must commence execution within 15 days after receipt of the letter of entrustment and shall not refuse to comply. After

后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

第二百三十条 在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

申请执行人因受欺诈、胁迫与被执行人达成和解协议，或者当事人不履行和解协议的，人民法院可以根据当事人的申请，恢复对原生效法律文书的执行。

第二百三十一条 在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

第二百三十二条 作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

execution is completed, the entrusted people's court shall promptly reply to the entrusting people's court by letter, setting forth the result of the execution. If execution is not completed within 30 days, the entrusted people's court shall also inform the entrusting people's court by letter of the particulars of execution.

If the entrusted people's court does not execute the judgment or ruling within 15 days from the date of receipt of the letter of entrustment, the entrusting people's court may request the immediate superior people's court than the entrusted people's court to instruct it to execute the judgment or ruling.

Article 230 Where, in the course of execution, the parties reach an agreement upon mediation at their own initiative, the execution officer shall make a record of the contents of the agreement and both parties shall sign or seal such record.

Where the person applying for enforcement reaches an agreement upon mediation with the person subject to the enforcement due to deception or coercion, or if a party fails to perform the mediation agreement, the people's court may, upon application by the other party, resume the enforcement of the original effective legal document.

Article 231 Where, in the course of execution, the person subject to execution provides security to the people's court, the people's court may decide to suspend the execution and decide the term of such suspension, subject to the consent of the person applying for execution. If the person subject to execution fails to perform within the specified term, the people's court shall have the power to execute the judgment or ruling against the property provided as security by the person subject to execution or the property of his guarantor.

Article 232 When a citizen subject to execution dies, his debts shall be repaid from his estate. When a legal person or another organization subject to execution is terminated, the successor to the rights and obligations of the legal person or organization shall perform the obligation.

第二百三十三条 执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

Article 233 Where, after execution is completed, an error is discovered in a judgment, ruling or other legal document on which execution is based and such judgment, ruling or other legal document is quashed by the people's court, the people's court shall make a ruling ordering the person who has obtained property subject to execution to return the property. If such person refuses to return the property, the ruling ordering the return of the property shall be enforced.

第二百三十四条 人民法院制作的调解书的执行，适用本编的规定。

Article 234 This Division shall apply to the execution of written mediation statements prepared by a people's court.

第二百三十五条 人民检察院有权对民事执行活动实行法律监督。

Article 235 The people's procuratorates shall have the right to exercise legal supervision over civil enforcement.

第二十章 执行的申请和移送

Chapter XX Application for and Referral of Execution

第二百三十六条 发生法律效力民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。调解书和其他应当由人民法院执行的法律文书，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行。

Article 236 The parties must perform civil judgments or rulings that have become legally effective. Where a party refuses to perform a ruling or judgment, the other party may apply to the people's court for execution. Alternatively, a judge may refer such judgment or ruling to an execution officer for execution. The parties must perform any written mediation agreement or other legal document that is enforceable by the people's courts. Where a party refuses to perform such a document, the other party may apply to the people's court for execution.

第二百三十七条 对依法设立的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

Article 237 Where a party fails to perform an award of an arbitration institution established according to law, the other party may apply for execution to the people's court with jurisdiction. The people's court to which an application is made shall execute the award.

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

Where the party against whom the application is made presents evidence that the arbitral award falls under any of the following circumstances, the people's court shall, after examination and verification by a collegiate bench formed by the people's court, rule to deny execution:

(一) 当事人在合同中没

1. the parties have neither included an arbitration clause in their contract, nor subsequently reached a

有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）裁决所根据的证据是伪造的；

（五）对方当事人向仲裁机构隐瞒了足以影响公正裁决的证据的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

written arbitration agreement;

2. the matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration institution;

3. the composition of the arbitral tribunal or the arbitration procedure did not conform to statutory procedure;

4. the evidence used as a basis for rendering an award is fabricated;

5. the other party to the case conceals important evidence, which is substantial enough to affect the impartial ruling by the arbitration institution; or

6. one or several arbitrators acts corruptly, accepts bribes or engages in malpractice for personal benefits or made an award that perverted the law.

Where the people's court determines that the execution of the award would be against the public interest, it shall rule to deny execution.

The written ruling shall be served on both parties and on the arbitration institution.

Where a people's court rules to deny execution of an arbitral award, a party may, in accordance with the written arbitration agreement between the two parties, re-apply to the arbitration institution for arbitration or institute an action in a people's court.

第二百三十八条 对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

Article 238 Where a party fails to perform its obligations pursuant to a document that has been lawfully rendered enforceable by a notary public, the other party may apply to the people's court with jurisdiction for execution. The people's court to which the application is made shall execute the document.

Where a notarized document of obligation contains an error, the people's court shall rule to deny execution and shall serve the written ruling on both parties and on the notary public.

第二百三十九条 申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

Article 239 The time limit applicable to applications to execute a judgment is two years. The provisions relating to the suspension or discontinuance of the litigation limitation period shall be applicable to the suspension or discontinuance of the limitation period for applications to execute a judgment.

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

The time limit referred to in the preceding paragraph shall commence from the last day of the time limit for satisfaction of the judgment specified in the legal documentation; where the legal documentation provides for satisfaction of the judgment in stages, the time limit shall commence from the last day of the period for satisfaction of the judgment at each stage; where the legal documentation does not provide a time limit for satisfaction of the judgment, the time limit shall commence from the effective date of the legal documentation.

第二百四十条 执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，并可以立即采取强制执行措施。

Article 240 Upon receiving an application for enforcement or a document for the handover of enforcement, an enforcement officer shall send a notice of enforcement to the person subject to execution and may immediately proceed to execute the enforcement measures.

第二十一章 执行措施

Chapter XXI Execution Measures

第二百四十一条 被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

Article 241 Where the person subject to execution fails to perform the obligation specified in the legal documentation in accordance with the execution notice, he or she shall provide a report on the circumstances relating to the assets concerned during the current period or in the year prior to the date on which he receives the execution notice. Where the person subject to execution refuses to provide such a report or makes a false report, the people's court may fine or detain that person subject to execution, its statutory agent, principally responsible person or the directly responsible person in the relevant work unit, according to the seriousness of the case.

第二百四十二条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权向有关单位查询被执行人的存款、债券、股票、基金份额等财产情况。人民法院有权根据不同情形扣押、冻结、划拨、变价被执行人的财产。人民法院查询、扣押、冻结、划拨、变价的

Article 242 Where a person subject to execution fails to perform the obligation specified in the legal document in accordance with the notice of execution, the people's court shall have the power to direct inquiries to the relevant units about the property of deposits, bonds, stocks and funds of the person subject to execution, and shall have the power to distraint, freeze, transfer or sell the property of such person, provided that such inquiries, distraint, freezing, transfer or sale does not exceed the scope of the obligation to be

财产不得超出被执行人应当履行义务的范围。人民法院决定扣押、冻结、划拨、变价财产，应当作出裁定，并发出协助执行通知书，有关单位必须办理。

performed by the person subject to execution. For distraint, freezing, transfer or sale of deposits, a people's court shall make a ruling and issue a notice requesting for assistance for enforcement, which must be complied with by relevant units.

第二百四十三条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

Article 243 If a person subject to execution fails to perform the obligation specified in the legal document in accordance with the notice of execution, the people's court shall have the power to withhold or garnish a portion of the revenue of the person subject to execution that is sufficient to cover the obligation he should perform, provided that such measures leave enough revenue to cover the necessary living expenses of the person subject to execution and of his dependants. When deciding to withhold or garnish revenue, a people's court shall make a ruling and issue a notice requesting assistance with execution. Such notice must be complied with by the work unit of the person subject to execution, banks, credit cooperatives and other savings units.

