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## 성공적인 투자진출을 위한 TIP



### 자원 개발형/의존형 투자는 부적합

대만은 전체 국토 면적 중 약 70%가 산이며, 천연자원 역시 우리나라만큼이나 빈약하다. 따라서 자원개발형 투자나 자원의존형 투자는 부적합하다고 볼 수 있다



### 전문회계사를 통한 등록 절차 수행이 바람직

외국인 혹은 외국계 회사의 투자신청 및 회사 등록시, 대만정부가 지정한 첨단산업 등과 같은 희망유치분야가 아닐 경우에는 실질적으로 막대한 시간과 노력이 필요하다. 따라서 직접 회사설립 절차를 밟는 것보다는 현지의 회사설립 관련 전문회계사를 선정하여 신청 작업에 착수한다면 시간과 인력의 낭비를 방지할 수 있다.



### 계약서에 사업영역을 포괄적으로 명시

계약서 작성시에 사업영역은 되도록 여러 분야를 포괄하여 크게 잡아두는 것이 좋다. 이는 사업영역 확장을 위해 기존의 투자자가 새로운 사업을 추진하려 할 경우, 새로운 사업에 대해서 초기투자와 마찬가지로의 절차를 밟아야 하기 때문이다.

## I . 투자 여건

### 1. 투자 환경

#### ■ 탁월한 지정학적·문화적 요건

- 세계 최대 생산기지인 중국과 최대 소비시장인 북미를 연결하는 길목이자 동북아시아와 유럽의 해상운송로를 잇는 지역으로서 북미, 유럽, 중국, 동북아시아 등 세계 4대 경제축이 교차하는 지역
- 전통 중화 문화를 계승한 자유민주주의 시장경제 국가로서 선진국 수준의 효율적이고 국제화된 비즈니스 환경을 구축
- 중국과 민족, 언어, 문화적 배경을 공유하는 중국시장 진출의 교두보로서 중국시장의 테스트마켓이자 대중 투자 합작파트너 발굴 유망 지역

#### ■ 공인된 안정되고 우수한 투자환경

- BERI, IMD, EIU 등 주요 국제평가기관에서 투자환경 우수 국가로 평가

기 관	평 가
BERI	2006년 투자환경리스크 보고서에서 투자 리스크가 낮은 국가로서 전세계 국가 중 6위, 아시아 국가 중 3위에 랭크
IMD	2006년 국가경쟁력 전세계 국가 중 18위, 아시아 국가 중 4위
EIU	비즈니스환경 전세계 국가 중 19위, 아시아 국가 중 3위
Fitch Ratings	대만 국가신용도 A+

## ■ 세계적인 IT산업 R&D 및 생산 기지

- GDP중 R&D 관련 비용이 2.5%에 이르며, 대만기업의 연간 미국 특허 취득건수는 7,000건을 상회하여 미국, 일본, 독일에 이어 세계 4위임
- 반도체 파운드리, PC 주기관, 노트북 PC, TFT LCD 패널 등 주요 IT 제품의 세계적인 생산기지

## 2. 주요국별 對 대만 투자동향

### <對 대만 국별 외국인투자>

(단위: 백만 달러)

구분	누계(1952~2006)			2006		
국가명	건수	투자금액	점유율	건수	투자금액	점유율
미국	3,311	15,028.64	19.10%	275	883.44	6.32%
일본	5,186	14,373.38	18.27%	313	1,591.09	11.39%
카리브해 영국령국가	2,626	12,967.75	16.48%	387	1,785.87	12.78%
네덜란드	313	8,888.24	11.30%	42	5,417.19	38.78%
싱가폴	1,029	5,466.01	6.95%	72	951.50	6.81%
홍콩	2,679	4,222.02	5.37%	164	118.82	0.85%
영국	426	4,086.73	5.19%	62	1,505.99	10.78%
버뮤다	91	1,743.55	2.22%	5	365.51	2.62%
독일	363	1,694.21	2.15%	32	434.16	3.11%
필리핀	241	1,143.67	1.45%	7	6.76	0.05%
한국	380	696.20	0.88%	59	52.03	0.37%
기타	3,398	8,381.33	11.00%	428.00	856.88	0.06
<b>총액</b>	<b>20,043</b>	<b>78,691.73</b>	<b>100.00%</b>	<b>1,846</b>	<b>13,969.25</b>	<b>100.00%</b>

자료원: 대만 경제부 투자심의회(2007.5.25일)

- 누계기준으로 미국은 금액기준 1위, 건수기준 2위 투자국 (2위 일본, 3위 카리브해 영국령국가)
- 한국은 1952년 이후 현재까지 총 380건 약 7억 달러를 투자하여 전체 외국인 투자액의 0.9%를 차지
- 초기 외국인의 對 대만 투자는 전기 및 전자산업을 중심으로 하는 제조업에 집중되었으나, 최근에는 금융보험업과 운수 및 창고업 등 서비스업에 대한 투자가 큰 폭으로 증가하고 있음
- 현재 대만 행정원이 심의하고 있는 “화교 및 외국인 투자제한 및 금지항목의 전면 해제”가 실시되면 향후 임대업, 통신업, 금융업에 대한 외국인투자가 더욱 확대될 것으로 전망

## II. 투자유치 제도

### 1. 외국인투자조례(外國人投資條例)

- 1997년 11월 19일 수정 공포된 동법은 외국인의 對 대만 투자, 보장, 제한 및 처리에 관한 사항을 담고 있음. 동법의 주무부처는 행정원 경제부임

### 2. 외국인투자 금지 및 제한(僑外投資負面表列)

- 동법은 외국인(화교 포함)투자에 대한 제한 및 금지 업종별 세부항목을 명시하고 있음
- 주요 투자 제한 및 금지 업종별 세부항목(禁止及限制僑外人投資業別項目)

업종	세부업종	항목	주관부서	비고
임업, 벌목업			農委會	화교가능
화학원료 제조업	기본화학공업	유독성화학물 제조업	國防部	
		수은법Chlor-alkali	經濟部	내국민우대
		UN이 금지한 화학무기공약상에 명시되어있는 “화학물질 1”에 속하는 화학품	經濟部 國防部	내국민우대
		CFC, Halons, methylchloroform, carbon tetrachloride	經濟部	내국민우대

화학제품 제조업	기타화학제품 제조업	독성화학물질 제조업 (「독성화학물질관 리법」 규정에의거)	環保署	내국민우대
		도화선을 비롯한 인화제품	國防部	
금속기본공업	기타금속기본공업	카드뮴제련공업	經濟部	내국민우대
기계설비제조 수리·조립업	미분류 기타기계 제작·수리·조립 업	화기·무기제작 및 수리, 탄약·사격통제 (군용 항공무기 포함하지 않음)	內政部 國防部	
육상운수업	버스운송업	시내버스, 고속버스 운송업 포함	交通部	화교가능
	택시운송업			
	일반운송업	관광버스운송업		
우편·택배 업	우편업		交通部	
금융 및 기타 금융업	우편 및 송금서비스		交通部 財政部	
렌탈	자동차렌탈서비스 업	소형트럭 렌탈서비스업	交通部	화교가능
라디오·TV 방송업	라디오방송업	무선라디오방송업	新聞局	
	TV방송업	무선TV방송업		
레저서비스업	특수오락업		經濟部	

### 3. 투자 제한 분야

업종	세부업종	항목	주관부서	비고
농·목업	쌀농사		農委會	
	잡곡농사			
	특용작물농사			
	채소농사			

	과일농사			
	버섯농사			
	사탕수수농사			
	화초농사			
	기타농업 및 원예업			
	소 사육			
	돼지 사육			
	닭 사육			
	오리 사육			
	기타 동물 사육			
어업			農委會	
식품 및 음료제조업	알코올류 제조업		財政部	내국인우대
	맥주제조업			
담배제조업			財政部	내국인우대
화학원료 제조업	기본화학공업	유독성 화학물 제조업	內政部 經濟部 國防部	
화학제품 제조업	기타화학제품 제조업	독성화학물질제조(「독성화학물질관리법」 규정예의거)	環保署	내국인우대
	양약제조업		衛生署	내국인우대
	한약제조업			
	농약 및 환경위생용 약품제조업	농약제조업	農委會	
금속제품 제조업	금속 수공기계 제조업	칼 제조업	內政部	「창포탄약 도계관제조 레」 규정에 따라제작업 자 관리
운수용기구 제작수리업	항공기제작수리	군용항공기제작수 리	國防部 經濟部	
	항공기 부품제조업			
정밀・光學・ 의료기재 및 시계 제작업		군용측정기기설비	國防部	
기타공업제품 제조업	미분류 기타 공업제품제조업	상아가공	農委會	내국인우대
전력공급업			經濟部	
가스공급업	가스공급	가스공급관	經濟部	

용수공급업	용수공급	상수도사업	經濟部	
수상운송업	해양수운업	선박운송 및 임대	交通部	화교가능
	내부하천 및 호수 수운업			
항공운송업	민간항공운송업		交通部	화교가능
	일반항공업			
운송보조업	항공화물운송서비스	활주로, 공항, 항공운송, 에어 카고 등 서비스	交通部	1. 화교가능 2. 조약이나 협정 등의 규정에 의해 허가된 자만 가능
	항공운송보조업			
	기타운송보조업			
	항구업	항구 및 기타 관련 서비스	交通部	내국인우대
	기타수상운송보조업			
전신업	전신업	제1군에 속하는 전신사업	交通部	화교가능
금융 및 기타 서비스업	본국 및 외국은행업		財政部	내국인우대
	외국은행업			
	신용합작사			
	신용투자업			
	증권금융업			
	신용카드업			
보험업	생명보험		財政部	내국인우대
	재산보험			
	재보험			
	보험보조서비스			
법률 및 회계업	법률사무소		法務部	내국인우대
	대서사무소서비스			
	기타법률사무소서비스			
	회계서비스		財政部	
건축,공사기술 서비스업			內政部	내국인우대
교육서비스업	기타교육서비스	학원	教育部	
라디오TV방송업	라디오방송	유선라디오·TV방송시스템경영, 위성방송사업	新聞局	
	TV방송			

자료원: 대만 경제부 투자심의위원회

## 4. 투자 인센티브

### 가. 조세 감면

#### ■ 연구개발

- 연구개발에 사용된 투자액이 30% 이상인 경우, 당해 연도부터 5년간 영리사업소득세(법인세)가 면제됨
- 연구개발비용은 신상품 개발, 생산기술 개선 등에 사용되어야 함
- 영리사업소득세 면제 신청 시 연구개발 계획, 연구과정을 기록한 문건, 연구개발보고서 등 관련 자료를 제출해야함
- 1년 감면 총액이 당해 연도에 납부해야 하는 영리사업소득세의 50%를 초과할 수 없으나 마지막 연도에는 이러한 제한이 없음

#### ■ 인력 개발

- 인력개발에 사용된 투자액이 30% 이상인 경우, 당해 연도부터 5년간 영리사업소득세가 면제됨
- 인재양성계획서 혹은 양성인재리스트 등 관련 자료를 첨부해함
- 1년 감면 총액이 해당 연도에 납부해야 하는 영리사업소득세의 50%를 초과할 수 없으나 마지막 연도에는 이러한 제한이 없음

## ■ 신설비 또는 신기술

- 하기 항목에 대하여는 지출한 금액의 5~20% 한도 내에서 5년간 영리사업소득세가 면제됨. 1년 감면 총액이 해당 연도에 납부해야하는 영리사업소득세의 50%를 초과할 수 없으나 마지막 연도에는 이러한 제한이 없음
- 자동화설비 및 기술에 대한 투자
- 자원회수, 오염방지설비 및 기술에 대한 투자
- 이산화탄소 방출억제, 에너지 효율강화 관련 기술 및 설비에 대한 투자
- 기업의 정보효율을 제고하는 하드웨어, 소프트웨어 및 기술에 대한 투자
- 조세감면비율

<자동화, 온실배기가스감축 및 기업의 디지털정보 효율화분야>

(단위: 대만원)

구분	신설비	신기술	최저투자액
제조기술서비스업	11%	10%	600,000
건설업	8%	5%	2,000,000
교통업, 영화제작업, 농업, 폐기물회수처리업, 도소매 및 기술서비스업	8%	5%	600,000

## ■ 신흥 주요전략산업<sup>1)</sup>

- 신흥 주요전략산업에 해당하는 산업에 투자할 경우 주주의 투자소득세 감면 혹은 영리사업소득세 감면 등 조세 우대 혜택을 받을 수 있음
- 신흥 주요전략 산업에 대한 투자회사는 주주들이 자본금을 납입하는 날로부터 2년 내에 주주총회를 개최하여 “주주들의 투자소득세 감면” 또는 “영리사업소득세의 감면” 중에서 한 가지를 선택할 수 있으며, 세금 감면 방식은 한번 선택한 이후에 변경이 불가능함
- 주주의 투자소득세 감면
  - 신흥 주요전략산업에 투자하는 회사의 주식을 3년 이상 보유하고 있는 개인 또는 법인 주주는 5년간 영리사업소득세 또는 종합소득세 감면
  - 법인주주는 당해 연도 영리사업소득세에서 투자 주식가치의 20%까지 공제
  - 개인 투자자는 매년 공제금액이 납부해야 할 종합소득세의 50%를 초과하지 않는 범위 내에서 당해 연도 종합소득세에서 투자 주식가치의 7%까지 공제받을 수 있음. 단, 마지막 연도에는 이러한 제한이 없음
- 영리사업소득세 감면

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### 1) 신흥 주요전략산업<sup>1)</sup>(新興重要策略性産業)

- 제조업: 3C공업(통신공업, 소비성전자공업, 정보하드웨어공업), 정밀전자공업, 정밀기계설비공업, 항공공업, 생의학 및 특화공업(의료보건공업, 제약공업, 특용화합품, 건강식품), 녹색기술공업, 고급재료공업 등의 7항목
- 기술서비스업: 인터넷기능의 소프트웨어 혹은 콘텐츠, 인터넷서비스, 고급집적회로설계, 자동화 및 전자화 공정서비스, 전력시스템공정서비스, 상품공정서비스, 환경보호공정기술서비스, 생물기술 및 제약업기술서비스, 제조업의 온실가스배출감소공정기술서비스, 에너지원절약 등의 공정기술서비스, 지적재산기술서비스, 연구개발서비스 등의 12항목

- 신흥 주요전략산업을 영위하는 신규 법인은 자사 상품 판매, 또는 서비스 제공 개시일로부터 연속 5년간 영리사업소득세를 공제받을 수 있음
- 증자로 회사가 확대된 경우, 새로 확대한 설비 또는 사업부문의 서비스 개시일로부터 신규 설비 및 사업부문에서 창출된 소득에 대한 영리사업소득세를 공제받을 수 있음
- 위와 같이 소득세 공제 대상이 되는 업체는 상품판매 또는 서비스 제공 개시일로부터 2년 안에 세금공제 개시일을 연기할 수 있음. 연기 기간은 4년을 초과할 수 없으며, 연기가 시작되는 날은 당해 회계연도의 제 1일이어야 함

<신흥 중요전략산업 설립 비준기관>

	가공수출구	과학공업단지	직할시 <sup>2)</sup> 내	직할시외
비준기관	經濟部 加工出口區管理處	科學工業園區 管理局	台北市 또는 高雄市 政府建設局	經濟部

## ■ 민간참여 공공건설

### ● 주주의 투자소득세 감면

- 중요한 공공건설에 참여하는 민간기업이 발행한 주식을 4년 이상 보유한 경우, 주식가치의 20% 한도 내에서 당해 연도의 영리사업소득세를 면제
- 매년 공제금액은 납부해야 할 영리사업소득세의 50%를 초과할 수 없음. 단, 마지막 연도에는 이러한 제한이 없음

### ● 영리사업소득세 감면

2) 대만은 타이베이(台北)와 까오슝(高雄) 2개의 직할시가 있다.

- 민간기업이 중요 공공건설에 참여한 경우, 운영 개시 후 5년간 영리사업소득세가 면제됨

#### ■ 낙후지역 투자

- 해당 지역에서 일정 범위 이상의 투자액 혹은 일정 수 이상의 인력을 고용 시, 투자금액의 20% 범위 내에서 5년간 영리사업소득세를 감면

#### ■ 물류센터 설립

- 외국기업이나 지사, 또는 업무 위임을 받은 대만기업이 대만 국내 판매용 상품을 보관하거나 단순가공 할 목적으로 대만에 물류유통센터를 설립했을 경우, 이로부터 파생되는 수입의 세금은 영리사업소득세에서 면제됨

#### ■ 지역운영본부 설립

- 중요한 경제적 파급효과를 일으키는 일정 규모 이상의 영업 본부를 대만 내 설립한 경우, 설립 회사의 경영 서비스 혹은 R&D 부분에서 창출되는 수입 및 로열티 수입, 투자이익, 자산 처분에서 생기는 이익은 영리사업소득세를 면제하며, 해당 회사는 공공소유의 토지를 우대가에 구입할 수 있음

<과학단지/가공수출지역/보세공장 혹은 보세창고의 조세우대혜택>

	가공수출지역	과학단지	보세공장/창고
수입된 원료, 연료, 반제품	관세 및 영업세면제	관세 및 영업세면제	관세 및 영업세면제
수입된 기계설비	관세 및 영업세면제	관세 및 영업세면제	5%영업세에 대한환급신청가능
화물 및 노동력의 해외 수출	영업세율 0%	영업세율 0%	영업세율 0%
과세지역에서 구입한 원료, 연료, 반제품, 기계설비	영업세율 0%	영업세율 0%	영업세율 0%

## 나. 비조세 지원

### ■ 연구개발 보조금

- R&D능력을 갖춘 기업의 신상품 개발을 장려하기 위해 대만정부는 “주도성 신제품개발보조법(主導性新產品開發輔導辦法)”에 의거하여 개발경비의 50% 한도 내에서 보조
- 동 법령에 따라 지원할 수 있는 기업은 회사법에 근거하여 설립된 회사(제조업과 관련 기술 서비스 회사 포함)로 재정적으로 건전해야 하며 대만 내에 R&D 시설과 충분한 전문 인력을 보유해야 하는 등의 조건을 구비해야 함
- 지원 가능한 산업 분야로는 ▲신흥 주요전략산업(新興重要策略性產業) ▲현재 대만 내의 산업 기술수준을 뛰어넘는 혁신적인 기술응용 상품 ▲시장창출효과나 관련 산업 파급효과가 뛰어난 상품 ▲국제수준을 뛰어넘는 수준의 디지털 콘텐츠 상품 등임

### ■ 저리 대출

- 아래와 같은 프로젝트에 의해 저리대출을 받을 수 있음
  - 산업구조개선(促進產業升級) 대출 프로젝트
  - 환경보호 및 에너지원 정책 추진을 위한 대출 프로젝트
  - 연구개발을 강화하고 경제건설 프로젝트를 지원하는 대출 프로젝트
  - 국가경제 및 사회발전 정책에 부합하는 민간기업 투자자에게 제공하는 민간기업 중장기 자금대출
  - 민간의 공공건설참여정책 촉진에 보조를 맞추는 장기대출
  - 전체 경제발전에 보조를 맞추기 위한 중소기업 협조대출
  - 산업연구개발 촉진을 위한 대출 프로젝트

● 관련기관

- 行政院開跋基金管理委員會: [www.df.gov.tw](http://www.df.gov.tw)
- 行政院經濟建設委員會: [www.cepd.gov.tw](http://www.cepd.gov.tw)
- 經濟部中小企業處: [www.moeasmea.gov.tw](http://www.moeasmea.gov.tw)
- 經濟部工業局: [www.moeaiad.gov.tw](http://www.moeaiad.gov.tw)

■ 정부 투자금 지원

- “산업고도화촉진조례(促進產業升級條例)” 21조에 의거하여, 정부가 투자하는 사업에 참여하는 경우 정부 투자금을 지원받을 수 있음. 단, 정부투자금은 전체 투자총액의 49%를 초과하지 못함
- 주요 투자산업이 과거에는 석유화학 및 반도체산업에 한정되어 있었으나, 최근에는 IT, 통신, 디지털, 바이오테크 등으로 확대되고 있음

■ 가공수출지역(加工出口區) 및 과학공업단지(科學工業園區) 입주기업 우대

- 가공수출지역(加工出口區) 및 과학공업단지(科學工業園區)는 간소한 행정수속, 신속한 통관, 조세우대, 편리한 교통망, 정보통신 인프라 완비, 양호한 치안상태 및 환경 등 강점을 부각시켜 대만 국내 및 외국기업들의 투자를 유치하고 있음

<가공수출지역(加工出口區) 및 과학공업단지(科學工業園區)의 우대 내역>

지역	설립 가능한 사업	혜택
가공수출지역 (加工出口區)	1. 하이테크, 고부가가치 전자, 항공, 바이오 테크 등의 선진산업 2. 저오염 제조업 3. 물류, 운수 등의 관련성 산업	1. 조세 우대 (구내수입 기계설비, 원자재, 샘플의 수입세, 화물세, 영업세 등 면제) 2. 투자자의 권익보호 3. 단일창구를 통한 편리한

	4. 기타 가공수출 허가 설립구 내 사업종류에 해당하는 사업	서비스 제공 4. 낮은 용지 사용료 5. 상호 지원을 통한 산업다원화 추구 6. “산업고도화촉진조례”에 의한 “신흥중요책략산업”일 경우 5년간 영업소득세 등 면제
과학공업단지 (科學工業園區)	1. 집적회로 2. 컴퓨터 및 주변 설비 3. 통신 4. 광전 5. 정밀기계 6. 바이오테크 등	1. 조세 우대 (구내 사용 기기설비, 원자재, 반제품 등 수입세 면제) 2. 신흥주요전략성산업조세 혜택 3. 정부참여투자 신청가능

## 5. 외국인투자 형태

### 가. 외국인투자기업의 형태

#### ■ 외국인투자기업의 형태는 법인, 지사, 연락사무소의 3종류로 분류

- 대만 회사법(公司法)에 따른 법인의 종류는 무한공사(無限公司), 양합공사(兩合公司), 유한공사(有限公司), 고분유한공사(股份有限公司)의 네 가지 형태가 있음
- 이 중에서 외국인투자자가 가장 많이 설립하고 있는 회사의 형태는 우리나라의 주식회사에 해당하는 고분유한공사와 유한공사임

#### ■ 지사(외국기업의 分公司)의 권리와 의무

- 지사의 권리와 의무는 대만기업과 같으며, 외국기업은 행정원 경제부의 허가를 받기 전에는 대만 내에서 영업활동을 할 수 없음

## 나. 투자진출형태에 따른 비교

	법인 (고분유한공사 /유한공사)	지사	연락사무소
허가된 활동	일반무역, 판매 및 제조	일반 무역 및 국내 판매	법률행위 및 연락업무
영리사업소득세 (소득액 기준)	10만 대만원 이하: 15% 10만 대만원 초과: 25%	법인과 같음	적용되지 않음
산업고도화 촉진조례 <sup>3)</sup> 규정에 따른 조세장려혜택	적용	적용되지 않음	적용되지 않음
주주의 책임한도	출자한 자금의 한도액에 따른 책임	외국 본사가 지사의 채무에 대해 연대책임	적용되지 않음
주주의 조건	1인 이상의 법인주주 혹은 자연인 2인 이상 (유한공사의 경우 자연인 혹은 법인 주주 1인) 대만 국외에 거주하는 외국인투자자여야 함	주주 없음	주주 없음
이사의 조건	3인 이상의 이사가 있어야 하며(유한공사의 경우 1~3인), 대만 국외에 거주하는 외국인투자자여야 함	이사 없음	이사 없음
감사의 조건	1인 이상의 감사 (유한공사의 경우 규정 없음), 대만 국외에 거주하는 외국인투자자여야 함	감사 없음	감사 없음
최저자본(법인) /최저영업자금( 지사)	고분유한공사: 100만 대만원 유한공사: 50만 대만원	본사가 고분유한공사 : 100만 대만원 본사가 유한공사 : 50만 대만원	영업자본금 등록 불요
자금출처	현금, 이윤 및 회사채	최초의 출처는 해외 모회사의 송금, 이후	적용되지 않음

		에는 해외 모회사의 해외송금이나 지사의 발생 이윤	
허가증취득소요 시간	4~6주	4~5주	3주
연간소득세결산 신고	필수	필수	불요
임금, 수당, 임대료 등 비용의 세금공제	필수	필수	필수
장부의 보존	필수	필수	필수
자회사/지사/대 표인의 명의로 부동산 및 차량 구매	가능	가능	불가

3) 산업고도화촉진조례(促進産業昇級條例)란 대만의 주요 투자장려법으로 소득세법, 영업세법, 관세법 등의 조세감면 혜택을 지칭

### Ⅲ. 법인 설립

#### 1. 법인 설립과정 및 필요 서류

No.	설립 과정	필요자료 및 서류
1	經濟部 投資業務處의 투자서비스	
2	경제부상업사(經濟部商業司)에서 신청할 회사의 이름을 사전 검색	<input type="checkbox"/> <input type="checkbox"/> 회사 중문명 및 형태 <input type="checkbox"/> <input type="checkbox"/> 사업 분야 <input type="checkbox"/> <input type="checkbox"/> 신청인의 성명, 여권번호, 거주지주소
3	경제부 투자심의위원회, 과학공 업원구 관리국 혹은 가공수출구 관리처 등에 외국인투자허가신청 (투자회사의 소재지위치에 따라 결정)	<input type="checkbox"/> <input type="checkbox"/> 외국인투자금액 <input type="checkbox"/> <input type="checkbox"/> 회사 전체 주식투자의 구성
4	籌備處 <sup>4)</sup> 의 명의로 은행에서 구 좌개설	
5	개설된 구좌에 자금 납입	
6	경제부투자심의위원회에서 외국 인투자금액 심사	<input type="checkbox"/> <input type="checkbox"/> 송금된 자금 통지서 <input type="checkbox"/> <input type="checkbox"/> 은행 통장 사본
7	정부기관의 규정에 부합한 법인설립 장소 선별	<input type="checkbox"/> <input type="checkbox"/> 회사 소재지의 건물사용허가증사본 <input type="checkbox"/> <input type="checkbox"/> 회사 소재지의 토지사용구분증명서
8	주주회의 소집으로 회사장정 및 이사와 감사 결정	
9	주주회의 소집으로 이사장 및 위임경영인결정	
10	주관기관에 회사설립등록 신청	<input type="checkbox"/> <input type="checkbox"/> 회사 정관(章程) <input type="checkbox"/> <input type="checkbox"/> 발기인회의 의사록 <input type="checkbox"/> <input type="checkbox"/> 이사회 의사록 및 이사출석기록 <input type="checkbox"/> <input type="checkbox"/> 籌備處로 개설한 은행통장 사본 <input type="checkbox"/> <input type="checkbox"/> 외국법인 발기인의 회사설립증명서 사본 <input type="checkbox"/> <input type="checkbox"/> 외국법인 발기인 대표자의 파견 증명서 <input type="checkbox"/> <input type="checkbox"/> 발기인의 여권사본 <input type="checkbox"/> <input type="checkbox"/> 이사 및 감사의 여권사본

		(신분증사본) 및 이사 감사인의 위임동의서 <input type="checkbox"/> 이사장의 중문성명 인감도장 <input type="checkbox"/> 회사의 중문명의 인감도장 <input type="checkbox"/> 회사 소재지의 건물사용허가증사본 <input type="checkbox"/> 등록비용: 회사의 등록 자본 총액의 1/4,000 (1,000대만원 이하시 1,000대만원으로 계산)
11	회사가 소재한 지방정부에 영리사업등기증 신청	<input type="checkbox"/> 회사 소재지의 건물세 영수증 사본 <input type="checkbox"/> 統一發票 <sup>5)</sup> 전용 도장 <input type="checkbox"/> 2개월에 한번씩 납부하는 영업세 납부 시 필요한 전용도장 <input type="checkbox"/> 등록비용: 1,000 대만원
12	경제부 국제무역국에 설립한 회사의 영문명 검색 및 취득 확인 신청	<input type="checkbox"/> 회사 영문명 <input type="checkbox"/> 이사장 중문성명 인감도장
13	경제부 국제무역국에 설립한 회사를 수출입업체로 신청	<input type="checkbox"/> 회사 영리사업 등기증 사본

## 2. 투자심사에 소요되는 시간

구 분	소 요 일
투자액 또는 증자액이 5억 대만원을 초과하지 않으며 외국인 및 투자제한금지항목에 포함되지 않은 경우	2~4일
투자액 또는 증자액이 5억 대만원 이상 15억 대만원 미만이며 외국인 및 투자제한금지항목에 포함되지 않은 경우	3~5일
투자액 또는 증자액이 15억 대만원 미만이나, 합병 또는 대출 투자로서 외국인 및 투자제한금지항목에 포함되지 않은 경우	10~20일
국외 기업과의 합병안	20~30일

- 4) 籌備處는 대만 경제부 상업사에 회사신청 후 정식 회사허가가 나오기 전의 서류  
5) 영수증

### 3. 투자 우대 지역별 설립조건

지역	설립자본한도액	투자적합업종
과학공업단지	대만 회사법(公司法)에 의거한 고분유한공사의 최저자본금은 100만 대만원	1. 집적회로 2. 컴퓨터 및 주변설비 3. 통신 4. 광전 5. 정밀기계 6. 바이오테크 등
가공수출지역	1. 제조업 공장 임대 혹은 구매 : 1,000만 대만원 2. 제조업 공장 건축: 2,000만 대만원 3. 창고업: 8,000만 대만원 4. 운송업: 5,000만 대만원 5. 기타: 100만 대만원	1. 하이테크산업 및 고부가가치의 전자, 바이오 테크 등 선진산업 2. 저오염제조업 3. 창고, 물류, 운송 산업

## Ⅳ. 연락사무소 설립

### 1. 연락사무소 설립 신청처

- 경제부 상업사(商業司)에 관련 서류를 첨부하여 대표사무소 설립 허가 신청

### 2. 연락사무소 설립 구비서류

- 회사설립등기증명서
- 상업등기증
- 대만 경내 소송 및 비소송 대리인의 위탁서
- 회사 소송 및 비소송 대리인(대만 주민일 경우)의 신분증 사본
- 회사 소송 및 비소송 대리인(외국인일 경우)의 여권 사본
- 홍콩 영구 거류증 사본(대리인이 홍콩 주민일 경우)
- 소송 및 비소송 대리인의 중문 인감도장

## V. 조세 제도

### 1. 영리사업소득세<sup>6)</sup>

- 영리사업소득세법 제3조 1항 및 2항의 규정에 따라, 대만에서 영리사업을 경영하는 모든 사업자는 반드시 영리사업소득세를 납부해야 함
- 영리사업체의 본사가 대만 경내에 있을 경우에는 국내외 영업소득을 합하여 이에 대해 세금을 부과하고, 만약 영리사업체의 본사가 해외에 있을 경우에는 대만에서 발생한 소득에 대해서만 영리사업소득세를 부과

<영리사업소득세율>

항 목	세 율
영리사업소득액 5만 대만원 이하	0%
영리사업소득액 5만 대만원 초과 10만 대만원 이하	15%
영리사업소득액 10만 대만원 초과	25%

### 2. 개인종합소득세

- 대만 체류일이 183일 이상일 경우에는 대만 현지인과 동일한 기준에 의거하여 개인종합소득세가 부과되며, 체류일이 183일 미만일 경우에는 20%의 단일세율로 개인종합소득세를 부과함
- 2004년 11월 30일 기준, 대만은 호주를 비롯한 18개국과 이중과세면제협정을 체결하였으나, 우리나라와는 아직 체결되어 있지 않음

6) 우리나라의 법인세에 해당

<개인종합소득세율>

소득 범위(대만원)	세율
0 ~ 370,000	6%
370,001 ~ 990,000	13%
990,000 ~ 1,980,000	21%
1,980,001 ~ 3,720,000	30%
3,720,001 이상	40%

### 3. 영업세(부가가치세, 價值型及非價值型營業稅)

- 價值型及非價值型營業稅法(이하 영업세법) 제1조 규정에 의거하여, 대만 경내에서 판매되는 물품과 노동력 그리고 화물 수입에 대해서 반드시 영업세를 부과하도록 되어있음
- “가치형(價值型)영업자”라 함은 물품이나 노동력을 판매하여 수익을 얻는 것으로 영업세법 제17조 혹은 제10조 규정에 의해 세액을 산출하며,
- “비가치형(非價值型)영업자”는 은행업, 보험업, 투자신탁업, 증권업, 선물(先物)업, 전당(典當)업 등을 가리키는 것으로 얻어진 수익은 영업세법 제 11조 규정에 의해 세액을 산출함
- 영업세법 규정에 따라 감면방법은 영세율(零稅率)과 면세로 나뉨
- 영세율(零稅率) 적용 항목
  - 수출 화물
  - 수출과 관련된 노무 혹은 대만에서 제공하여 해외에서 사용되는 노무

- 면세상점에서 판매되는 물품 혹은 출국객 화물
- 면세수출지역 수출사업, 과학단지사업, 해관이 관리하는 보세 공장 혹은 보세창고 내 기계설비, 원료, 물료, 연료, 반제품
- 국제운송 (단, 해외 운송업자가 대만 경내에서 국제운송업을 경영할 경우 대만 국내 운송업자와 동일한 세액을 적용하거나 면세로 처리함)
- 국제 운송에 이용되는 선박, 항공기 및 원양어선
- 국제 운송에 이용되는 선박, 항공기 및 원양어선에 판매되는 화물 및 수리에 제공되는 노무
- 주대만(駐台灣) 외교기관에 물품과 노동력을 제공한 경우
- 해외 고객이 수출대금결제를 연기하여 발생한 이자
- 화재로 인해 훼손된 수출화물의 외국환 증명서류를 취득한 경우
- 영업세 면세
  - 농업관계 용수, 병원, 진료소, 요양원에 제공되는 의료서비스, 탁아소, 양로원, 장애인복지시설에서 제공하는 보육, 양로서비스, 학교, 유치원, 기타 교육문화시설에서 제공하는 교육 및 정부위탁 문화서비스 등 사회정책에 따른 영업세 면제
  - 기타 법률에서 규정하는 영업세 면제
- 영업세 신고 및 징수
  - 영업자는 반드시 2개월에 1회(연중 6회), 국세국에 2개월 분의 매출액과 납부세액, 과다납부세액을 신고
  - 첫 과세기간은 영업자별 영업 개시일부터 기산되며, 매 신고기한은 매 과세기간 종료 후 15일 이내