第二百四十四条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。采取前款措施，人民法院应当作出裁定。

Article 244 If a person subject to execution fails to perform the obligation specified in the legal document in accordance with the notice of execution, the people's court shall have the power to seal up, distraint, freeze, auction off or sell off a portion of the property of the person subject to execution sufficient to cover the obligation he should perform, provided that such action does not deprive the person subject to execution and his dependents of daily necessities. When adopting any of the foregoing measures, a people's court shall make a ruling.

第二百四十五条 人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，

Article 245 When a people's court seals up or distrains property and the person subject to execution is a citizen, the court shall notify the person subject to execution or an adult member of his family that he should come to the scene. If the person subject to execution is a legal person or another organization, the court shall notify the legal representative or principally responsible person of the person subject to execution that he should come to the scene. Their refusal to come to the scene shall not affect the execution. If the person

其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

subject to execution is a citizen, his work unit or the basic-level organization in the place where his property is located shall send representatives to attend the execution.

An execution officer must prepare a list of the sealed-up or distrained property. A copy of the list shall be delivered to the person subject to execution after the persons present at the scene have signed or sealed the list. If the person subject to execution is a citizen, his copy may alternatively be delivered to an adult member of his family.

第二百四十六条 被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

Article 246 An execution officer may designate the person subject to execution to take custody of the sealed-up property. The person subject to execution shall bear any losses incurred due to his fault.

第二百四十七条 财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文书确定的义务。被执行人逾期不履行的，人民法院应当拍卖被查封、扣押的财产；不适于拍卖或者当事人双方同意不进行拍卖的，人民法院可以委托有关单位变卖或者自行变卖。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。

Article 247 After the property has been sealed up or distrained, the enforcement officer(s) shall order the person subject to execution to perform the obligation specified in the legal document within the specified time limit. If such person does not perform the obligation within the specified time limit, the people's court shall auction off the sealed-up or distrained property; if the property is unfit for auction or the parties agree not to conduct such auction, the court may on its own accord or engage the relevant units to sell the property. Goods that the State has prohibited to be traded freely shall be delivered to the relevant units to be purchased at the prices stipulated by the State.

第二百四十八条 被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。采取前款措施，由院长签发搜查令。

Article 248 Where a person subject to execution fails to perform the obligations specified in the legal document and conceals property, the people's court shall have the power to issue a search warrant to search the place of residence of the person subject to execution or the place where the property is concealed.

The court presidents shall issue a search warrant when adopting any of the foregoing measures.

第二百四十九条 法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者

Article 249 Where a legal document stipulates that property or a negotiable instrument must be delivered, the execution officer shall either summon both parties before him to effect delivery or deliver the item himself. The person taking delivery shall

由执行员转交，并由被交付人签收。

有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

第二百五十条 强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。

第二百五十一条 在执行中，需要办理有关财

sign for the same.

If the relevant work unit is holding such property or negotiable instrument, it shall deliver the item in accordance with the notice requesting assistance with execution issued by the people's court and the person taking delivery shall sign for the same.

If the citizen concerned is holding such property or negotiable instrument, the people's court shall order him to release the item. If he refuses to do so, the people's court shall enforce such release.

Article 250 To evict a person subject to execution from a house or a piece of land, the court president shall issue a public notice to order him to perform within the specified time limit. If the person subject to execution fails to perform within the specified time limit, an execution officer shall enforce the order.

At the time of eviction, if the person subject to execution is a citizen, he or an adult member of his family shall be notified that he should come to the scene. If the person subject to execution is a legal person or another organization, the legal representative or the principally responsible person of the organization subject to execution shall be notified that he should come to the scene. Their refusal to come to the scene shall not affect the execution. If the person subject to execution is a citizen, his work unit or the basic-level organization of the place where the house or land is located shall send representatives to attend the execution. The execution officer shall make a record of the particulars of the execution, which shall be signed or sealed by the persons at the scene.

The people's court shall send personnel to transport the property removed from the house from which the person subject to execution was evicted to a designated location for delivery to the person subject to execution. If such person is a citizen, such property and belongings may also be delivered to an adult member of his family. The person subject to execution shall bear any losses arising from the refusal to accept the property and belongings on the party of himself or the adult member of his family.

Article 251 If procedures for the transfer of title deeds must be carried out in the course of

产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

execution, the people's court may issue a notice requesting assistance with execution to the relevant work units, which must comply with such notice.

第二百五十二条 对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人员完成，费用由被执行人承担。

Article 252 If a person subject to execution fails to perform the act specified in a judgment, ruling or other legal document in accordance with the notice of execution, the people's court may compel performance or entrust a relevant work unit or other person with such performance, at the expense of the person subject to execution.

第二百五十三条 被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

Article 253 If a person subject to execution fails to perform his obligations to pay within the time limit specified in a judgment, ruling or other legal document, he shall pay twice the amount of interest on the debt for the period during which the performance is deferred. If a person subject to execution fails to perform any other obligations within the time limit specified in a judgment, ruling or other legal document, he shall pay a fine for deferred performance.

第二百五十四条 人民法院采取本法第二百四十二条、第二百四十三条、第二百四十四条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

Article 254 If a person subject to execution is still unable to repay his debts after a people's court has adopted any of the execution measures provided for in Articles 242, 243 and 244 of the Law, he shall continue to perform his obligation. If a creditor finds that the person subject to execution has other property, he may request execution by the people's court at any time.

第二百五十五条 被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

Article 255 Where any person fails to perform the obligation specified in the legal documentation, the people's court may take steps towards or seek the assistance of his employer in the imposition of restrictions on him leaving the country, record in the public credit system or publicize through the media the fact that he has failed to perform his obligation, or adopt other measures provided by the law.

第二十二章 执行中止和终结

Chapter XXII Suspension and Termination of Execution

<p>第二百五十六条 有下列情形之一的，人民法院应当裁定中止执行：</p> <p>（一）申请人表示可以延期执行的；</p> <p>（二）案外人对执行标的提出确有理由的异议的；</p> <p>（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；</p> <p>（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；</p> <p>（五）人民法院认为应当中止执行的其他情形。中止的情形消失后，恢复执行。</p>	<p>Article 256 Under any of the following circumstances, the people's court may rule to suspend execution:</p> <ol style="list-style-type: none"> 1. the applicant indicates that the execution may be deferred; 2. a person who is not a participant in the case raises an objection on reasonable grounds with respect to the object of execution; 3. a citizen, being one of the parties, dies and it is necessary to wait for his successor to succeed to his rights or to assume his obligations; 4. a legal person or another organization, being one of the parties, is terminated and the person that will succeed to its rights and obligations has not yet been determined; or 5. other circumstances which the people's court deems to call for suspension of execution. <p>Execution shall be resumed when the circumstances calling for suspension of execution cease.</p>
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<p>第二百五十七条 有下列情形之一的，人民法院裁定终结执行：</p> <p>（一）申请人撤销申请的；</p> <p>（二）据以执行的法律文书被撤销的；</p> <p>（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；</p> <p>（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；</p> <p>（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；</p> <p>（六）人民法院认为应当终结执行的其他情形。</p>	<p>Article 257 Under any of the following circumstances, a people's court shall rule to terminate execution:</p> <ol style="list-style-type: none"> 1. the applicant withdraws his application; 2. the legal document on which the execution is based is quashed or revoked; 3. the person subject to execution is a citizen, who dies without an estate against which execution can be effected and without a person to assume his obligations; 4. the person who has the right to claim payment of overdue alimony, maintenance or child support dies; 5. the person subject to execution is a citizen who has lost his ability to work and is unable to repay a loan due to poor financial circumstances and lack of a source of revenue; or 6. other circumstances occur that the people's court deems to require the termination of execution.
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<p>第二百五十八条 中止和终结执行的裁定，送达当事人后立即生效。</p>	<p>Article 258 A ruling of suspension or termination of execution shall become effective immediately after it has been served on the parties.</p>
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<p>第四编 涉外民事诉讼程序的特别规定</p>	<p>Division Four Special Provisions on Civil Actions Involving Foreign Parties</p>
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第二十三章 一般原则 Chapter XXIII General Provisions

第二百五十九条 在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

Article 259 This Division shall apply to civil actions within the territory of the People's Republic of China involving foreign parties. For matters not addressed in this Division, the other relevant provisions of the Law shall apply.

第二百六十条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

Article 260 If an international treaty that the People's Republic of China has concluded or acceded to contains provisions that are inconsistent with the Law, the provisions of the international treaty shall prevail, except for those provisions to which the People's Republic of China has declared its reservations.

第二百六十一条 对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际条约的规定办理。

Article 261 Civil actions instituted against foreigners, foreign organizations or international organizations that enjoy diplomatic privileges and immunities shall be handled in accordance with the relevant laws of the People's Republic of China and the relevant international treaties concluded or acceded to by the People's Republic of China.

第二百六十二条 人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

Article 262 In trying civil cases involving foreign parties, a people's court shall use the written and spoken language commonly used in the People's Republic of China. At the request of a party, translation may be provided at the expense of such party.

第二百六十三条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

Article 263 An alien, stateless person or foreign enterprise or organization that needs to be represented by a lawyer as his or its agent ad litem in instituting and responding to an action in a people's court shall appoint a lawyer of the People's Republic of China.

第二百六十四条 在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他代理人代理诉讼，从中华

Article 264 When an alien, stateless person or foreign enterprise or organization without a domicile within the territory of the People's Republic of China appoints a lawyer or another person of the People's Republic of China as his or its agent ad litem, the power of attorney sent or forwarded from outside the territory of the People's Republic of

人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

China shall become effective only after it has been notarized by a notary public of his or its state and either has been authenticated by the embassy or a consulate of the People's Republic of China in that state or certification procedures provided for in the relevant treaty between the People's Republic of China and that state have been carried out.

第二十四章 管辖

Chapter XXIV Jurisdiction

第二百六十五条 因合同纠纷或者其他财产权益纠纷，对在中华人民共和国领域内没有住所的被告提起的诉讼，如果合同在中华人民共和国领域内签订或者履行，或者诉讼标的物在中华人民共和国领域内，或者被告在中华人民共和国领域内有可供扣押的财产，或者被告在中华人民共和国领域内设有代表机构，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地或者代表机构住所地人民法院管辖。

Article 265 Where an action is instituted against a defendant without a domicile within the territory of the People's Republic of China concerning a dispute over a contract or rights and interests in property, if the contract was executed or performed within the territory of the People's Republic of China, or the subject matter of the action is located within the territory of the People's Republic of China, or the defendant has distrainable property within the territory of the People's Republic of China, or the defendant maintains a representative office within the territory of the People's Republic of China, the action may come under the jurisdiction of the people's court of the place where the contract was executed, the place where the contract was performed, the place where the object of action is located, the place where the distrainable property is located, the place where the tort was committed or the place where the representative office is domiciled.

第二百六十六条 因在中华人民共和国履行中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同发生纠纷提起的诉讼，由中华人民共和国人民法院管辖。

Article 266 An action instituted for a dispute arising from the performance in the People's Republic of China of a Sino-foreign equity joint venture contract, a Sino-foreign cooperative joint venture contract or a contract for Sino-foreign cooperative exploration and development of natural resources shall come under the jurisdiction of the people's courts of the People's Republic of China.

第二十五章 送达、期间

Chapter XXV Service and Time Periods

第二百六十七条 人民法院对在中华人民共和国领域内没有住所的当事人

Article 267 A people's court may serve procedural documents on a party without a domicile within the territory of the People's Republic of China in the following ways:

人送达诉讼文书，可以采用下列方式：

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

（二）通过外交途径送达；

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

（四）向受送达人委托的有权代其接受送达的诉讼代理人送达；

（五）向受送达人在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；

（六）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满三个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

（七）采用传真、电子邮件等能够确认受送达人收悉的方式送达；

（八）不能用上述方式送达的，公告送达，自公告之日起满三个月，即视为送达。

1. service in the way specified in an international treaty concluded between or acceded to by the state of the person to be served and the People's Republic of China;

2. service through diplomatic channels;

3. if the person to be served is a national of the People's Republic of China, entrustment of the embassy or a consulate of the People's Republic of China in the state where such person is located with service on its behalf;

4. service on the agent ad litem appointed by the person to be served and authorized to accept service on his behalf;

5. service on the representative office, or the branch or business agent authorized to accept service, established within the territory of the People's Republic of China by the person to be served;

6. Service shall be made by post if it is permitted by the law of the State of the person to be serviced. If the acknowledgment of service is not returned within three months after the date of posting, and various circumstances justify the assumption that the document has been served, the document shall be deemed to have been served on the date of expiry of the time limit;

7. Service by facsimile, e-mail and any other means through which the receipt of the document may be acknowledged;

8. If a document cannot be served by any of the above means, it shall be served by public announcement. The documents shall be deemed to have been served after three months from the date of the public announcement.

第二百六十八条 被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

Article 268 If a defendant does not have a domicile within the territory of the People's Republic of China, the people's court shall serve a copy of the statement of claim on the defendant and notify the defendant that he should submit a statement of defence within 30 days from receipt of the copy of the statement of claim. If the defendant applies for an extension of the time limit, the people's court shall decide on the application.

第二百六十九条 在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

Article 269 If a party without a domicile within the territory of the People's Republic of China disagrees with the judgment or ruling rendered by the people's court of first instance, he shall have the right to lodge an appeal within 30 days from the date on which the judgment or ruling is served. The respondent shall file a statement of defence within 30 days after the date of receipt of the copy of the appeal petition. If a party is unable to lodge an appeal or to submit a defence within the statutory time limit and applies for an extension of the time limit, the people's court shall decide on the application.

第二百七十条 人民法院审理涉外民事案件的期间，不受本法第一百四十九条、第一百七十六条规定的限制。

Article 270 The period for the trial by the people's court of civil cases involving foreign parties shall not be subject to the restrictions of Articles 149 and 176 of the Law.

第二十六章 仲裁

Chapter XXVI Arbitration

第二百七十一条 涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

Article 271 Where disputes arising from economic, trade, transport or maritime activities involve foreign parties, if the parties have included an arbitration clause in their contract or subsequently reach a written arbitration agreement that provides that such disputes shall be submitted for arbitration to an arbitration institution of the People's Republic of China for foreign-related disputes or to another arbitration institution, no party may institute an action in a people's court.

If the parties have neither included an arbitration clause in their contract nor subsequently reached a written arbitration agreement, an action may be instituted in a people's court.

第二百七十二条 当事人申请采取保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

Article 272 If a party applies for preservation, the arbitration institution of the People's Republic of China for foreign-related disputes shall submit the application to the intermediate people's court of the place where the domicile of the person against whom the application is made is located or where the property is located.

第二百七十三条 经中华人民共和国涉外仲裁机构裁决的，当事人不得

Article 273 After an award has been made by an arbitration institution of the People's Republic of China for foreign-related disputes, no party may

向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

institute an action in a people's court. If a party fails to perform the arbitral award, the other party may apply for execution to the intermediate people's court of the place where the domicile of the person against whom an application is made is located or where the property is located.

第二百七十四条 对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

Article 274 If the person against whom the application is made presents evidence that the arbitral award made by an arbitration institution of the People's Republic of China for foreign-related disputes falls under any of the following circumstances, the people's court shall, after examination and verification by a collegiate bench formed by the people's court, rule to deny execution of the award:

（一）当事人在合同中沒有訂有仲裁条款或者事后沒有达成书面仲裁协议的；

1. the parties have neither included an arbitration clause in their contract nor subsequently reached a written arbitration agreement;

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

2. the person against whom the application is made was not requested to appoint an arbitrator or take part in the arbitration proceedings or the person was unable to state his opinions due to reasons for which he is not responsible;

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

3. the composition of the arbitration tribunal or the arbitration procedure was not in conformity with the rules of arbitration; or

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

4. matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration institution.