- 영업세법 제36조 규정에 따라 외국사업체, 기관, 단체, 조직이 대만에서 고정적인 영업장소 없이 노동력을 판매하는 경우, 노동력 구매자가 임금(서비스 비용)을 지불한 날부터 15일 이내에 영업세법 제10조 및 제11조에 규정된 세율을 적용해 영업세액을 계산하여 납부함
- 해외 국제운송업자가 대만에서 고정영업장소 없이 대리인을 두고 운송 서비스를 하는 경우, 여객 또는 화물을 운송할 선박 및 항공기가 출항한 다음날부터 15일 이내에 영업세법 제 10조에 규정된 세율을 적용해 영업세액을 계산하고, 영업세법 제 35조 규정에 의거해 납세신고를 함

●과다 납부한 영업세의 처리

- 영업자가 신고한 매입세액이 매출세액보다 커 영업세의 과다 납부가 발생했을 때, 원칙적으로는 납부해야 할 세금에서 공제하거나 영세율 적용 물품 및 노동력 제공 및 고정자산취득으로 인해 발생한 과다 납부한 영업세액에 대해서는 환급 받음

<대만과 한국의 주요 내국세 비교>

한국		대만 (대만원)	
부가가치세	10%	營業稅 (Business Tax, Value-Added Tax)	▶ 일반 제조업: 5% ▶ 은행업, 보험업, 투자신탁업, 증권업, 전당업 등: 2% ▶ 소규모 영업: 1%
법인세	▶ 소득이 1억원 이하: 13% ▶ 1억원 초과분: 25%	營利事業 所得稅 (Enterprises Income Tax)	▶ 영리사업소득액이 5만 대만원 이하: 0% ▶ 영리사업소득액이 10만 대만원 이하: 15% ▶ 영리사업소득액이 10만 대만원 이상: 25%

<b>소득세</b> <b>(종합소득세)</b>	<ul style="list-style-type: none"> <li>▶ 1,000만원 이하: 8%</li> <li>▶ 1,000만원~4,000만원 이하 (800,000원 + 1,000만원 초과액 × 17%)</li> <li>▶ 4,000만원~8,000만원 이하 (5,900,000원 + 4,000만원 초과액 × 26%)</li> <li>▶ 8,000 만원 초과 (16,300,000원 + 8,000만원 초과액 × 35%)</li> </ul>	<b>所得稅</b> <b>(Individual Income Tax)</b>	<ul style="list-style-type: none"> <li>▶ 0~370,000: 6%</li> <li>▶ 370,001~990,000: 13%</li> <li>▶ 990,000~1,980,000: 21%</li> <li>▶ 980,001~3,720,000: 30%</li> <li>▶ 3,720,001 이상: 40%</li> </ul>
<b>화물세</b>	없음	<b>貨物稅</b> <b>(Commodity Tax)</b>	貨物稅條例及貨物稅稽徵規則에 의거하여 부과하며 세율은 품목에 따라 다름

자료원: 타이베이 무역관 자체 정리

## VI. 노무 관리

### 1. 임금

#### ■ 임금 수준

- 행정원 주계처(우리나라의 통계청에 해당)에 따르면, 2006년 기준 전체 평균 월임금은 44,107대만원이고, 공업부문 평균 월임금은 42,503대만원임
- 일반적인 대만의 상관습에 따르면, 보통 春節(음력 설)때 평균적으로 월급여의 1.5개월분에 해당하는 보너스를 연말 상여금(年終獎金)으로 지급하고 있으며, 매해 경영성파에 따라서 발생한 이윤을 연말에 紅利(특별 상여금)로 지급하기도 함
- 임금은 고용주와 피고용인 쌍방간 협정에 의해 이루어지나 기본임금(17,280대만원)보다 낮을 수 없음

<대만의 연도별 월평균 임금 및 월평균 근로시간>

연도	임금 (대만원)			근로시간 (시간)		
	평균	공업	서비스업	평균	공업	서비스업
2002	41,667	38,995	44,229	181.4	185.8	177.2
2003	42,287	39,933	44,534	181.2	186.2	176.4
2004	43,021	40,868	45,064	183.5	188.7	178.6
2005	43,615	41,872	45,234	182.0	187.0	177.2
2006	44,107	42,503	45,584	180.8	185.9	176.1

자료원: 대만 행정원 주계처

# <대만 직종별 임금수준>

(단위: 대만원)

직종	2003	2004	2005	2006	증가율
공업 전체	39,933	40,868	41,872	42,503	1.5%
광업 및 토석 채취업	47,263	45,297	45,893	49,574	8.0%
제조업	39,583	40,611	41,751	42,293	1.3%
수도, 전기, 연료업	91,034	90,711	89,264	95,664	7.2%
건설업	37,219	37,921	38,455	39,175	1.9%
서비스업 전체	44,534	45,064	45,234	45,584	0.8%
도소매업	39,799	40,129	40,033	40,028	-0.01%
운수, 창고 및 통신업	51,396	51,704	53,793	53,313	-0.9%
금융 및 보험업	64,693	66,743	65,097	69,132	6.2%
부동산 및 임대업	39,872	40,006	39,129	38,213	2.3%
전문과학 및 기술서비스업	50,990	52,833	54,868	55,579	1.3%
<b>총 계</b>	<b>42,287</b>	<b>43,021</b>	<b>43,615</b>	<b>44,107</b>	<b>2.2%</b>

주) 증가율은 2005년 대비 증가율

자료원: 대만 행정원 주계처

## ■ 퇴직금

- 대만 정부는 2005년 7월 1일부로 “노동자 퇴직금 지급 관련 신법(勞退新制)”를 실시하고 있음. 동 제도에 따라 고용주는 매월 지급하는 급여의 6%를 근로자연금보험기금에 피고용자의 명의로 적립해야 함

- 정리해고 시 근무기간 1년당 1개월분의 퇴직금을 추가 지급함

## 2. 노동 조건

### ■ 노동 시간

- 원칙적으로 1일 8시간, 2주일에 84시간을 초과할 수 없음
- 정상 근로시간 이외에 지속적으로 추가 근무가 필요한 경우 고용주는 해당 업종 협회의 동의를 거쳐 주관기관에 보고하고 허가를 득한 후에 근로시간을 연장할 수 있음
- 연장근무로 인한 하루 근무시간은 12시간을 초과할 수 없으며, 연장근무 시간은 1개월에 46시간을 초과할 수 없음
- 초과 근로에 따른 수당 지급률
  - 평일에 연장근무시간이 2시간 이내일 경우 시급의 1/3이 추가 지급되며, 2시간 초과하는 부분에 대해서는 시급의 1/2을 추가 지급. 한편, 휴일에 연장근무 시에는 평일 연장근무수당의 2배를 지급

### ■ 휴가

- 기념일과 노동절 및 기타 중앙기관에서 정하는 법정 공휴일 외에 근무기간에 따른 휴가를 추가 부여함. 추가 부여 휴가 일수는 총 30일을 초과할 수 없음

<근속연수별 휴가 일수>

근속연수	휴가 일수
1년 미만	휴가 없음
1년 이상 3년 미만	7일
3년 이상 5년 미만	10일
5년 이상 10년 미만	14일
10년 이상	14일 + 10년을 초과하는 때 1년당 1일 단, 총 휴가 일수는 30일을 초과할 수 없음

- 이외에 결혼휴가(8일), 장례휴가(3~8일) 등의 특별휴가와 여성의 경우 생리휴가 및 출산휴가가 있음

## ■ 해 고

- 고용주는 근로자와 계약 종료 시 계약만료 사전에 고지해야 함
  - 근로자의 근무기간이 3개월 이상 1년 미만일 경우 10일 전에, 근무기간이 1년 이상 3년 미만 시 20일 전에, 근무기간 3년 이상일 경우 30일 전에 고지해야 함
- 근로자는 사업장 내에서 고용주의 대만 노동법 및 기타 법률의 위반행위를 발견했을 때에는 관계기관 신고 또는 검찰 고발 등의 조치를 취할 수 있으며, 고용주는 근로자의 관계기관 신고 및 검찰 고발 등의 조치를 원인으로 해당 근로자의 해고 또는 타 부서 발령 등 근로자에게 불리한 인사처분을 내릴 수 없음

## 3. 사회보장제도

### ■ 全民健保(의료보험)

- 월급여의 4.55%를 납부해야 하며, 납부해야 할 보험금의 60%는 고용주가, 30%는 피고용인이, 10%는 정부가 부담함

### ■ 勞工保險(산재보험)

- 월급여의 5.5%를 납부해야하며, 납부해야할 보험금의 70%는 고용주가, 20%는 피고용인이, 10%는 정부가 부담함.

### ■ 就業保險(고용보험)

- 월급여의 1%를 납부해야하며, 납부해야할 보험금의 70%는 고용주가, 20%는 피고용인이, 10%는 정부가 부담함

## Ⅶ. 기타 정보

### 1. 대만 벤처캐피탈 공회(創投公會)

■ 中華民國創業投資商業同業公會<sup>7)</sup>

(Taiwan Venture Capital Association)

- 주소: 台北市105 民權東路 三段 142號 301室
- 전화: (886-2) 2545-0075
- 팩스: (886-2) 2545-2752
- 홈페이지: [www.tvca.org.tw](http://www.tvca.org.tw)

※“대만 벤처캐피탈 공회”는 대만의 유력한 창업투자가들의 연합회로서 신규 창업 시 자본조달의 창구로서 활용할 수 있음

### 2. 회계사 사무소

■ 勤業眾信會計師事務所

- 주소: 台北市 松山區 民生東路 三段 156號 12樓
- 전화: (886-2) 2545-9988
- 팩스: (886-2) 2545-9966
- 홈페이지: [www.tvca.org.tw](http://www.tvca.org.tw)

■ 安侯建業會計師事務所

- 홈페이지: [www.kpmg.com.tw](http://www.kpmg.com.tw)

■ 資誠會計師事務所

- 주소: 台北市 信義區110 基隆路 一段 333號 27樓

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7) 벤처캐피탈, 회계사사무소, 법률사무소정보는 TAITRA가 운영하는 TAIWAN BUSINESS ALLIANCE에서 제공한 자료

- 전화: (886-2) 2729-6666
- 팩스: (886-2) 2757-6371
- 홈페이지: [www.pwc.com](http://www.pwc.com)

■ 致遠會計師事務所

- 주소: 台北市 基隆路 一段 333號 9樓
- 전화: (886-2) 2720-4000
- 팩스: (886-2) 2757-6050
- 홈페이지: [www.ey.com/global/content.nsf/Taiwan/Home\\_C](http://www.ey.com/global/content.nsf/Taiwan/Home_C)

■ 立本台灣聯合會計師事務所

- 주소: 台北市 南京東路 二段 72號 10樓
- 전화: (886-2) 2564-3000
- 팩스: (886-2) 2564-1184
- 홈페이지: [www.bdotaiwan.com.tw](http://www.bdotaiwan.com.tw)

■ 中華元田會計師事務所

- 주소: 台北市 10683 敦化南路 二段 38號 9樓
- 전화: (886-2) 2325-3256
- 팩스: (886-2) 2325-2065
- 홈페이지: [www.goodearth.com.tw/twindex.html](http://www.goodearth.com.tw/twindex.html)

### 3. 법률사무소

■ 理律法律事務所

- 주소: 台北市 敦化北路201號 七樓
- 전화: (886-2) 2715-3300
- 팩스: (886-2) 2713-3966
- 홈페이지: [www.leeandli.com](http://www.leeandli.com)

■ 萬國法律事務所

- 주소: 臺北市 106 仁愛路 三段 136號 15樓
- 전화: (886-2) 2755-7366
- 팩스: (886-2) 2755-6486
- 홈페이지: [www.taiwanlaw.com](http://www.taiwanlaw.com)

■ 博仲法律事務所

- 주소: 台北市 中正區 重慶南路 一段 86號 12樓
- 전화: (886-2) 2311-2345
- 팩스: (886-2) 2311-2688
- 홈페이지: [www.winklerpartners.com](http://www.winklerpartners.com)

#### 4. 투자 서비스 관련 정부기관

■ 經濟部

- 주소: 臺北市 福州街 15號
- 전화: (886-2) 2321-2200
- 홈페이지: [www.moea.gov.tw](http://www.moea.gov.tw)

■ 經濟部工業局

- 주소: 台北市 信義路 三段 41-3號
- 전화: (886-2) 2754-1255
- 팩스: (886-2) 2703-0160
- 홈페이지: [www.moeaidb.gov.tw](http://www.moeaidb.gov.tw)

■ 經濟部中小企業處

- 주소: 臺北市 羅斯福路 二段 95號 3樓
- 전화: (886-2) 2368-0816
- 팩스: (886-2) 2367-1134
- 홈페이지: [www.moeasmea.gov.tw](http://www.moeasmea.gov.tw)

■ 經濟部商業司

- 주소: 台北市 福州街 15號
- 전화: (886-2) 2396-7333
- 홈페이지: [gcis.nat.gov.tw](http://gcis.nat.gov.tw)

■ 濟部投資審議委員會

- 주소: 台北市 羅斯福路 一段 7號 8樓
- 전화: (886-2) 3343-5700
- 홈페이지: [www.moeaic.gov.tw](http://www.moeaic.gov.tw)

■ 經濟部技術處

- 주소: 台北市 福州街 15號
- 전화: (886-2) 2321-2200
- 홈페이지: [doit.moea.gov.tw](http://doit.moea.gov.tw)

■ 行政院經濟建設委員會

- 주소: 台北市 寶慶路 3號
- 전화: (886-2) 2316-5300
- 홈페이지: [www.cepd.gov.tw](http://www.cepd.gov.tw)

■ 經濟部加工出口區管理處

- 주소: 高雄市 811 楠梓區 加昌路 600號
- 전화: (886-7) 361-1212
- 팩스: (886-7) 361-2751
- 홈페이지: [portal.epza.gov.tw](http://portal.epza.gov.tw)

■ 貿協全球資訊網

- 주소: 台北市 11003 基隆路 一段 333號 國貿大樓 5-7樓
- 전화: (886-2) 2725-5200
- 팩스: (886-2) 2727-6444

- 홈페이지: [www.taitraesource.com](http://www.taitraesource.com)

■ 新竹科學工業園區

- 주소: 新竹市 新安路 2號
- 전화: (886-3) 577-3311
- 팩스: (886-3) 577-6222
- 홈페이지: [www.sipa.gov.tw](http://www.sipa.gov.tw)

## 국가 개요

- 국 명: 중화민국(The Republic of China/TAIWAN)
- 면 적: 36,188 km<sup>2</sup> (한반도의 1/6)
- 수 도: 타이베이(臺北, Taipei)
- 주요도시: 타이베이, 까오슝, 타이중
- 행정구역: 2개 직할시(타이베이, 까오슝), 18개 현(縣), 5개 시(市)
- 인 구: 2,288만명 (2007.3월)
- 민족구성: 민남(閩南)인(74%), 객가(客家)인(12%),  
외성(外省)인(12%), 원주민(2%)
- 언 어: 중국어(공용어), 민남어/원주민어/객가어(상용어)
- 종 교: 불교, 도교, 기독교, 천주교, 회교
- 정부형태: 입헌민주공화제
- 화폐단위: 대만원(New Taiwan Dollar, NTD로 표기)
- 환 율: NTD 33.35 / US\$ 1 (2007.5.26일 현재)
- 기 후: 북부-아열대, 남부-열대
- 시 차: GMT + 6 (한국보다 1시간 늦음)

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## <부록> 투자 법령 및 관련 자료

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## Statute For Investment By Foreign Nationals ( Amended on November 19, 1997 )

### Article 1

Matters relating to domestic investment by foreign nationals, and the protection, restrictions, and administration of such investments shall be governed by this Statute.

### Article 2

The term "Competent Authority" as used in this Statute shall mean the Ministry of Economic Affairs.

The Competent Authority may delegate its subordinate or may commission other institutions or organizations to administer the investments set forth in this Statute.

### Article 3

Foreign national as referred to in this Statute shall include foreign juridical persons.

The nationality of a foreign juridical person shall be determined by the law under which the foreign juridical person is incorporated.

Foreign nationals making investments within the territory of the Republic of China ("ROC") under this Statute are hereinafter referred to as "investors" or the "investor."

### Article 4

Investments as referred to in this Statute shall be as follows:

1. Holding shares issued by an ROC company, or contributing to the capital of an ROC company;
2. Establishing a branch office, a proprietary business or a partnership in the territory of the Republic of China; and
3. Providing loan(s) to the invested business referred to in the preceding two Paragraphs for a period exceeding one (1) year.

### Article 5

If the investor holds, in an aggregate, more than one third (1/3) of the total shares issued by an enterprise in which he/she invests, or if an

investor contributes, in an aggregate, more than one third (1/3) of the total capital amount of an enterprise in which he/she invests, the reinvestment to be made by the invested enterprise shall be subject to the Competent Authority's approval.

#### Article 6

Investments made under in this Statute consist of the following kinds:

1. Cash;
2. Machinery and equipment or raw materials for own use;
3. Patent right, trademark right, copyright, technical know-how or other intellectual property right; and
4. Other property in which the investor may invest under the Competent Authority's approval.

#### Article 7

The investor is prohibited from investing in the following industries:

1. Those which may negatively affect national security, public order, good customs and practices, or national health; and
2. Those which are prohibited by the law.

The investor, who applies to invest in an industry in which investment is restricted by law or by an order given under the applicable law, shall obtain an approval thereof or a consent thereto from the competent authority in charge of the industry in question.

The industries prohibited under Paragraph 1 above or restricted under Paragraph 2 above shall be prescribed and reviewed on a regular basis by the Executive Yuan.

#### Article 8

The investor who makes an investment in accordance with this Statute is required to submit an investment application, together with his/her investment plans and relevant documents, to the Competent Authority for approval. The same shall apply if and when his/her investment plan changes.

The investment application form shall be prescribed by the Competent Authority.

The Competent Authority shall make its decision on an investment application within one (1) month after the completion of the application procedures by the applicant, or if the application is also subject to the approval of the competent authority in charge of the relevant end enterprise, within two (2) months thereafter.

Regulations governing investors' investments in securities shall be stipulated by the Executive Yuan.

## Article 9

The investor shall have his/her approved capital contribution remitted in full into the Republic of China within the prescribed time limit, and shall submit a report on the receipt of the contribution amount to the Competent Authority for examination.

If, after being granted an approval to make an investment under this Statute, the investor fails to implement his/her investment, in whole or in part, within the prescribed time limit, the approval of his/her unimplemented investment shall be revoked upon expiration of the prescribed time limit. However, for good cause shown, the investor may, prior to the expiration, apply to the Competent Authority for an extension of the prescribed time limit.

After implementing his/her investment, the investor shall request the Competent Authority to verify the total amount of his/her investment. The rules of the verification shall be prescribed by the Competent Authority.

## Article 10

In case the investor intends to transfer his/her investment already implemented by him/her to an industry other than those prohibited from investment under Paragraph 1 of Article 7 hereof, he/she shall apply to the Competent Authority for cancellation of his/her original investment and for approval of his/her new investment.

In case the investor intends to assign his/her investment, the assignor and the assignee shall jointly apply to the Competent Authority for approval of the assignment.

## Article 11

An investor shall be entitled to exchange settlement under this

Statute. This entitlement is not transferable, except to the legitimate heir of the assignee of his/her investment, or to other authorized foreign nationals or overseas Chinese to whom he/she has assigned his/her investment.

## Article 12

The investor may apply for exchange settlement against the interests accrued on his/her annual income, or against the profit surplus distributed to him/her from his/her investment.

When the investor is approved to transfer his/her shares, to withdraw or decrease his/her investment, he/she may apply for exchange settlement, in a lump sum, against the total amount of his/her investment as approved. The foregoing clause is also applicable to the capital gain realized from the investor's investment.

The investor's application for exchange settlement against the payment of the principal and interest of his/her loan investment shall be governed by the agreed terms and conditions approved by the Competent Authority.

## Article 13

In case the government expropriates or acquires an invested enterprise for national defense reasons, the investor thereof whose investment is less than 45% of the total capital amount of the invested enterprise shall be entitled to a reasonable compensation.

The compensation under the preceding Paragraph shall be permitted for exchange settlement.

## Article 14

In case the investor's investment accounts for 45% or more of the total capital amount of the enterprise in which he invests, the invested enterprise shall not be subject to requisition or expropriation as long as the said capital contribution rate of the investor remains unchanged for a period of twenty (20) years after the commencement of business of the invested enterprise.

If the investor's investment is made in conjunction with an overseas Chinese who makes the investment under the Stat for Investment by Overseas Chinese, and if their aggregate amount of investment accounts for 45% or more of the total capital amount of the invested

enterprise, the provisions referred to in the preceding Paragraph shall, mutatis mutandis, apply thereto.

## Article 15

Where an invested enterprise is organized as a company under the Company Law, the investor thereof may be exempt from the restrictions on his/her domicile in the Republic of China, Chinese nationality, and the amount of investment under Articles 98-1, 108-2, 128-1, 208-5, and 216-1 of the same Law.

The provisions of Article 156-4 of the Company Law requiring issuance of stock certificates to the public, and the provisions of Article 267 of the same Law requiring setting aside a certain percentage of new shares (issued as a result of capital increase by cash) to be purchased by the employees of the invested enterprise shall not apply to an investor's investment if such investment accounts for 45% or more of the total capital of the enterprise in which he/she invests.

If the investor's investment is made in conjunction with an overseas Chinese who makes the investment under the Statute for Investment by Overseas Chinese, and if their aggregate amount of investment accounts for 45% or more of the total capital amount of the invested enterprise, the provisions referred to in the preceding Paragraph shall, mutatis mutandis, apply thereto.

## Article 16

After special approval by the Executive Yuan, the investor or the enterprise in which he/she invests shall not be subject to the following restrictions:

1. Article 5-1, proviso of Article 5-3, Article 8-1 regarding Chinese nationals, and Sub-paragraph 2 of Article 43 of the Mining Law;
2. Sub-paragraph 7 of Article 17 of the Land Law;
3. Item 1, 2, 3 and 4 of Sub-paragraph 3, and Sub-paragraph 4 of Article 2 of the Maritime Law; provided, however, that inland and coastal navigation enterprises or those which are not in the form of jointly invested enterprises shall remain subject to the foregoing restrictions; and
4. Items 1, 2, 3, 4 and 5 of Sub-paragraph 3 of Paragraph I of Article 10, and Paragraph I of Article 45 of the Civil Aviation Law.

#### Article 17

Except as otherwise provided for in other laws, the enterprise in which the investor has invested hereunder shall be accorded the same rights and obligations to which an enterprise operated by local Chinese nationals is entitled.

#### Article 18

Unless otherwise provided for in this Statute, if the investor violates the provisions of this Statute, or fails to perform any matters approved by the Competent Authority, the Competent Authority may deal with the situation in the following manner:

1. Revoke the investor's right of exchange settlement against his/her income of the profit from his/her investment, and the interest accrued thereon in a prescribed period of time; and
2. Revoke the approval for the investor's investment and his/her rights under this Statute.

#### Article 19

A foreign national, who fails to make an investment in accordance with this Statute prior to the amendment to this Statute may, within one (1) year from the enforcement of this amended Statute, apply to the Competent Authority for registration for the application of this amended statute to his/her prior investment.

The procedure of registration referred to in the preceding Paragraph shall be prescribed by the Competent Authority.

#### Article 20

This Statute shall become effective as of its date of promulgation.

## Negative List for Investment by Overseas Chinese and Foreign Nationals ( Amended on May 13, 2004 )

### 1. Prohibited Industries

Group Code No.	Scope of Industry	Sub-item of Indus.	Item	Competent Authorities	Remarks
02	Forestry and Loggings			Council of Agriculture	Overseas Chinese are not prohibited
17	Chemical Material Manufacturing	Basic Industrial Chemicals	Manufacture of nitroglycerine-Nitrated glycerin used in gunpower/explosive pillars and involving public safety	Ministry of National Defense	
			Soda-chloride factories operating with mercuric electrolyzers	Ministry of Economic Affairs	National Treatment
			Banning a A category of chemical products by the prohibition for chemical weapons of U.N.	Ministry of Economic Affairs Ministry of National Defense	National Treatment
			CFC, Halon, methylchloroform, carbon tetrachloride	Ministry of Economic Affairs	National Treatment

18	Chemical Products Manufacturing	Other Chemical Products Manufacturing	Manufacture of toxic chemicals(manufacture is prohibited as announced pursuant to "Toxic Chemicals Control Act")	Environmental Protection Administration	National Treatment
			Gun powder fuse, agents of fire and fulminating mercury	Ministry of National Defense	
23	Basic Metal Industries	Other Basic Metal Industries	Cadmium smelting	Ministry of Economic Affairs	National Treatment
25	Machinery and Equipment Manufacturing and Repairing	Other Machinery Manufacturing and Repairing Not Elsewhere Classified	Firearms, weapon manufacture, arms repair, ammunitions and fire-control(exclusive of military aircraft)	Ministry of National Defense  Ministry of the Interior	
53	Land Transportation	Motor Bus Transportation	Passenger bus services(includingcity passenger bus services and highway passenger services)	Ministry of Transportation and Communication	Overseas Chinese are not prohibited
		Taxi Transportation			
		General Bus Transportation	Tour bus services		
59	Postal and Courier Services	Postal Services		Ministry of Transportation and	

				Communication	
62	Financing and Auxiliary Financing	Postal Saving and Remittance Services		Ministry of Transportation and Communication  Ministry of Financial Affairs	
67	Rental and Leasing	Passenger Car Rental and Leasing	Light-truck Rental and Leasing	Ministry of Transportation and Communication	Overseas Chinese are not prohibited
86	Radio and Television Broadcasting	Radio Broadcasting	Radio broadcasting industry	Government Information Office	
		Television Broadcasting	Radio television industry		
90	Recreational Services	Special Recreational Services		Ministry of Economic Affairs	

## 2. Restricted Industries

Group Code No.	Scope of Industry	Sub-item of Indus.	Item	Competent Authorities	Remarks
01	Agriculture and Animal Husbandry	Paddy Rice		Council of Agriculture	
		Dryland Food Crops			

		Vegetables			
		Fruits			
		Mushrooms			
		Sugar-cane			
		Flowers			
		Other Agriculture and Horticulture			
		Cattle			
		Hogs			
		Chickens			
		Ducks			
		Other Animal Husbandry			
03	Fishing			Council of Agriculture	
08	Food and Beverage Manufacturing	Wine and Liquor Manufacturing		Ministry of Financial Affairs	National Treatment
		Beer Manufacturing			
09	Tobacco Manufacturing			Ministry of Financial Affairs	National Treatment ( Commenced to open the production since 2004 )

17	Chemical Material Manufacturing	Basic Industrial Chemical	Manufacture of nitroglycerine-Nitrated glycerin not used in gunpowder/explosive pillars and not involving public safety	Ministry of the Interior  Ministry of Economic Affairs  Ministry of National Defense	
18	Chemical Products Manufacturing	Other Chemical Products Manufacturing	Manufacture of toxic chemicals(manufacture is subject to approval as announced pursuant to "Toxic Chemicals Control Act"	Environmental Protection Administration	National Treatment
		Drugs and Medicines Manufacturing		Dept. of Health	National Treatment
		Chinese Medicines Manufacturing			
		Pesticides and Herbicides Manufacturing	Pesticides and Herbicides Manufacturing	Council of Agriculture	
24	Fabricated Metal Products Manufacturing	Cutlery and Handtools Manufacturing	Swords manufacturing	Ministry of the Interior	Statute for Gun / Cannon and Swords Control Articles
29	Transport	Aircraft	Military Aircraft	Ministry of	Ministry of

	Equipment Manufacturing and Repairing	Manufacturing and Repairing		National Defense	Economic Affairs
		Aircraft Parts Manufacturing			
30	Precision, Optical, Medical Equipment, Watches and Clocks Manufacturing		Military instruments and equipment	Ministry of National Defense	
31	Other Industrial Products Manufacturing	Other Industrial Products Manufacturing Not Elsewhere Classified	Processing of ivory	Council of Agriculture	National Treatment
33	Electric Power Supply			Ministry of Economic Affairs	
34	Gas Supply	Gas Supply	Fule gas supply by pipe lines	Ministry of Economic Affairs	
36	Water Supply	Water Supply	Water Supply	Ministry of Economic Affairs	
54	Water Transportation	Ocean Water Transportation	Transport by ship, ship leasing service	Ministry of Transportation and Communication	Overseas Chinese are not restricted
		Inland and Lake Transportation			
55	Air	Civil Air		Ministry of	Overseas

	Transportation	Transportation General Aviation		Transportation and Communication	Chinese are not restricted
57	Supporting Services to Transportation	Air Freight Transportation Forwarding Services	Airport ground services, air cargo forwarding services, air cargo terminal services and air catering services	Ministry of Transportation and Communication	1.Overseas Chinese are not restricted 2.Unless otherwise provided for treaty or agreement not for restriction
		Supporting Services to Air Transportation			
		Other Supporting Services to Transportation			
		Harbor Services	Harbor and the relevant services ( private ship hauling services, shipment consolidating services, water freight loading and unloading forwarding services, minor repair of boats and ships, supply of sailor's daily needs and cargo salvaging )	Ministry of Transportation and Communication	National Treatment
		Other Supporting Services to Water Transportation			
60	Tele-communications	Tele-communications	Class A telecommunications enterprise	Ministry of Transportation and Communication	Overseas Chinese are not restricted

62	Financing and Auxiliary Financing	Domestic Banks		Ministry of Financial Affairs	National Treatment
		Foreign Banks			
		Credit Cooperatives			
		Trust and Investment			
		Bills Financing			
		Credit Card Company			
64	Insurance Carriers	Personal Insurance		Ministry of Financial Affairs	National Treatment
		Property and Liability Insurance			
		Reinsurance Carriers			
		Auxiliary Insurance Services			
69	Legal and Accounting Services	Offices of Lawyers		Ministry of Justice	
		Scrivener's Services			
		Other Legal Services			
		Accounting Services			

70	Architectural and Engineering Technical Services			Ministry of the Interior	National Treatment
79	Educational Services	Other Educational Services	Supplementary class	Ministry of Education	
86	Radio and Television Broadcasting	Radio Broadcasting	Cable broadcast and television, Satellite broadcast and television	Government Information Office	
		Television Broadcasting			

**Social Security Insurance, Schools, Hospitals those belong to public welfare corporation, non-profit enterprises, should not be listed in the negative lists for investment.**

名 稱：公司法（民國 95 年 02 月 03 日 修正）

## 第 一 章 總則

第 1 條 本法所稱公司，謂以營利為目的，依照本法組織、登記、成立之社團法人。

第 2 條 公司分為左列四種：

- 一 無限公司：指二人以上股東所組織，對公司債務負連帶無限清償責任之公司。
  - 二 有限公司：由一人以上股東所組織，就其出資額為限，對公司負其責任之公司。
  - 三 兩合公司：指一人以上無限責任股東，與一人以上有限責任股東所組織，其無限責任股東對公司債務負連帶無限清償責任；有限責任股東就其出資額為限，對公司負其責任之公司。
  - 四 股份有限公司：指二人以上股東或政府、法人股東一人所組織，全部資本分為股份；股東就其所認股份，對公司負其責任之公司。
- 公司名稱，應標明公司之種類。

第 3 條 公司以其本公司所在地為住所。

本法所稱本公司，為公司依法首先設立，以管轄全部組織之總機構；所稱分公司，為受本公司管轄之分支機構。

第 4 條 本法所稱外國公司，謂以營利為目的，依照外國法律組織登記，並經中華民國政府認許，在中華民國境內營業之公司。

第 5 條 本法所稱主管機關：在中央為經濟部；在直轄市為直轄市政府。

中央主管機關得委任所屬機關、委託或委辦其他機關辦理本法所規定之事項。

第 6 條 公司非在中央主管機關登記後，不得成立。

第 7 條 公司申請設立、變更登記之資本額，應先經會計師查核簽證；其辦法，由中央主管機關定之。

第 8 條 本法所稱公司負責人：在無限公司、兩合公司為執行業務或代表公司之股東；在有限公司、股份有限公司為董事。

公司之經理人或清算人，股份有限公司之發起人、監察人、檢查人、重整人或重整監督人，在執行職務範圍內，亦為公司負責人。

第 9 條 公司應收之股款，股東並未實際繳納，而以申請文件表明收足，或股東雖已繳納而於登記後將股款發還股東，或任由股東收回者，公司負責人各處五年以下有期徒刑、拘役或科或併科新臺幣五十萬元以上二百五十萬元以

下罰金。

有前項情事時，公司負責人應與各該股東連帶賠償公司或第三人因此所受之損害。

第一項裁判確定後，由檢察機關通知中央主管機關撤銷或廢止其登記。但裁判確定前，已為補正或經主管機關限期補正已補正者，不在此限。

公司之設立或其他登記事項有偽造、變造文書，經裁判確定後，由檢察機關通知中央主管機關撤銷或廢止其登記。

第 10 條 公司有左列情事之一者，主管機關得依職權或利害關係人之申請，命令解散之：

一 公司設立登記後六個月尚未開始營業者。但已辦妥延展登記者，不在此限。

二 開始營業後自行停止營業六個月以上者。但已辦妥停業登記者，不在此限。

第 11 條 公司之經營，有顯著困難或重大損害時，法院得據股東之聲請，於徵詢主管機關及目的事業中央主管機關意見，並通知公司提出答辯後，裁定解散。

前項聲請，在股份有限公司，應有繼續六個月以上持有已發行股份總數百分之十以上股份之股東提出之。

第 12 條 公司設立登記後，有應登記之事項而不登記，或已登記之事項有變更而不為變更之登記者，不得以其事項對抗第三人。

第 13 條 公司不得為他公司無限責任股東或合夥事業之合夥人；如為他公司有限責任股東時，其所有投資總額，除以投資為專業或公司章程另有規定或經依左列各款規定，取得股東同意或股東會決議者外，不得超過本公司實收股本百分之四十：

一 無限公司、兩合公司經全體無限責任股東同意。

二 有限公司經全體股東同意。

三 股份有限公司經代表已發行股份總數三分之二以上股東出席，以出席股東表決權過半數同意之股東會決議。

公開發行股票之公司，出席股東之股份總數不足前項第三款定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。

第一項第三款及第二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。

公司因接受被投資公司以盈餘或公積增資配股所得之股份，不計入第一項投資總額。

公司負責人違反第一項規定時，應賠償公司因此所受之損害。

第 14 條 (刪除)