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

If the people's court determines that the execution of the said award would be against public interest, it shall rule to deny execution.

第二百七十五条 仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

Article 275 If a people's court rules to deny execution of an arbitral award, a party may, in accordance with a written arbitration agreement between the two parties, re-apply to the arbitration institution for arbitration, or institute an action in a people's court.

第二十七章 司法协助

Chapter XXVII Judicial Assistance

第二百七十六条 根据中华人民共和国缔结或者参加的国际条约，或者

Article 276 Pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity, people's courts and foreign courts may

按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百七十七条 请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

第二百七十八条 外国法院请求人民法院提供司法协助的请求书及其所附文件，应当附有中文译本或者国际条约规定的其他文字文本。

人民法院请求外国法院提供司法协助的请求书及其所附文件，应当附有该国文字译本或者国际条约规定的其他文字文本。

第二百七十九条 人民法院提供司法协助，依照中华人民共和国法律规

request mutual assistance in the service of legal documents, investigation, collection of evidence, and other acts in connection with litigation, on each other's behalf.

If any matter in which a foreign court requests assistance would harm the sovereignty, security or public interest of the People's Republic of China, the people's court shall refuse to comply with the request.

Article 277 The request for and provision of judicial assistance shall be conducted through the channels stipulated in the international treaties concluded or acceded to by the People's Republic of China.

Where no treaty relations exist, the request for and provision of judicial assistance shall be conducted through diplomatic channels.

The embassy or a consulate in the People's Republic of China of a foreign state may serve documents on, investigate, and take evidence from its citizens, provided that the law of the People's Republic of China is not violated and that no compulsory measures are adopted.

Except for the circumstances set forth in the preceding paragraph, no foreign agency or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents, carry out an investigation or collect evidence within the territory of the People's Republic of China.

Article 278 The letter of request for judicial assistance and its annexes submitted to a people's court by a foreign court shall be accompanied by a Chinese translation or a text in another language as specified in the relevant international treaty.

The letter of request for judicial assistance and its annexes submitted to a foreign court by a people's court shall be accompanied by a translation in the language of that state or a text in another language as specified in the relevant international treaty.

Article 279 The judicial assistance provided by a people's court shall be carried out in accordance with the procedure prescribed by the law of the

定的程序进行。外国法院请求采用特殊方式的,也可以按照其请求的特殊方式进行,但请求采用的特殊方式不得违反中华人民共和国法律。

People's Republic of China. If a special method is requested by a foreign court, judicial assistance may also be provided using the special method requested, provided that such special method shall not violate the law of the People's Republic of China.

第二百八十条 人民法院作出的发生法律效力判决、裁定,如果被执行人或者其财产不在中华人民共和国领域内,当事人请求执行的,可以由当事人直接向有管辖权的外国法院申请承认和执行,也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定,或者按照互惠原则,请求外国法院承认和执行。中华人民共和国涉外仲裁机构作出的发生法律效力仲裁裁决,当事人请求执行的,如果被执行人或者其财产不在中华人民共和国领域内,应当由当事人直接向有管辖权的外国法院申请承认和执行。

Article 280 If a party applies for execution of a legally effective judgment or ruling made by a people's court and the party subject to execution or his property is not located within the territory of the People's Republic of China, the applicant may directly apply for recognition and execution to the foreign court with jurisdiction. Alternatively, the people's court may, pursuant to an international treaty concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity, request the foreign court to recognize and execute the judgment or ruling. If a party applies for execution of a legally effective arbitral award made by an arbitration institution of the People's Republic of China for foreign-related disputes and the party subject to execution or its property is not located within the territory of the People's Republic of China, it shall directly apply for recognition and execution to the foreign court with jurisdiction.

第二百八十一条 外国法院作出的发生法律效力判决、裁定,需要中华人民共和国人民法院承认和执行的,可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行,也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定,或者按照互惠原则,请求人民法院承认和执行。

Article 281 If a legally effective judgment or ruling made by a foreign court requires recognition and execution by a people's court of the People's Republic of China, the party concerned may directly apply for recognition and execution to the intermediate people's court with jurisdiction of the People's Republic of China. Alternatively, the foreign court may, pursuant to the provisions of an international treaty concluded between or acceded to by the foreign state and the People's Republic of China, or in accordance with the principle of reciprocity, request the people's court to recognize and execute the judgment or ruling.

第二百八十二条 人民法院对申请或者请求承认和执行的外国法院作出

Article 282 Having received an application or a request for recognition and execution of a legally effective judgment or ruling of a foreign court, a

的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

people's court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity. If, upon such review, the people's court considers that such judgment or ruling neither contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and the public interest, it shall rule to recognize its effectiveness. If execution is necessary, it shall issue an order of execution, which shall be implemented in accordance with the relevant provisions of the Law. If such judgment or ruling contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security or the public interest, the people's court shall refuse to recognize and execute the judgment or ruling.

第二百八十三条 国外仲裁机构的裁决，需要中华人民共和国人民法院承认和执行的，应当由当事人直接向被执行人住所地或者其财产所在地的中级人民法院申请，人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

Article 283 If an award made by a foreign arbitration institution must be recognized and executed by a people's court of the People's Republic of China, the party concerned shall directly apply to the intermediate people's court of the place where the party subject to execution is domiciled or where his property is located. The people's court shall handle the matter pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity.

第二百八十四条 本法自公布之日起施行，《中华人民共和国民事诉讼法（试行）》同时废止。

Article 284 The Law shall be implemented as of the date of promulgation. The Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be repealed simultaneously.

Annex L

to the Expert Report of Professor Guiguo Wang

TRANSLATION OF ARTICLE 260 OF THE CIVIL PROCEDURE LAW
OF THE PEOPLE'S REPUBLIC OF CHINA

Article 260: Where the provisions of an international treaty concluded or acceded to by the People's Republic of China differ from the provisions of this Law, the provisions of the international treaty shall apply, except for those provisions where the People's Republic of China has declared its reservations.

Certified true translation by:

Mrs Chin-Puar Yow Hoy, 1 APR 2014
 a certified interpreter

Chin-Puar Yow Hoy

Annex M

to the Expert Report of Professor Guiguo Wang

ADMINISTRATIVE PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Important Notice: (注意事项)

英文本源自中华人民共和国国务院法制局编译, 中国法制出版社出版的《中华人民共和国涉外法规汇编》(1991年7月版).

当发生歧意时, 应以法律法规颁布单位发布的中文原文为准.

This English document is coming from "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7)

which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House.

In case of discrepancy, the original version in Chinese shall prevail.

Whole Document (法规全文)

ADMINISTRATIVE PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by Order No. 16 of the President of the People's Republic of China on April 4, 1989, and effective as of October 1, 1990)

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Chapter I General Provisions

Article 1

Pursuant to the Constitution, this Law is enacted for the purpose of ensuring the correct and prompt handling of administrative cases by the people's courts, protecting the lawful rights and interests of citizens, legal persons and other organizations, and safeguarding and supervising the exercise of administrative powers by administrative organs in accordance with the law.

Article 2

If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law.

Article 3

The people's courts shall, in accordance with the law, exercise judicial power independently with respect to administrative cases, and shall not be subject to interference by any administrative organ, public organization or individual. The people's courts shall set up administrative divisions for the handling of administrative cases.

Article 4

In conducting administrative proceedings, the people's courts shall base themselves on facts and take the law as the criterion.

Article 5

In handling administrative cases, the people's courts shall examine the legality of specific administrative acts.