第 15 條 公司之資金，除有左列各款情形外，不得貸與股東或任何他人：

- 一 公司間或與行號間有業務往來者。
- 二 公司間或與行號間有短期融通資金之必要者。融資金額不得超過貸與企業淨值的百分之四十。

公司負責人違反前項規定時，應與借用人連帶負返還責任；如公司受有損害者，亦應由其負損害賠償責任。

第 16 條 公司除依其他法律或公司章程規定得為保證者外，不得為任何保證人。

公司負責人違反前項規定時，應自負保證責任，如公司受有損害時，亦應負賠償責任。

第 17 條 公司業務，依法律或基於法律授權所定之命令，須經政府許可者，於領得許可文件後，方得申請公司登記。

前項業務之許可，經目的事業主管機關撤銷或廢止確定者，應由各該目的事業主管機關，通知中央主管機關，撤銷或廢止其公司登記或部分登記事項。

第 17-1 條 公司之經營有違反法令受勒令歇業處分確定者，應由處分機關通知中央主管機關，廢止其公司登記或部分登記事項。

第 18 條 公司名稱，不得與他公司名稱相同。二公司名稱中標明不同業務種類或可資區別之文字者，視為不相同。

公司所營事業除許可業務應載明於章程外，其餘不受限制。

公司所營事業應依中央主管機關所定營業項目代碼表登記。已設立登記之公司，其所營事業為文字敘述者，應於變更所營事業時，依代碼表規定辦理。

公司不得使用易於使人誤認其與政府機關、公益團體有關或妨害公共秩序或善良風俗之名稱。

公司名稱及業務，於公司登記前應先申請核准，並保留一定期間；其審核準則，由中央主管機關定之。

第 19 條 未經設立登記，不得以公司名義經營業務或為其他法律行為。

違反前項規定者，行為人處一年以下有期徒刑、拘役或科或併科新臺幣十五萬元以下罰金，並自負民事責任；行為人有二人以上者，連帶負民事責任，並由主管機關禁止其使用公司名稱。

第 20 條 公司每屆會計年度終了，應將營業報告書、財務報表及盈餘分派或虧損撥補之議案，提請股東同意或股東常會承認。

公司資本額達中央主管機關所定一定數額以上者，其財務報表，應先經會

計師查核簽證；其簽證規則，由中央主管機關定之。但公開發行股票之公司，證券管理機關另有規定者，不適用之。

前項會計師之委任、解任及報酬，準用第二十九條第一項規定。

第一項書表，主管機關得隨時派員查核或令其限期申報；其辦法，由中央主管機關定之。

公司負責人違反第一項或第二項規定時，各處新臺幣一萬元以上五萬元以下罰鍰。妨礙、拒絕或規避前項查核或屆期不申報時，各處新臺幣二萬元以上十萬元以下罰鍰。

第 21 條 主管機關得會同目的事業主管機關，隨時派員檢查公司業務及財務狀況，公司負責人不得妨礙、拒絕或規避。

公司負責人妨礙、拒絕或規避前項檢查者，各處新臺幣二萬元以上十萬元以下罰鍰。連續妨礙、拒絕或規避者，並按次連續各處新臺幣四萬元以上二十萬元以下罰鍰。

主管機關依第一項規定派員檢查時，得視需要選任會計師或律師或其他專業人員協助辦理。

第 22 條 主管機關查核第二十條所定各項書表，或依前條檢查公司業務及財務狀況時，得令公司提出證明文件、單據、表冊及有關資料，除法律另有規定外，應保守秘密，並於收受後十五日內，查閱發還。

公司負責人違反前項規定，拒絕提出時，各處新臺幣二萬元以上十萬元以下罰鍰。連續拒絕者，並按次連續各處新臺幣四萬元以上二十萬元以下罰鍰。

第 23 條 公司負責人應忠實執行業務並盡善良管理人之注意義務，如有違反致公司受有損害者，負損害賠償責任。

公司負責人對於公司業務之執行，如有違反法令致他人受有損害時，對他人應與公司負連帶賠償之責。

第 24 條 解散之公司除因合併、分割或破產而解散外，應行清算。

第 25 條 解散之公司，於清算範圍內，視為尚未解散。

第 26 條 前條解散之公司，在清算時期中，得為了結現務及便利清算之目的，暫時經營業務。

第 26-1 條 公司經中央主管機關撤銷或廢止登記者，準用前三條之規定。

第 27 條 政府或法人為股東時，得當選為董事或監察人。但須指定自然人代表行使職務。

政府或法人為股東時，亦得由其代表人當選為董事或監察人，代表人有數人時，得分別當選。

第一項及第二項之代表人，得依其職務關係，隨時改派補足原任期。

對於第一項、第二項代表權所加之限制，不得對抗善意第三人。

第 28 條 公司之公告應登載於本公司所在之直轄市或縣（市）日報之顯著部分。但公開發行股票之公司，證券管理機關另有規定者，不在此限。

第 28-1 條 主管機關依法應送達於公司之公文書無從送達者，改向代表公司之負責人送達之；仍無從送達者，得以公告代之。

第 29 條 公司得依章程規定置經理人，其委任、解任及報酬，依左列規定定之。但公司章程有較高規定者，從其規定：

- 一 無限公司、兩合公司須有全體無限責任股東過半數同意。
- 二 有限公司須有全體股東過半數同意。
- 三 股份有限公司應由董事會以董事過半數之出席，及出席董事過半數同意之決議行之。

經理人應在國內有住所或居所。

第 30 條 有左列情事之一者，不得充經理人，其已充任者，當然解任：

- 一 曾犯組織犯罪防制條例規定之罪，經有罪判決確定，服刑期滿尚未逾五年者。
- 二 曾犯詐欺、背信、侵占罪經受有期徒刑一年以上宣告，服刑期滿尚未逾二年者。
- 三 曾服公務虧空公款，經判決確定，服刑期滿尚未逾二年者。
- 四 受破產之宣告，尚未復權者。
- 五 使用票據經拒絕往來尚未期滿者。
- 六 無行為能力或限制行為能力者。

第 31 條 經理人之職權，除章程規定外，並得依契約之訂定。

經理人在公司章程或契約規定授權範圍內，有為公司管理事務及簽名之權。

第 32 條 經理人不得兼任其他營利事業之經理人，並不得自營或為他人經營同類之業務。但經依第二十九條第一項規定之方式同意者，不在此限。

第 33 條 經理人不得變更董事或執行業務股東之決定，或股東會或董事會之決議，或逾越其規定之權限。

第 34 條 經理人因違反法令、章程或前條之規定，致公司受損害時，對於公司負賠償之責。

第 35 條 （刪除）

第 36 條 公司不得以其所加於經理人職權之限制，對抗善意第三人。

第 37 條 （刪除）

第 38 條 (刪除)

第 39 條 (刪除)

## 第二章 無限公司

### 第一節 設立

第 40 條 無限公司之股東，應有二人以上，其中半數，應在國內有住所。

股東應以全體之同意，訂立章程，簽名或蓋章，置於本公司，並每人各執一份。

第 41 條 無限公司章程應載明左列事項：

- 一 公司名稱。
- 二 所營事業。
- 三 股東姓名、住所或居所。
- 四 資本總額及各股東出資額。
- 五 各股東有以現金以外財產為出資者，其種類、數量、價格或估價之標準。
- 六 盈餘及虧損分派比例或標準。
- 七 本公司所在地；設有分公司者，其所在地。
- 八 定有代表公司之股東者，其姓名。
- 九 定有執行業務之股東者，其姓名。
- 一〇 定有解散事由者，其事由。
- 一一 訂立章程之年、月、日。

代表公司之股東，不備置前項章程於本公司者，處新臺幣一萬元以上五萬元以下罰鍰。連續拒不備置者，並按次連續處新臺幣二萬元以上十萬元以下罰鍰。

### 第二節 公司之內部關係

第 42 條 公司之內部關係，除法律有規定者外，得以章程定之。

第 43 條 股東得以信用、勞務或其他權利為出資。但須依照第四十一條第一項第五款之規定辦理。

第 44 條 股東以債權抵作股本，而其債權到期不得受清償者，應由該股東補繳；如公司因之受有損害，並應負賠償之責。

第 45 條 各股東均有執行業務之權利，而負其義務。但章程中訂定由股東中之一人或數人執行業務者，從其訂定。

前項執行業務之股東須半數以上在國內有住所。

第 46 條 股東之數人或全體執行業務時，關於業務之執行，取決於過半數之同意。執行業務之股東，關於通常事務，各得單獨執行。但其餘執行業務之股東

， 有一人提出異議時， 應即停止執行。

第 47 條 公司變更章程， 應得全體股東之同意。

第 48 條 不執行業務之股東， 得隨時向執行業務之股東質詢公司營業情形， 查閱財產文件、帳簿、表冊。

第 49 條 執行業務之股東， 非有特約， 不得向公司請求報酬。

第 50 條 股東因執行業務所代墊之款項， 得向公司請求償還， 並支付墊款之利息；如係負擔債務， 而其債務尚未到期者， 得請求提供相當之擔保。

股東因執行業務， 受有損害， 而自己無過失者， 得向公司請求賠償。

第 51 條 公司章程訂明專由股東中之一人或數人執行業務時， 該股東不得無故辭職， 他股東亦不得無故使其退職。

第 52 條 股東執行業務， 應依照法令、章程及股東之決定。

違反前項規定， 致公司受有損害者， 對於公司應負賠償之責。

第 53 條 股東代收公司款項， 不於相當期間照繳或挪用公司款項者， 應加算利息， 一併償還；如公司受有損害， 並應賠償。

第 54 條 股東非經其他股東全體之同意， 不得為他公司之無限責任股東或合夥事業之合夥人。

執行業務之股東， 不得為自己或他人為與公司同類營業之行為。

執行業務之股東違反前項規定時， 其他股東得以過半數之決議， 將其為自己或他人所為行為之所得， 作為公司之所得。但自所得產生後逾一年者， 不在此限。

第 55 條 股東非經其他股東全體之同意， 不得以自己出資之全部或一部， 轉讓於他人。

### 第 三 節 公司之對外關係

第 56 條 公司得以章程特定代表公司之股東；其未經特定者， 各股東均得代表公司。

第四十五條第二項之規定， 於代表公司之股東準用之。

第 57 條 代表公司之股東， 關於公司營業上一切事務， 有辦理之權。

第 58 條 公司對於股東代表權所加之限制， 不得對抗善意第三人。

第 59 條 代表公司之股東， 如為自己或他人與公司為買賣、借貸或其他法律行為時， 不得同時為公司之代表。但向公司清償債務時， 不在此限。

第 60 條 公司資產不足清償債務時， 由股東負連帶清償之責。

第 61 條 加入公司為股東者， 對於未加入前公司已發生之債務， 亦應負責。

第 62 條 非股東而有可以令人信其為股東之行為者， 對於善意第三人， 應負與股東

同一之責任。

第 63 條 公司非彌補虧損後，不得分派盈餘。

公司負責人違反前項規定時，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金。

第 64 條 公司之債務人，不得以其債務與其對於股東之債權抵銷。

#### 第 四 節 退 股

第 65 條 章程未定公司存續期限者，除關於退股另有訂定外，股東得於每會計年度終了退股。但應於六個月前，以書面向公司聲明。

股東有非可歸責於自己之重大事由時，不問公司定有存續期限與否，均得隨時退股。

第 66 條 除前條規定外，股東有左列各款情事之一者退股：

- 一 章程所定退股事由。
- 二 死亡。
- 三 破產。
- 四 受禁治產之宣告。
- 五 除名。
- 六 股東之出資，經法院強制執行者。

依前項第六款規定退股時，執行法院應於二個月前通知公司及其他股東。

第 67 條 股東有左列各款情事之一者，得經其他股東全體之同意議決除名。但非通知後不得對抗該股東：

- 一 應出之資本不能照繳或屢催不繳者。
- 二 違反第五十四條第一項之規定者。
- 三 有不正當行為妨害公司之利益者。
- 四 對於公司不盡重要之義務者。

第 68 條 公司名稱中列有股東之姓或姓名者，該股東退股時，得請求停止使用。

第 69 條 退股之股東與公司之結算，應以退股時公司財產之狀況為準。

退股股東之出資，不問其種類，均得以現金抵還。

股東退股時，公司事務有未了結者，於了結後計算其損益，分派其盈虧。

第 70 條 退股股東應向主管機關申請登記，對於登記前公司之債務，於登記後二年內，仍負連帶無限責任。

股東轉讓其出資者，準用前項之規定。

#### 第 五 節 解散、合併及變更組織

第 71 條 公司有左列各款情事之一者解散：

- 一 章程所定解散事由。

- 二 公司所營事業已成就或不能成就。
- 三 股東全體之同意。
- 四 股東經變動而不足本法所定之最低人數。
- 五 與他公司合併。
- 六 破產。
- 七 解散之命令或裁判。

前項第一款、第二款得經全體或一部股東之同意繼續經營，其不同意者視為退股。

第一項第四款得加入新股東繼續經營。

因前二項情形而繼續經營時，應變更章程。

第 72 條 公司得以全體股東之同意，與他公司合併。

第 73 條 公司決議合併時，應即編造資產負債表及財產目錄。

公司為合併之決議後，應即向各債權人分別通知及公告，並指定三十日以上期限，聲明債權人得於期限內提出異議。

第 74 條 公司不為前條之通知及公告，或對於在指定期限內提出異議之債權人不為清償，或不提供相當擔保者，不得以其合併對抗債權人。

第 75 條 因合併而消滅之公司，其權利義務，應由合併後存續或另立之公司承受。

第 76 條 公司得經全體股東之同意，以一部股東改為有限責任或另加入有限責任股東，變更其組織為兩合公司。

前項規定，於第七十一條第三項所規定繼續經營之公司準用之。

第 77 條 公司依前條變更組織時，準用第七十三條至第七十五條之規定。

第 78 條 股東依第七十六條第一項之規定，改為有限責任時，其在公司變更組織前，公司之債務，於公司變更登記後二年內，仍負連帶無限責任。

#### 第 六 節 清 算

第 79 條 公司之清算，以全體股東為清算人。但本法或章程另有規定或經股東決議，另選清算人者，不在此限。

第 80 條 由股東全體清算時，股東中有死亡者，清算事務由其繼承人行之；繼承人有數人時，應由繼承人互推一人行之。

第 81 條 不能依第七十九條規定定其清算人時，法院得因利害關係人之聲請，選派清算人。

第 82 條 法院因利害關係人之聲請，認為必要時，得將清算人解任。但股東選任之清算人，亦得由股東過半數之同意，將其解任。

第 83 條 清算人應於就任後十五日內，將其姓名、住所或居所及就任日期，向法院聲報。

清算人之解任，應由股東於十五日內，向法院聲報。

清算人由法院選派時，應公告之；解任時亦同。

違反第一項或第二項聲報期限之規定者，各處新臺幣三千元以上一萬五千元以下罰鍰。

第 84 條 清算人之職務如左：

- 一 了結現務。
- 二 收取債權、清償債務。
- 三 分派盈餘或虧損。
- 四 分派賸餘財產。

清算人執行前項職務，有代表公司為訴訟上或訴訟外一切行為之權。但將公司營業包括資產負債轉讓於他人時，應得全體股東之同意。

第 85 條 清算人有數人時，得推定一人或數人代表公司，如未推定時，各有對於第三人代表公司之權。關於清算事務之執行，取決於過半數之同意。  
推定代表公司之清算人，應準用第八十三條第一項之規定向法院聲報。

第 86 條 對於清算人代表權所加之限制，不得對抗善意第三人。

第 87 條 清算人就任後，應即檢查公司財產情形，造具資產負債表及財產目錄，送交各股東查閱。

對前項所為檢查有妨礙、拒絕或規避行為者，各處新臺幣二萬元以上十萬元以下罰鍰。

清算人應於六個月內完結清算；不能於六個月內完結清算時，清算人得申敘理由，向法院聲請展期。

清算人不於前項規定期限內清算完結者，各處新臺幣一萬元以上五萬元以下罰鍰。

清算人遇有股東詢問時，應將清算情形隨時答覆。

清算人違反前項規定者，各處新臺幣一萬元以上五萬元以下罰鍰。

第 88 條 清算人就任後，應以公告方法，催告債權人報明債權，對於明知之債權人，並應分別通知。

第 89 條 公司財產不足清償其債務時，清算人應即聲請宣告破產。

清算人移交其事務於破產管理人時，職務即為終了。

清算人違反第一項規定，不即聲請宣告破產者，各處新臺幣二萬元以上十萬元以下罰鍰。

第 90 條 清算人非清償公司債務後，不得將公司財產分派於各股東。

清算人違反前項規定，分派公司財產時，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金。

第 91 條 賸餘財產之分派，除章程另有訂定外，依各股東分派盈餘或虧損後淨餘出

資之比例定之。

第 92 條 清算人應於清算完結後十五日內，造具結算表冊，送交各股東，請求其承認，如股東不於一個月內提出異議，即視為承認。但清算人有不法行為時，不在此限。

第 93 條 清算人應於清算完結，經送請股東承認後十五日內，向法院聲報。  
清算人違反前項聲報期限之規定時，各處新臺幣三千元以上一萬五千元以下罰鍰。

第 94 條 公司之帳簿、表冊及關於營業與清算事務之文件，應自清算完結向法院聲報之日起，保存十年，其保存人，以股東過半數之同意定之。

第 95 條 清算人應以善良管理人之注意處理職務，倘有怠忽而致公司發生損害時，應對公司負連帶賠償之責任；其有故意或重大過失時，並應對第三人負連帶賠償責任。

第 96 條 股東之連帶無限責任，自解散登記後滿五年而消滅。

第 97 條 清算人與公司之關係，除本法規定外，依民法關於委任之規定。

### 第 三 章 有 限 公 司

第 98 條 有限公司由一人以上股東所組成。  
股東應以全體之同意訂立章程，簽名或蓋章，置於本公司，每人各執一份。

第 99 條 各股東對於公司之責任，以其出資額為限。

第 100 條 公司資本總額，應由各股東全部繳足，不得分期繳款或向外招募。  
有限公司之最低資本總額，由中央主管機關以命令定之。

第 101 條 公司章程應載明左列事項：

- 一 公司名稱。
- 二 所營事業。
- 三 股東姓名或名稱、住所或居所。
- 四 資本總額及各股東出資額。
- 五 盈餘及虧損分派比例或標準。
- 六 本公司所在地；設有分公司者，其所在地。
- 七 董事人數。
- 八 定有解散事由者，其事由。
- 九 訂立章程之年、月、日。

代表公司之董事不備置前項章程於本公司者，處新臺幣一萬元以上五萬元以下罰鍰。連續拒不備置者，並按次連續處新臺幣二萬元以上十萬元以下罰鍰。

第 102 條 每一股東不問出資多寡，均有一表決權。但得以章程訂定按出資多寡比例分配表決權。

政府或法人為股東時，準用第一百八十一條之規定。

第 103 條 公司應在本公司備置股東名簿，記載左列事項：

- 一 各股東出資額及股單號數。
- 二 各股東姓名或名稱、住所或居所。
- 三 繳納股款之年、月、日。

代表公司之董事，不備置前項股東名簿於本公司者，處新臺幣一萬元以上五萬元以下罰鍰。連續拒不備置者，並按次連續處新臺幣二萬元以上十萬元以下罰鍰。

第 104 條 公司設立登記後，應發給股單，載明左列各款事項：

- 一 公司名稱。
- 二 設立登記之年、月、日。
- 三 股東姓名或名稱及其出資額。
- 四 發給股單之年、月、日。

第一百六十二條第二項、第一百六十三條第一項但書、第一百六十五條之規定，於前項股單準用之。

第 105 條 公司股單，由全體董事簽名或蓋章。

第 106 條 公司增資，應經股東過半數之同意。但股東雖同意增資，仍無按原出資數比例出資之義務。

前項不同意增資之股東，對章程因增資修正部分，視為同意。

有第一項但書情形時，得經全體股東同意，由新股東參加。

公司得經全體股東同意減資或變更其組織為股份有限公司。

第 107 條 公司為變更組織之決議後，應即向各債權人分別通知及公告。

變更組織後之公司，應承擔變更組織前公司之債務。

第 108 條 公司應至少置董事一人執行業務並代表公司，最多置董事三人，應經三分之二以上股東之同意，就有行為能力之股東中選任之。董事有數人時，得以章程特定一人為董事長，對外代表公司。

執行業務之董事請假或因故不能行使職權時，指定股東一人代理之；未指定代理人者，由股東間互推一人代理之。

董事為自己或他人為與公司同類業務之行為，應對全體股東說明其行為之重要內容，並經三分之二以上股東同意。

第三十條、第四十六條、第四十九條至第五十三條、第五十四條第三項、第五十七條至第五十九條、第二百零八條第三項、第二百零八條之一及第二百零十一條之規定，於董事準用之。

第 109 條 不執行業務之股東，均得行使監察權；其監察權之行使，準用第四十八條之規定。

第 110 條 每屆會計年度終了，董事應依第二百二十八條之規定，造具各項表冊，分送各股東，請其承認。

前項表冊送達後逾一個月未提出異議者，視為承認。

第二百三十一條至第二百三十三條、第二百三十五條及第二百四十五條第一項之規定，於有限公司準用之。

第 111 條 股東非得其他全體股東過半數之同意，不得以其出資之全部或一部，轉讓於他人。

前項轉讓，不同意之股東有優先受讓權；如不承受，視為同意轉讓，並同意修改章程有關股東及其出資額事項。

公司董事非得其他全體股東同意，不得以其出資之全部或一部，轉讓於他人。

法院依強制執行程序，將股東之出資轉讓於他人時，應通知公司及其他全體股東，於二十日內，依第一項或第三項之方式，指定受讓人；逾期未指定或指定之受讓人不依同一條件受讓時，視為同意轉讓，並同意修改章程有關股東及其出資額事項。

第 112 條 公司於彌補虧損完納一切稅捐後，分派盈餘時，應先提出百分之十為法定盈餘公積。但法定盈餘公積已達資本總額時，不在此限。

除前項法定盈餘公積外，公司得以章程訂定，或股東全體之同意，另提特別盈餘公積。

公司負責人違反第一項規定，不提出法定盈餘公積時，各科新臺幣六萬元以下罰金。

第 113 條 公司變更章程、合併、解散及清算，準用無限公司有關之規定。

#### 第 四 章 兩 合 公 司

第 114 條 兩合公司以無限責任股東與有限責任股東組織之。

無限責任股東，對公司債務負連帶無限清償責任；有限責任股東，以出資額為限，對於公司負其責任。

第 115 條 兩合公司除本章規定外，準用第二章之規定。

第 116 條 兩合公司之章程，除記載第四十一條所列各款事項外，並應記明各股東之責任為無限或有限。

第 117 條 有限責任股東，不得以信用或勞務為出資。

第 118 條 有限責任股東，得於每會計年度終了時，查閱公司帳目、業務及財產情形；必要時，法院得因有限責任股東之聲請，許其隨時檢查公司帳目、業務

及財產之情形。

對於前項之檢查，有妨礙、拒絕或規避行為者，各處新臺幣二萬元以上十萬元以下罰鍰。

連續妨礙、拒絕或規避者，並按次連續各處新臺幣四萬元以上二十萬元以下罰鍰。

第 119 條 有限責任股東，非得無限責任股東過半數之同意，不得以其出資全部或一部，轉讓於他人。

第一百十一條第二項及第四項之規定，於前項準用之。

第 120 條 有限責任股東，得為自己或他人，為與本公司同類營業之行為；亦得為他公司之無限責任股東，或合夥事業之合夥人。

第 121 條 有限責任股東，如有可以令人信其為無限責任股東之行為者，對於善意第三人，負無限責任股東之責任。

第 122 條 有限責任股東，不得執行公司業務及對外代表公司。

第 123 條 有限責任股東，不因受禁治產之宣告而退股。

有限責任股東死亡時，其出資歸其繼承人。

第 124 條 有限責任股東遇有非可歸責於自己之重大事由時，得經無限責任股東過半數之同意退股，或聲請法院准其退股。

第 125 條 有限責任股東有左列各款情事之一者，得經全體無限責任股東之同意，將其除名：

一 不履行出資義務者。

二 有不正當行為，妨害公司利益者。

前項除名，非通知該股東後，不得對抗之。

第 126 條 公司因無限責任股東或有限責任股東全體之退股而解散。但其餘股東得以一致之同意，加入無限責任股東或有限責任股東，繼續經營。

前項有限責任股東全體退股時，無限責任股東在二人以上者，得以一致之同意變更其組織為無限公司。

無限責任股東與有限責任股東，以全體之同意，變更其組織為無限公司時，依前項規定行之。

第 127 條 清算由全體無限責任股東任之。但無限責任股東得以過半數之同意另行選任清算人；其解任時亦同。

## 第 五 章 股份有限公司

### 第 一 節 設立

第 128 條 股份有限公司應有二人以上為發起人。

無行為能力人或限制行為能力人，不得為發起人。

政府或法人均得為發起人。但法人為發起人者，以左列情形為限：

- 一、公司。
- 二、以其自行研發之專門技術或智慧財產權作價投資之法人。
- 三、經目的事業主管機關認屬與其創設目的相關而予核准之法人。

第 128-1 條 政府或法人股東一人所組織之股份有限公司，不受前條第一項之限制。該公司之股東會職權由董事會行使，不適用本法有關股東會之規定。前項公司之董事、監察人，由政府或法人股東指派。

第 129 條 發起人應以全體之同意訂立章程，載明左列各款事項，並簽名或蓋章：

- 一 公司名稱。
- 二 所營事業。
- 三 股份總數及每股金額。
- 四 本公司所在地。
- 五 董事及監察人之人數及任期。
- 六 訂立章程之年、月、日。

第 130 條 左列各款事項，非經載明於章程者，不生效力：

- 一 分公司之設立。
- 二 分次發行股份者，定於公司設立時之發行數額。
- 三 解散之事由。
- 四 特別股之種類及其權利義務。
- 五 發起人所得受之特別利益及受益者之姓名。

前項第五款發起人所得受之特別利益，股東會得修改或撤銷之。但不得侵及發起人既得之利益。

第 131 條 發起人認足第一次應發行之股份時，應即按股繳足股款並選任董事及監察人。

前項選任方法，準用第一百九十八條之規定。

第一項之股款，得以公司事業所需之財產抵繳之。

第 132 條 發起人不認足第一次發行之股份時，應募足之。

前項股份招募時，得依第一百五十七條之規定發行特別股。

第 133 條 發起人公開招募股份時，應先具備左列事項，申請證券管理機關審核：

- 一 營業計畫書。
- 二 發起人姓名、經歷、認股數目及出資種類。
- 三 招股章程。
- 四 代收股款之銀行或郵局名稱及地址。
- 五 有承銷或代銷機構者，其名稱及約定事項。
- 六 證券管理機關規定之其他事項。

前項發起人所認股份，不得少於第一次發行股份四分之一。

第一項各款，應於證券管理機關通知到達之日起三十日內，加記核准文號及年、月、日公告招募之。但第五款約定事項，得免予公告。

第 134 條 代收股款之銀行或郵局，對於代收之股款，有證明其已收金額之義務，其證明之已收金額，即認為已收股款之金額。

第 135 條 申請公開招募股份有左列情形之一者，證券管理機關得不予核准或撤銷核准：

- 一 申請事項有違反法令或虛偽者。
- 二 申請事項有變更，經限期補正而未補正者。

發起人有前項第二款情事時，由證券管理機關各處新臺幣二萬元以上十萬元以下罰鍰。

第 136 條 前條撤銷核准，未招募者，停止招募；已招募者，應募人得依股份原發行金額，加算法定利息，請求返還。

第 137 條 招股章程，應載明左列各款事項：

- 一 第一百二十九條及第一百三十條所列各款事項。
- 二 各發起人所認之股數。
- 三 股票超過票面金額發行者，其金額。
- 四 招募股份總數募足之期限，及逾期未募足時，得由認股人撤回所認股份之聲明。
- 五 發行特別股者，其總額及第一百五十七條各款之規定。
- 六 發行無記名股者，其總額。

第 138 條 發起人應備認股書，載明第一百三十三條第一項各款事項，並加記證券管理機關核准文號及年、月、日，由認股人填寫所認股數、金額及其住所或居所，簽名或蓋章。

以超過票面金額發行股票者，認股人應於認股書註明認繳之金額。

發起人違反第一項規定，不備認股書者，由證券管理機關各處新臺幣一萬元以上五萬元以下罰鍰。

第 139 條 認股人有照所填認股書繳納股款之義務。

第 140 條 股票之發行價格，不得低於票面金額。但公開發行股票之公司，證券管理機關另有規定者，不在此限。

第 141 條 第一次發行股份總數募足時，發起人應即向各認股人催繳股款，以超過票面金額發行股票時，其溢額應與股款同時繳納。

第 142 條 認股人延欠前條應繳之股款時，發起人應定一個月以上之期限催告該認股人照繳，並聲明逾期不繳失其權利。

發起人已為前項之催告，認股人不照繳者，即失其權利，所認股份另行募集。

前項情形，如有損害，仍得向認股人請求賠償。

第 143 條 前條股款繳足後，發起人應於二個月內召開創立會。

第 144 條 創立會之程序及決議，準用第一百七十二條第一項、第三項、第六項，第一百七十四條至第一百七十九條、第一百八十一條及第一百八十三條之規定。但關於董事及監察人之選任，準用第一百九十八條之規定。

第 145 條 發起人應就左列各款事項報告於創立會：

- 一 公司章程。
- 二 股東名簿。
- 三 已發行之股份總數。
- 四 以現金以外之財產抵繳股款者，其姓名及其財產之種類、數量、價格或估價之標準及公司核給之股數。
- 五 應歸公司負擔之設立費用，及發起人得受報酬。
- 六 發行特別股者，其股份總數。
- 七 董事、監察人名單，並註明其住所或居所、國民身分證統一編號或其他經政府核發之身分證明文件字號。

發起人對於前項報告有虛偽情事時，各科新臺幣六萬元以下罰金。

第 146 條 創立會應選任董事、監察人。董事、監察人經選任後，應即就前條所列事項，為確實之調查並向創立會報告。

董事、監察人如有由發起人當選，且與自身有利害關係者，前項調查，創立會得另選檢查人為之。

前二項所定調查，如有冒濫或虛偽者，由創立會裁減之。

發起人如有妨礙調查之行為或董事、監察人、檢查人報告有虛偽者，各科新臺幣六萬元以下罰金。

第一項、第二項之調查報告，經董事、監察人或檢查人之請求延期提出時，創立會應準用第一百八十二條之規定，延期或續行集會。

第 147 條 發起人所得受之報酬或特別利益及公司所負擔之設立費用有冒濫者，創立會均得裁減之，用以抵作股款之財產，如估價過高者，創立會得減少其所給股數或責令補足。

第 148 條 未認足之第一次發行股份，及已認而未繳股款者，應由發起人連帶認繳；其已認而經撤回者亦同。

第 149 條 因第一百四十七條及第一百四十八條情形，公司受有損害時，得向發起人請求賠償。

第 150 條 公司不能成立時，發起人關於公司設立所為之行為，及設立所需之費用，

均應負連帶責任，其因冒濫經裁減者亦同。

[第 151 條](#) 創立會得修改章程或為公司不設立之決議。

第二百七十七條第二項至第四項之規定，於前項修改章程準用之；第三百十六條之規定，於前項公司不設立之決議準用之。

[第 152 條](#) 第一次發行股份募足後，逾三個月而股款尚未繳足，或已繳納而發起人不於二個月內召集創立會者，認股人得撤回其所認之股。

[第 153 條](#) 創立會結束後，認股人不得將股份撤回。

[第 154 條](#) 股東對於公司之責任，以繳清其股份之金額為限。

[第 155 條](#) 發起人對於公司設立事項，如有怠忽其任務致公司受損害時，應對公司負連帶賠償責任。

發起人對於公司在設立登記前所負債務，在登記後亦負連帶責任。

## 第 二 節 股 份

[第 156 條](#) 股份有限公司之資本，應分為股份，每股金額應歸一律，一部分得為特別股；其種類，由章程定之。

前項股份總數，得分次發行。

股份有限公司之最低資本總額，由中央主管機關以命令定之。

公司得依董事會之決議，向證券管理機關申請辦理公開發行程序。但公營事業之公開發行，應由該公營事業之主管機關專案核定之。

股東之出資除現金外，得以對公司所有之貨幣債權，或公司所需之技術、商譽抵充之；其抵充之數額需經董事會通過，不受第二百七十二條之限制。

公司設立後得發行新股作為受讓他公司股份之對價，需經董事會三分之二以上董事出席，以出席董事過半數決議行之，不受第二百六十七條第一項至第三項之限制。

同次發行之股份，其發行條件相同者，價格應歸一律。但公開發行股票之公司，證券管理機關另有規定者，不在此限。

[第 157 條](#) 公司發行特別股時，應就左列各款於章程中定之：

- 一 特別股分派股息及紅利之順序、定額或定率。
- 二 特別股分派公司贖餘財產之順序、定額或定率。
- 三 特別股之股東行使表決權之順序、限制或無表決權。
- 四 特別股權利、義務之其他事項。

[第 158 條](#) 公司發行之特別股，得以盈餘或發行新股所得之股款收回之。但不得損害特別股股東按照章程應有之權利。

[第 159 條](#) 公司已發行特別股者，其章程之變更如有損害特別股股東之權利時，除應

有代表已發行股份總數三分之二以上股東出席之股東會，以出席股東表決權過半數之決議為之外，並應經特別股股東會之決議。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之，並應經特別股股東會之決議。

前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。特別股股東會準用關於股東會之規定。

第 160 條 股份為數人共有者，其共有人應推定一人行使股東之權利。

股份共有人，對於公司負連帶繳納股款之義務。

第 161 條 公司非經設立登記或發行新股變更登記後，不得發行股票。但公開發行股票之公司，證券管理機關另有規定者，不在此限。

違反前項規定發行股票者，其股票無效。但持有人得向發行股票人請求損害賠償。

第 161-1 條 公司資本額達中央主管機關所定一定數額以上者，應於設立登記或發行新股變更登記後三個月內發行股票；其未達中央主管機關所定一定數額者，除章程另有規定者外，得不發行股票。

公司負責人違反前項規定，不發行股票者，除由主管機關責令限期發行外，各處新臺幣一萬元以上五萬元以下罰鍰；期滿仍未發行者，得繼續責令限期發行，並按次連續各處新臺幣二萬元以上十萬元以下罰鍰，至發行股票為止。

第 162 條 股票應編號，載明左列事項，由董事三人以上簽名或蓋章，並經主管機關或其核定之發行登記機構簽證後發行之：

- 一 公司名稱。
- 二 設立登記或發行新股變更登記之年、月、日。
- 三 發行股份總數及每股金額。
- 四 本次發行股數。
- 五 發起人股票應標明發起人股票之字樣。
- 六 特別股票應標明其特別種類之字樣。
- 七 股票發行之年、月、日。

記名股票應用股東姓名，其為同一人所有者，應記載同一姓名；股票為政府或法人所有者，應記載政府或法人之名稱，不得另立戶名或僅載代表人姓名。

第一項股票之簽證規則，由中央主管機關定之。但公開發行股票之公司，證券管理機關另有規定者，不適用之。

第 162-1 條 公開發行股票之公司發行新股時，其股票得就該次發行總數合併印製。

條 依前項規定發行之股票，應洽證券集中保管事業機構保管。  
依第一項規定發行新股時，不適用前條第一項股票應編號及第一百六十四條背書轉讓之規定。

第 162- 2 條 公開發行股票之公司，其發行之股份得免印製股票。  
依前項規定發行之股份，應洽證券集中保管事業機構登錄。

第 163 條 公司股份之轉讓，不得以章程禁止或限制之。但非於公司設立登記後，不得轉讓。  
發起人之股份非於公司設立登記一年後，不得轉讓。但公司因合併或分割後，新設公司發起人之股份得轉讓。

第 164 條 記名股票，由股票持有人以背書轉讓之，並應將受讓人之姓名或名稱記載於股票。無記名股票，得以交付轉讓之。

第 165 條 股份之轉讓，非將受讓人之姓名或名稱及住所或居所，記載於公司股東名簿，不得以其轉讓對抗公司。  
前項股東名簿記載之變更，於股東常會開會前三十日內，股東臨時會開會前十五日內，或公司決定分派股息及紅利或其他利益之基準日前五日內，不得為之。  
公開發行股票之公司辦理第一項股東名簿記載之變更，於股東常會開會前六十日內，股東臨時會開會前三十日內，不得為之。  
前二項期間，自開會日或基準日起算。

第 166 條 公司得以章程規定發行無記名股票。但其股數不得超過已發行股份總數二分之一。  
公司得因股東之請求，發給無記名股票或將無記名股票改為記名式。

第 167 條 公司除依第一百五十八條、第一百六十七條之一、第一百八十六條及第三百十七條規定外，不得自將股份收回、收買或收為質物。但於股東清算或受破產之宣告時，得按市價收回其股份，抵償其於清算或破產宣告前結欠公司之債務。  
公司依前項但書、第一百八十六條規定，收回或收買之股份，應於六個月內，按市價將其出售，屆期未經出售者，視為公司未發行股份，並為變更登記。  
被持有已發行有表決權之股份總數或資本總額超過半數之從屬公司，不得將控制公司之股份收買或收為質物。  
前項控制公司及其從屬公司直接或間接持有他公司已發行有表決權之股份總數或資本總額合計超過半數者，他公司亦不得將控制公司及其從屬公司之股份收買或收為質物。  
公司負責人違反前四項規定，將股份收回、收買或收為質物，或抬高價格

抵償債務或抑低價格出售時，應負賠償責任。

第 167- 1 條 公司除法律另有規定者外，得經董事會以董事三分之二以上之出席及出席董事過半數同意之決議，於不超過該公司已發行股份總數百分之五之範圍內，收買其股份；收買股份之總金額，不得逾保留盈餘加已實現之資本公積之金額。

前項公司收買之股份，應於三年內轉讓於員工，屆期未轉讓者，視為公司未發行股份，並為變更登記。

公司依第一項規定收買之股份，不得享有股東權利。

第 167- 2 條 公司除法律或章程另有規定者外，得經董事會以董事三分之二以上之出席及出席董事過半數同意之決議，與員工簽訂認股權契約，約定於一定期間內，員工得依約定價格認購特定數量之公司股份，訂約後由公司發給員工認股權憑證。

員工取得認股權憑證，不得轉讓。但因繼承者，不在此限。

第 168 條 公司非依股東會決議減少資本，不得銷除其股份；減少資本，應依股東所持股份比例減少之。但本法或其他法律另有規定者，不在此限。

公司負責人違反前項規定銷除股份者，各處新臺幣二萬元以上十萬元以下罰鍰。

第 168- 1 條 公司為彌補虧損，於會計年度終了前，有減少資本及增加資本之必要者，董事會應將財務報表及虧損撥補之議案，於股東會開會三十日前交監察人查核後，提請股東會決議。

第二百二十九條至第二百三十一條之規定，於依前項規定提請股東臨時會決議時，準用之。

第 169 條 股東名簿應編號記載左列事項：

- 一 各股東之姓名或名稱、住所或居所。
- 二 各股東之股數；發行股票者，其股票號數。
- 三 發給股票之年、月、日。
- 四 發行無記名股票者，應記載其股數、號數及發行之年、月、日。
- 五 發行特別股者，並應註明特別種類字樣。

採電腦作業或機器處理者，前項資料得以附表補充之。

代表公司之董事，應將股東名簿備置於本公司或其指定之股務代理機構；違反者，處新臺幣一萬元以上五萬元以下罰鍰。連續拒不備置者，並按次連續處新臺幣二萬元以上十萬元以下罰鍰。

### 第 三 節 股東會

第 170 條 股東會分左列二種：

- 一 股東常會，每年至少召集一次。

二 股東臨時會，於必要時召集之。

前項股東常會應於每會計年度終了後六個月內召開。但有正當事由經報請主管機關核准者，不在此限。

代表公司之董事違反前項召開期限之規定者，處新臺幣一萬元以上五萬元以下罰鍰。

第 171 條 股東會除本法另有規定外，由董事會召集之。

第 172 條 股東常會之召集，應於二十日前通知各股東，對於持有無記名股票者，應於三十日前公告之。

股東臨時會之召集，應於十日前通知各股東，對於持有無記名股票者，應於十五日前公告之。

公開發行股票之公司股東常會之召集，應於三十日前通知各股東，對於持有無記名股票者，應於四十五日前公告之；公開發行股票之公司股東臨時會之召集，應於十五日前通知各股東，對於持有無記名股票者，應於三十日前公告之。

通知及公告應載明召集事由；其通知經相對人同意者，得以電子方式為之。

選任或解任董事、監察人、變更章程、公司解散、合併、分割或第一百八十五條第一項各款之事項，應在召集事由中列舉，不得以臨時動議提出。代表公司之董事，違反第一項、第二項或第三項通知期限之規定者，處新臺幣一萬元以上五萬元以下罰鍰。

第 172-1 條 持有已發行股份總數百分之一以上股份之股東，得以書面向公司提出股東常會議案。但以一項為限，提案超過一項者，均不列入議案。

公司應於股東常會召開前之停止股票過戶日前，公告受理股東之提案、受理處所及受理期間；其受理期間不得少於十日。

股東所提議案以三百字為限，超過三百字者，該提案不予列入議案；提案股東應親自或委託他人出席股東常會，並參與該項議案討論。

有左列情事之一，股東所提議案，董事會得不列為議案：

一、該議案非股東會所得決議者。

二、提案股東於公司依第一百六十五條第二項或第三項停止股票過戶時，持股未達百分之一者。

三、該議案於公告受理期間外提出者。

公司應於股東會召集通知日前，將處理結果通知提案股東，並將合於本條規定之議案列於開會通知。對於未列入議案之股東提案，董事會應於股東會說明未列入之理由。

公司負責人違反第二項或前項規定者，處新臺幣一萬元以上五萬元以下罰

緩。

第 173 條 繼續一年以上，持有已發行股份總數百分之三以上股份之股東，得以書面記明提議事項及理由，請求董事會召集股東臨時會。

前項請求提出後十五日內，董事會不為召集之通知時，股東得報經主管機關許可，自行召集。

依前二項規定召集之股東臨時會，為調查公司業務及財產狀況，得選任檢查人。

董事因股份轉讓或其他理由，致董事會不為召集或不能召集股東會時，得由持有已發行股份總數百分之三以上股份之股東，報經主管機關許可，自行召集。

第 174 條 股東會之決議，除本法另有規定外，應有代表已發行股份總數過半數股東之出席，以出席股東表決權過半數之同意行之。

第 175 條 出席股東不足前條定額，而有代表已發行股份總數三分之一以上股東出席時，得以出席股東表決權過半數之同意，為假決議，並將假決議通知各股東，於一個月內再行召集股東會，其發有無記名股票者，並應將假決議公告之。

前項股東會，對於假決議，如仍有已發行股份總數三分之一以上股東出席，並經出席股東表決權過半數之同意，視同前條之決議。

第 176 條 無記名股票之股東，非於股東會開會五日前，將其股票交存公司，不得出席。

第 177 條 股東得於每次股東會，出具公司印發之委託書，載明授權範圍，委託代理人，出席股東會。

除信託事業或經證券主管機關核准之股務代理機構外，一人同時受二人以上股東委託時，其代理之表決權不得超過已發行股份總數表決權之百分之三，超過時其超過之表決權，不予計算。

一股東以出具一委託書，並以委託一人為限，應於股東會開會五日前送達公司，委託書有重複時，以最先送達者為準。但聲明撤銷前委託者，不在此限。

委託書送達公司後，股東欲親自出席股東會者，至遲應於股東會開會前一日，以書面向公司為撤銷委託之通知；逾期撤銷者，以委託代理人出席行使之表決權為準。

第 177-1 條 公司召開股東會時，得採行以書面或電子方式行使其表決權；其以書面或電子方式行使表決權時，其行使方法應載明於股東會召集通知。

前項以書面或電子方式行使表決權之股東，視為親自出席股東會。但就該次股東會之臨時動議及原議案之修正，視為棄權。

第 177- 2 條 股東以書面或電子方式行使表決權者，其意思表示應於股東會開會五日前送達公司，意思表示有重複時，以最先送達者為準。但聲明撤銷前意思表示者，不在此限。

股東以書面或電子方式行使表決權後，欲親自出席股東會者，至遲應於股東會開會前一日，以與行使表決權相同之方式撤銷前項行使表決權之意思表示；逾期撤銷者，以書面或電子方式行使之表決權為準。

股東以書面或電子方式行使表決權，並以委託書委託代理人出席股東會者，以委託代理人出席行使之表決權為準。

第 177- 3 條 公開發行股票之公司召開股東會，應編製股東會議事手冊，並應於股東會開會前，將議事手冊及其他會議相關資料公告。

前項公告之時間、方式、議事手冊應記載之主要事項及其他應遵行事項之辦法，由證券管理機關定之。

第 178 條 股東對於會議之事項，有自身利害關係致有害於公司利益之虞時，不得加入表決，並不得代理他股東行使其表決權。

第 179 條 公司各股東，除有第一百五十七條第三款情形外，每股有一表決權。

有左列情形之一者，其股份無表決權：

一、公司依法持有自己之股份。

二、被持有已發行有表決權之股份總數或資本總額超過半數之從屬公司，所持有控制公司之股份。

三、控制公司及其從屬公司直接或間接持有他公司已發行有表決權之股份總數或資本總額合計超過半數之他公司，所持有控制公司及其從屬公司之股份。

第 180 條 股東會之決議，對無表決權股東之股份數，不算入已發行股份之總數。

股東會之決議，對依第一百七十八條規定不得行使表決權之股份數，不算入已出席股東之表決權數。

第 181 條 政府或法人為股東時，其代表人不限於一人。但其表決權之行使，仍以其所持有之股份綜合計算。

前項之代表人有二人以上時，其代表人行使表決權應共同為之。

第 182 條 股東會決議在五日内延期或續行集會，不適用第一百七十二條之規定。

第 182- 1 條 股東會由董事會召集者，其主席依第二百零八條第三項規定辦理；由董事會以外之其他召集權人召集者，主席由該召集權人擔任之，召集權人有二人以上時，應互推一人擔任之。

公司應訂定議事規則。股東會開會時，主席違反議事規則，宣布散會者，得以出席股東表決權過半數之同意推選一人擔任主席，繼續開會。

第 183 條 股東會之議決事項，應作成議事錄，由主席簽名或蓋章，並於會後二十日

內，將議事錄分發各股東。

前項議事錄之製作及分發，得以電子方式為之。

公開發行股票之公司對於持有記名股票未滿一千股之股東，第一項議事錄之分發，得以公告方式為之。

議事錄應記載會議之年、月、日、場所、主席姓名、決議方法、議事經過之要領及其結果，在公司存續期間，應永久保存。

出席股東之簽名簿及代理出席之委託書，其保存期限至少為一年。但經股東依第一百八十九條提起訴訟者，應保存至訴訟終結為止。

代表公司之董事，違反第一項、第四項或前項規定者，處新臺幣一萬元以上五萬元以下罰鍰。

**第 184 條** 股東會得查核董事會造具之表冊、監察人之報告，並決議盈餘分派或虧損撥補。

執行前項查核時，股東會得選任檢查人。

對於前二項查核有妨礙、拒絕或規避之行為者，各處新臺幣二萬元以上十萬元以下罰鍰。

**第 185 條** 公司為左列行為，應有代表已發行股份總數三分之二以上股東出席之股東會，以出席股東表決權過半數之同意行之：

一 締結、變更或終止關於出租全部營業，委託經營或與或他人經常共同經營之契約。

二 讓與全部或主要部分之營業或財產。

三 受讓他人全部營業或財產，對公司營運有重大影響者。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。

前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。

第一項行為之要領，應記載於第一百七十二條所定之通知及公告。

第一項之議案，應由有三分之二以上董事出席之董事會，以出席董事過半數之決議提出之。

**第 186 條** 股東於股東會為前條決議前，已以書面通知公司反對該項行為之意思表示，並於股東會已為反對者，得請求公司以當時公平價格，收買其所有之股份。但股東會為前條第一項第二款之決議，同時決議解散時，不在此限。

**第 187 條** 前條之請求，應自第一百八十五條決議日起二十日內，提出記載股份種類及數額之書面為之。

股東與公司間協議決定股份價格者，公司應自決議日起九十日內支付價款，自第一百八十五條決議日起六十日內未達協議者，股東應於此期間經過

後三十日內，聲請法院為價格之裁定。

公司對法院裁定之價格，自第二項之期間屆滿日起，應支付法定利息，股份價款之支付，應與股票之交付同時為之，股份之移轉於價款支付時生效。

第 188 條 第一百八十六條股東之請求，於公司取銷第一百八十五條第一項所列之行為時，失其效力。

股東於前條第一項及第二項之期間內，不為同項之請求時亦同。

第 189 條 股東會之召集程序或其決議方法，違反法令或章程時，股東得自決議之日起三十日內，訴請法院撤銷其決議。

第 189-1 條 法院對於前條撤銷決議之訴，認為其違反之事實非屬重大且於決議無影響者，得駁回其請求。

第 190 條 決議事項已為登記者，經法院為撤銷決議之判決確定後，主管機關經法院之通知或利害關係人之申請時，應撤銷其登記。

第 191 條 股東會決議之內容，違反法令或章程者無效。

#### 第 四 節 董事及董事會

第 192 條 公司董事會，設置董事不得少於三人，由股東會就有行為能力之人選任之。

公開發行股票之公司依前項選任之董事，其全體董事合計持股比例，證券管理機關另有規定者，從其規定。

民法第八十五條之規定，對於前項行為能力不適用之。

公司與董事間之關係，除本法另有規定外，依民法關於委任之規定。

第三十條之規定，對董事準用之。

第 192-1 條 公開發行股票之公司董事選舉，採候選人提名制度者，應載明於章程，股東應就董事候選人名單中選任之。

公司應於股東會召開前之停止股票過戶日前，公告受理董事候選人提名之期間、董事應選名額、其受理處所及其他必要事項，受理期間不得少於十日。

持有已發行股份總數百分之一以上股份之股東，得以書面向公司提出董事候選人名單，提名人數不得超過董事應選名額；董事會提名董事候選人之人數，亦同。

前項提名股東應檢附被提名人姓名、學歷、經歷、當選後願任董事之承諾書、無第三十條規定情事之聲明書及其他相關證明文件；被提名人為法人股東或其代表人者，並應檢附該法人股東登記基本資料及持有之股份數額證明文件。

董事會或其他召集權人召集股東會者，對董事被提名人應予審查，除有左

列情事之一者外，應將其列入董事候選人名單：

一、提名股東於公告受理期間外提出。

二、提名股東於公司依第一百六十五條第二項或第三項停止股票過戶時，持股未達百分之一。

三、提名人數超過董事應選名額。

四、未檢附第四項規定之相關證明文件。

前項審查董事被提名人之作業過程應作成紀錄，其保存期限至少為一年。

但經股東對董事選舉提起訴訟者，應保存至訴訟終結為止。

公司應於股東常會開會四十日前或股東臨時會開會二十五日前，將董事候選人名單及其學歷、經歷、持有股份數額與所代表之政府、法人名稱及其他相關資料公告，並將審查結果通知提名股東，對於提名人選未列入董事候選人名單者，並應敘明未列入之理由。

公司負責人違反第二項或前二項規定者，處新臺幣一萬元以上五萬元以下罰鍰。

第 193 條 董事會執行業務，應依照法令章程及股東會之決議。

董事會之決議，違反前項規定，致公司受損害時，參與決議之董事，對於公司負賠償之責；但經表示異議之董事，有紀錄或書面聲明可證者，免其責任。

第 194 條 董事會決議，為違反法令或章程之行為時，繼續一年以上持有股份之股東，得請求董事會停止其行為。

第 195 條 董事任期不得逾三年。但得連選連任。

董事任期屆滿而不及改選時，延長其執行職務至改選董事就任時為止。但主管機關得依職權限期令公司改選；屆期仍不改選者，自限期屆滿時，當然解任。

第 196 條 董事之報酬，未經章程訂明者，應由股東會議定。

第 197 條 董事經選任後，應向主管機關申報，其選任當時所持有之公司股份數額；公開發行股票之公司董事在任期中轉讓超過選任當時所持有之公司股份數額二分之一時，其董事當然解任。

董事在任期中其股份有增減時，應向主管機關申報並公告之。

董事任期末屆滿提前改選者，當選之董事，於就任前轉讓超過選任當時所持有之公司股份數額二分之一時，或於股東會召開前之停止股票過戶期間內，轉讓持股超過二分之一時，其當選失其效力。

第 197-1 條 董事之股份設定或解除質權者，應即通知公司，公司應於質權設定或解除後十五日內，將其質權變動情形，向主管機關申報並公告之。但公開發行股票之公司，證券管理機關另有規定者，不在此限。

[第 198 條](#) 股東會選任董事時，除公司章程另有規定外，每一股份有與應選出董事人數相同之選舉權，得集中選舉一人，或分配選舉數人，由所得選票代表選舉權較多者，當選為董事。第一百七十八條之規定，對於前項選舉權，不適用之。

[第 199 條](#) 董事得由股東會之決議，隨時解任；如於任期中無正當理由將其解任時，董事得向公司請求賠償因此所受之損害。  
股東會為前項解任之決議，應有代表已發行股份總數三分之二以上股東之出席，以出席股東表決權過半數之同意行之。  
公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。  
前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。

[第 199-1 條](#) 股東會於董事任期未屆滿前，經決議改選全體董事者，如未決議董事於任期屆滿始為解任，視為提前解任。

[第 200 條](#) 董事執行業務，有重大損害公司之行為或違反法令或章程之重大事項，股東會未為決議將其解任時，得由持有已發行股份總數百分之三以上股份之股東，於股東會後三十日內，訴請法院裁判之。

[第 201 條](#) 董事缺額達三分之一時，董事會應於三十日內召開股東臨時會補選之。但公開發行股票之公司，董事會應於六十日內召開股東臨時會補選之。

[第 202 條](#) 公司業務之執行，除本法或章程規定應由股東會決議之事項外，均應由董事會決議行之。

[第 203 條](#) 董事會由董事長召集之。但每屆第一次董事會，由所得選票代表選舉權最多之董事召集之。

每屆第一次董事會應於改選後十五日內召開之。但董事係於上屆董事任滿前改選，並決議自任期屆滿時解任者，應於上屆董事任滿後十五日內召開之。

董事係於上屆董事任期屆滿前改選，並經決議自任期屆滿時解任者，其董事長、副董事長、常務董事之改選得於任期屆滿前為之，不受前項之限制。

第一次董事會之召集，出席之董事未達選舉常務董事或董事長之最低出席人數時，原召集人應於十五日內繼續召集，並得適用第二百零六條之決議方法選舉之。

得選票代表選舉權最多之董事，未在第第二項或前項限期內召集董事會時，得由五分之一以上當選之董事報經主管機關許可，自行召集之。

[第 204 條](#) 董事會之召集，應載明事由，於七日前通知各董事及監察人。但有緊急情

事時，得隨時召集之。

第 205 條 董事會開會時，董事應親自出席。但公司章程訂定得由其他董事代理者，不在此限。

董事會開會時，如以視訊會議為之，其董事以視訊參與會議者，視為親自出席。

董事委託其他董事代理出席董事會時，應於每次出具委託書，並列舉召集事由之授權範圍。

前項代理人，以受一人之委託為限。

董事居住國外者，得以書面委託居住國內之其他股東，經常代理出席董事會。

前項代理，應向主管機關申請登記，變更時，亦同。

第 206 條 董事會之決議，除本法另有規定外，應有過半數董事之出席，出席董事過半數之同意行之。

第一百七十八條、第一百八十條第二項之規定，於前項之決議準用之。

第 207 條 董事會之議事，應作成議事錄。

前項議事錄準用第一百八十三條之規定。

第 208 條 董事會未設常務董事者，應由三分之二以上董事之出席，及出席董事過半數之同意，互選一人為董事長，並得依章程規定，以同一方式互選一人為副董事長。

董事會設有常務董事者，其常務董事依前項選舉方式互選之，名額至少三人，最多不得超過董事人數三分之一。董事長或副董事長由常務董事依前項選舉方式互選之。

董事長對內為股東會、董事會及常務董事會主席，對外代表公司。董事長請假或因故不能行使職權時，由副董事長代理之；無副董事長或副董事長亦請假或因故不能行使職權時，由董事長指定常務董事一人代理之；其未設常務董事者，指定董事一人代理之；董事長未指定代理人者，由常務董事或董事互推一人代理之。

常務董事於董事會休會時，依法令、章程、股東會決議及董事會決議，以集會方式經常執行董事會職權，由董事長隨時召集，以半數以上常務董事之出席，及出席過半數之決議行之。

第五十七條及第五十八條對於代表公司之董事準用之。

第 208-1 條 董事會不為或不能行使職權，致公司有受損害之虞時，法院因利害關係人或檢察官之聲請，得選任一人以上之臨時管理人，代行董事長及董事會之職權。但不得為不利於公司之行為。

前項臨時管理人，法院應囑託主管機關為之登記。

臨時管理人解任時，法院應囑託主管機關註銷登記。

第 209 條 董事為自己或他人為屬於公司營業範圍內之行為，應對股東會說明其行為之重要內容並取得其許可。

股東會為前項許可之決議，應有代表已發行股份總數三分之二以上股東之出席，以出席股東表決權過半數之同意行之。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。

前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。董事違反第一項之規定，為自己或他人為該行為時，股東會得以決議，將該行為之所得視為公司之所得。但自所得產生後逾一年者，不在此限。

第 210 條 除證券主管機關另有規定外，董事會應將章程及歷屆股東會議事錄、財務報表備置於本公司，並將股東名簿及公司債存根簿備置於本公司或股務代理機構。

前項章程及簿冊，股東及公司之債權人得檢具利害關係證明文件，指定範圍，隨時請求查閱或抄錄。

代表公司之董事，違反第一項規定，不備置章程、簿冊，或違反前項規定無正當理由而拒絕查閱或抄錄者，處新臺幣一萬元以上五萬元以下罰鍰。

第 211 條 公司虧損達實收資本額二分之一時，董事會應即召集股東會報告。

公司資產顯有不足抵償其所負債務時，除得依第二百八十二條辦理者外，董事會應即聲請宣告破產。

代表公司之董事，違反前二項規定者，處新臺幣二萬元以上十萬元以下罰鍰。

第 212 條 股東會決議對於董事提起訴訟時，公司應自決議之日起三十日內提起之。

第 213 條 公司與董事間訴訟，除法律另有規定外，由監察人代表公司，股東會亦得另選代表公司為訴訟之人。

第 214 條 繼續一年以上，持有已發行股份總數百分之三以上之股東，得以書面請求監察人為公司對董事提起訴訟。

監察人自有前項之請求日起，三十日內不提起訴訟時，前項之股東，得為公司提起訴訟；股東提起訴訟時，法院因被告之申請，得命起訴之股東，提供相當之擔保；如因敗訴，致公司受有損害，起訴之股東，對於公司負賠償之責。

第 215 條 提起前條第二項訴訟所依據之事實，顯屬虛構，經終局判決確定時，提起此項訴訟之股東，對於被訴之董事，因此訴訟所受之損害，負賠償責任。提起前條第二項訴訟所依據之事實，顯屬實在，經終局判決確定時，被訴

之董事，對於起訴之股東，因此訴訟所受之損害，負賠償責任。

#### 第 五 節 監 察 人

- 第 216 條 公司監察人，由股東會選任之，監察人中至少須有一人在國內有住所。  
公開發行股票之公司依前項選任之監察人須有二人以上，其全體監察人合計持股比例，證券管理機關另有規定者，從其規定。  
公司與監察人間之關係，從民法關於委任之規定。  
第三十條之規定及第一百九十二條第一項、第三項關於行為能力之規定，對監察人準用之。
- 第 216-1 條 公開發行股票之公司監察人選舉，依章程規定採候選人提名制度者，準用第一百九十二條之一規定。
- 第 217 條 監察人任期不得逾三年。但得連選連任。  
監察人任期屆滿而不及改選時，延長其執行職務至改選監察人就任時為止。但主管機關得依職權，限期令公司改選；屆期仍不改選者，自限期屆滿時，當然解任。
- 第 217-1 條 監察人全體均解任時，董事會應於三十日內召開股東臨時會選任之。但公開發行股票之公司，董事會應於六十日內召開股東臨時會選任之。
- 第 218 條 監察人應監督公司業務之執行，並得隨時調查公司業務及財務狀況，查核簿冊文件，並得請求董事會或經理人提出報告。  
監察人辦理前項事務，得代表公司委託律師、會計師審核之。  
違反第一項規定，妨礙、拒絕或規避監察人檢查行為者，各處新臺幣二萬元以上十萬元以下罰鍰。
- 第 218-1 條 董事發現公司有受重大損害之虞時，應立即向監察人報告。
- 第 218-2 條 監察人得列席董事會陳述意見。  
董事會或董事執行業務有違反法令、章程或股東會決議之行為者，監察人應即通知董事會或董事停止其行為。
- 第 219 條 監察人對於董事會編造提出股東會之各種表冊，應予查核，並報告意見於股東會。  
監察人辦理前項事務，得委託會計師審核之。  
監察人違反第一項規定而為虛偽之報告者，各科新臺幣六萬元以下罰金。
- 第 220 條 監察人除董事會不為召集或不能召集股東會外，得為公司利益，於必要時，召集股東會。
- 第 221 條 監察人各得單獨行使監察權。
- 第 222 條 監察人不得兼任公司董事、經理人或其他職員。

第 223 條 董事為自己或他人與公司為買賣、借貸或其他法律行為時，由監察人為公司之代表。

第 224 條 監察人執行職務違反法令、章程或怠忽職務，致公司受有損害者，對公司負賠償責任。

第 225 條 股東會決議，對於監察人提起訴訟時，公司應自決議之日起三十日內提起之。

前項起訴之代表，股東會得於董事外另行選任。

第 226 條 監察人對公司或第三人負損害賠償責任，而董事亦負其責任時，該監察人及董事為連帶債務人。

第 227 條 第一百九十六條至第二百零八條之一、第二百十四條及第二百五十五條之規定，於監察人準用之。但第二百十四條對監察人之請求，應向董事會為之。

#### 第 六 節 會 計

第 228 條 每會計年度終了，董事會應編造左列表冊，於股東常會開會三十日前交監察人查核：

- 一 營業報告書。
- 二 財務報表。
- 三 盈餘分派或虧損撥補之議案。

前項表冊，應依中央主管機關規定之規章編造。

第一項表冊，監察人得請求董事會提前交付查核。

第 229 條 董事會所造具之各項表冊與監察人之報告書，應於股東常會開會十日前，備置於本公司，股東得隨時查閱，並得偕同其所委託之律師或會計師查閱。

第 230 條 董事會應將其所造具之各項表冊，提出於股東常會請求承認，經股東常會承認後，董事會應將財務報表及盈餘分派或虧損撥補之決議，分發各股東。

公開發行股票之公司對於持有記名股票未滿一千股之股東，前項財務報表及盈餘分派或虧損撥補決議之分發各股東，得以公告方式為之。

第一項表冊及決議，公司債權人得要求給予或抄錄。

代表公司之董事，違反第一項規定不為分發者，處新臺幣一萬元以上五萬元以下罰鍰。

第 231 條 各項表冊經股東會決議承認後，視為公司已解除董事及監察人之責任。但董事或監察人有不法行為者，不在此限。

第 232 條 公司非彌補虧損及依本法規定提出法定盈餘公積後，不得分派股息及紅利

。

公司無盈餘時，不得分派股息及紅利。但法定盈餘公積已超過實收資本額百分之五十時，得以其超過部分派充股息及紅利。

公司負責人違反第一項或前項規定分派股息及紅利時，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金。

第 233 條 公司違反前條規定分派股息及紅利時，公司之債權人，得請求退還，並得請求賠償因此所受之損害。

第 234 條 公司依其業務之性質，自設立登記後，如需二年以上之準備，始能開始營業者，經主管機關之許可，得依章程之規定，於開始營業前分派股息。前項分派股息之金額，應以預付股息列入資產負債表之股東權益項下，公司開始營業後，每屆分派股息及紅利超過實收資本額百分之六時，應以其超過之金額扣抵沖銷之。

第 235 條 股息及紅利之分派，除章程另有規定外，以各股東持有股份之比例為準。章程應訂明員工分配紅利之成數。但經目的事業中央主管機關專案核定者，不在此限。

公營事業除經該公營事業之主管機關專案核定，並於章程訂明員工分配紅利之成數外，不適用前項本文之規定。

章程得訂明員工分配股票紅利之對象，包括符合一定條件之從屬公司員工。

第 236 條 (刪除)

第 237 條 公司於完納一切稅捐後，分派盈餘時，應先提出百分之十為法定盈餘公積。但法定盈餘公積，已達資本總額時，不在此限。

除前項法定盈餘公積外，公司得以章程訂定或股東會議決，另提特別盈餘公積。

公司負責人違反第一項規定，不提法定盈餘公積時，各科新臺幣六萬元以下罰金。

第 238 條 (刪除)

第 239 條 法定盈餘公積及資本公積，除填補公司虧損外，不得使用之。但第二百四十一條規定之情形，或法律另有規定者，不在此限。

公司非於盈餘公積填補資本虧損，仍有不足時，不得以資本公積補充之。

第 240 條 公司得由有代表已發行股份總數三分之二以上股東出席之股東會，以出席股東表決權過半數之決議，將應分派股息及紅利之全部或一部，以發行新股方式為之；不滿一股之金額，以現金分派之。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意

行之。

前二項出席股東股份總數及表決權數，章程有較高規定者，從其規定。

依前三項決議以紅利轉作資本時，依章程員工應分配之紅利，得發給新股或以現金支付之。

依本條發行新股，除公開發行股票之公司，應依證券管理機關之規定辦理者外，於決議之股東會終結時，即生效力，董事會應即分別通知各股東，或記載於股東名簿之質權人；其發行無記名股票者，並應公告之。

公開發行股票之公司，其股息及紅利之分派，章程訂明定額或比率並授權董事會決議辦理者，得以董事會三分之二以上董事之出席，及出席董事過半數之決議，依第一項及第四項規定，將應分派股息及紅利之全部或一部，以發行新股之方式為之，並報告股東會。

第 241 條 公司無虧損者，得依前條規定股東會決議之方法，將法定盈餘公積及左列資本公積之全部或一部撥充資本，按股東原有股份之比例發給新股：

一 超過票面金額發行股票所得之溢額。

二 受領贈與之所得。

前條第五項、第六項之規定，於前項準用之。

以法定盈餘公積撥充資本者，以該項公積已達實收資本百分之五十，並以撥充其半數為限。

第 242 條 (刪除)

第 243 條 (刪除)

第 244 條 (刪除)

第 245 條 繼續一年以上，持有已發行股份總數百分之三以上之股東，得聲請法院選派檢查人，檢查公司業務帳目及財產情形。

法院對於檢查人之報告認為必要時，得命監察人召集股東會。

對於檢查人之檢查有妨礙、拒絕或規避行為者，或監察人不遵法院命令召集股東會者，處新臺幣二萬元以上十萬元以下罰鍰。

#### 第 七 節 公 司 債

第 246 條 公司經董事會決議後，得募集公司債。但須將募集公司債之原因及有關事項報告股東會。

前項決議，應由三分之二以上董事之出席，及出席董事過半數之同意行之。

第 246-1 條 公司於發行公司債時，得約定其受償順序次於公司其他債權。

第 247 條 公司債之總額，不得逾公司現有全部資產減去全部負債及無形資產後之餘

額。

無擔保公司債之總額，不得逾前項餘額二分之一。

第 248 條 公司發行公司債時，應載明左列事項，向證券管理機關辦理之：

- 一 公司名稱。
- 二 公司債總額及債券每張之金額。
- 三 公司債之利率。
- 四 公司債償還方法及期限。
- 五 償還公司債款之籌集計畫及保管方法。
- 六 公司債募得價款之用途及運用計畫。
- 七 前已募集公司債者，其未償還之數額。
- 八 公司債發行價格或最低價格。
- 九 公司股份總數與已發行股份總數及其金額。
  - 一○ 公司現有全部資產，減去全部負債及無形資產後之餘額。
  - 一一 證券管理機關規定之財務報表。
  - 一二 公司債權人之受託人名稱及其約定事項。
  - 一三 代收款項之銀行或郵局名稱及地址。
  - 一四 有承銷或代銷機構者，其名稱及約定事項。
  - 一五 有發行擔保者，其種類、名稱及證明文件。
  - 一六 有發行保證人者，其名稱及證明文件。
  - 一七 對於前已發行之公司債或其他債務，曾有違約或遲延支付本息之事實或現況。
  - 一八 可轉換股份者，其轉換辦法。
  - 一九 附認股權者，其認購辦法。
- 二○ 董事會之議事錄。
- 二一 公司債其他發行事項，或證券管理機關規定之其他事項。

公司債之私募不受第二百四十九條第二款及第二百五十條第二款之限制，並於發行後十五日內檢附發行相關資料，向證券管理機關報備；私募之發行公司不以上市、上櫃、公開發行股票之公司為限。