Article 6

In handling administrative cases, the people's courts shall, as prescribed by law, apply the systems of collegial panel, withdrawal of judicial personnel and public trial and a system whereby the second instance is the final instance.

Article 7

Parties to an administrative suit shall have equal legal positions.

Article 8

Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings.

In an area where people of a minority nationality live in concentrated communities or where a number of nationalities live together, the people's courts shall conduct adjudication and issue legal documents in the language or languages commonly used by the local nationalities.

The people's courts shall provide interpretation for participants in proceedings who do not understand the language or languages commonly used by the local nationalities.

Article 9

Parties to an administrative suit shall have the right to debate.

Article 10

The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

Chapter II Scope of Accepting Cases

Article 11

The people's courts shall accept suits brought by citizens, legal persons or other organizations against any of the following specific administrative acts:

- (1) an administrative sanction, such as detention, fine, rescission of a license or permit, order to suspend production or business or confiscation of property, which one refuses to accept;
- (2) a compulsory administrative measure, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept;
- (3) infringement upon one's managerial decision-making powers, which is considered to have been perpetrated by an administrative organ;
- (4) refusal by an administrative organ to issue a permit or license, which one considers oneself legally qualified to apply for, or its failure to respond to the application;
- (5) refusal by an administrative organ to perform its statutory duty of protecting one's rights of the person and of property, as one has applied for, or its failure to respond to the application;
- (6) cases where an administrative organ is considered to have failed to issue a pension according to law;
- (7) cases where an administrative organ is considered to have illegally demanded the performance of duties; and
- (8) cases where an administrative organ is considered to have infringed upon other rights of the person and of property.

Apart from the provisions set forth in the preceding paragraphs, the people's courts shall accept other administrative suits which may be brought in accordance with the provisions of relevant laws and regulations.

Article 12

The people's courts shall not accept suits brought by citizens, legal persons or other organizations against any of the following matters:

- (1) acts of the state in areas like national defence and foreign affairs;
- (2) administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs;
- (3) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel; and
- (4) specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

Chapter III Jurisdiction

Article 13

The basic people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14

The intermediate people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

- (1) cases of confirming patent rights of invention and cases handled by the Customs;
- (2) suits against specific administrative acts undertaken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and
- (3) grave and complicated cases in areas under their jurisdiction.

Article 15

The higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

Article 16

The Supreme People's Court shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.

Article 17

An administrative case shall be under the jurisdiction of the people's court in the locality of the administrative organ that initially undertook the specific administrative act. A reconsidered case in which the organ conducting the reconsideration has amended the original specific administrative act may also be placed under the jurisdiction of the people's court in the locality of the administrative organ conducting the reconsideration.

Article 18

A suit against compulsory administrative measures restricting freedom of the person shall be under the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 19

An administrative suit regarding a real property shall be under the jurisdiction of the people's court in the place where the real property is located.

Article 20

When two or more people's courts have jurisdiction over a suit, the plaintiff may have the option to bring the suit in one of these people's courts. If the plaintiff brings the suit in two or more people's courts that have jurisdiction over the suit, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 21

If a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that does have jurisdiction over the case. The people's court to which the case has been transferred shall not on its own initiative transfer it to another people's court.

Article 22

If a people's court which has jurisdiction over a case is unable to exercise its jurisdiction for special reasons, a people's court at a higher level shall designate another court to exercise the jurisdiction. If a dispute arises over jurisdiction between people's courts, it shall be resolved by the parties to the dispute through consultation. If the dispute cannot be resolved through consultation, it shall be reported to a people's court superior to the courts in dispute for the designation of jurisdiction.

Article 23

People's courts at higher levels shall have the authority to adjudicate administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial. If a people's court deems it necessary for an administrative case of first instance under its jurisdiction to be adjudicated by a people's court at a higher level, it may report to such a people's court for decision.

Chapter IV Participants in Proceedings

Article 24

A citizen, a legal person or any other organization that brings a suit in accordance with this Law shall be a plaintiff.

If a citizen who has the right to bring a suit is deceased, his near relatives may bring the suit.

If a legal person or any other organization that has the right to bring a suit terminates, the legal person or any other organization that succeeds to its rights may bring the suit.

Article 25

If a citizen, a legal person or any other organization, brings a suit directly before a people's court, the administrative organ that undertook the specific administrative act shall be the defendant.

For a reconsidered case, if the organ that conducted the reconsideration sustains the original specific administrative act, the administrative organ that initially undertook the act shall be the defendant; if the organ that conducted the reconsideration has amended the original specific

administrative act, the administrative organ which conducted the reconsideration shall be the defendant.

If two or more administrative organs have undertaken the same specific administrative act, the administrative organs that have jointly undertaken the act shall be the joint defendants.

If a specific administrative act has been undertaken by an organization authorized to undertake the act by the law or regulations, the organization shall be the defendant. If a specific administrative act has been undertaken by an organization as entrusted by an administrative organ, the entrusting organ shall be the defendant.

If an administrative organ has been abolished, the administrative organ that carries on the exercise of functions and powers of the abolished organ shall be the defendant.

Article 26

A joint suit shall be constituted when one party or both parties consist of two or more persons and the administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature and the people's court considers that the cases can be handled together.

Article 27

If any other citizen, legal person or any other organization has interests in a specific administrative act under litigation, he or it may, as a third party, file a request to participate in the proceedings or may participate in them when so notified by the people's court.

Article 28

Any citizen with no capacity to take part in litigation shall have one or more legal representatives who will act on his behalf in a suit. If the legal representatives try to shift their responsibilities onto each other, the people's court may appoint one of them as the representative of the principal in litigation.

Article 29

Each party or legal representative may entrust one or two persons to represent him in litigation.

A lawyer, a public organization, a near relative of the citizen bringing the suit, or a person recommended by the unit to which the citizen bringing the suit belongs or any other citizen approved by the people's court may be entrusted as an agent ad litem.

Article 30

A lawyer who serves as an agent ad litem may consult materials pertaining to the case in accordance with relevant provisions, and may also investigate among and collect evidence from the organizations and citizens concerned. If the information involves state secrets or the private

affairs of individuals, he shall keep it confidential in accordance with relevant provisions of the law.

With the approval of the people's court, parties and other agents ad litem may consult the materials relating to the court proceedings of the case, except those that involve state secrets or the private affairs of individuals.

Chapter V Evidence

Article 31

Evidence shall be classified as follows:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-visual material;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) expert conclusions; and
- (7) records of inquests and records made on the scene.

Any of the above-mentioned evidence must be verified by the court before it can be taken as a basis for ascertaining a fact.

Article 32

The defendant shall have the burden of proof for the specific administrative act he has undertaken and shall provide the evidence and regulatory documents in accordance with which the act has been undertaken.

Article 33

In the course of legal proceedings, the defendant shall not by himself collect evidence from the plaintiff and witnesses.

Article 34

A people's court shall have the authority to request the parties to provide or supplement evidence.

A people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations or citizens.

Article 35

In the course of legal proceedings, when a people's court considers that an expert evaluation for a specialized problem is necessary, the expert evaluation shall be made by an expert evaluation department as specified by law. In the absence of such a department, the people's court shall designate one to conduct the expert evaluation.

Article 36

Under circumstances where there is a likelihood that evidence may be destroyed or lost or difficult to obtain later on, the participants in proceedings may apply to the people's court for the evidence to be

preserved. The people's court may also on its own initiative take measures to preserve such evidence.

Chapter VI Bringing a Suit and Accepting a Case

Article 37

A citizen, a legal person or any other organization may, within the scope of cases acceptable to the people's courts, apply to an administrative organ at the next higher level or to an administrative organ as prescribed by the law or regulations for reconsideration, anyone who refuses to accept the reconsideration decision may bring a suit before a people's court; a citizen, a legal person or any other organization may also bring a suit directly before a people's court.