前項私募人數不得超過三十五人。但金融機構應募者，不在此限。

公司就第一項各款事項有變更時，應即向證券管理機關申請更正；公司負責人不為申請更正時，由證券管理機關各處新臺幣一萬元以上五萬元以下罰鍰。

第一項第七款、第九款至第十一款、第十七款，應由會計師查核簽證；第十二款至第十六款，應由律師查核簽證。

第一項第十二款之受託人，以金融或信託事業為限，由公司於申請發行時約定之，並負擔其報酬。

第一項第十八款之可轉換股份數額或第十九款之可認購股份數額加計已發行股份總數、已發行轉換公司債可轉換股份總數、已發行附認股權公司債可認購股份總數、已發行附認股權特別股可認購股份總數及已發行認股權憑證可認購股份總數，如超過公司章程所定股份總數時，應先完成變更章程增加資本額後，始得為之。

第 249 條 公司有左列情形之一者，不得發行無擔保公司債：

- 一 對於前已發行之公司債或其他債務，曾有違約或遲延支付本息之事實已了結者。
- 二 最近三年或開業不及三年之開業年度課稅後之平均淨利，未達原定發行之公司債，應負擔年息總額之百分之一百五十者。

第 250 條 公司有左列情形之一者，不得發行公司債：

- 一 對於前已發行之公司債或其他債務有違約或遲延支付本息之事實，尚在繼續中者。
- 二 最近三年或開業不及三年之開業年度課稅後之平均淨利，未達原定發行之公司債應負擔年息總額之百分之一百者。但經銀行保證發行之公司債不受限制。

第 251 條 公司發行公司債經核准後，如發現其申請事項，有違反法令或虛偽情形時，證券管理機關得撤銷核准。

為前項撤銷核准時，未發行者，停止募集；已發行者，即時清償。其因此所發生之損害，公司負責人對公司及應募人負連帶賠償責任。

第一百三十五條第二項規定，於本條第一項準用之。

第 252 條 公司發行公司債之申請經核准後，董事會應於核准通知到達之日起三十日內，備就公司債應募書，附載第二百四十八條第一項各款事項，加記核准之證券管理機關與年、月、日、文號，並同時將其公告，開始募集。但第二百四十八條第一項第十一款之財務報表，第十二款及第十四款之約定事項，第十五款及第十六款之證明文件，第二十款之議事錄等事項，得免予公告。

超過前項期限未開始募集而仍須募集者，應重行申請。

代表公司之董事，違反第一項規定，不備應募書者，由證券管理機關處新臺幣一萬元以上五萬元以下罰鍰。

第 253 條 應募人應在應募書上填寫所認金額及其住所或居所，簽名或蓋章，並照所填應募書負繳款之義務。

應募人以現金當場購買無記名公司債券者，免填前項應募書。

第 254 條 公司債經應募人認定後，董事會應向未交款之各應募人請求繳足其所認金額。

第 255 條 董事會在實行前條請求前，應將全體記名債券應募人之姓名、住所或居所暨其所認金額，及已發行之無記名債券張數、號碼暨金額，開列清冊，連同第二百四十八條第一項各款所定之文件，送交公司債債權人之受託人。前項受託人，為應募人之利益，有查核及監督公司履行公司債發行事項之權。

第 256 條 公司為發行公司債所設定之抵押權或質權，得由受託人為債權人取得，並得於公司債發行前先行設定。

受託人對於前項之抵押權或質權或其擔保品，應負責實行或保管之。

第 257 條 公司債之債券應編號載明發行之年、月、日及第二百四十八條第一項第一款至第四款、第十八款及第十九款之事項，有擔保、轉換或可認購股份者，載明擔保、轉換或可認購字樣，由董事三人以上簽名或蓋章，並經證券管理機關或其核定之發行登記機構簽證後發行之。

有擔保之公司債除前項應記載事項外，應於公司債正面列示保證人名稱，並由其簽名或蓋章。

第 257-1 條 公司發行公司債時，其債券就該次發行總額得合併印製。

依前項規定發行之公司債，應洽證券集中保管事業機構保管。

依第一項規定發行公司債時，不適用第二百四十八條第一項第二款、第二百五十七條、第二百五十八條及第二百六十條有關債券每張金額、編號及背書轉讓之規定。

第 257-2 條 公司發行之公司債，得免印製債券，並應洽證券集中保管事業機構登錄。

第 258 條 公司債存根簿，應將所有債券依次編號，並載明左列事項：

- 一 公司債債權人之姓名或名稱及住所或居所。
  - 二 第二百四十八條第一項第二款至第四款之事項，第十二款受託人之名稱，第十五款、第十六款之發行擔保及保證、第十八款之轉換及第十九款之可認購事項。
  - 三 公司債發行之年、月、日。
  - 四 各債券持有人取得債券之年、月、日。
- 無記名債券，應以載明無記名字樣，替代前項第一款之記載。

第 259 條 公司募集公司債款後，未經申請核准變更，而用於規定事項以外者，處公司負責人一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金，如公司因此受有損害時，對於公司並負賠償責任。

第 260 條 記名式之公司債券，得由持有人以背書轉讓之。但非將受讓人之姓名或名稱，記載於債券，並將受讓人之姓名或名稱及住所或居所記載於公司債存根簿，不得以其轉讓對抗公司。

第 261 條 債券為無記名式者，債權人得隨時請求改為記名式。

第 262 條 公司債約定得轉換股份者，公司有依其轉換辦法核給股份之義務。但公司債債權人有選擇權。

公司債附認股權者，公司有依其認購辦法核給股份之義務。但認股權憑證持有人有選擇權。

第 263 條 發行公司債之公司，公司債債權人之受託人，或有同次公司債總數百分之五以上之公司債債權人，得為公司債債權人之共同利害關係事項，召集同次公司債債權人會議。

前項會議之決議，應有代表公司債債權總額四分之三以上債權人之出席，以出席債權人表決權三分之二以上之同意行之，並按每一公司債券最低票面金額有一表決權。

無記名公司債債權人，出席第一項會議者，準用股份有限公司無記名股票之股東出席股東會之規定。

第 264 條 前條債權人會議之決議，應製成議事錄，由主席簽名，經申報公司所在地之法院認可並公告後，對全體公司債債權人發生效力，由公司債債權人之受託人執行之。但債權人會議另有指定者，從其指定。

第 265 條 公司債債權人會議之決議，有左列情事之一者，法院不予認可：

一 召集公司債債權人會議之手續或其決議方法，違反法令或應募書之記載者。

二 決議不依正當方法達成者。

三 決議顯失公正者。

四 決議違反債權人一般利益者。

#### 第 八 節 發行新股

第 266 條 公司依第一百五十六條第二項分次發行新股，或依第二百七十八條第二項發行增資後之新股，均依本節之規定。

公司發行新股時，應由董事會以董事三分之二以上之出席，及出席董事過半數同意之決議行之。

第一百四十一條、第一百四十二條之規定，於發行新股準用之。

第 267 條 公司發行新股時，除經目的事業中央主管機關專案核定者外，應保留發行新股總數百分之十至十五之股份由公司員工承購。

公營事業經該公營事業之主管機關專案核定者，得保留發行新股由員工承購；其保留股份，不得超過發行新股總數百分之十。

公司發行新股時，除依前二項保留者外，應公告及通知原有股東，按照原有股份比例儘先分認，並聲明逾期不認購者，喪失其權利；原有股東持有股份按比例不足分認一新股者，得合併共同認購或歸併一人認購；原有股

東未認購者，得公開發行或洽由特定人認購。

前三項新股認購權利，除保留由員工承購者外，得與原有股份分離而獨立轉讓。

第一項、第二項所定保留員工承購股份之規定，於以公積或資產增值抵充，核發新股予原有股東者，不適用之。

公司對員工依第一項、第二項承購之股份，得限制在一定期間內不得轉讓。但其期間最長不得超過二年。

本條規定，對因合併他公司、分割、公司重整或依第一百六十七條之二、第二百六十二條、第二百六十八條之一第一項而增發新股者，不適用之。

公司負責人違反第一項規定者，各處新臺幣二萬元以上十萬元以下罰鍰。

第 268 條 公司發行新股時，除由原有股東及員工全部認足或由特定人協議認購而不公開發行者外，應將左列事項，申請證券管理機關核准，公開發行：

- 一 公司名稱。
- 二 原定股份總數、已發行數額及金額。
- 三 發行新股總數、每股金額及其他發行條件。
- 四 證券管理機關規定之財務報表。
- 五 增資計畫。
- 六 發行特別股者，其種類、股數、每股金額及第一百五十七條各款事項。
- 七 發行認股權憑證或附認股權特別股者，其可認購股份數額及其認股辦法。
- 八 代收股款之銀行或郵局名稱及地址。
- 九 有承銷或代銷機構者，其名稱及約定事項。
- 一〇 發行新股決議之議事錄。
- 一一 證券管理機關規定之其他事項。

公司就前項各款事項有變更時，應即向證券管理機關申請更正；公司負責人不為申請更正者，由證券管理機關各處新臺幣一萬元以上五萬元以下罰鍰。

第一項第二款至第四款及第六款，由會計師查核簽證；第八款、第九款，由律師查核簽證。

第一項、第二項規定，對於第二百六十七條第五項之發行新股，不適用之。

前項發行新股之股數、認股權憑證或附認股權特別股可認購股份數額加計已發行股份總數、已發行轉換公司債可轉換股份總數、已發行附認股權公司債可認購股份總數、已發行附認股權特別股可認購股份總數及已發行認股權憑證可認購股份總數，如超過公司章程所定股份總數時，應先完成變

更章程增加資本額後，始得為之。

第 268-1 條 公司發行認股權憑證或附認股權特別股者，有依其認股辦法核給股份之義務，不受第二百六十九條及第二百七十條規定之限制。但認股權憑證持有人有選擇權。

第二百六十六條第二項、第二百七十一條第一項、第二項、第二百七十二條及第二百七十三條第二項、第三項之規定，於公司發行認股權憑證時，準用之。

第 269 條 公司有左列情形之一者，不得公開發行具有優先權利之特別股：

- 一 最近三年或開業不及三年之開業年度課稅後之平均淨利，不足支付已發行及擬發行之特別股股息者。
- 二 對於已發行之特別股約定股息，未能按期支付者。

第 270 條 公司有左列情形之一者，不得公開發行新股：

- 一 最近連續二年有虧損者。但依其事業性質，須有較長準備期間或具有健全之營業計畫，確能改善營利能力者，不在此限。
- 二 資產不足抵償債務者。

第 271 條 公司公開發行新股經核准後，如發現其申請事項，有違反法令或虛偽情形時，證券管理機關得撤銷其核准。

為前項撤銷核准時：未發行者，停止發行；已發行者，股份持有人，得於撤銷時起，向公司依股票原定發行金額加算法定利息，請求返還；因此所發生之損害，並得請求賠償。

第一百三十五條第二項之規定，於本條準用之。

第 272 條 公司公開發行新股時，應以現金為股款。但由原有股東認購或由特定人協議認購，而不公開發行者，得以公司事業所需之財產為出資。

第 273 條 公司公開發行新股時，董事會應備置認股書，載明左列事項，由認股人填寫所認股數、種類、金額及其住所或居所，簽名或蓋章：

- 一 第一百二十九條第一項第一款至第六款及第一百三十條之事項。
- 二 原定股份總數，或增加資本後股份總數中已發行之數額及其金額。
- 三 第二百六十八條第一項第三款至第十一款之事項。
- 四 股款繳納日期。

公司公開發行新股時，除在前項認股書加記證券管理機關核准文號及年、月、日外，並應將前項各款事項，於證券管理機關核准通知到達後三十日內，加記核准文號及年、月、日，公告並發行之。但營業報告、財產目錄、議事錄、承銷或代銷機構約定事項，得免予公告。

超過前項期限仍須公開發行時，應重行申請。

認股人以現金當場購買無記名股票者，免填第一項之認股書。

代表公司之董事，違反第一項規定，不備置認股書者，由證券管理機關處新臺幣一萬元以上五萬元以下罰鍰。

第 274 條 公司發行新股，而依第二百七十二條但書不公開發行時，仍應依前條第一項之規定，備置認股書；如以現金以外之財產抵繳股款者，並於認股書加載其姓名或名稱及其財產之種類、數量、價格或估價之標準及公司核給之股數。

前項財產出資實行後，董事會應送請監察人查核加具意見，報請主管機關核定之。

第 275 條 (刪除)

第 276 條 發行新股超過股款繳納期限，而仍有未經認購或已認購而撤回或未繳股款者，其已認購繳款之股東，得定一個月以上之期限，催告公司使認購足額並繳足股款；逾期不能完成時，得撤回認股，由公司返回其股款，並加給法定利息。

有行為之董事，對於因前項情事所致公司之損害，應負連帶賠償責任。

#### 第 九 節 變更章程

第 277 條 公司非經股東會決議，不得變更章程。

前項股東會之決議，應有代表已發行股份總數三分之二以上之股東出席，以出席股東表決權過半數之同意行之。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。

前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。

第 278 條 公司非將已規定之股份總數，全數發行後，不得增加資本。

增加資本後之股份總數，得分次發行。

第 279 條 因減少資本換發新股票時，公司應於減資登記後，定六個月以上之期限，通知各股東換取，並聲明逾期不換取者，喪失其股東之權利；發行無記名股票者，並應公告之。

股東於前項期限內不換取者，即喪失其股東之權利，公司得將其股份拍賣，以賣得之金額，給付該股東。

公司負責人違反本條通知或公告期限之規定時，各處新臺幣三千元以上一萬五千元以下罰鍰。

第 280 條 因減少資本而合併股份時，其不適於合併之股份之處理，準用前條第二項之規定。

第 281 條 第七十三條及第七十四條之規定，於減少資本準用之。

第 一〇 節 公司重整

第 282 條 公開發行股票或公司債之公司，因財務困難，暫停營業或有停業之虞，而有重建更生之可能者，得由公司或左列利害關係人之一向法院聲請重整：

- 一 繼續六個月以上持有已發行股份總數百分之十以上股份之股東。
- 二 相當於公司已發行股份總數金額百分之十以上之公司債權人。

公司為前項聲請，應經董事會以董事三分之二以上之出席及出席董事過半數同意之決議行之。

第 283 條 公司重整之聲請，應由聲請人以書狀連同副本五份，載明左列事項，向法院為之：

- 一 聲請人之姓名及住所或居所；聲請人為法人、其他團體或機關者，其名稱及公務所、事務所或營業所。
- 二 有法定代理人、代理人者，其姓名、住所或居所，及法定代理人與聲請人之關係。
- 三 公司名稱、所在地、事務所或營業所及代表公司之負責人姓名、住所或居所。
- 四 聲請之原因及事實。
- 五 公司所營事業及業務狀況。
- 六 公司最近一年度依第二百二十八條規定所編造之表冊；聲請日期已逾年度開始六個月者，應另送上半年之資產負債表。
- 七 對於公司重整之具體意見。

前項第五款至第七款之事項，得以附件補充之。

公司為聲請時，應提出重整之具體方案。

股東或債權人為聲請時，應檢同釋明其資格之文件，對第一項第五款及第六款之事項，得免予記載。

第 283-1 條 重整之聲請，有左列情形之一者，法院應裁定駁回：

- 一 聲請程序不合者。但可以補正者，應限期命其補正。
- 二 公司未依本法公開發行股票或公司債者。
- 三 公司經宣告破產已確定者。
- 四 公司依破產法所為之和解決議已確定者。
- 五 公司已解散者。
- 六 公司被勒令停業限期清理者。

第 284 條 法院對於重整之聲請，除依前條之規定裁定駁回者外，應即將聲請書狀副本，檢送主管機關、目的事業中央主管機關、中央金融主管機關及證券管理機關，並徵詢其關於應否重整之具體意見。

法院對於重整之聲請，並得徵詢本公司所在地之稅捐稽徵機關及其他有關

機關、團體之意見。

前二項被徵詢意見之機關，應於三十日內提出意見。

聲請人為股東或債權人時，法院應檢同聲請書狀副本，通知該公司。

第 285 條 法院除為前條徵詢外，並得就對公司業務具有專門學識、經營經驗而非利害關係人者，選任為檢查人，就左列事項於選任後三十日內調查完畢報告法院：

- 一 公司業務、財務狀況及資產估價。
- 二 依公司業務、財務、資產及生產設備之分析，是否尚有重建更生之可能。
- 三 公司以往業務經營之得失及公司負責人執行業務有無怠忽或不當情形。
- 四 聲請書狀所記載事項有無虛偽不實情形。
- 五 聲請人為公司者，其所提重整方案之可行性。
- 六 其他有關重整之方案。

檢查人對於公司業務或財務有關之一切簿冊、文件及財產，得加以檢查。

公司之董事、監察人、經理人或其他職員，對於檢查人關於業務財務之詢問，有答覆之義務。

公司之董事、監察人、經理人或其他職員，拒絕前項檢查，或對前項詢問無正當理由不為答覆，或為虛偽陳述者，處新臺幣二萬元以上十萬元以下罰鍰。

第 285-1 條 法院依檢查人之報告，並參考目的事業中央主管機關、證券管理機關、中央金融主管機關及其他有關機關、團體之意見，應於收受重整聲請後一百二十日內，為准許或駁回重整之裁定，並通知各有關機關。

前項一百二十日之期間，法院得以裁定延長之，每次延長不得超過三十日。但以二次為限。

有左列情形之一者，法院應裁定駁回重整之聲請：

- 一 聲請書狀所記載事項有虛偽不實者。
- 二 依公司業務及財務狀況無重建更生之可能者。

法院依前項第二款於裁定駁回時，其合於破產規定者，法院得依職權宣告破產。

第 286 條 法院於裁定重整前，得命公司負責人，於七日內就公司債權人及股東，依其權利之性質，分別造報名冊，並註明住所或居所及債權或股份總金額。

第 287 條 法院為公司重整之裁定前，得因公司或利害關係人之聲請或依職權，以裁定為左列各款處分：

- 一 公司財產之保全處分。

二 公司業務之限制。

三 公司履行債務及對公司行使債權之限制。

四 公司破產、和解或強制執行等程序之停止。

五 公司記名式股票轉讓之禁止。

六 公司負責人，對於公司損害賠償責任之查定及其財產之保全處分。

前項處分，除法院准予重整外，其期間不得超過九十日；必要時，法院得由公司或利害關係人之聲請或依職權以裁定延長之；其延長期間不得超過九十日。

前項期間屆滿前，重整之聲請駁回確定者，第一項之裁定失其效力。

法院為第一項之裁定時，應將裁定通知證券管理機關及相關之目的事業中央主管機關。

第 288 條 (刪除)

第 289 條 法院為重整裁定時，應就對公司業務，具有專門學識及經營經驗者或金融機構，選任為重整監督人，並決定下列事項：

一、債權及股東權之申報期日及場所，其期間應在裁定之日起十日以上，三十日以下。

二、所申報之債權及股東權之審查期日及場所，其期間應在前款申報期間屆滿後十日以內。

三、第一次關係人會議期日及場所，其期日應在第一款申報期間屆滿後三十日以內。

前項重整監督人，應受法院監督，並得由法院隨時改選。

重整監督人有數人時，關於重整事務之監督執行，以其過半數之同意行之。

第 290 條 公司重整人由法院就債權人、股東、董事、目的事業中央主管機關或證券管理機關推薦之專家中選派之。

第三十條之規定，於前項公司重整人準用之。

關係人會議，依第三百零二條分組行使表決權之結果，有二組以上主張另行選定重整人時，得提出候選人名單，聲請法院選派之。

重整人有數人時，關於重整事務之執行，以其過半數之同意行之。

重整人執行職務應受重整監督人之監督，其有違法或不當情事者，重整監督人得聲請法院解除其職務，另行選派之。

重整人為下列行為時，應於事前徵得重整監督人之許可：

一、營業行為以外之公司財產之處分。

二、公司業務或經營方法之變更。

三、借款。

四、重要或長期性契約之訂立或解除，其範圍由重整監督人定之。

五、訴訟或仲裁之進行。

六、公司權利之拋棄或讓與。

七、他人行使取回權、解除權或抵銷權事件之處理。

八、公司重要人事之任免。

九、其他經法院限制之行為。

第 291 條 法院為重整裁定後，應即公告左列事項：

一 重整裁定之主文及其年、月、日。

二 重整監督人、重整人之姓名或名稱、住址或處所。

三 第二百八十九條第一項所定期間、期日及場所。

四 公司債權人及持有無記名股票之股東怠於申報權利時，其法律效果。

法院對於重整監督人、重整人、公司、已知之公司債權人及股東，仍應將前項裁定及所列各事項，以書面送達之。

法院於前項裁定送達公司時，應派書記官於公司帳簿，記明截止意旨，簽名或蓋章，並作成節略，載明帳簿狀況。

第 292 條 法院為重整裁定後，應檢同裁定書，通知主管機關，為重整開始之登記，並由公司將裁定書影本黏貼於該公司所在地公告處。

第 293 條 重整裁定送達公司後，公司業務之經營及財產之管理處分權移屬於重整人，由重整監督人監督交接，並聲報法院，公司股東會、董事及監察人之職權，應予停止。

前項交接時，公司董事及經理人，應將有關公司業務及財務之一切帳冊、文件與公司之一切財產，移交重整人。

公司之董事、監察人、經理人或其他職員，對於重整監督人或重整人所為關於業務或財務狀況之詢問，有答覆之義務。

公司之董事、監察人、經理人或其他職員，有左列行為之一者，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金：

一 拒絕移交。

二 隱匿或毀損有關公司業務或財務狀況之帳冊文件。

三 隱匿或毀棄公司財產或為其他不利於債權人之處分。

四 無故對前項詢問不為答覆。

五 捏造債務或承認不真實之債務。

第 294 條 裁定重整後，公司之破產、和解、強制執行及因財產關係所生之訴訟等程序，當然停止。

第 295 條 法院依第二百八十七條第一項第一、第二、第五及第六各款所為之處分，不因裁定重整失其效力，其未為各該款處分者，於裁定重整後，仍得依利

害關係人或重整監督人之聲請，或依職權裁定之。

**第 296 條** 對公司之債權，在重整裁定前成立者，為重整債權；其依法享有優先受償權者，為優先重整債權；其有抵押權、質權或留置權為擔保者，為有擔保重整債權；無此項擔保者，為無擔保重整債權；各該債權，非依重整程序，均不得行使權利。

破產法破產債權節之規定，於前項債權準用之。但其中有關別除權及優先權之規定，不在此限。

取回權、解除權或抵銷權之行使，應向重整人為之。

**第 297 條** 重整債權人，應提出足資證明其權利存在之文件，向重整監督人申報。經申報者，其時效中斷；未經申報者，不得依重整程序受清償。

公司記名股東之權利，依股東名簿之記載；無記名股東之權利，應準用前項規定申報，未經申報者，不得依重整程序，行使其權利。

前二項應為申報之人，因不可歸責於自己之事由，致未依限申報者，得於事由終止後十五日內補報之。但重整計劃已經關係人會議可決時，不得補報。

**第 298 條** 重整監督人，於權利申報期間屆滿後，應依其初步審查之結果，分別製作優先重整債權人、有擔保重整債權人、無擔保重整債權人及股東清冊，載明權利之性質、金額及表決權數額，於第二百八十九條第一項第二款期日之三日以前，聲報法院及備置於適當處所，並公告其開始備置日期及處所，以供重整債權人、股東及其他利害關係人查閱。

重整債權人之表決權，以其債權之金額比例定之；股東表決權，依公司章程之規定。

**第 299 條** 法院審查重整債權及股東權之期日，重整監督人、重整人及公司負責人，應到場備詢，重整債權人、股東及其他利害關係人，得到場陳述意見。

有異議之債權或股東權，由法院裁定之。

就債權或股東權有實體上之爭執者，應由爭執之利害關係人，於前項裁定送達後二十日內提起確認之訴，並應向法院為起訴之證明；經起訴後在判決確定前，仍依前項裁定之內容及數額行使其權利。但依重整計劃受清償時，應予提存。

重整債權或股東權，在法院宣告審查終結前，未經異議者，視為確定；對公司及全體股東、債權人有確定判決同一之效力。

**第 300 條** 重整債權人及股東，為公司重整之關係人，出席關係人會議，因故不能出席時，得委託他人代理出席。

關係人會議由重整監督人為主席，並召集除第一次以外之關係人會議。

重整監督人，依前項規定召集會議時，於五日前訂明會議事由，以通知及

公告為之。一次集會未能結束，經重整監督人當場宣告連續或展期舉行者，得免為通知及公告。

關係人會議開會時，重整人及公司負責人應列席備詢。

公司負責人無正當理由對前項詢問不為答覆或為虛偽之答覆者，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金。

第 301 條 關係人會議之任務如左：

- 一 聽取關於公司業務與財務狀況之報告及對於公司重整之意見。
- 二 審議及表決重整計劃。
- 三 決議其他有關重整之事項。

第 302 條 關係人會議，應分別按第二百九十八條第一項規定之權利人，分組行使其表決權，其決議以經各組表決權總額二分之一以上之同意行之。

公司無資本淨值時，股東組不得行使表決權。

第 303 條 重整人應擬訂重整計劃，連同公司業務及財務報表，提請第一次關係人會議審查。

重整人經依第二百九十條之規定另選者，重整計畫，應由新任重整人於一個月內提出之。

第 304 條 公司重整如有左列事項，應訂明於重整計畫：

- 一 全部或一部重整債權人或股東權利之變更。
- 二 全部或一部營業之變更。
- 三 財產之處分。
- 四 債務清償方法及其資金來源。
- 五 公司資產之估價標準及方法。
- 六 章程之變更。
- 七 員工之調整或裁減。
- 八 新股或公司債之發行。
- 九 其他必要事項。

前項重整計畫之執行，除債務清償期限外，自法院裁定認可確定之日起算不得超過一年；其有正當理由，不能於一年內完成時，得經重整監督人許可，聲請法院裁定延展期限；期限屆滿仍未完成者，法院得依職權或依關係人之聲請裁定終止重整。

第 305 條 重整計畫經關係人會議可決者，重整人應聲請法院裁定認可後執行之，並報主管機關備查。

前項法院認可之重整計畫，對於公司及關係人均有拘束力，其所載之給付義務，適於為強制執行之標的者，並得逕予強制執行。

第 306 條 重整計畫未得關係人會議有表決權各組之可決時，重整監督人應即報告法

院，法院得依公正合理之原則，指示變更方針，命關係人會議在一個月內再予審查。

前項重整計畫，經指示變更再予審查，仍未獲關係人會議可決時，應裁定終止重整。但公司確有重整之價值者，法院就其不同意之組，得以下列方法之一，修正重整計畫裁定認可之：

- 一、有擔保重整債權人之擔保財產，隨同債權移轉於重整後之公司，其權利仍存續不變。
- 二、有擔保重整債權人，對於擔保之財產；無擔保重整債權人，對於可充清償其債權之財產；股東對於可充分派之賸餘財產；均得分別依公正交易價額，各按應得之份，處分清償或分派承受或提存之。
- 三、其他有利於公司業務維持及債權人權利保障之公正合理方法。

前條第一項或前項重整計畫，因情事變遷或有正當理由致不能或無須執行時，法院得因重整監督人、重整人或關係人之聲請，以裁定命關係人會議重行審查，其顯無重整之可能或必要者，得裁定終止重整。

前項重行審查可決之重整計畫，仍應聲請法院裁定認可。

關係人會議，未能於重整裁定送達公司後一年內可決重整計畫者，法院得依聲請或依職權裁定終止重整；其經法院依第三項裁定命重行審查，而未能於裁定送達後一年內可決重整計畫者，亦同。

第 307 條 法院為前二條處理時，應徵詢主管機關、目的事業中央主管機關及證券管理機關之意見。

法院為終止重整之裁定，應檢同裁定書通知主管機關；裁定確定時，主管機關應即為終止重整之登記；其合於破產規定者，法院得依職權宣告其破產。

第 308 條 法院裁定終止重整，除依職權宣告公司破產者，依破產法之規定外，有左列效力：

- 一 依第二百八十七條、第二百九十四條、第二百九十五條或第二百九十六條所為之處分或所生之效力，均失效力。
- 二 因怠於申報權利，而不能行使權利者，恢復其權利。
- 三 因裁定重整而停止之股東會、董事及監察人之職權，應即恢復。

第 309 條 公司重整中，左列各款規定，如與事實確有扞格時，經重整人聲請法院，得裁定另作適當之處理：

- 一 第二百七十七條變更章程之規定。
- 二 第二百七十八條增資之規定。
- 三 第二百七十九條及第二百八十一條減資之通知公告期間及限制之規定。

- 四 第二百六十八條至第二百七十條及第二百七十六條發行新股之規定。
- 五 第二百四十八條至第二百五十條，發行公司債之規定。
- 六 第一百二十八條、第一百三十三條、第一百四十八條至第一百五十條及第一百五十五條設立公司之規定。
- 七 第二百七十二條出資種類之規定。

第 310 條 公司重整人，應於重整計畫所定期限內完成重整工作；重整完成時，應聲請法院為重整完成之裁定，並於裁定確定後，召集重整後之股東會選任董事、監察人。

前項董事、監察人於就任後，應會同重整人向主管機關申請登記或變更登記。

第 311 條 公司重整完成後，有左列效力：

- 一 已申報之債權未受清償部分，除依重整計畫處理，移轉重整後之公司承受者外，其請求權消滅；未申報之債權亦同。
- 二 股東股權經重整而變更或減除之部分，其權利消滅；未申報之無記名股票之權利亦同。
- 三 重整裁定前，公司之破產、和解、強制執行及因財產關係所生之訴訟等程序，即行失其效力。

公司債權人對公司債務之保證人及其他共同債務人之權利，不因公司重整而受影響。

第 312 條 左列各款，為公司之重整債務，優先於重整債權而為清償：

- 一 維持公司業務繼續營運所發生之債務。
- 二 進行重整程序所發生之費用。

前項優先受償權之效力，不因裁定終止重整而受影響。

第 313 條 檢查人、重整監督人或重整人，應以善良管理人之注意，執行其職務，其報酬由法院依其職務之繁簡定之。

檢查人、重整監督人或重整人，執行職務違反法令，致公司受有損害時，對於公司應負賠償責任。

檢查人、重整監督人或重整人，對於職務上之行為，有虛偽陳述時，各處一年以下有期徒刑、拘役或科或併科新臺幣六萬元以下罰金。

第 314 條 關於本節之管轄及聲請通知送達公告裁定或抗告等，應履行之程序，準用民事訴訟法之規定。

#### 第 一一 節 解散、合併及分割

第 315 條 股份有限公司，有左列情事之一者，應予解散：

- 一 章程所定解散事由。
- 二 公司所營事業已成就或不能成就。

三 股東會為解散之決議。

四 有記名股票之股東不滿二人。但政府或法人股東一人者，不在此限。

五 與他公司合併。

六 分割。

七 破產。

八 解散之命令或裁判。

前項第一款得經股東會議變更章程後，繼續經營；第四款本文得增加有記名股東繼續經營。

第 316 條 股東會對於公司解散、合併或分割之決議，應有代表已發行股份總數三分之二以上股東之出席，以出席股東表決權過半數之同意行之。

公開發行股票之公司，出席股東之股份總數不足前項定額者，得以有代表已發行股份總數過半數股東之出席，出席股東表決權三分之二以上之同意行之。

前二項出席股東股份總數及表決權數，章程有較高之規定者，從其規定。

公司解散時，除破產外，董事會應即將解散之要旨，通知各股東，其有發行無記名股票者，並應公告之。

第 316-1 條 股份有限公司相互間合併，或股份有限公司與有限公司合併者，其存續或新設公司以股份有限公司為限。

股份有限公司分割者，其存續公司或新設公司以股份有限公司為限。

第 316-2 條 控制公司持有從屬公司百分之九十以上已發行股份者，得經控制公司及從屬公司之董事會以董事三分之二以上出席，及出席董事過半數之決議，與其從屬公司合併。其合併之決議，不適用第三百十六條第一項至第三項有關股東會決議之規定。

從屬公司董事會為前項決議後，應即通知其股東，並指定三十日以上期限，聲明其股東得於期限內提出書面異議，請求從屬公司按當時公平價格，收買其持有之股份。

從屬公司股東與從屬公司間依前項規定協議決定股份價格者，公司應自董事會決議日起九十日內支付價款；其自董事會決議日起六十日內未達協議者，股東應於此期間經過後三十日內，聲請法院為價格之裁定。

第二項從屬公司股東收買股份之請求，於公司取銷合併之決議時，失其效力。股東於第二項及第三項規定期間內不為請求或聲請時，亦同。

第三百十七條有關收買異議股東所持股份之規定，於控制公司不適用之。

控制公司因合併而修正其公司章程者，仍應依第二百七十七條規定辦理。

第 317 條 公司分割或與他公司合併時，董事會應就分割、合併有關事項，作成分割計畫、合併契約，提出於股東會；股東在集會前或集會中，以書面表示異

議，或以口頭表示異議經紀錄者，得放棄表決權，而請求公司按當時公平價格，收買其持有之股份。

他公司為新設公司者，被分割公司之股東會視為他公司之發起人會議，得同時選舉新設公司之董事及監察人。

第一百八十七條及第一百八十八條之規定，於前項準用之。

第 317- 1 條

前條第一項所指之合併契約，應以書面為之，並記載左列事項：

- 一 合併之公司名稱，合併後存續公司之名稱或新設公司之名稱。
- 二 存續公司或新設公司因合併發行股份之總數、種類及數量。
- 三 存續公司或新設公司因合併對於消滅公司股東配發新股之總數、種類及數量與配發之方法及其他有關事項。
- 四 對於合併後消滅之公司，其股東配發之股份不滿一股應支付現金者，其有關規定。
- 五 存續公司之章程需變更者或新設公司依第一百二十九條應訂立之章程。

前項之合併契約書，應於發送合併承認決議股東會之召集通知時，一併發送於股東。

第 317- 2 條

第三百十七條第一項之分割計畫，應以書面為之，並記載左列事項：

- 一 承受營業之既存公司章程需變更事項或新設公司章程。
- 二 被分割公司讓與既存公司或新設公司之營業價值、資產、負債、換股比例及計算依據。
- 三 承受營業之既存公司發行新股或新設公司發行股份之總數、種類及數量。
- 四 被分割公司或其股東所取得股份之總數、種類及數量。
- 五 對被分割公司或其股東配發之股份不滿一股應支付現金者，其有關規定。
- 六 既存公司或新設公司承受被分割公司權利義務及其相關事項。
- 七 被分割公司之資本減少時，其資本減少有關事項。
- 八 被分割公司之股份銷除所需辦理事項。
- 九 與他公司共同為公司分割者，分割決議應記載其共同為公司分割有關事項。

前項分割計畫書，應於發送分割承認決議股東會之召集通知時，一併發送於股東。

第 317- 3 條

(刪除)

第 318 條 公司合併後，存續公司之董事會，或新設公司之發起人，於完成催告債權

人程序後，其因合併而有股份合併者，應於股份合併生效後；其不適於合併者，應於該股份為處分後，分別循左列程序行之：

一 存續公司，應即召集合併後之股東會，為合併事項之報告，其有變更章程必要者，並為變更章程。

二 新設公司，應即召開發起人會議，訂立章程。

前項章程，不得違反合併契約之規定。

第 319 條 第七十三條至第七十五條之規定，於股份有限公司之合併或分割準用之。

第 319-1 條 分割後受讓營業之既存公司或新設公司，應就分割前公司所負債務於其受讓營業之出資範圍負連帶清償責任。但債權人之連帶清償責任請求權，自分割基準日起二年內不行使而消滅。

第 320 條 (刪除)

第 321 條 (刪除)

## 第 一二 節 清算

### 第 一 目 普通清算

第 322 條 公司之清算，以董事為清算人。但本法或章程另有規定或股東會另選清算人時，不在此限。

不能依前項之規定定清算人時，法院得因利害關係人之聲請，選派清算人。

第 323 條 清算人除由法院選派者外，得由股東會決議解任。

法院因監察人或繼續一年以上持有已發行股份總數百分之三以上股份股東之聲請，得將清算人解任。

第 324 條 清算人於執行清算事務之範圍內，除本節有規定外，其權利義務與董事同。

第 325 條 清算人之報酬，非由法院選派者，由股東會議定；其由法院選派者，由法院決定之。

清算費用及清算人之報酬，由公司現存財產中儘先給付。

第 326 條 清算人就任後，應即檢查公司財產情形，造具財務報表及財產目錄，送經監察人審查，提請股東會承認後，並即報法院。

前項表冊送交監察人審查，應於股東會集會十日前為之。

對於第一項之檢查有妨礙、拒絕或規避之行為者，各處新臺幣二萬元以上十萬元以下罰鍰。

第 327 條 清算人於就任後，應即以三次以上之公告，催告債權人於三個月內申報其債權，並應聲明逾期不申報者，不列入清算之內。但為清算人所明知者，不在此限。其債權人為清算人所明知者，並應分別通知之。

第 328 條 清算人不得於前條所定之申報期限內，對債權人為清償。但對於有擔保之債權，經法院許可者，不在此限。

公司對前項未為清償之債權，仍應負遲延給付之損害賠償責任。

公司之資產顯足抵償其負債者，對於足致前項損害賠償責任之債權，得經法院許可後先行清償。

第 329 條 不列入清算內之債權人，就公司未分派之賸餘財產，有清償請求權。但賸餘財產已依第三百三十條分派，且其中全部或一部已經領取者，不在此限。

第 330 條 清償債務後，賸餘之財產應按各股東股份比例分派。但公司發行特別股，而章程中另有訂定者，從其訂定。

第 331 條 清算完結時，清算人應於十五日內，造具清算期內收支表、損益表、連同各項簿冊，送經監察人審查，並提請股東會承認。

股東會得另選檢查人，檢查前項簿冊是否確當。

簿冊經股東會承認後，視為公司已解除清算人之責任。但清算人有不法行為者，不在此限。

第一項清算期內之收支表及損益表，應於股東會承認後十五日內，向法院聲報。

清算人違反前項聲報期限之規定時，各處新臺幣一萬元以上五萬元以下罰鍰。

對於第二項之檢查有妨礙、拒絕或規避行為者，各處新臺幣二萬元以上十萬元以下罰鍰。

第 332 條 公司應自清算完結聲報法院之日起，將各項簿冊及文件，保存十年。其保存人，由清算人及其利害關係人聲請法院指定之。

第 333 條 清算完結後，如有可以分派之財產，法院因利害關係人之聲請，得選派清算人重行分派。

第 334 條 第八十三條至第八十六條、第八十七條第三項、第四項、第八十九條及第九十條之規定，於股份有限公司之清算準用之。

## 第 二 目 特別清算

第 335 條 清算之實行發生顯著障礙時，法院依債權人或清算人或股東之聲請或依職權，得命令公司開始特別清算；公司負債超過資產有不實之嫌疑者亦同。

但其聲請，以清算人為限。

第二百九十四條關於破產、和解及強制執行程序當然停止之規定，於特別清算準用之。

第 336 條 法院依前條聲請人之聲請，或依職權於命令開始特別清算前，得提前為第

三百三十九條之處分。

[第 337 條](#) 有重要事由時，法院得解任清算人。

清算人缺額或有增加人數之必要時，由法院選派之。

[第 338 條](#) 法院得隨時命令清算人，為清算事務及財產狀況之報告，並得為其他清算監督上必要之調查。

[第 339 條](#) 法院認為對清算監督上有必要時，得為第三百五十四條第一項第一款、第二款或第六款處分。

[第 340 條](#) 公司對於其債務之清償，應依其債權額比例為之。但依法得行使優先受償權或別除權之債權，不在此限。

[第 341 條](#) 清算人於清算中，認為有必要時，得召集債權人會議。

占有公司明知之債權總額百分之十以上之債權人，得以書面載明事由，請求清算人召集債權人會議。

第一百七十三條第二項於前項準用之。

前條但書所定之債權，不列入第二項之債權總額。

[第 342 條](#) 債權人會議之召集人，對前條第四項債權之債權人，得通知其列席債權人會議徵詢意見，無表決權。

[第 343 條](#) 第一百七十二條第二項、第三項、第六項、第一百七十六條、第一百八十三條、第二百九十八條第二項及破產法第一百二十三條之規定，於特別清算準用之。

[第 344 條](#) 清算人應造具公司業務及財產狀況之調查書、資產負債表及財產目錄，提交債權人會議，並就清算實行之方針與預定事項，陳述其意見。

[第 345 條](#) 債權人會議，得經決議選任監理人，並得隨時解任之。

前項決議應得法院之認可。

[第 346 條](#) 清算人為左列各款行為之一者，應得監理人之同意，不同意時，應召集債權人會議決議之。但其標的在資產總值千分之一以下者，不在此限：

一 公司財產之處分。

二 借款。

三 訴之提起。

四 成立和解或仲裁契約。

五 權利之拋棄。

應由債權人會議決議之事項，如迫不及待時，清算人經法院之許可，得為前項所列之行為。

清算人違反前兩項規定時，應與公司對於善意第三人連帶負其責任。

第八十四條第二項但書之規定，於特別清算不適用之。

[第 347 條](#) 清算人得徵詢監理人之意見，對於債權人會議提出協定之建議。

[第 348 條](#) 協定之條件，在各債權人間應屬平等。但第三百四十條但書所定之債權，不在此限。

[第 349 條](#) 清算人認為作成協定有必要時，得請求第三百四十條但書所定之債權人參加。

[第 350 條](#) 協定之可決，應有得行使表決權之債權人過半數之出席，及得行使表決權之債權總額四分之三以上之同意行之。

前項決議，應得法院之認可。

破產法第一百三十六條之規定，於第一項協定準用之。

[第 351 條](#) 協定在實行上遇有必要時，得變更其條件，其變更準用前四條之規定。

[第 352 條](#) 依公司財產之狀況有必要時，法院得據清算人或監理人，或繼續六個月以上持有已發行股份總數百分之三以上之股東，或曾為特別清算聲請之債權人，或占有公司明知之債權總額百分之十以上債權人之聲請，或依職權命令檢查公司之業務及財產。

第二百八十五條之規定，於前項準用之。

[第 353 條](#) 檢查人應將左列檢查結果之事項，報告於法院：

- 一 發起人、董事、監察人、經理人或清算人依第三十四條、第一百四十八條、第一百五十五條、第一百九十三條及第二百二十四條應負責任與否之事實。
- 二 有無為公司財產保全處分之必要。
- 三 為行使公司之損害賠償請求權，對於發起人、董事、監察人、經理人或清算人之財產，有無為保全處分之必要。

[第 354 條](#) 法院據前條之報告，認為必要時，得為左列之處分：

- 一 公司財產之保全處分。
- 二 記名式股份轉讓之禁止。
- 三 發起人、董事、監察人、經理人或清算人責任解除之禁止。
- 四 發起人、董事、監察人、經理人或清算人責任解除之撤銷；但於特別清算開始起一年前已為解除，而非出於不法之目的者，不在此限。
- 五 基於發起人、董事、監察人、經理人、或清算人責任所生之損害賠償請求權之查定。
- 六 因前款之損害賠償請求權，對於發起人、董事、監察人、經理人或清算人之財產為保全處分。

[第 355 條](#) 法院於命令特別清算開始後，而協定不可能時，應依職權依破產法為破產之宣告，協定實行上不可能時亦同。

[第 356 條](#) 特別清算事項，本目未規定者，準用普通清算之規定。

第 六 章 （刪除）

[第 357 條](#) （刪除）

[第 358 條](#) （刪除）

[第 359 條](#) （刪除）

[第 360 條](#) （刪除）

[第 361 條](#) （刪除）

[第 362 條](#) （刪除）

[第 363 條](#) （刪除）

[第 364 條](#) （刪除）

[第 365 條](#) （刪除）

[第 366 條](#) （刪除）

[第 367 條](#) （刪除）

[第 368 條](#) （刪除）

[第 369 條](#) （刪除）

第 六 章 之 一 關 係 企 業

[第 369- 1 條](#) 本法所稱關係企業，指獨立存在而相互間具有下列關係之企業：

- 一 有控制與從屬關係之公司。
- 二 相互投資之公司。

[第 369- 2 條](#) 公司持有他公司有表決權之股份或出資額，超過他公司已發行有表決權之股份總數或資本總額半數者為控制公司，該他公司為從屬公司。  
除前項外，公司直接或間接控制他公司之人事、財務或業務經營者亦為控制公司，該他公司為從屬公司。

[第 369- 3 條](#) 有左列情形之一者，推定為有控制與從屬關係：

- 一 公司與他公司之執行業務股東或董事有半數以上相同者。
- 二 公司與他公司之已發行有表決權之股份總數或資本總額有半數以上為相同之股東持有或出資者。

[第 369- 4 條](#) 控制公司直接或間接使從屬公司為不合營業常規或其他不利益之經營，而未於會計年度終了時為適當補償，致從屬公司受有損害者，應負賠償責任。

控制公司負責人使從屬公司為前項之經營者，應與控制公司就前項損害負連帶賠償責任。

控制公司未為第一項之賠償，從屬公司之債權人或繼續一年以上持有從屬

公司已發行有表決權股份總數或資本總額百分之一以上之股東，得以自己名義行使前二項從屬公司之權利，請求對從屬公司為給付。

前項權利之行使，不因從屬公司就該請求賠償權利所為之和解或拋棄而受影響。

第 369- 5 條 控制公司使從屬公司為前條第一項之經營，致他從屬公司受有利益，受有利益之該他從屬公司於其所受利益限度內，就控制公司依前條規定應負之賠償，負連帶責任。

第 369- 6 條 前二條所規定之損害賠償請求權，自請求權人知控制公司有賠償責任及知有賠償義務人時起，二年間不行使而消滅。自控制公司賠償責任發生時起，逾五年者亦同。

第 369- 7 條 控制公司直接或間接使從屬公司為不合營業常規或其他不利益之經營者，如控制公司對從屬公司有債權，在控制公司對從屬公司應負擔之損害賠償限度內，不得主張抵銷。

前項債權無論有無別除權或優先權，於從屬公司依破產法之規定為破產或和解，或依本法之規定為重整或特別清算時，應次於從屬公司之其他債權受清償。

第 369- 8 條 公司持有他公司有表決權之股份或出資額，超過該他公司已發行有表決權之股份總數或資本總額三分之一者，應於事實發生之日起一個月內以書面通知該他公司。

公司為前項通知後，有左列變動之一者，應於事實發生之日起五日內以書面再為通知：

- 一 有表決權之股份或出資額低於他公司已發行有表決權之股份總數或資本總額三分之一時。
- 二 有表決權之股份或出資額超過他公司已發行有表決權之股份總數或資本總額二分之一時。
- 三 前款之有表決權之股份或出資額再低於他公司已發行有表決權之股份總數或資本總額二分之一時。

受通知之公司，應於收到前二項通知五日內公告之，公告中應載明通知公司名稱及其持有股份或出資額之額度。

公司負責人違反前三項通知或公告之規定者，各處新臺幣六千元以上三萬元以下罰鍰。主管機關並應責令限期辦理；期滿仍未辦理者，得責令限期辦理，並按次連續各處新臺幣九千元以上六萬元以下罰鍰至辦理為止。

第 369- 9 條 公司與他公司相互投資各達對方有表決權之股份總數或資本總額三分之一以上者，為相互投資公司。

相互投資公司各持有對方已發行有表決權之股份總數或資本總額超過半數

者，或互可直接或間接控制對方之人事、財務或業務經營者，互為控制公司與從屬公司。

[第 369-10 條](#) 相互投資公司知有相互投資之事實者，其得行使之表決權，不得超過被投資公司已發行有表決權股份總數或資本總額之三分之一。但以盈餘或公積增資配股所得之股份，仍得行使表決權。

公司依第三百六十九條之八規定通知他公司後，於未獲他公司相同之通知，亦未知有相互投資之事實者，其股權之行使不受前項限制。

[第 369-11 條](#) 計算本章公司所持有他公司之股份或出資額，應連同左列各款之股份或出資額一併計入：

- 一 公司之從屬公司所持有他公司之股份或出資額。
- 二 第三人為該公司而持有之股份或出資額。
- 三 第三人為該公司之從屬公司而持有之股份或出資額。

[第 369-12 條](#) 公開發行股票公司之從屬公司應於每會計年度終了，造具其與控制公司間之關係報告書，載明相互間之法律行為、資金往來及損益情形。

公開發行股票公司之控制公司應於每會計年度終了，編製關係企業合併營業報告書及合併財務報表。

前二項書表之編製準則，由證券管理機關定之。

## 第 七 章 外 國 公 司

[第 370 條](#) 外國公司之名稱，應譯成中文，除標明其種類外，並應標明其國籍。

[第 371 條](#) 外國公司非在其本國設立登記營業者，不得申請認許。

非經認許，並辦理分公司登記者，不得在中華民國境內營業。

[第 372 條](#) 外國公司應專撥其在中華民國境內營業所用之資金，並應受主管機關對其所營事業最低資本額規定之限制。

外國公司應在中華民國境內指定其訴訟及非訴訟之代理人，並以之為在中華民國境內之公司負責人。

[第 373 條](#) 外國公司有左列情事之一者，不予認許：

- 一 其目的或業務，違反中華民國法律、公共秩序或善良風俗者。
- 二 公司之認許事項或文件，有虛偽情事者。

[第 374 條](#) 外國公司應於認許後，將章程備置於中華民國境內指定之訴訟及非訴訟代理人處所，或其分公司，如有無限責任股東者，並備置其名冊。

公司負責人違反前項規定，不備置章程或無限責任股東名冊者，各處新臺幣一萬元以上五萬元以下罰鍰。連續拒不備置者，並按次連續各處新臺幣二萬元以上十萬元以下罰鍰。

[第 375 條](#) 外國公司經認許後，其法律上權利義務及主管機關之管轄，除法律另有規

定外，與中華民國公司同。

第 376 條 (刪除)

第 377 條 第九條、第十條、第十二條至第二十五條，於外國公司準用之。

第 378 條 外國公司經認許後，無意在中華民國境內繼續營業者，應向主管機關申請撤回認許。但不得免除申請撤回以前所負之責任或債務。

第 379 條 外國公司有左列情事之一者，主管機關應撤銷或廢止其認許：

- 一 申請認許時所報事項或所繳文件，經查明有虛偽情事者。
- 二 公司已解散者。
- 三 公司已受破產之宣告者。

前項撤銷或廢止認許，不得影響債權人之權利及公司之義務。

第 380 條 撤回、撤銷或廢止認許之外國公司，應就其在中華民國境內營業，或分公司所生之債權債務清算了結，所有清算未了之債務，仍由該外國公司清償之。

前項清算，以外國公司在中華民國境內之負責人或分公司經理人為清算人，並依外國公司性質，準用本法有關各種公司之清算程序。

第 381 條 外國公司在中華民國境內之財產，在清算時期中，不得移出中華民國國境，除清算人為執行清算外，並不得處分。

第 382 條 外國公司在中華民國境內之負責人或分公司經理人，違反前二條規定時，對於外國公司在中華民國境內營業，或分公司所生之債務，應與該外國公司負連帶責任。

第 383 條 (刪除)

第 384 條 外國公司經認許後，主管機關於必要時，得查閱其有關營業之簿冊文件。

第 385 條 第三百七十二條第二項規定之代理人，在更換或離境前，外國公司應另指定代理人，並將其姓名、國籍、住所或居所申請主管機關登記。

第 386 條 外國公司因無意在中華民國境內設立分公司營業，未經申請認許而派其代表人在中華民國境內為業務上之法律行為時，應報明左列各款事項，申請主管機關備案：

- 一 公司名稱、種類、國籍及所在地。
- 二 公司股本總額及在本國設立登記之年、月、日。
- 三 公司所營之事業及其代表人在中華民國境內所為業務上之法律行為。
- 四 在中華民國境內指定之訴訟及非訴訟代理人之姓名、國籍、住所或居所。

前項代表人須經常留駐中華民國境內者，應設置代表人辦事處，並報明辦事處所在地，依前項規定辦理。

前二項申請備案文件，應由其本國主管機關或其代表人業務上法律行為行為地或其代表人辦事處所在地之中華民國使領館、代表處、辦事處或其他外交部授權機構驗證。

外國公司非經申請指派代表人報備者，不得在中華民國境內設立代表人辦事處。

## 第 八 章 公司之登記及認許

### 第 一 節 申請

第 387 條 公司之登記或認許，應由代表公司之負責人備具申請書，連同應備之文件一份，向中央主管機關申請；由代理人申請時，應加具委託書。

前項代表公司之負責人有數人時，得由一人申辦之。

第一項代理人，以會計師、律師為限。

公司之登記或認許事項及其變更，其辦法，由中央主管機關定之。

前項辦法，包括申請人、申請書表、申請方式、申請期限及其他相關事項。

代表公司之負責人違反依第四項所定辦法規定之申請期限者，處新臺幣一萬元以上五萬元以下罰鍰。

代表公司之負責人不依第四項所定辦法規定之申請期限辦理登記者，除由主管機關責令限期改正外，處新臺幣一萬元以上五萬元以下罰鍰；期滿未改正者，繼續責令限期改正，並按次連續處新臺幣二萬元以上十萬元以下罰鍰，至改正為止。

第 388 條 主管機關對於公司登記之申請，認為有違反本法或不合法定程式者，應令其改正，非俟改正合法後，不予登記。

第 389 條 （刪除）

第 390 條 （刪除）

第 391 條 公司登記，申請人於登記後，確知其登記事項有錯誤或遺漏時，得申請更正。

第 392 條 請求證明登記事項，主管機關得核給證明書。

第 393 條 公司登記文件，公司負責人或利害關係人，得聲敘理由請求查閱或抄錄。

但主管機關認為必要時，得拒絕抄閱或限制其抄閱範圍。

公司左列登記事項，主管機關應予公開，任何人得向主管機關申請查閱或抄錄：

- 一 公司名稱。
- 二 所營事業。
- 三 公司所在地。

四 執行業務或代表公司之股東。

五 董事、監察人姓名及持股。

六 經理人姓名。

七 資本總額或實收資本額。

八 公司章程。

前項第一款至第七款，任何人得至主管機關之資訊網站查閱。

[第 394 條](#) (刪除)

[第 395 條](#) (刪除)

[第 396 條](#) (刪除)

[第 397 條](#) 公司之解散，不向主管機關申請解散登記者，主管機關得依職權或據利害關係人申請，廢止其登記。

主管機關對於前項之廢止，除命令解散或裁定解散外，應定三十日之期間，催告公司負責人聲明異議；逾期不為聲明或聲明理由不充分者，即廢止其登記。

[第 398 條](#) (刪除)

[第 399 條](#) (刪除)

[第 400 條](#) (刪除)

[第 401 條](#) (刪除)

[第 402 條](#) (刪除)

[第 402-1 條](#) (刪除)

[第 403 條](#) (刪除)

[第 404 條](#) (刪除)

[第 405 條](#) (刪除)

[第 406 條](#) (刪除)

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[第 427 條](#) (刪除)

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[第 435 條](#) (刪除)

[第 436 條](#) (刪除)

[第 437 條](#) (刪除)

## 第 二 節 規費

[第 438 條](#) 依本法受理公司名稱及所營事業預查、登記、查閱、抄錄及各種證明書等，應收取審查費、登記費、查閱費、抄錄費及證照費；其費額，由中央主管機關定之。

[第 439 條](#) (刪除)

[第 440 條](#) (刪除)

[第 441 條](#) (刪除)

[第 442 條](#) (刪除)

[第 443 條](#) (刪除)

[第 444 條](#) (刪除)

[第 445 條](#) (刪除)

[第 446 條](#) (刪除)

#### 第 九 章 附則

[第 447 條](#) (刪除)

[第 448 條](#) 本法所定之罰鍰，拒不繳納者，依法移送強制執行。

[第 449 條](#) 本法自公布日施行。

本法修正條文，除第三百七十三條及第三百八十三條施行日期，由行政院定之外，其餘修正條文自公布日施行。

# Value-added and Non-value-added Business Tax Act

## Chapter I: General Provisions

### Article 1

Business tax, in the form of value-added or non-value-added, shall be levied in accordance with this Act on the sale of goods or services within the territory of the Republic of China (R.O.C.) and the import of goods.

### Article 1-1

The so called “value-added form business tax” means the tax calculated in line with the Chapter 4, Section I; the so called “non-value-added form business tax” means the tax calculated in line with the Chapter 4, Section II.

### Article 2

Taxpayers of business tax shall be as follows:

1. Business entities who sell goods or services.
2. The receivers or holders of imported goods.
3. Those who receive services provided by foreign enterprises, institutions, organizations or associations which have no fixed place of business within the territory of the R.O.C. Also, the agents who handle business for international transport enterprises which have no fixed place of business within the territory of the R.O.C.

### Article 3

The definition of sale of goods is the transfer of ownership of goods to others for a consideration.

The definition of sale of services is the supply of services to others or the provision of goods for the use of others for a consideration with the exception of professional services offered by practitioners and services rendered by individuals in employment.

Any one of the following circumstances shall be deemed as a sale of goods:

1. Goods produced, imported or purchased by a business entity for sale

but in fact used by itself or transferred to others for no consideration.

2. Goods used to redeem debt or distributed to shareholders or investors; and stock left over when a business entity is dissolved or shut-down.

3. Where a business entity purchases goods under its own name on behalf of a third party and delivers the goods to the third party.

4. Where a business entity consigns goods to others for sale.

5. Where a business entity sells the consigned goods.

The preceding paragraph shall also be applicable to sale of services.

### Article 3-1

The transfer or disposition of trust property between trust parties as follows shall not be deemed as a sale of goods regulated in the preceding article:

1. Between settler and trustee, due to the establishment of the trust.

2. Between the former trustee and new trustee, due to a new appointment of trustee during the term of the trust relationship.

3. Between settler and trustee, due to the unsuccessful creation, nullification, revocation, or cancellation of a trust act, or the termination of trust relations.

### Article 4

Any one of the following circumstances shall be considered to be the sale of goods within the territory of the R.O.C.:

1. Where goods sold are required to be transported in order to effectuate delivery and the origin of shipment is within the territory of the R.O.C.

2. Where goods sold are not required to be transported in order to effectuate delivery, and the goods are located within the territory of the R.O.C.

Any one of the following circumstances shall be considered to be the sale of services within the territory of the R.O.C.

1. Where services sold are supplied or utilized within the territory of the R.O.C.

2. Where passengers are boarded or goods loaded within the territory of the R.O.C by an international transportation enterprise.

3. Where a foreign insurance enterprise accepts reinsurance policies from an insurance enterprise within the territory of the R.O.C.

## Article 5

Any one of the following circumstances shall be considered to be the import of goods:

1. The goods are imported to the R.O.C., with the exceptions of the goods imported to the export enterprises inside duty free export processing zones, enterprises inside the Science-based Industrial Park, or a bonded factory or bonded warehouse supervised by Customs.
2. The goods are transported from the enterprises, factories and warehouses referred to in the proviso of the preceding paragraph to other areas of the R.O.C.

## Article 6

Any one of the following shall be regarded as a business entity:

1. A profit-seeking enterprise owned by the private sector, government, or jointly owned by both.
2. A nonprofit-seeking enterprise, institution, organization or association which sells goods or services.
3. A foreign enterprise, society, institution or organization which has a fixed place of business within the territory of the R.O.C.

## Chapter II : Scope of Reduction and Exemption

## Article 7

The business tax rates shall be zero for the sales of goods or services of the following items:

1. Export of goods.
2. Services related to exports or services supplied within the territory of the R.O.C. but used in foreign countries.
3. Goods sold to outbound or transit passengers by the tax-free shops set up according to the act.
4. The sale of machinery and equipment, materials, supplies, fuel and unfinished goods to export enterprises inside the duty free export processing zone, to enterprises inside the Science-based Industrial Park, or to bonded factories or bonded warehouses supervised by the customs house.
5. International transportation. Foreign transport enterprises engaged in

international transportation within the territory of the R.O.C. shall qualify for the zero tax rate, provided that reciprocal treatment, or exemption from similar taxes, is given to the international transport enterprises of the R.O.C. by the foreign country in which it is incorporated.

6. Vessels and aircraft used in international transportation and deep sea fishing boats.

7. Sales of goods and maintenance services to vessels and aircraft used for international transportation and deep sea fishing boats.

## Article 8

The following goods or services are exempted from the business tax:

1. The sale of land.

2. The water supplied to farmland for irrigation.

3. The medical services, medicine, ward lodging and meals provided by hospitals, clinics and sanitariums.

4. The rearing and nursing services offered by the nursing homes for children, the elderly or handicapped.

5. The education services offered by schools, kindergartens, and other educational and cultural institutions including cultural services offered under government's consignment.

6. Publication which are textbooks authorized by education authorities for use at various levels of schools and important specialized academic writings awarded by the government according to the law issued by the publishing industry.

7. (Deleted).

8. The goods or services sold by student-run shops of vocational schools which do not serve outsiders.

9. Newspapers, magazines, news letters, advertisements, television and broadcasting programs produced and sold by legally registered newspaper and magazine publishers, news agencies, and television and broadcasting stations, excluding the advertisements sold by newspaper publishers and advertisements broadcasted by television stations.

10. The goods or services sold to their members by cooperatives managed in accordance with the law; and business consigned by government to said cooperatives.

11. The goods or services sold to their members by farmers', fishermen's,

workers', commercial and industrial associations in accordance with the law, business consigned by government to said associations, and the management fee charged in accordance with Article 27 of "The Agricultural Products Market Transaction Act" for the use of an agricultural products wholesale market, which is organized as a company in accordance with the Act and in which the share ownership of farmers' association, fishermen' association, cooperatives and government accounts for more than 70%.

12. The proceeds from goods sold in tenders, charity sales and charity shows held by charity and relief institutions organized according to the law, provided that the total proceeds are solely used by said institutions after deducting the necessary expenditures for the tenders, charity sales and charity shows.

13. The goods or services sold by employee welfare organizations of government bodies, state enterprises and social organizations which are organized and operated under relevant laws and are not open to the public.

14. The goods or services sold by prison workshops and their finished goods stores.

15. Services rendered by post and telecommunication offices in accordance with the law; and business consigned under government mandate.

16. Monopoly goods sold at statutory prices by state owned monopoly industries and by business entities which are authorized to sell the monopoly goods.

17. The service of consigned sale of stamp tax tickets and postage stamps.

18. The goods or services sold by peddlers or hawkers.

19. Feed and unprocessed raw agricultural, forestry, fishing and livestock products, and by-products.

20. The fish caught and sold by fishermen.

21. The sales of rice and wheat flour and the service of husking rice.

22. The sales of fixed assets which are not regularly traded by business entities which compute their business tax according to Section II of Chapter IV.

23. Insurance policies accepted by insurance enterprises for insurance promoted by the government, covering military, government and education entities and their dependents, laborers, students, farmers, fishermen,

exports, and compulsory automobile third party liability insurance, and reinsurance premiums paid out by insurance enterprises from premiums received by the same, and life insurance policy reserves, annuity insurance policy reserves and health insurance policy reserves, provided, however, that this does not include income, other benefits and return of policy reserves received on termination of life insurance, annuity insurance and health insurance.

24. The bonds issued by all levels of government and securities upon which a securities transaction tax has been imposed in accordance with the law.

25. Residual or obsolete goods sold at tenders by all levels of government.

26. The sales of weapons, warships, aircraft, tanks and reconnaissance communication equipment for military use to defense agencies.

27. Fertilizer, pesticides, veterinary drugs, agricultural machinery, transportation equipment for farmland, and fuel and electricity used by such machinery and equipment.

28. Fishing boats for coastal or inshore fishery and machinery, equipment, nets and fuel used by fishing boats.

29. Interest on the flow of funds between head and branch offices of banking enterprises, the revenue of trust and investment enterprise derived from trust funds in the manner designated by the settler, provided the settler bears the risk of loss and enjoys the proceeds, and unredeemed items where the proceeds arising from their sale by pawnshops does not exceed the aggregate of principal and interest receivable.

30. Gold bars, gold bricks, gold foil, gold coins and gold ornaments, excluding the processing fee.

31. The research services supplied by scientific or technological institutions which are established under the approval of the government.

32. The sales amount of operating financial derivatives products, corporate bonds, financial bonds, new Taiwan dollar interbank call loans and foreign currency call loans, excluding commissions and service charges of these products.

Any business entity which sells the aforementioned exempt goods or services can apply to the Ministry of Finance to waive the exemption and compute its business tax according to the provisions of Section I of Chapter 4. However, once approved, no changes can be made within three

years.

#### Article 8-1

The proceeds from goods sold in tenders, charity sales and shows held by settler in charitable trust shall be excluded from the sales of the settler, provided that the total proceeds are solely used on the charity business after deducting the necessary expenditures for the tenders, charity sales and charity shows.

The sales from goods sold in tenders, charity sales and charity shows prescribed in the preceding paragraph shall be excluded from the sales of the settler.

#### Article 8-2

(deleted)

#### Article 9

Importing any one of the following items shall be exempted from business tax:

1. The goods specified in Subparagraph 6, paragraph 1 of Article 7 and Subparagraph 30, paragraph 1 of Article 8.
2. The goods stated in Article 26 of the Customs Act, provided, however, that in case of transfer of ownership or change in use of said goods, which results in payment of customs duties under Article 31 of the Customs Act, the business tax so exempted will become due.
3. National ancient curios or remains.

### Chapter III : Tax Rates

#### Article 10

Except as otherwise prescribed by this Act, the business tax rate shall be no less than 5% and no more than 10%. The applicable collection rate shall be determined by the Executive Yuan.

#### Article 11

The business tax rate shall be 2% for enterprises engaged in banking, insurance, investment trust, securities, futures, commercial paper and

pawnshops, but 5% for all other operations which are not connected exclusively with their authorized business, and 1% for reinsurance premiums of insurance enterprises.

The scope of the term "all other operations" and the related rules shall be prescribed by the Ministry of Finance, and submitted to the Executive Yuan for approval.

The enterprises in the first paragraph shall conform to the regulations stipulated by the specific competent authorities, that starting from July 1, 1999, they shall allocate 3% of their sales (excluding all other operations and reinsurance premiums received by insurance companies) for writing off overdue loans or setting aside allowances for bad debts, with those enterprises failing to do so being assessed an additional 3% business tax surcharge.

The aforementioned allocation of 3% of sales for writing off overdue loans or setting aside allowances for bad debts shall be stopped if the percentage of the overdue loans of the enterprises prescribed in the Paragraph 1 is lower than 1%.

From January 2002 to the date of ceasing allocation to the Financial Reconstruction Fund of the Executive Yuan prescribed under Subparagraph 1, Paragraph 1, Article 3 of "The Rules Governing the Establishment and Administration of the Financial Reconstruction Fund of the Executive Yuan", the business tax revenue collected from the enterprises prescribed in the preceding paragraph, shall be supplied exclusively to the Financial Reconstruction Fund of the Executive Yuan, and shall be used for the improvement of financial institutions with serious problems. The use of these funds shall not be subject to the provisions of the Act Governing the Allocation of Government Revenues and Expenditures.

According to Article 38-1 of the Act Governing the Allocation of Government Revenues and Expenditures, the Executive Yuan shall compensate local governments for the revenue losses due to the decrease of the Centrally-Allotted Tax Revenues after shifting of the business tax revenue to the Fund referred to in the preceding paragraph, unless the Act is subsequently revised.

From January 2011, the business tax revenue from enterprises engaged in banking shall exclusively go to the Deposit Insurance Pay-off Special Reserves; the revenue as is accrued from enterprises as described in the

first paragraph other than banking shall go to the other Special Reserves; and the regulations for operation and administration of the reserves shall be prescribed by the Financial Supervisory Commission, Executive Yuan.

#### Article 12

The business tax rates for special food and beverage services enterprises are as follows:

1. 15% for night clubs or restaurants providing entertaining show programs;
2. 25% for saloons and tea rooms, coffee shops and bars providing hostesses to entertain customers.

#### Article 13

For small business entities and other business entities exempted by the Ministry of Finance from filing sales amounts, the business tax rate shall be 1%.

For consignees of the agricultural wholesale markets and small business entities which sell agricultural products, the business tax rate shall be 0.1%. The definition of small business entities provided in the preceding paragraphs shall be the business entities, excluding those prescribed in Article 11 and 12, whose monthly average sales amount is below the criteria prescribed by the Ministry of Finance in which case the business tax amount shall be determined and assessed by the tax authority.

### Chapter IV : Calculation of Tax Computation

#### Section I : General Tax Computation

#### Article 14

Except as otherwise prescribed in section II of this Chapter, business entities shall calculate the output tax based on all sales amounts of goods and services, in accordance with the tax rates prescribed in Article 7 or 10 and round up to the nearest dollar.

The output tax is defined as the amount of business tax to be collected in accordance with the act by the business entity at the time of selling goods or services.

#### Article 15

The amount of business tax payable or overpaid by a business entity will be the difference between the output tax in a tax period and the input tax in the same period.

The amount of business tax returned by a business entity to a buyer due to sales return of goods or rebates allowed shall be deducted from output tax in the tax period when the return or rebate occurs. The amount of business tax refunded to a business entity due to such business entity's return of goods, or due to a rebate, shall be deducted from the amount of input tax in the tax period when such return of goods or rebate occurs.