In circumstances where, in accordance with relevant provisions of laws or regulations, a citizen, a legal person or any other organization shall first apply to an administrative organ for reconsideration and then bring a suit before a people's court, if he or it refuses to accept the reconsideration decision, the provisions of the laws or regulations shall apply.

Article 38

If a citizen, a legal person or any other organization applies to an administrative organ for reconsideration, the organ shall make a decision within two months from the day of the receipt of the application, except as otherwise provided for by law or regulations. Anyone who refuses to accept the reconsideration decision may bring a suit before a people's court within 15 days from the day of the receipt of the reconsideration decision. If the administrative organ conducting the reconsideration fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.

Article 39

If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within three months from the day when he or it knows that a specific administrative act has been undertaken, except as otherwise provided for by law.

Article 40

If a citizen, a legal person or any other organization fails to observe the time limit prescribed by law due to force majeure or other special reasons, he or it may apply for an extent of the time limit within ten days after the obstacle is removed; the requested extent shall be decided by a people's court.

Article 41

The following requirements shall be met when a suit is brought:

(1) the plaintiff must be a citizen, a legal person or any other organization that considers a specific administrative act to have infringed upon his or its lawful rights and interests;
 (2) there must be a specific defendant or defendants;
 (3) there must be a specific claim and a corresponding factual basis for the suit; and (4) the suit must fall within the scope of cases acceptable to the people's courts and the specific jurisdiction of the people's court where it is filed.

Article 42

When a people's court receives a bill of complaint, it shall, upon examination, file a case within seven days or decide to reject the complaint. If the plaintiff refuses to accept the decision, he may appeal to a people's court.

Chapter VII Trial and Judgment

Article 43

A people's court shall send a copy of the bill of complaint to the defendant within five days of filing the case. The defendant shall provide the people's court with the documents on the basis of which a specific administrative act has been undertaken and file a bill of defence within ten days of receiving the copy of the bill of complaint. The people's court shall send a copy of the bill of defence to the plaintiff within five days of receiving it. Failure by the defendant to file a bill of defence shall not prevent the case from being tried by the people's court.

Article 44

During the time of legal proceedings, execution of the specific administrative act shall not be suspended. Execution of the specific administrative act shall be suspended under one of the following circumstances:

(1) where suspension is deemed necessary by the defendant;
 (2) where suspension of execution is ordered by the people's court at the request of the plaintiff because, in the view of the people's court, execution of the specific administrative act will cause irremediable losses and suspension of the execution will not harm public interests; or
 (3) where suspension of execution is required by the provisions of laws or regulations.

Article 45

Administrative cases in the people's courts shall be tried in public, except for those that involve state secrets or the private affairs of individuals or are otherwise provided for by law.

Article 46

Administrative cases in the people's courts shall be tried by a collegial

panel of judges or of judges and assessors. The number of members of a collegial panel shall be an odd number of three or more.

Article 47

If a party considers a member of the judicial personnel to have an interest in the case or to be otherwise related to it, which may affect the impartial handling of the case, the party shall have the right to demand his withdrawal.

If a member of the judicial personnel considers himself to have an interest in the case or to be otherwise related to it, he shall apply for withdrawal.

The provisions of the two preceding paragraphs shall apply to court clerks, interpreters, expert witnesses and persons who conduct inquests. The withdrawal of the president of the court as the chief judge shall be decided by the court's adjudication committee; the withdrawal of a member of the judicial personnel shall be decided by the president of the court; the withdrawal of other personnel shall be decided by the chief judge. Parties who refuse to accept the decision may apply for reconsideration.

Article 48

If the plaintiff refuses to appear in court without justified reasons after being twice legally summoned by the people's court, the court shall consider this an application for the withdrawal of the suit; if the defendant refuses to appear in court without justified reasons, the court may make a judgment by default.

Article 49

If a participant in the proceedings or any other person commits any of the following acts, the people's court may, according to the seriousness of his offence, reprimand him, order him to sign a statement of repentance or impose upon him a fine of not more than 1,000 yuan or detain him for not longer than 15 days; if a crime is constituted, his criminal responsibility shall be investigated:

- (1) evading without reason, refusing to assist in or obstructing the execution of the notice of a people's court for assistance in its execution by a person who has the duty to render assistance;
- (2) forging, concealing or destroying evidence;
- (3) instigating, suborning or threatening others to commit perjury or hindering witnesses from giving testimony;
- (4) concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;
- (5) using violence, threats or other means to hinder the personnel of a people's court from performing their duties or disturbing the order of the work of a people's court; or (6) insulting, slandering, framing, beating or retaliating against the personnel of a people's court, participants in

proceedings or personnel who assist in the execution of duties; A fine or detention must be approved by the president of a people's court. Parties who refuse to accept the punishment decision may apply for reconsideration.

Article 50

A people's court shall not apply conciliation in handling an administrative case.

Article 51

Before a people's court announces its judgment or order on an administrative case, if the plaintiff applies for the withdrawal of the suit, or if the defendant amends its specific administrative act and, as a result, the plaintiff agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval.

Article 52

In handling administrative cases, the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas. In handling administrative cases of a national autonomous area, the people's courts shall also take the regulations on autonomy and separate regulations of the national autonomous area as the criteria.

Article 53

In handling administrative cases, the people's courts shall take, as references, regulations formulated and announced by ministries or commissions under the State Council in accordance with the law and administrative rules and regulations, decisions or orders of the State Council and regulations formulated and announced, in accordance with the law and administrative rules and regulations of the State Council, by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, of the cities where the people's governments of provinces and autonomous regions are located, and of the larger cities approved as such by the State Council.

If a people's court considers regulations formulated and announced by a local people's government to be inconsistent with regulations formulated and announced by a ministry or commission under the State Council, or if it considers regulations formulated and announced by ministries or commissions under the State Council to be inconsistent with each other, the Supreme People's Court shall refer the matter to the State Council for interpretation or ruling.

Article 54

After hearing a case, a people's court shall make the following judgments according to the varying conditions:

(1) If the evidence for undertaking a specific administrative act is conclusive, the application of the law and regulations to the act is correct, and the legal procedure is complied with, the specific administrative act shall be sustained by judgment.

(2) If a specific administrative act has been undertaken in one of the following circumstances, the act shall be annulled or partially annulled by judgment, or the defendant may be required by judgment to undertake a specific administrative act anew:

- a. inadequacy of essential evidence;
- b. erroneous application of the law or regulations;
- c. violation of legal procedure;
- d. exceeding authority; or
- e. abuse of powers.

(3) If a defendant fails to perform or delays the performance of his statutory duty, a fixed time shall be set by judgment for his performance of the duty.

(4) If an administrative sanction is obviously unfair, it may be amended by judgment.

Article 55

A defendant who has been judged by a people's court to undertake a specific administrative act anew must not, based on the same fact and reason, undertake a specific administrative act essentially identical with the original act.

Article 56

In handling administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, it shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people's court considers the person to have committed a crime, it shall transfer the relevant materials to the public security and procuratorial organs.

Article 57

A people's court shall pass a judgment of first instance within three months from the day of filing the case. Extent of the time limit necessitated by special circumstances shall be approved by a higher people's court, extent of the time limit for handling a case of first instance by a higher people's court, extent of the time limit for handling a case of first instance by a higher people's court shall be approved by the Supreme People's Court.

Article 58

If a party refuses to accept a judgment of first instance by a people's

court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days of the serving of the written judgment. If a party refuses to accept an order of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 10 days of the serving of the written order. All judgments and orders of first instance by a people's court that have not been appealed within the prescribed time limit shall be legally effective.

Article 59

A people's court may handle an appealed case by examining the court records, if it considers the facts clearly ascertained.