The input tax is defined as the business tax paid by a business entity in accordance with the act at the time of purchasing goods or services.

#### Article 16

The sales amount prescribed in Article 14 refers to all the consideration received from sale of goods or services, including any expense reimbursement other than the sales price of goods or services sold, provided, however that the business tax incurred on such sale is not included.

If the goods referred to in the preceding paragraph are subject to commodity tax or tobacco and alcohol tax, the sales amount shall include the amount of commodity tax or tobacco and alcohol tax.

#### Article 17

In the event that a business entity sells goods or services at a price unreasonably lower than the market price, the tax authority may determine the sales amount based on the market price.

#### Article 18

The sales amount of an international transport enterprise transporting outbound cargo or passengers from within the territory of the R.O.C. shall be calculated as follows:

1. Marine transport enterprise: total ticket fares or freight charges for outbound passengers or cargo accepted for transportation from within the territory of the R.O.C.

2. Air transport enterprise:

(a) passenger transportation: ticket fares from the point of embarkation within the territory of the R.O.C. to first-leg stations outside the territory of the R.O.C.;

(b) cargo transportation: freight charges for the entire trip for the cargo accepted for transportation. However, where an international air transport enterprise transships its outbound cargo en route to an aircraft of another international air transport enterprise due to route restrictions or other reasons, its freight shall be calculated upon the charges actually attributable to the portion made by the first enterprise.

First-leg stations outside the territory of the R.O.C., as provided in Subparagraph 2 (a) of the preceding paragraph, shall be prescribed by the Ministry of Finance.

## Article 19

In any of the following events, input tax shall not be deducted from output tax by a business entity:

1. Where supporting documents with respect to purchased goods or services are not obtained or kept according to Article 33.
2. The goods or services purchased are not for the use of principal and ancillary business operation. However, purchases made for assisting national defense construction, troop morale, and contribution to government are not included.
3. Goods or services for social relations purposes.
4. Goods or services rewarded to individual employees.
5. Passenger cars for personal use.

For business entities engaged solely in the business of exempt goods or services as provided in paragraph 1 of Article 8, the input tax shall not be refunded.

In the case that the full deduction is restricted due to the sales of goods or services provided in paragraph 1 of Article 8 representing only a portion of the business entities' business operation, or due to other provisions of this Act, the ratio and calculation method related to the non-deductible amount shall be prescribed by the Ministry of Finance.

## Article 20

Business tax on imported goods shall be calculated at the tax rate provided in Article 10 based on the total amount of duty-paying value and customs duty.

If the above-mentioned goods are subject to commodity tax or tobacco and alcohol tax, the business tax shall be calculated based on the amount prescribed in the preceding paragraph plus the commodity tax or the tobacco and alcohol tax.

## Section II: Special Tax Computation

### Article 21

Enterprises engaged in banking, insurance, investment trust, securities, futures, commercial paper and pawnshops shall calculate their business tax based on their sales amount at the tax rate provided in Article 11. However, the business tax for pawnshops may be calculated by the competent authority upon the assessed sales amount.

### Article 22

The special food and beverage service enterprises under Article 12 shall compute the amount of their business tax based upon their sales amount at the tax rate provided in said Article. However, the competent authority may compute it based upon the assessed sales amount according to their investigation.

### Article 23

Consignees of the agricultural wholesale markets or small business entities which sell agricultural products, or other small business entities or other business entities exempted by the Ministry of Finance from reporting their sales amount, shall compute their amount of business tax based upon the amount of sales as assessed by the competent authority at the tax rate provided under Article 13, unless, in accordance with the provisions of Article 24, they apply to calculate their tax under Section I of this Chapter and file tax returns in accordance with Article 35.

### Article 24

For enterprises engaged in banking, insurance, and trust investment, the

sales amount from operations not within the scopes of their exclusively authorized business, as defined in the footnote of "Time Limit for Issuing Sales Documentary Evidence" of this Act, may apply to calculate business tax in accordance with the provisions in Section I of this Chapter and file tax returns in accordance with the provisions of Article 35.

Where application has been made in accordance with the preceding paragraph to calculate the amount of business tax under Section I of this Chapter, application may not be made for alteration for three years following approval.

The Ministry of Finance may gauge the nature and capabilities of small business entities and determine that Section I of this Chapter shall be applied to calculate business tax and Article 35 shall be applied to file tax returns and pay taxes.

#### Article 25

When a business entity, whose business tax is assessed as prescribed in Article 23, purchases goods or services for business operation, obtains evidence stating amount of pertinent business tax, and files a return as required, 10% of input tax shall be deducted from the assessed tax amount by the competent authority. However, when the assessed tax amount is less than the minimum amount for assessment, this deduction shall not be applicable.

If, as provided in the preceding paragraph, 10% of input tax exceeds the assessed tax amount, the excess may be deductible in the coming period.

#### Article 26

For consignees of the agricultural wholesale markets or small business entities which sell agricultural products, or other small business entities covered by Article 23 and other business entities exempted by the Ministry of Finance from filing tax returns, the minimum taxable sales amount shall be prescribed by the Ministry of Finance.

#### Article 27

Section I of this Chapter, with the exception of Article 14, paragraph 1 of Article 15, and the proviso to paragraph 1 of Article 16, applies mutatis mutandis to the tax computation by a business entity under this Section.

## Chapter V : Collection Procedures

### Section I : Registration of Tax Payer

#### Article 28

Any business entities' head office and its branches with fixed places of business shall file individually with the competent authority an application for business registration before commencement of business. Matters relating to registration shall be prescribed by the Ministry of Finance.

#### Article 29

Those business entities engaged solely in the business of sales of exempt goods or services, as provided in paragraph 1, Subparagraphs 2 to 5, 8, 12 to 15, 17 to 20 and 31 of Article 8, and government entities of various levels may be exempted from business registration.

#### Article 30

Provided there is any change in matters registered under Article 28, or there is a merger, consolidation, ownership transfer, dissolution, or cessation of business of a business entity, an application for amendment to registration or de-registration shall be filed with the collection authority-in-charge within fifteen days after the occurrence of such an event.

An application by a business entity under the preceding paragraph, for amendment to registration or de-registration, may only take effect upon the payment in full of taxes, or upon the posting of security, provided, however, that this shall not apply in the case of amendment due to merger, consolidation, increase of capital, or change of scope of business.

#### Article 31

Prior to temporary suspension of business or a resumption of business after the suspension, the business entity shall file with the collection authority-in-charge of such event.

### Section II: Books and Documentary Evidence

#### Article 32

Business entities selling goods or services shall issue uniform invoices to the buyer at the time stipulated in the "Time Limit for Issuing Sales Documentary Evidence" in this Act. Business entities of a special nature or small business entities may be exempted from issuing uniform invoices, and may, instead, issue ordinary receipts.

The input tax computed under Article 14 should be stated separately with the sales amount on the uniform invoice if the buyer is a business entity. However, if the buyer is not a business entity, only the total amount which includes sales amount and input tax should be stated on the uniform invoice.

The uniform invoice shall be printed and sold by the government, or the business entity shall be authorized to print its own invoices. The forms, items to be recorded, and use of invoices shall be prescribed by the Ministry of Finance.

The collection authority-in-charge may approve a business entity to use a cash register to issue uniform invoices or to issue cash register receipts instead of issuing uniform invoices. The Ministry of Finance shall promulgate regulations governing the use of cash registers.

### Article 33

Business entities which deduct input tax from output tax shall maintain the following documentary evidence with their names, addresses, and business administration numbers on them.

1. Uniform invoices specifying business tax paid on purchases of goods and services.
2. Uniform invoices specifying amount of business tax issued by the business entity itself under the circumstances deemed as sales of goods or services as prescribed in paragraph 3 or paragraph 4 of Article 3.
3. Other documentary evidence specifying the amount of business tax and approved by the Ministry of Finance.

### Article 34

The Ministry of Finance shall promulgate regulations governing the books of account and documentary evidence.

## Section III : Tax Return & Payment

### Article 35

Except as otherwise prescribed by this Act, a business entity, whether or not it has sales, shall file a bimonthly tax return on a prescribed form for its sales amount and tax payable or overpaid of the preceding two months together with tax deduction and other appropriate documents with the collection authority-in-charge prior to the fifteenth day of the following period. The business tax payable, if any, shall be paid to the government treasury in advance. The receipt for tax paid shall be enclosed with the tax return.

A business entity which applies zero ratings as prescribed in Article 7 of this act may apply to the collection authority-in-charge for filing a monthly tax return for its sales amount and tax payable or overpaid of the preceding month prior to the fifteenth day of the following month. Once approved to file a monthly tax return, the business entity cannot apply for approval to change the filing period within a year.

The business entities mentioned in the preceding two paragraphs, if using uniform invoices, shall further enclose a detailed list of uniform invoices used.

### Article 36

A buyer of services sold by foreign enterprises, institutions, organizations, or associations having no fixed place of business within the territory of the R.O.C. shall, prior to the fifteenth day of the period following the period in which payment is made, compute the amount of business tax on the amount paid in accordance with the tax rate provided in Article 10 or the proviso to Article 11, and paid said tax, provided, however, that where the buyer is a business entity which computes its tax in accordance with the provisions of Section I of Chapter IV, and the purchased services are used solely in the conduct of business in taxable goods or services, no tax shall be owed; where the purchaser is partly engaged in business involving exempt goods or services under Article 8, paragraph 1, the proportion payable shall be determined by the Ministry of Finance.

Where an international transportation enterprise which has no fixed place of business within the territory of the R.O.C., but has an agent within the territory of the R.O.C., sells services, said agent shall, prior to the fifteenth

day of the period following the period in which passengers or goods depart the territory (of the R.O.C.), compute the amount of business tax on the sales amount in accordance with the tax rate provided in Article 10, file a tax return, and pay said tax according to Article 35.

#### Article 37

The business tax upon the performance by foreign artistic and show enterprises within the territory of the R.O.C. shall be reported and paid under Article 35 to the local collection authority-in-charge where the performance takes place. However, in case the duration of the performance at any one location does not exceed 30 days, tax return and payment shall be filed and made within 15 days after performance is concluded.

Such enterprises shall file and pay business tax before departure if the departure time is prior to the preceding paragraph time limit.

#### Article 38

The head office and other fixed places of business of a business entity located within the territory of the R.O.C. shall file tax returns and tax payable or overpaid to the local collection authorities-in-charge separately. A business entity which computes its business tax according to Section I of Chapter IV may apply for approval from the Ministry of Finance to combine the sales of goods or services of the head office and all branches and file a consolidated tax return and tax payable or overpaid to the local collection authority-in-charge of the head office.

#### Article 39

Under the following situations, the amount of overpaid business tax claimed by a business entity shall be refunded after verification by the collection authority-in-charge.

1. The amount of business tax overpaid is on goods or services subject to zero-tax-rate as provided in the provision of Article 7.
2. The business tax overpaid is on fixed assets obtained.
3. The business tax overpaid is by a business entity whose application has been made for cancellation or registration due to merger or consolidation, business transfer, dissolution or cessation of business.

Overpaid tax resulting from circumstances other than the aforementioned ones may be offset against future business tax payable. Business entities with special situations may apply to obtain approval from the Ministry of Finance to receive tax refunds.

#### Article 40

For pawnshops and other business entities governed by Article 21 and Article 23, respectively, the collection authority-in-charge shall assess the sales amount and tax payable and issue a payment notice every three months.

For business entities governed by Article 22, the aforementioned procedures shall be done monthly.

The rules in assessing sales amount and tax payable, as mentioned above, shall be prescribed by the Ministry of Finance.

#### Article 41

The amount of business tax payable on imported goods shall be levied by Customs. With respect to the collection procedures and administrative relief of business tax, the provisions of the Customs Act and the Customs Smuggling Prevention Act shall apply *mutatis mutandis*.

#### Article 42

Tax which is to be paid by the taxpayer of his own accord under this Act shall be paid to the government treasury and accompanied by a tax payment slip prepared by the taxpayer.

In accordance with the provisions of this Act, the collection authority-in-charge shall issue a payment notice for payment of assessed business tax, back collection, and surcharges for belated filing or non-filing. The taxpayer shall pay to the government treasury within 10 days starting from the day following the day the payment notice is received by the taxpayer.

In the event that the payment notice is lost, the taxpayer shall apply to the collection authority-in-charge for re-issuance of such notice. The collection authority-in-charge shall re-issue the notice on the next day following the day of receipt of the application. However, the time limit for tax payment shall still commence from the day following the receipt of the first notice, as provided for in the preceding paragraph.

### Article 43

In any of the following circumstances, the collection authority-in-charge may assess the sales amount and tax payable of a business entity and levy the delinquent tax based on the data obtained from investigation.

1. Where the sales amount has not been reported more than 30 days beyond the prescribed time limit.
2. Where accounting records have not been kept, where an entry has not been made in accounting records within the deadline prescribed by regulation and there has been a failure to make such entry after notification, where accounting records have been lost, where audit by the tax authority-in-charge is refused, or where false statements have been made in accounting records.
3. Where business operations have been commenced prior to appropriate registration, or where business has been continued after suspension of registration, and sales amount has not been reported in accordance with regulation.
4. Where the sales amount has not been reported or has been under-reported.
5. Where there has been a failure to issue uniform invoices or where the sales amount shown on uniform invoices has been understated.
6. Where uniform invoices have not been used, although required by regulation.

Where the sales amount reported by the business entity is found to be unusual, the collection authority-in-charge may, by referring to the circumstances of similar business and other information, determine the sales amount or tax payable and levy the delinquent tax.

### Section IV : Inspection

### Article 44

In the course of investigation performed by an inspector appointed by the Ministry of Finance, if a business entity is suspected of failing to issue uniform invoices when required to, the inspector shall record the violation at that locality, with specifications of name of the business entity, time, location, transacted item, and sales amount and refer the case to the

collection authority-in-charge so as to transmit the case to the court for imposition of penalty.

The records referred to in the preceding paragraph shall be signed by the business entity or the buyer or the chop (seal) thereof shall be affixed thereto. In the case that both of them refuse to sign or affix their chop (seal), the inspector shall record such factual events.

## Chapter VI : Penalty Provisions

### Article 45

A business entity failing to apply for a business registration in accordance with the prescribed provision, in addition to being ordered to comply with the requirements within a specified time limit, shall be punished with a fine of no less than 1,000 yuan and no more than 10,000 yuan. In case of a failure in compliance with the requirements within the specified time limit, the business entity may be punished repeatedly.

### Article 46

In any of the following circumstances, the business entity, in addition to being notified to make corrections or to comply with the requirements within a specified time limit, shall be fined no more than 5,000 yuan and no less than 500 yuan. Failure in compliance with the rules within the time limit may result in continuous punishment until compliance.

1. The business entity fails to comply with the rules to apply for amendment to registration, de-registration, temporary suspension or resumption of business.
2. The business entity makes false statements in applying for business registration, amendment to registration or de-registration.
3. The business entity fails to submit the account books to the collection authority-in-charge for examination and stamping within the prescribed time period.

### Article 47

In any of the following circumstances, the taxpayer, in addition to being notified to make corrections or to comply with the requirements within a

specified time limit, shall be fined no less than 1,000 yuan and no more than 10,000 yuan. Failure in compliance with the rules within the time limit may result in continuous punishment and suspension of business.

1. Where uniform invoices have not been used, although prescribed.
2. Where uniform invoices have been supplied for use by others.
3. Where there is refusal to accept payment notice of business tax.

#### Article 48

In the event a business entity fails to record the necessary particulars or records false data on issuing uniform invoices, in addition to being ordered to make corrections or fulfill the requirements within a specified time limit, the business entity shall be fined for 1% of the sales amount on the uniform invoice. The fine shall be no less than 500 yuan and no more than 5,000 yuan. In case the business entity fails to make corrections after being notified, or fails to make appropriate corrections, it shall be punished repeatedly.

In case the aforementioned unrecorded item on the uniform invoice is the buyer's name, address, or business administration number, the repeated punishment shall be 2% of the sales amount stated on the invoice and shall be no less than 1,000 yuan and no more than 10,000 yuan.

#### Article 49

In the event that a business entity fails to file the sales amount or a detailed list of uniform invoices used within the time limit as prescribed by in this Act, the business entity shall be liable to a surcharge for belated filing. The surcharge shall be equivalent to 1% of the tax payable for every two days overdue, provided that the filing is less than 30 days past due. The fine shall not be less than 400 or more than 4,000 yuan. If the filing is in excess of 30 days past due, the business entity shall be liable to a non-filing surcharge equivalent to 30% of the tax payable, as determined by the competent authority. The amount of this surcharge shall not be less than 1,000 or more than 10,000 yuan. Where there is no tax payable, the surcharge for belated filing and non-filing shall be 400 yuan and 1,000 yuan, respectively.

#### Article 50

A taxpayer, failing to pay any tax or surcharge for belated filing or non-filing within the specified time limit, shall be subject to a 1% surcharge on late payment for every two days in arrears, starting from the day immediately following the date the time limit expires; if the payment is not met thirty days after the time limit, the collection authority-in-charge may, in addition to referring the case to the court for compulsory execution, suspend its business.

Any amount of the aforementioned tax or surcharges shall be subject to interest charges calculated on a daily basis at the local bank's prevailing rate for one-year term time deposit. The period of time, during which interest shall be charged, shall start from the date immediately following the date the time limit for late payment expires, to the date the taxpayer makes payment, or to the date the compulsory collection is executed by the court.

#### Article 51

In any of the following circumstances, the taxpayer shall be pursued for payment of taxes and be fined from one to ten times of the amount of tax evaded. In addition, his business may be suspended.

1. Where business is conducted without application for business registration as required herein.
2. Where, thirty days having lapsed since the prescribed deadline, the sales amount or detailed list of uniform invoices used has not been reported and the amount of business tax due has not been paid.
3. Where the sales amount is not reported or under-reported.
4. Where business is conducted after applying for de-registration or after suspension of business by the collection authority-in-charge in accordance with this Act.
5. Where the amount of input tax has been falsely reported.
6. Where, thirty days having lapsed since the prescribed deadline, business tax has not been paid under paragraph 1 of Article 36.
7. Where tax is evaded in any other way.

#### Article 52

A business entity found to have failed to issue uniform invoices or understated sales amount on uniform invoices, in addition to paying the tax

calculated on the basis of the understated or omitted sales amount at the prescribed tax rate, shall be fined 1 to 10 times of the amount of the tax evaded. Business entities found to have committed such violation three times within a one-year period shall be suspended from business operation.

#### **Article 53**

Where suspension of business is imposed as a penalty in accordance with this Act, a time period shall be set, with the maximum period not to exceed six months, provided, however, that where, by the end of the period of suspension, the business entity penalized has not met the required obligation, the penalty may continue to be imposed until such time as the obligation is met.

The penalty referred to in the preceding paragraph shall be enforced with the assistance of the police authorities and, further, a notice shall be given to the agency in charge of the business entity prior to enforcement.

#### **Article 53–1**

A business entity who violates the Business Tax Act is liable to penalties of the current provisions or the previous act, whichever is lesser.

#### **Article 54**

(Deleted)

#### **Article 55**

(Deleted)

### **Chapter VII : Supplementary Provisions**

#### **Article 56**

(Deleted)

#### **Article 57**

The tax due, surcharges for belated filing, non-filing, or late payment, and interest owed by a taxpayer pursuant to provisions of this Act and tax

which shall be levied at the time of merger, consolidation, transfer, dissolution or discontinuation, and which has yet to be levied, or which shall be paid but the time for payment of which has not expired, shall all take precedence over ordinary debts.

#### Article 58

In order to prevent tax evasion, maintain control of sources of tax revenue, and promote the use of uniform invoices, the Ministry of Finance shall prescribe uniform invoice reward regulations. Three percent of the annual business tax revenue shall be set aside to support payment of rewards.

#### Article 59

The enforcement rules of this Act shall be prescribed by the Ministry of Finance and submitted to the Executive Yuan for approval and promulgation.

#### Article 60

The effective date of the act shall be prescribed by the Executive Yuan. The only exceptions are Article 11 and 21, which were revised on June 28, 1999 and went into force from July 1, 1999.

## Income Tax Act

### Article 1

Income tax is classified into consolidated income tax and profit-seeking enterprise income tax.

### Article 2

For any individual having income from sources in the Republic of China, consolidated income tax shall be levied in accordance with this Act on his income derived from sources in the Republic of China.

Unless otherwise provided in this Act, in the case of an individual who is a nonresident in the Republic of China but who has derived income from sources in the Republic of China, income tax payable by him on all such income shall be withheld and paid at the respective sources.

### Article 3

For any profit-seeking enterprise operating within the territory of the Republic of China, profit-seeking enterprise income tax shall be levied in accordance with this Act.

For any profit-seeking enterprise having its head office within the territory of the Republic of China, profit-seeking enterprise income tax shall be levied on its total profit-seeking enterprise income derived within or without the territory of the Republic of China; provided, that in case income tax has been paid on the income derived outside of the territory of the Republic of China in accordance with the tax act of the source country of that income, such tax paid may, upon presentation by the taxpayer of evidence of tax payment issued by the tax office of said source country for the same business year and attested by a Chinese embassy or consulate or other organizations recognized by the Government of the Republic of China in the said local, be deducted from the amount of tax payable by the taxpayer at the time of filing final returns on the total profit-seeking enterprise income, to the extent that such deduction shall not exceed the amount of tax which, computed at the applicable domestic tax rate, is increased in consequence of inclusion of its income derived from abroad.

For any profit-seeking enterprise having its head office without the territory of the Republic of China but having income derived from sources in the

Republic of China, profit-seeking enterprise income tax shall be levied on its profit-seeking enterprise income derived within the territory of the Republic of China.

#### Article 3-1

For payment of profit-seeking income tax for the year of 1998 and the years thereafter, a profit-seeking enterprise may, when making surplus earning distribution, cause its shareholders, association/society members, partners of capital owners to deduct from the gross amount of tax payable as declared in their respective annual consolidated income tax return for the current year the amount of income tax payable by them on the dividend or the surplus earning distributed to them by the said profit-seeking enterprise.

#### Article 3-2

Where the settlor of a trust deed is a profit-seeking enterprise and the beneficiary of the whole or any part of the trust benefit designated therein is not the settlor himself/herself/itself, then the said beneficiary shall include the value of his/her/its entitlement to such trust benefit in the aggregate amount of his/her/its annual income in the year the trust deed takes effect for assessment of income tax under the act.

In the case of a trust deed referred to in the preceding Paragraph wherein the settlor is named as the beneficiary of the whole or any part of the trust benefit, if the beneficiary is replaced by a person other than the settlor during the term of such trust relationship, then the said new beneficiary shall include the value of his/her/its entitlement to such trust benefit in the aggregate amount of his/her/its annual income in the year such beneficiary change takes effect for assessment of income tax under the act.

In the case of a trust deed wherein the settlor is a profit-seeking enterprise, if any person other than a settlor is added thereto as a beneficiary to the trust benefit as a result of an increase of the property in trust during the term of existence of the trust relationship, then the said new beneficiary shall include the increased portion of the value of his/her/its entitlement to such trust benefit in the aggregate amount of his/her/its annual income in the year the trust property increase takes effect for assessment of income tax under the act.

Where the beneficiary or beneficiaries of a trust deed set forth in any of the preceding three Paragraphs are to be decided or not in existence yet, the settlor shall be considered as the tax-payer for that trust deed who shall include the value of his/her/its or their entitlement to such trust benefit as calculated in accordance with the applicable withholding tax rate and received by him/her/it or them under the trust deed in his/her/their annual income tax return to be filed within the tax declaration period fixed in Article 71 of this Act. The income tax withholding rates referred to hereinabove shall be formulated by the Ministry of Finance and submitted to the Executive Yuan for its approval and promulgation.

### Article 3-3

Where the trust property is transferred or otherwise disposed of based on transfer of trust relationship between the interested parties under any of the following circumstances, such transfer or disposition of trust property shall be exempt from assessment of income tax:

1. Between the settlor and a trustee, due to creation of the trust deed;
2. Between the original trustee and a new trustee, upon change of the trustee during the term of persistence of the trust relationship;
3. Between a trustee and a beneficiary, upon delivery of the trust property by the trustee pursuant to the intent of trust during the term of persistence of the trust relationship;
4. Between the settlor and the trustee or between the trustee and the beneficiary upon extinguishment of the trust relationship; or
5. Between the settlor and the trustee due to unsuccessful creation of, or invalidation, cancellation or nullification of the trust deed.

The income arising from management or disposition of the trust property by the trustee prior to transfer or disposition of the trust property to be effected under the preceding Paragraph shall be subject to assessment of income tax in accordance with the provisions of Article 3-4 of this Act.

### Article 3-4

With regard to the revenue, if any, derived from trust property, the trustee shall, in the year of derivation of such revenue and after deducting therefrom the costs, necessary expenses and loss occurred, calculate the amount of each category of income as classified in this Act to be payable

to each trust beneficiary; and each beneficiary shall include such portion of trust benefit distributed to him/her/it in his/her/its annual income tax return to be filed in the then current year for assessment of income tax under this Act.

Where there are two or more beneficiaries entitled to the trust benefit set forth in the preceding Paragraph, the trustee shall calculate the amounts of such revenue distributable to all beneficiaries in accordance with the benefit distribution proportions explicitly provided in the trust deed or the deductive proportions. However, if the distribution proportions are unknown or can not be deduced, then the revenue of various categories of such revenue derived from the trust property and distributable to trust beneficiaries shall be calculated on an average basis.

In the absence of specific or any beneficiary/beneficiaries, the tax payer for the amount of revenue derived from the trust property as calculated in the year of occurrence of such revenue under the preceding two Paragraphs shall be the trustee of the trust property, and a withholding tax shall be paid at the applicable withholding rates and declared in the annual income tax return to be filed within the filing period fixed in Article 71 of this Act. As for the withholding tax already declared and paid in accordance with the provisions of Paragraph Two, Article 89-1 of this Act, the amount of such withholding tax may be deducted from the amount of income tax payable by the tax-payer. The withholding tax rates shall be formulated and reported to the Ministry of Finance for its approval and promulgation.

In case a trustee fails to comply with the provisions set out in the preceding Paragraphs One through Three, the competent tax collection authority shall assess the amount of income of the trust beneficiary concerned based on the relevant information available and levy the income tax accordingly.

With regard to the public trust conforming to the requirements set out in Article 4-3 of this Act, the trust benefit actually distributed to trust beneficiaries shall be included in their respective annual income for the year of distribution of such benefit for assessment of income under this Act.

With regard to the mutual trust funds, securities investment trust funds and/or other trust funds approved by the competent authorities under the

acts, the trust benefits actually distributed to trust beneficiaries shall be included in their respective annual income for the year of distribution of such benefits for assessment of income tax under this Act.

#### Article 4

Income tax on the following categories of income shall be exempted:

1. Salaries of military personnel in active service;
2. Salaries of teachers and employees of nurseries, kindergartens, public primary and junior high schools, and private primary and junior high schools;
3. Compensation for death or injury and that obtained in pursuance of the National Compensation Act;
4. Pension or compensation for death received in accordance with applicable acts or regulations by the bereaved family of a person who died in performing official duties. Pension or compensation for death in one lump sum or by installments received in accordance with applicable acts or regulations by the bereaved family of a person died not in performing official duties with the lump sum or the total amount paid in all installments in one year calculated together with the amount of the Separation Income provided in Paragraph 1, Article 14 hereof; however, the total amount received shall not be more than the deductible amount provided in Category 9, Paragraph 1, Article 14 hereof;
5. Payment for special disbursement, allowance in kind or cash in lieu thereof and housing allowances received from the government by public servants, teachers, military personnel, policemen and laborers; and that portion included in the uniform-scale salary received by employees of state-run organizations representing allowance in kind and housing allowance;
6. Interest on savings of a compulsory nature made in accordance with act or ordinance;
7. Compensation payment made under life insurance, labor insurance and insurance for public servants, military personnel and teachers;
8. Scholarships and subsidies granted by governments of the Republic of China or foreign governments, international institutions, educational, cultural, and scientific research organizations or associations, and other public or private organizations for encouragement of advanced studies,

research or participation in scientific and professional training, except for the scholarships or subsidies received as the remuneration for services rendered to the grantors;

9. Income, derived by virtue of office, of foreign diplomatic officials, consular officials and other persons entitled to treatment accordable to diplomatic officials in the service of foreign embassies, legations and consulates in the Republic of China;

10. Income, derived by virtue of office, of employees, other than diplomatic officials, consular officials and persons entitled to diplomatic treatment, who, being nationals of a foreign country, are employed by the embassy, legation or consulate of their country or by subsidiary agencies thereof in the Republic of China; provided, that reciprocal treatment is accorded by the foreign country concerned to employees of Chinese nationality employed by the embassy, legation or consulate of the Republic of China or by subsidiary agencies thereof, in the foreign country concerned.

11. Salaries paid by foreign governmental agencies, organizations or educational and cultural institutions to foreign technicians and professors of universities and colleges for services rendered within the territory of the Republic of China under technical cooperation or cultural and educational exchange agreements made by and between such foreign governmental agencies, organizations or educational and cultural institutions and those of the Republic of China;

12. (Deleted)

13. Income derived by organizations or societies, which are established for educational, cultural, public welfare or charitable purposes and are in conformity with the criteria prescribed by the Executive Yuan, from the operations of their own and their subsidiaries;

14. Surplus profit of consumer cooperatives operated in accordance with act, doing no business with outsiders;

15. (Deleted)

16. Income earned by an individual or by a profit-seeking enterprise from the sale of land, or by an individual from the sales of apparel or furniture for household use, or income earned by a profit-seeking enterprise from the transactions of sale of property for the purpose of stockpiling war materials in accordance with the regulations established by the government.

The portion of stock or bond transactions income, earned by an individual or a profit-seeking enterprise through sale of stock or corporate bonds of companies limited by shares, attributable to changes in the valuation of said securities from date of acquisition to December 31, 1973.

17. Properties received by way of inheritance, bequest or gift, except properties obtained as a gift from a profit-seeking enterprise;

18. All kinds of income derived by governments of various levels;

19. Income of public utility enterprises owned by governments of various levels;

20. Business income obtained from the operation inside the territory of the Republic of China by a foreign enterprise engaged in international transportation; provided that reciprocal treatment is accorded by the foreign country concerned to an international transport enterprise of the Republic of China operating in its territory;

21. Royalty paid to a foreign enterprise for the use of its patent rights, trademarks, and/or various kinds of special licensed rights in order to introduce new production technology or products, improve product quality, or reduce production cost under the approval of the competent authority as a special case, as well as remuneration paid to a foreign enterprise for its technical services rendered in construction of a factory for an important productive enterprise determined and approved as such by the competent authority;

22. Interest derived from loans offered to the government of the Republic of China or legal entities within the territory of the Republic of China by foreign government or international financial institutions for economic development, and interest derived from the financing facilities offered to their branch offices and other financial institutions within the territory of the Republic of China by foreign financial institutions. Interest derived from loans extended to legal entities within the territory of the Republic of China by foreign financial institutions for financing important economic construction projects under the approval of the Ministry of Finance. Interest derived from favorable-interest export loans offered to or guaranteed for the legal entities within the territory of the Republic of China by foreign governmental institutions and foreign financial institutions which are specialized in offering export loans or guarantees;

23. Individual income derived from written articles, copyright books,

musical compositions, musical productions, dramas, cartoons, or as remuneration for speeches and lectures on an hourly basis. However, the total amount of such income for the whole year shall not exceed NT\$ 180,000;

24. Various payments paid to personnel engaged in handling various kinds of examinations held by governmental agencies or academic organizations as commissioned by such agencies and in entrance examinations held by public and private schools of various levels.

Criteria of "performing official duties" as referred to in Item 4 of the preceding Paragraph shall be stipulated by the Executive Yuan.

#### Article 4-1

Income tax on gains derived from the securities transactions ceased to be imposed with effect from January 1, 1990, at the same time, losses on securities transactions shall no longer be deductible from the amount of income derived from such transactions.

#### Article 4-2

Assessment of income tax on income from transactions of futures under Statute for Futures Transaction Tax shall be suspended for the time being and loss in such transactions shall not be deductible from the amount of income.

#### Article 4-3

Where a profit-seeking enterprise provides property for the purpose of formation of, or contribution to, or participation in any of the following public trusts, the value of the beneficiaries' entitlement to the benefits distributable to them under the said public trust shall be exempt from assessment of income tax and from application of the provisions of Article 3-2 and the proviso set out in Item 17, Paragraph One, Article 4 of this Act:

1. A public trust, the trustee thereof is a trust business operator as defined in the Trust Business Act;
2. A public trust which will not pay special benefit in any manner to any specific person or any person who may be designated as a specific person,

except for payment of the expenses which must be made to an enterprise incorporated in realizing the creation objective of the said public trust; or

3. A public trust which, according to the provisions of the trust deed thereof, will be transferred to a government authority at a specific level, or a public juristic person or public trust having a similar objective upon the cancellation, termination or extinguishment of such trust deed.

## Article 5

The personal exemption for consolidated income tax shall be limited to NT\$ 60,000 each person per year. If the total increase of the consumer price index is more than 3%, as compared to the index of the year of previous adjustment, the exemption shall be adjusted accordingly. The adjusted amount shall be calculated in units of thousands of NT Dollars; amounts less than a thousand NT Dollars shall be calculated in hundreds of NT Dollars and then rounded off to the nearest thousand using the traditional method.

The tax brackets and rates of consolidated income tax are as follows:

1. If the annual total net consolidated income is less than NT\$ 300,000, the tax rate shall be 6%.
2. If the annual total net consolidated income is above NT\$ 300,000 to NT\$ 800,000, the income tax payable shall be NT\$ 18,000 plus 13% for the portion of income more than NT\$ 300,000.
3. If the annual total net consolidated income is above NT\$ 800,000 to NT\$ 1,600,000, the income tax payable shall be NT\$ 83,000 plus 21% for the portion of income more than NT\$ 800,000.
4. If the annual total net consolidated income is above NT\$ 1,600,000 to NT\$ 3,000,000, the income tax payable shall be NT\$ 251,000 plus 30% for the portion of income more than NT\$ 1,600,000.
5. If the annual total net consolidated income is above NT\$ 3,000,000, the income tax payable shall be NT\$ 671,000 plus 40% for the portion of income more than NT\$ 3,000,000.

If the total increase of the consumer price index is more than 10% as compared to the index of the year of previous adjustment, the tax brackets as described in the preceding paragraph shall be adjusted accordingly. The adjusted amount shall be calculated in units of ten thousands of NT Dollars; amounts less than ten thousand NT Dollars shall be calculated in

thousands of NT Dollars and then rounded off to the nearest ten thousands using the traditional method.