Article 60

In handling an appealed case, a people's court shall make a final judgment within two months from the day of receiving the appeal. Extent of the time limit necessitated by special circumstances shall be approved by a higher people's court, extent of the time limit for handling an appealed case by a higher people's court shall be approved by the Supreme People's Court.

Article 61

A people's court shall handle an appealed case respectively according to the conditions set forth below:

- (1) if the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment, the appeal shall be rejected and the original judgment sustained;
- (2) if the facts are clearly ascertained but the law and regulations are incorrectly applied in the original judgment, the judgment shall be amended according to the law and regulations; or
- (3) if the facts are not clearly ascertained in the original judgment or the evidence is insufficient, or a violation of the prescribed procedure may have affected the correctness of the original judgment, the original judgment shall be rescinded and the case remanded to the original people's court for retrial, or the people's court of the second instance may amend the judgment after investigating and clarifying the facts. The parties may appeal against the judgment or order rendered in a retrial of their case.

Article 62

If a party considers that a legally effective judgment or order contains some definite error, he may make complaints to the people's court which tried the case or to a people's court at a higher level, but the execution of the judgment or order shall not be suspended.

Article 63

If the president of a people's court finds a violation of provisions of the law or regulations in a legally effective judgment or order of his court and deems it necessary to have the case retried, he shall refer the

matter to the adjudication committee, which shall decide whether a retrial is necessary.

If a people's court at a higher level finds a violation of provisions of the law or regulations in a legally effective judgment or order of a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at the lower level to conduct a retrial.

Article 64

If the people's procuratorate finds a violation of provisions of the law or regulations in a legally effective judgement or order of a people's court, it shall have the right to lodge a protest in accordance with procedures of judicial supervision.

Chapter VII Execution

Article 65

The parties must perform the legally effective judgment or order of the people's court. If a citizen, a legal person or any other organization refuses to perform the judgment or order, the administrative organ may apply to a people's court of first instance for compulsory execution or proceed with compulsory execution according to law. If an administrative organ refuses to perform the judgment or order, the people's court of first instance may adopt the following measures:

- (1) informing the bank to transfer from the administrative organ's account the amount of the fine that should be returned or the damages that should be paid;
- (2) imposing a fine of 50 to 100 yuan per day on an administrative organ that fails to perform the judgment or order within the prescribed time limit, counting from the day when the time limit expires;
- (3) putting forward a judicial proposal to the administrative organ superior to the administrative organ in question or to a supervisory or personnel department; the organ or department that accepts the judicial proposal shall deal with the matter in accordance with the relevant provisions and inform the people's court of its disposition; and
- (4) if an administrative organ refuses to execute a judgment or order, and the circumstances are so serious that a crime is constituted, the head of the administrative organ and the person directly in charge shall be investigated for criminal responsibility according to law.

Article 66

If a citizen, a legal person or any other organization, during the period prescribed by law, neither brings a suit nor carries out the specific administrative act, the administrative organ may apply to a people's court for compulsory execution, or proceed with compulsory execution according

to law.

Chapter IX Liability for Compensation for Infringement of Rights

Article 67

A citizen, a legal person or any other organization who suffers damage because of the infringement upon his or its lawful rights and interests by a specific administrative act of an administrative organ or the personnel of an administrative organ, shall have the right to claim compensation.

If a citizen, a legal person or any other organization makes an independent claim for damages, the case shall first be dealt with by an administrative organ. Anyone who refuses to accept the disposition by the administrative organ may file a suit in a people's court. Conciliation may be applied in handling a suit for damages.

Article 68

If a specific administrative act undertaken by an administrative organ or the personnel of an administrative organ infringes upon the lawful rights and interests of a citizen, a legal person or any other organization and causes damage, the administrative organ or the administrative organ to which the above-mentioned personnel belongs shall be liable for compensation.

After paying the compensation, the administrative organ shall instruct those members of its personnel who have committed intentional or gross mistakes in the case to bear part or all of the damages.

Article 69

The cost of compensation shall be included as an expenditure in the government budget at various levels. The people's governments at various levels may order the administrative organs responsible for causing the compensation to bear part or all of the damages. The specific measures thereof shall be formulated by the State Council.

Chapter X Administrative Procedure Involving Foreign Interests

Article 70

This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China, except as otherwise provided for by law.

Article 71

Foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China shall have the same litigation rights and obligations as citizens and organizations of the People's Republic of China. Should the courts of a foreign country impose restrictions on the administrative litigation rights of the citizens and organizations of the People's Republic of

China, the Chinese people's courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

Article 72

If an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

Article 73

When foreign nationals, stateless persons and foreign organizations appoint lawyers as their agents ad litem in administrative suits in the People's Republic of China, they shall appoint lawyers of a lawyers' organization of the People's Republic of China.

Chapter XI Supplementary Provisions

Article 74

A people's court shall charge litigation fees for handling administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both held responsible. The procedure for the charging of litigation fees shall be specified separately.

Article 75

This Law shall come into force as of October 1, 1990.

Annex N

to the Expert Report of Professor Guiguo Wang

中华人民共和国政府和老挝人民 民主共和国政府民用航空运输协定

中华人民共和国政府和老挝人民民主共和国政府，为了便利中国人民和老挝人民之间的友好往来，发展两国航空运输方面的相互关系，根据互相尊重独立和主权、互不干涉内政、平等互利以及两国人民之间友好合作的原则，就建立两国间以及延伸至两国以外地区的定期航班，协议如下：

第一条

一、缔约一方给予缔约另一方在本协定附件所规定的航线(以下称“规定航线”)上建立定期航班(以下称“协议航班”)的权利，以载运缔约双方境内两点间的国际旅客、行李、货物和邮件。

二、缔约一方指定空运企业的飞机，在缔约另一方境内飞行时，必须遵守缔约另一方关于航路和国境走廊的规定。

三、缔约一方在规规定航线上飞行协议航班，至迟应在开航前六十天通知缔约另一方。

四、缔约一方指定空运企业如欲在规规定航线上作不定期飞行或包机飞行，缔约一方民航当局应向缔约另一方民航当局提出申请，由其负责向本国有关当局办理许可和答复。

第二条

一、缔约一方有权书面通知缔约另一方，指定一家空运企业经营协议航班。根据本条第三和第四款的规定，被通知的缔约方应在合理的期限内，给予指定空运企业有关的许可，以便实施飞行。

二、按照本协定的规定，缔约一方的指定空运企业在缔约另一方领土上经营规定航线时，应享有下列权利：

(一)不降停地飞越其领土；

(二)在规规定航线上的通航地点作非业务性经停；

(三)在规规定航线上的通航地点经停，载运缔约双方境内两点间的旅客、行李、货物和邮件。

三、缔约另一方民航当局可要求缔约一方指定空运企业向其证明，该空运企业有资格履行该民航当局根据法令规章所规定的，在经营国际航班方面正常和合理地所应用的条件。

四、缔约一方指定空运企业的主要所有权和有效管理权，应属于该缔约方。缔约另一方对此如有疑义，它有权拒绝发给该指定空运企业以本条第一款所述的经营许可，或取消此项经营许可。

五、缔约一方指定空运企业如不遵守缔约另一方的法令规章，或不按照本协定及其附件所规定的条件经营时，缔约另一方有权暂停缔约一方指定空运企业行使本协定第一条规定的权利。但在通常情况下，应同缔约一方协商后方可行使这种权利。

第三条

一、缔约双方指定空运企业在经营规定航线的协议航班方面，应享有公平和平等的机会。

二、为经营规定航线有关班次、机型、班期时刻、运输章程、业务代理和地面服务等事项，由缔约双方指定空运企业协商确定，并经缔约双方各自的民航当局同意。

三、缔约双方协议航班的客货运价，由缔约双方指定空运企业商定，并经缔约双方各自的民航当局同意。

第四条

缔约一方应在其领土内，为缔约另一方指定空运企业的飞机指定供经营规定航线所使用的机场和备降机场，并提供飞行协议航班所需的通信、导航、气象和其他附属服务。具体办法由缔约双方民航当局商定。

第五条

一、缔约一方指定空运企业在规定航线上飞行的飞机及其留置在飞机上的正常设备、零备件、燃料、油料、润滑油和机上供应品(包括食品、饮料、香烟等)，在进出缔约另一方领土时，应免除任何关税、检验费和其他类似税捐，这些设备及用品应留置机上直至重新运出。

二、除为提供服务所付费用外，缔约一方指定空运企业在缔约另一方领土内加注或装上飞机供指定航线飞行所耗用的燃料、油料、润滑油和机上供应品，应免除关税、检验费和其他类似税捐。

三、缔约一方指定空运企业运入缔约另一方领土供在规定航线上飞行的飞机维修用的零备件和机上正常设备，亦应免除关税、检验费和其他类似税捐，但应由海关监管，不得在缔约另一方领土内转售或移作他用，并按缔约另一方的规定缴纳保管费用。

第六条

一、缔约一方关于从事国际航班飞行的飞机进出其领土和在其领土内的停留、运行的法令规章，以及关于旅客、空勤组、行李、货物和邮件进出其领土和在其领土内停留的法令规章，均适用于缔约另一方指定空运企业在缔约一方领土内的飞机、空勤组和所载运的旅客、行李、货物和邮件。缔约一方应及时向缔约另一方提供上述有关的法令规章资料。

二、缔约一方指定空运企业使用缔约另一方的机场和技术服务，应按照缔约另一方规定的合理的费率付费。

第七条

一、缔约一方指定空运企业为了在规定航线上经营协议航班，有权在缔约另一方领土内规定航线的通航地点设立代表机构。代表机构的人员应为中华人民共和国和老挝人民民主共和国公民，其人数由缔约双方指定空运企业商定，并经缔约双方民航当局批准。代表机构人员必须遵守驻在国的现行法令规章。

二、缔约一方应保障缔约另一方指定空运企业的代表机构和工作人员的安全并提供协

助和便利，以及保护在其领土内经营协议航班所用的飞机、器材和其他财产的安全。

三、缔约一方应对缔约另一方指定空运企业的代表机构人员免除个人所得税。

第八条

缔约一方应保证缔约另一方指定空运企业在规定航线上经营协议航班所得的收入准予结汇。如缔约双方的结算办法按专门的协议进行，则应按该协议办理。

免除收入所得税问题应在尊重各自利益的基础上，在现行法令规定范围内，由缔约双方协商解决。

第九条

一、缔约一方指定空运企业在规定航线上飞行的飞机应具有该缔约方的国籍标志和登记标志，并携带下列文件：

- 1 登记证；
- 2 适航证；
- 3 航行记录表；
- 4 机上无线电台执照；
- 5 空勤组成员的执照或证件；
- 6 空勤组名单；
- 7 注明起讫地点的旅客名单；
- 8 货物、邮件舱单。

缔约一方的上述有效文件，缔约另一方应予承认。

二、缔约双方指定空运企业在规定航线上飞行的空勤组成员，应分别为本国公民。缔约一方指定空运企业如欲雇用第三国国籍的空勤组成员飞行规定航线，缔约一方应通过外交途径事先取得缔约另一方同意。

三、缔约一方指定空运企业的空勤组成员在飞行协议航班时，缔约另一方应允许其凭有效护照入出国境，无需办理签证。但缔约一方应每年向缔约另一方提供一次上述空勤组成员的名单，包括出生日期、护照号码和每人照片两张，名单上的人员如有更改，应按上述要求在执行航班任务的一周前书面通知缔约另一方。缔约一方应在每次航班前在飞行计划中，将该航班机长姓名和空勤组人数预报给缔约另一方有关航空当局。

上述空勤组成员如不随同原飞机离境，应事先取得缔约另一方有关当局的许可。如由于气候、飞机故障等原因需作短期停留者，无需补办签证；但如因空勤组成员临时患病或因其他个人原因需作停留，或改乘其他交通工具者，须向缔约另一方有关当局补办签证。

第十条

一、缔约一方指定空运企业的飞机在缔约另一方领土内遇险或失事时，缔约另一方应：

- 1 立即将失事情况通知缔约一方；
- 2 立即进行寻找和营救；
- 3 对旅客和空运组提供援助；
- 4 对飞机和机上装载物，采取一切安全措施；
- 5 调查事故情况；
- 6 允许缔约一方的代表接近飞机，并作为观察员参加对事故的调查；

7 如调查中不再需要遇险或失事的飞机和其装载物，应予放行；

8 将调查结果书面通知缔约一方。

二、由于对遇险或失事飞机的寻找、营救、调查及其他活动所产生的一切费用暂由飞机所属方支付，最终应由事故责任方偿还。

第十一条

缔约双方应密切合作，互相支持，保证本协议正确实施。如对本协议的解释和实施发生分歧，缔约双方指定空运企业应本着友好合作、互相谅解的精神直接协商解决。如不能达成协议，应由缔约双方民航当局协商解决。如仍不能达成协议，缔约双方应通过外交途径解决。

第十二条

缔约一方如认为需要修改或补充本协议的任何条款或其附件，可随时要求与缔约另一方进行协商，此项协商应于缔约另一方接到建议之日起六十天内进行。

本协议或其附件的任何修改或补充，应经缔约双方换文确认后生效。

第十三条

缔约一方可随时将终止本协议的愿望通知缔约另一方。本协议在缔约另一方接到通知之日起十二个月后终止，如在期满前，缔约一方提出撤销上述通知，并取得缔约另一方同意后，则本协议继续有效。

第十四条

本协议自签字之日起生效。

自本协议生效之日起，两国间原有的民用航空运输协定均作废。

本协议于一九七八年六月二十八日在万象签订，共两份，每份都用中文、老文和法文写成，三种文本具有同等效力。

中华人民共和国政府

老挝人民民主共和国政府

全 权 代 表

全 权 代 表

张瑞霭(签字)

奔·卡姆奈昂(签字)

附件

一、航线

1 中华人民共和国政府指定空运企业在经营缔约双方境内两点间的协议航班时，使用下列规定往返航线：

北京——经停或不经停河内或另一点——万象——曼谷——金边——其他国家多点。

2 老挝人民民主共和国政府指定空运企业在经营缔约双方境内两点间的协议航班时，使用下列规定往返航线：

万象——经停或不经停河内或另一点——北京或中国境内另一点——乌兰巴托或其他国家多点。

二、上述未注明的其他国家多点及中间点应由缔约双方民航当局商定。

三、不经停的权利

缔约双方指定空运企业的飞机有权不经停上述规定航线上缔约双方领土间的中间经停点，但应尽早相互通知。

四、第五种业务的实施权将在尊重相互利益的基础上由缔约双方民航当局另行商定。

Annex O

to the Expert Report of Professor Guiguo Wang

**TRANSLATION OF THE TITLE, DATE AND PARTIES TO THE CIVIL
AVIATION TRANSPORT AGREEMENT**

**THE CIVIL AVIATION TRANSPORT AGREEMENT BETWEEN THE
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE
GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC**

Article 14 (last paragraph):

This Agreement is signed in Vientiane on 28 June 1978. There is a total of two sets, each set is written in the Chinese, Lao and French languages. The three versions shall have equal force.

**THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA**

**THE GOVERNMENT OF THE
LAO PEOPLE'S DEMOCRATIC
REPUBLIC**

Plenipotentiary Delegate

Plenipotentiary Delegate

Zhang Rui'ai (Signature)

Ben. Ka Mu Nai Ang (Signature)

Certified true translation by:

Mrs Chin-Puar Yow Hoy,
a certificated interpreter

- 1 APR 2014

Chin - Puar Yow Hoy