The exemption and tax brackets for consolidated income tax shall be publicly announced by the Ministry of Finance in accordance with preceding paragraphs 1 & 3 before the beginning of each year. The consumer price index as indicated above shall be publicly released by the Director General of Budget, Accounting and Statistics of the Executive Yuan based on the average consumer price index for 12 months up to the end of October of the previous year.

The minimum taxable amount, tax brackets and rates for profit seeking enterprises income tax are as follows:

1. If the total taxable income of a profit seeking enterprise is less than NT\$ 50,000, the profit-seeking enterprise is exempt from tax.
2. If the total taxable income of a profit seeking enterprise is less than NT\$ 100,000, the income tax rate will be 15%. However, the income tax payable shall not exceed one half of the portion of taxable income more than NT\$ 50,000.
3. If the total taxable income of a profit seeking enterprise is more than NT\$100,000, the income tax rate shall be 25% on the portion of taxable income more than NT\$ 100,000.

#### Article 5-1

The standard deduction, special deduction of income from salaries/wages and special deduction for the disabled or handicapped shall be handled in accordance with Article 17, and their respective calculations for adjustments shall apply mutates to paragraph 1 and paragraph 4 of Article 5.

The deductions of paragraph 1 and the exemption of Article 5 shall be assessed every three years in accordance with the standard of income and changes in basic living standards.

#### Article 6

All amounts of money as provided in this Act shall be into New Taiwan Dollars.

#### Article 6-1

With regard to the property provided by any individual or profit-seeking enterprise for creating, or contributing to, or participating in a public trust conforming to the applicable requirements set out in Article 4-3, the provisions of Article 17 and Article 36 of this Act shall govern.

#### Article 6-2

Separate accounting books and records shall be established and maintained for individual trust deeds by the respective trustees of such trust deeds for use in keeping the details of the receiving and disbursing transactions effected under each individual trust deed. Every disbursement transaction must be supported by appropriate certificate or receipt.

### Section 2 Definitions

#### Article 7

The term "person" as used in this Act refers to a natural person or juristic person. The term "individual" used in this Act means a natural person.

1. A person who has domicile within the territory of the Republic of China and resides at all times within the territory of the Republic of China;
2. A person who has no domicile within the territory of the Republic of China but resides within the territory of the Republic of China for a period of more than 183 days during a taxable year.

The term "individual not residing in the Republic of China" denotes an individual other than those as provided in the preceding paragraph.

The term "taxpayer" as used in this Act means a person who is required under this Act to report or pay income tax.

The term "tax withholder" as used in this Act means a person who is required under this Act to withhold income tax from his payment to be made to a taxpayer.

#### Article 8

The term "income from sources in the Republic of China" used in this Act refers to income of the following categories:

1. Dividends distributed by companies incorporated and registered in accordance with the Company Act of the Republic of China and by foreign companies authorized by the government of the Republic of China to

operate within the territory of the Republic of China;

2. Profits distributed by profit-seeking enterprises organized in the form of a cooperative or a partnership within the territory of the Republic of China;

3. Remuneration for services rendered within the territory of the Republic of China, provided that this shall not apply to remuneration obtained from an employer without the territory of the Republic of China by an individual not residing in the Republic of China but staying in the Republic of China for a period of not more than ninety days during a taxable year;

4. Interest obtained from governments of various levels of the Republic of China, from juristic persons within the territory of the Republic of China and from individuals residing in the Republic of China;

5. Rental obtained from lease of property situated within the territory of the Republic of China;

6. Royalty obtained from patents, trademarks, copyrights, secret formulas and franchises by virtue of their being made available for use by other persons within the territory of the Republic of China;

7. Profits from the transaction of properties within the territory of the Republic of China;

8. Remuneration for services performed by personnel sent abroad by the government of the Republic of China on overseas missions and for services rendered abroad by employees in general;

9. Profits from operation of industry, commerce, agriculture, forestry, fishery, animal husbandry, mining, and metallurgy enterprises within the territory of the Republic of China;

10. Awards or grants obtained from participating in various skill contests, games, or lotteries, etc. within the territory of the Republic of China; and

11. Any other income obtained within the territory of the Republic of China.

#### Article 9

The terms "income from the transaction of property" and "losses from the transaction of property" as used in this Act refer to profits and losses resulting from sale, purchase, or exchange of property by a taxpayer, who comes to possess the property other than engaging in regular sales and purchases of such properties for profit-seeking purposes.

#### Article 10

The term "fixed place of business" as used in this Act refers to fixed places for operation of business, including administrative offices, branch or sub-branch offices, business offices, factories, workshops, warehouses, mining fields, and construction sites, however, this shall exclude warehouse or storage sites used exclusively for purchase of goods and maintenance shops not used for processing or manufacturing products.

The term "business agent" as used in this Act means an agent fulfilling any of the following requirements:

1. Where the agent, in addition to representing its principal in the purchase of goods, is authorized to regularly represent the principal in making business arrangements and in signing contracts;
2. Where the agent regularly keeps in store goods of its principal and delivers the same, for its principal, to others; and
3. Where the agent regularly accepts, for its principal, order for goods.

## Article 11

The term "practitioner of profession" as used in this Act refers to a lawyer, certified public accountant, architect, technician, physician, pharmacist, obstetrician, author, broker, scrivener, artisan, performer, and any other person who makes a living with craftsmanship or art.

The term "profit-seeking enterprise" as used in this Act refers to industrial, commercial, agricultural, forestry, fishing, animal husbandry, mining or metallurgical enterprises operated by public, private, or joint public and private interests and having a business name or place and organized in the form of sole proprietorship, partnership, company or in any other form of organization.

The term "public-owned enterprise" as used in this Act refers to an organization established by a government of any level for the purpose of attaining certain objectives of a specific enterprise without computation of profit or loss and distribution of dividend.

The term "educational, cultural, public welfare and charitable organizations or institutions" as used in this Act denotes organizations or institutions that are organized in accordance with the provisions of the Book of General Principles of the Civil Code relating to public welfare organization and foundations or in accordance with the provisions of other relevant acts and ordinances and are duly registered with the authority-in-charge.

The term "cooperative" as used in this Act refers to cooperatives which are organized in accordance with the Cooperative Act, duly registered with the authority-in-charge at the place of their business, and conduct their operations in accordance with act, provided that an organization which, although engaged in business of a cooperative nature, fails to meet the requirements set forth herein, shall not be considered as a cooperative.

The term "taxable year" as used in this Act where the individual consolidated income tax is involved shall commence on the first day of January and end on the thirty-first day of December of each year.

## Article 12

(Deleted)

## Chapter II Consolidated Income Tax

## Article 13

Consolidated income tax of an individual shall be levied on the amount of his net consolidated income which shall be the gross consolidated income minus the amount of tax-exempt income, and various deductions.

## Article 14

The gross amount of consolidated income of an individual shall be the aggregate of the following categories of income for the whole year:

Category 1:

Income from profit-seeking: the gross dividend received by each shareholder of a company, the gross surplus profit received by each member of a cooperative, and the gross surplus profit payable each year to each partner of a profit-seeking partnership, the gross surplus profit derived in each year by a sole proprietor from the operation of an enterprise invested soled by him, and the surplus profit derived by an individual from incidental trading activities shall all come under this Category of income.

The gross amount of dividend received by a shareholder or the gross amount of surplus profit received by a member of a cooperative shall by the some of the net dividend as indicated in the dividend voucher or the total amount of distributable surplus profit plus the amount of deductible

income tax, as the case may be. Gross surplus profit payable to a partner or the surplus profit derived by a sole proprietor from operation of an enterprise invested solely by him shall be included in the approved amount of such profit-seeking enterprise income.

#### Category 2:

Income from professional practice: any income of an individual from professional practice or performances after deduction of the rental for or depreciation of the place of business, depreciation of and repairing expenses for the facilities and equipment required for business, or the cost of medications, supplies, etc. sold to clients, salaries and wages for employees required for business, travelling expenses for practicing the profession and other direct and necessary expenditures, shall be the actual amount of income in this Category.

Any individual engaged in professional practice shall at least keep a journal as his accounting book to provide detailed entries of all the operating revenues and expenses. For all business expenditures, documents of positive evidence shall be secured. The documents of evidence and account book shall be kept for a period of at least five years. Measures regarding the setting up, acquisition, and maintenance of the documents of evidence and account books and other related matters shall be prescribed by the Ministry of Finance.

Depreciation of buildings, facilities, and equipment used in professional practice shall be calculated in accordance with the Table of Service Life of Fixed Assets. The relevant provisions with respect to profit-seeking enterprise income tax of this Act shall be applicable, mutatis mutandis. Measures regarding the inspection of the documents of evidence, recognition of the revenues and expenses from professional practice and their account books and other related matters shall be prescribed by the Ministry of Finance.

#### Category 3:

Income from salaries and wages: any income from salaries and wages of public functionaries, teachers, military personnel, policemen, staff employees and workers of public and private enterprises and any income earned by persons rendering services:

1. Income from salaries and wages shall be all salaries and wages earned for performing duties or doing works;

2. Salaries and wages as provided in the preceding subparagraph shall include salaries, stipends, wages, allowances, annuities, cash awards, bonuses and all kinds of subsidies, whereas, the money received for performing duties for the employer as traveling expenditures, daily allowance and overtime pay not in excess of the prescribed amounts and the incomes which are exempt from income tax as prescribed under Article 4 of this Act shall be excluded.

Category 4:

Income from interest: any income from interest on public debts, corporate bonds, financial, various kinds of short-term commercial papers, deposits and other loans:

1. Public debts shall include bonds, treasury notes, securities, and other notes issued by governments of all levels;
2. Prize money from raffle-savings in excess of the amount of savings shall be deemed as income from interest on deposits:
3. Short-term commercial papers shall include one-year or less treasury bonds, transferable time deposit certificates issued by banks, bill of exchange accepted by banks, commercial promissory notes, and other short-term certificates of indebtedness approved by the authority in charge of the specific end enterprise.

The portion of the pecuniary amount realized by the short-term commercial papers at their maturity in excess of the selling price at their initial issuance shall be deemed as income from interest such income shall not be added to the gross consolidated income, but withheld in accordance with the provision of Article 88.

Category 5:

Income from lease and from royalties: any income from lease of property, from utilization of money obtained as the price of a lien on property, or from royalties on patents, registered trademarks, copyrights, secret formulas, and all kinds of franchise made available for use by others:

1. Amount of income from lease of property and from royalties shall be the whole year's income after deduction of necessary losses and expenditures;
2. Any income derived from long-lasting tenant right and superficies created for fixed terms shall be deemed as income from lease;
3. For money received in the form of rental deposit or in other similar forms for lease of property, and for money received as the price of a lien created

on property, to calculate the income from lease the prevailing bank interest rate for one-year-term deposit shall be used as a basis;

4. Income tax on revenue from lease calculated in accordance with the local prevailing rental standard shall be paid for properties lent to others for use, unless it can be verified that no payment is made and the properties involved are not being used for business or for carrying out professional services;

5. The revenue from lease will be upward adjusted by the collection authority according to the local prevailing rental standard if the contracted rental of the lent properties was obviously too low in comparison with the local prevailing standards.

Category 6:

Income from self-undertaking in farming, fishing, animal husbandry, forestry and mining—amount of income shall be the whole year's income after deduction of necessary expenses.

Category 7:

Income from property transactions: any income derived from transactions of property and right:

1. Where the property or right was originally acquired at a price, amount of the income shall be the transaction price after deduction of original cost and all expenses necessary for acquisition, improvement and ownership transfer of that asset;

2. Where the property or right was originally acquired through succession or donation, amount of the income shall be the transaction price after deduction of value prevailing at time of succession or donation and all expenses necessary for acquisition, improvement and ownership transfer of that property or right;

3. One-half of the amount of income of an individual derived from transactions in registered stocks or registered corporate bonds issued by a company limited by shares, or public bonds issued by governments of all levels, or development bonds issued by banks under the approval of government, if the individual has held such stocks or bonds for a period of one year or longer, shall be considered as a part of his income in the taxable year, while the other one-half shall be exempted from income tax.

Category 8:

Income from contests and games and from prizes and awards won by

chance: any income derived from prizes or awards in contests or lotteries shall be included in the category:

1. All expenses necessary for participating in contests or games are permitted to be deducted;
2. All costs necessary for participating in lotteries are permitted to be deducted;
3. Prize money from lottery tickets under the auspices of the government, except that tax payable shall be withheld in accordance with the provision of Article 88, shall not be included in the gross consolidated income.

Category 9:

Separation income: The retirement pay, severance pay, separation pay, resignation pay, life-time pension and the old-age pension not covered by insurance benefits received by a person, except receipt of the savings made by said person from his/her salaries every year and interest accrued thereon.

1. If received in one lump sum, the income amount is calculated as follows:

(1) If the total amount received in one lump sum is less than NT\$150,000 multiplied by the number of service years at the time of separation, the income amount shall be considered zero;

(2) If the total amount received in one lump sum is more than NT\$ 150,000 multiplied by the number of service years at the time of separation, half of the portion of the amount over NT\$ 150,000 but less than NT\$ 300,000 multiplied by the number of service years at the time of separation shall be the income amount;

(3) The portion of the amount over NT\$ 300,000 multiplied by the number of service years shall totally be considered the income amount.

The last digit of the number of service years, if less than 6 months, shall be calculated as half a year and, if over 6 months, as one year.

2. If received by installments, the income amount shall be the balance of the total amount of all installments received in one year with the deduction of NT\$650,000;

3. If portion of the separation income is received in one lump sum and portion by installments, the deductible amount mentioned in Item 2 above shall be calculated in proportion to the amounts received in one lump sum and by installments respectively.

#### Category 10:

Other income: amount of any income other than the aforesaid after deduction of necessary expenses and costs. However, the reward for information or accusation shall not be added to the gross consolidated income, but withheld in accordance with the provisions of Article 88.

Where any of the aforesaid categories of income is earned in kind, in the form of valuable securities or in foreign currencies, the amount of income shall be computed at the prevailing price or exchange rate prescribed or recognized by the government or in the absence thereof, at the respective actual local value at time of receipt.

Any variable income such as that derived from self-undertaking in forestry, or from old age pensions or retirement pensions or alimony paid in lump sum, or remuneration in lump sum distributed after each trip to the employed for fishing in the high seas or compensation received for returning the leased farm land in accordance with the provision of Article 77 of the Statute for Equalization of Urban Land Rights, among an individual's gross consolidated income may be subject to taxation at a half of the amount thereof in the taxable year of income.

If the increase of consumer price index accumulates to 3% or more over the figure last adjusted, the amounts stipulated in Category 9 of Paragraph 1 above shall be adjusted accordingly and the adjustment shall be made at the rate of NT\$1,000 as a basic unit with the hundreds rounded off if the adjusted amount is less than NT\$1,000. As to the method of publication and the consumer price index mentioned above, the provisions in Paragraph 4, Article 5 hereof shall apply.

#### Article 15

Where the spouse of a taxpayer and/or a dependent whose support deduction may be made in accordance with Article 17 of this Act has any incomes as provided in the preceding Article, the taxpayer shall include such income in his income return for taxation. After the taxpayer has been identified, a change may be made within six months from the time limit prescribed for filling income tax returns for the taxable year.

The amount of tax leviable on the salary income of a taxpayer or his(her) spouse may be computed separately and then declared and paid

consolidatedly by the taxpayer. In computing the amount of such tax, only the tax exempt amount and the special deduction of income from salary and wage as specified in Article 17 may be made from the salary/wage income computed separately; whereas all other exemption and deductions applicable to the person whose salary income is computed separately shall be declared in the tax return of the taxpayer. The taxpayer may not make a duplicate claim for exemption or special deduction for the salary/wage income of the person whose salary income is computed separately when computing the amount of income tax payable by himself (herself).

#### Article 16

In the computation of an individual's gross consolidated income in accordance with the preceding two Articles, if a taxpayer and his spouse operate two or more profit-seeking enterprises, any loss determined by the tax office may be deducted from his income from profit-seeking as determined by the tax office and the amount of income shall be the balance after such a deduction.

The deduction as provided in the preceding paragraph may be made only where the "blue return" as provided in Article 77 of this Act issued by all the profit-seeking enterprises operated; however this shall not apply where the consolidated income report is not filed by the taxpayer within the prescribed time limit.

#### Article 17

The net consolidated income of an individual shall be the gross consolidated income as computed in accordance with the preceding three Articles less the following exemption and deductions:

1. Exemption: Taxpayers may deduct a prescribed amount of exemption for themselves, their spouses, and dependents that meet any of the conditions below. Furthermore, the exemption amount for taxpayers and spouses that are at least seventy years old shall be increased by 50%. In accordance with Paragraph 2, Article 15, however, the taxpayer shall not be permitted to make a duplicate claim for exemption for a person whose amount of salary/wages income tax payable has been computed separately:

(1) Lineal ascendant(s) of the taxpayer and his (her) spouse having

attained sixty years of age, or being incapable of earning a livelihood and being supported by the taxpayer. If a lineal ascendant being supported by the taxpayer has attained seventy years of age, the exemption amount for said lineal ascendant shall be increased by 50%.

(2) Children of the taxpayer who are under twenty years of age, or who, although having attained twenty years of age, are being supported by the taxpayer by reason of their studying in school, or having physical or mental disability, or being incapable of earning a livelihood.

(3) Brothers and sisters of the taxpayer and his(her) spouse who are under twenty years of age, or who, although having attained twenty years of age, are being supported by the taxpayer by reason of their studying in school, or having physical or mental disability, or being incapable of earning a livelihood.

(4) Other relatives or family members of the taxpayer within the meaning of sub-paragraph 4, Article 1114, or paragraph 3, Article 1123, of the Civil Code who and under twenty years of age or over sixty years of age and are incapable of earning a livelihood and are supported by the taxpayer. However, such dependents shall not be entitled to income tax exemption if their respective father or mother is eligible for tax exemption under sub-paragraphs 1 and 2, Article 4, of this Act.

2. Deductions: A taxpayer may select either the "Standard Deduction" or "Itemized Deductions" and may, in addition thereto, declare special deductions:

(1) Standard Deduction: NT\$ 38,000 for a single taxpayer; with a deduction to double that of the amount for a single taxpayer for a taxpayer and his or her spouse.

(2) Itemized Deductions:

i. Contributions and donations: Contributions and donations made to educational, cultural, public welfare or charitable organizations or associations in a total amount not in excess of 20% of the total amount of the gross consolidated income is deductible. However, there is no limit to the amount of donations or contributions made for the support of national defense or troop-cheering or contributions to the government.

ii. Insurance premiums: Premiums paid by or for the taxpayer, his (her) spouse and lineal dependents on life insurance, labor insurance and insurance for military personnel, public servants or teachers, with the

deductible amount not exceed NT\$ 24,000 for each person per year. However, there is no limit to the amount of the premium paid for national health insurance.

iii. Medical and childbirth expenses: Medical and childbirth expenses incurred by the taxpayer, his (her) spouse, or dependents provided that payments so made are limited to that paid to public hospitals, private hospitals or clinics appointed under insurance for public servants and/or labor insurance, or those hospitals having complete and accurate accounting records as recognized by the Ministry of Finance. However, no deduction shall be made for the portion (of such expense) covered by an insurance payment.

iv. Losses from disaster: The portion of loss incurred by the taxpayer, his(her) spouse and dependents from a disaster caused by force majeure. However, no deduction shall be made for the portion of loss for which insurance benefit or relief has been received.

v. Interest on a house mortgage: The interest payable on a loan from a financial institution by a taxpayer for the purpose of a house for his own use may be deducted from his (her) consolidated income, with the deductible amount not to exceed NT\$ 300,000 per year per tax return. However, if a special deduction for savings and investment has been made in the same tax return, the amount of such special deduction shall be subtracted from the aforesaid interest of the house mortgage; the deduction for interest on the house mortgage in accordance with the above mentioned provisions is limited to one house only.

vi. Rent for Housing: Rent for housing in the R.O.C. paid by taxpayers, their spouses, and lineal dependents and used as their own residence rather than for business or performing professional services, may be deducted from their consolidated income to the extent of NT\$ 120,000 per year per tax return. However, no deduction shall be made for taxpayers who have filed "Interest on a House Mortgage" on the same tax return.

### (3) Special Deductions:

i. Loss from property transactions: The amount of loss from property transactions incurred by a taxpayer, his (her) spouse and dependents which is deductible in one year shall not exceed the declared amount of income derived from property transactions in the same year. However, if no income or no sufficient income derived from property transactions in

the same year is available for deduction, the loss may be carried forward in the next three years. The provisions relating to computation of income derived from property transactions set forth in category 7, Paragraph 1, Article 14 of the Act shall apply mutatis mutandis to the computation of loss from property transactions.

ii. Special deduction of income from salaries/wages: For a taxpayer and the individual(s) whose taxable income are combined with that of the said taxpayer for tax return purposes having income from salaries/wages, a deduction of NT\$ 75,000 per year may be taken for each person. However, if the declared amount of salaries/wages of any person is less than NT\$ 75,000, then the total declared amount of his salaries/wages may be deducted in full. Where the spouse of the taxpayer elects to have the tax on his (her) salaries/wages computed separately in accordance with Paragraph 2, Article 15 of the Act, a deduction of NT\$ 75,000 per year may be made by the spouse individually. However, if the amount of salaries/wages declared by him (her) is less than NT\$ 75,000, the amount of his (her) salaries/wages declared may be deducted in full.

iii. Special deduction for savings and investment: Interest derived from deposits in financial institutions, government bonds, corporate bonds, and financial bonds, income from trust funds in the nature of savings, and dividends accrued on registered share certificates publicly issued and listed on the market by a company earned by a taxpayer, and his (her) spouse and dependents whose income are combined in the same consolidated income tax return filed by the taxpayer may be exempt from income tax in full, if the total amount of such income for the whole year does not exceed NT\$ 270,000. If the amount exceeds NT\$ 270,000, the deduction shall be limited to NT\$ 270,000. However, this limit of deduction does not apply to the interest accrued and exempt from income tax on postal pass-book savings under the provisions of the Post Savings Act and the interest accrued on short-term commercial papers subject to separate taxation as stipulated in this Act.

iv. Special deduction for the disabled or handicapped: If the taxpayer or his (her) spouse having taxable income combined with that of the taxpayer for tax return purposes and/or any of the taxpayer's dependents is a disabled or handicapped person within the meaning as defined in Article 3 of The Physically and Mentally Handicapped Protection Act or a patient as

defined in Paragraph 2, Article 5 of The Mental Health Act, a deduction of NT\$ 63,000 per year may be made for each person.

v. Special deduction for educational tuition: If any of the children of a taxpayer is studying in a college or university, a deduction of NT\$ 25,000 per year may be made for his (her) educational tuition. However, the tuition of the Open University, vocational colleges, the first three years of five-year vocational colleges and students who have accepted government subsidies or students who have obtained scholarship are excluded.

Where the taxpayer or his (her) spouse elects to have the tax on his (her) salary/wages computed separately in accordance with Paragraph 2, Article 15, the exemption and special deductions on income from the salary/wages computed separately shall be deducted by the receiver of the salary/wages computed separately, while other exemptions or deductions conforming to the provisions of the preceding Paragraph may not be deducted from the salary/wages computed separately, but shall instead be declared for deduction by the taxpayer.

The provisions of the deductions set forth in Item 2, Sub-Paragraph 2 of Paragraph 1 of this Article shall not apply to a taxpayer who is subject to filing a final income tax return in accordance with Article 71 of this Act but fails to do so and is assessed by the tax collection authority as to his (her) tax liabilities.

#### Article 17-1

Where an individual subject to the filing of consolidated income tax return under Article 71-1 is deceased or departed from the Republic of China during a taxable year, the deductible amounts of tax exemption and standard deductions for him (her) shall be computed respectively in proportion to the ratio between the number of days before his (her) death or the number of days of his residing in the territory of the Republic of China in that year and the total number of days of the said taxable year.

#### Article 17-2

The amount of consolidated income tax paid by a taxpayer on the income realized from sales of building of the self-use residence, if he repurchases another building as his self-use residence within two years from the date on which the registration of transfer of ownership of the old building was

completed, and the cost of the new building exceeds the original sales price, may be deducted or refunded from the consolidated income tax payable or paid for the year in which the registration of transfer of ownership of repurchased building as self-use residence was completed. However, if the income realized from the property transaction had already been offset against the loss incurred from property transaction concluded previously in accordance with the stipulations of this Act, then the provisions hereof shall not apply.

The provisions of the preceding paragraph shall also be applicable to the taxpayer who buys first and sells later.

### **Article 17-3**

The provisions regarding special deduction for savings and investment as provided for in Subparagraph 2-(3)-(iii), Paragraph One of Article 17 of the Income Tax Act shall not apply to the dividends on the registered stocks publicly offered and listed by any company and acquired from January 1, 1999 and thereafter by a tax-payer and his/her spouse and any dependent supported by him/her as covered in a combined annual income tax return.

## **Chapter III Profit-Seeking Enterprise Income Tax**

### **Section 1 Registration**

### **Article 18**

(deleted)

### **Article 19**

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### **Article 20**

The responsible person of any trade association of profit-seeking enterprises shall, within the first month of each year, report to the local collection authority-in-charge a list of all its members for the preceding year and their respective responsible persons and business addresses.

### **Section 2 Account Books, Vouchers and Accounting**

## Article 21

A profit-seeking enterprise shall keep sufficient and accurate account books, vouchers and accounting records to calculate its total amount of business income.

All procedures governing the aforesaid keeping, acquisition, use, maintenance, accounting, handing and other matters concerned shall be prescribed by the Ministry of Finance.

## Article 22

The accounting system of a company shall be on the accrual basis. But a profit-seeking enterprise not organized as a company may, if there is an established custom of the business or if the volume of business is small report to the local collect authority-in-charge for adoption of accounting system on the cash basis.

A profit-seeking enterprise not organized as a company may change its adopted accounting system but shall report the change to the local collection authority-in-charge three months prior to commencement of the next fiscal year.

## Article 23

The fiscal year shall commence on the first day of January and end on the thirty-first day of December of each calendar year, provided that a profit-seeking enterprise may, on account of an existing usage of the business or of special circumstances arising from the seasonal nature of the business and upon the approval of the local collection authority-in-charge, change the commencing and expiring dates of its fiscal year.

## Section 3 Profit-seeking enterprise Income Amount

## Article 24

The amount of income of a profit-seeking enterprise shall be the net income, i.e., the gross yearly income after deduction of all costs, expenses, losses and taxes. When calculating the amount of income in which there are taxable and exempt incomes involved, the costs, expenses or losses, except that those which are attributable to such respective income in a direct, reasonable and definite way, which may be attributed to

thereby and recognized as its deductions respectively, shall be reasonably allocated to the respective income. Measures regarding such allocation shall be prescribed by the Ministry of Finance.

Income derived from interest of short-term commercial papers by a profit-seeking enterprise in accordance with Category 4, of paragraph 1 of Article 14 shall not be added to the amount of income of the profit-seeking enterprise, but withheld in accordance with the provisions of Article 88.

Net dividends or net surplus earnings received by a profit-seeking enterprise having its head office outside the territory of the Republic of China shall not be added to the amount of income of the profit-seeking enterprise, but withheld in accordance with the provisions of Article 88.

## Article 25

Any profit-seeking enterprise having its head office outside the territory of the Republic of China, and which is engaged in international transport, construction contracting, providing technical services, or machinery and equipment leasing, etc., in the territory of the Republic of China, and the cost and expenses of which are difficult to calculate may apply for approval from the Ministry of Finance, or the Ministry of Finance may make the decision to consider ten per cent of its total business revenue for an enterprise engaged in international transport business, or fifteen per cent of its total business revenue for one engaged in any other businesses as its income derived within the territory of the Republic of China regardless whether or not it has a branch office or business agent in the territory of the Republic of China. In such cases, however, the regulation in Article 39 regarding the deduction of losses cannot be applied.

Business revenue derived by an international transport enterprise within the Republic of China as provided in the preceding paragraph shall be as follows:

1. Marine transport enterprises: Referring to all ticket fares or transportation charges for outbound passengers and cargo accepted for carriage inside the territory of the Republic of China;
2. Air transport enterprises:
  - (1) Passenger transport: refers to ticket fares from the stations of embarkation inside the territory of the Republic of China to first-leg stations outside the territory of the Republic of China,

(2) Cargo transport: refers to freight charges for the entire trip for the cargo accepted for carriage. However, whereas an international air transport enterprise has transshipped its outbound cargo enroute to an aircraft of another international air transport enterprise due to the route restrictions or other reasons, its freight charges shall be calculated according to the distance of the trip actually made.

First-leg stations outside the territory of the Republic of China as provided in item 2 of the preceding paragraph shall be prescribed by decree of the Ministry of Finance.

#### Article 26

In the case of a motion picture enterprise outside of the territory of the Republic of China which has no branch office inside the territory of the Republic of China, fifty per cent of the revenue from the lease of motion pictures through agents shall be deemed as income within the territory of the Republic of China. Where a branch office has been established inside the territory of the Republic of China, costs may be computed at forty-five per cent of the revenue from the lease of motion pictures.

#### Article 27

Where documents of evidence with respect to purchases are not obtained or kept by a profit-seeking enterprise or are found to be incorrect upon verification, the collection authority-in-charge may determine the purchase costs on the basis of the lowest prices prevailing in the year at the locality concerned.

Where documents of evidence with respect to sales are not issued to others or the counterfoils thereof are not kept by a profit-seeking enterprise, the collection authority-in-charge may determine the selling prices on the basis of the highest prevailing in the year at the locality concerned.

#### Article 28

The portion of an item of raw material used by a manufacturer in excess of the general raw material consumption standard of the trade shall be disallowed unless justifiable reason is submitted to and found true upon verification by the collection authority-in-charge.

#### Article 29

Interest on capital is paid out from the distribution of profit and, as such, shall not be listed as expense or loss.

#### Article 30

Interest payable on loans within a business year is deductible as expense or loss of that year.

Where the interest rate on loans as provided in the loan contracts exceeds the statutory rate, computation shall nevertheless be made according to the maximum interest rate chargeable by local commercial banks; provided that in case the collection authority-in-charge has determined the maximum interest rate with respect to a loan acquired from a source other than a bank by reference to the market rate, the maximum interest rate as determined by the collection authority-in-charge may apply.

#### Article 31

(Deleted)

#### Article 31-1

(Deleted)

#### Article 32

Salaries of the staff employees and workers of profit-seeking enterprise in conformity with any of the following provisions may be considered as expenses or losses:

1. Salaries of the staff employees and workers paid by corporations or cooperative societies, or salaries of the shareholders, board directors and supervisors who conduct business under a prior agreement paid by corporations or cooperative societies duly prescribed in the provisions of incorporation or under a previous resolution of shareholders' meeting or members' meeting as payable irrespective of whether the enterprises or societies operate at a profit or loss.
2. Salaries of the staff employees and workers of a partnership or sole-proprietorship and salaries of the partners who conduct the business or owner, paid irrespective of whether the partnership or sole-proprietorship

operates at a profit or loss, if the amount of the salaries paid does not exceed the standard generally adhered to by other firms of the same trade.

### Article 33

Where a profit-seeking enterprise has established rules for retirement of staff employees and workers which have been reported to and approved by local collection authority-in-charge, it may each year set aside a reserve for retirement pensions of no more than four per cent of the total salaries and wages paid in that year. However, where a profit-seeking enterprise has set aside a retirement fund for staff employees and works independently with no connection with the profit-seeking enterprise under a separate means of custody, operation, distribution, etc. in conformity with the regulations prescribed by the Ministry of Finance with the approval obtained from the local collection authority-in-charge, it may each year appropriate such retirement reserve within the limit of no more than eight per cent of the total salaries and wages paid in that year and may further consider it as expenses of the year.

All those profit-seeking enterprises which are subject to the application of the Labor Standards Act, with due approval from the local tax collection authority-in-charge, may each year set aside an amount within the limit of no more than fifteen per cent of the total salaries and wages paid in that year as retirement reserve and the appropriation thus made may be considered as expenses of the year.

Where a reserve for retirement pensions for staff employees, or a retirement fund for workers has been set up pursuant to the provisions of the above two paragraphs, payment of retirement pensions or severance pay in accordance with the regulations shall be paid first from such reserve or fund when staff employees and workers retire henceforward, and only when the reserve or the fund is insufficient to meet the requirement, then such payment may be considered as expenses of the year of payment.

In computing income during liquidation proceeding upon dissolution, closure, merger or ownership transfer of a profit-seeking enterprise in accordance with the provision of Article 75, the accumulative balance of reserve for retirement pensions should change over to the current year's profit and handled accordingly.

#### Article 34

Expenditures incurred in the expansion, replacement, improvement or repair of buildings, vessels, machinery, tools, apparatus, appliances and other equipment for use in business, where such expenditure result in an increase of the value or efficiency thereof that cannot be exhausted within two years, are an increment of the capital and, as such, shall not be considered as expenses or losses.

#### Article 35

For damages due to force majeure, the portion of loss that has been indemnified by insurance shall not be considered as expenses or losses.

#### Article 36

Voluntary contributions and donations made by a profit-seeking enterprise shall be considered as expenses or losses of the year of payment in accordance with the following provisions:

1. Those that have been made for assisting national defense construction, troop cheering, contribution to government of any level and donation for a designated purpose approved by the Ministry of Finance as a special case. No restriction on the amount of money is placed;
2. In addition to the contributions and donations as provided in the preceding item, those that have been made by organizations and institutions which conform to the provisions of the fourth paragraph of Article 11 to a maximum extent of ten per cent of the amount of income.

#### Article 37

Direct expenses incurred in the course of business for social entertainment for which positive evidence of payment has been received may be listed as expenses or losses to the extent as provided hereunder:

1. If the value of yearly purchases of an enterprise is less than NT\$ 30,000,000, direct expenses for social entertainment incurred at the time and for the purpose of purchase, shall not exceed 0.15% of the value of purchases for the whole year and, in case of an enterprise approved to use Blue Returns, such expenses shall not exceed 0.2% of the value of purchase for the whole year. If the value of yearly purchases is between NT\$ 30,000,000 and NT\$ 150,000,000, the expenses for social

entertainment shall not exceed 0.1% of the portion between NT\$ 30,000,000 and NT\$ 150,000,000 and, in the case of an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.15%. If the value of yearly purchases is between NT\$ 150,000,000 and NT\$ 600,000,000, the expenses for social entertainment shall not exceed 0.05% of the portion between NT\$ 150,000,000 to NT\$ 600,000,000 and, in the case of an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.1%. If the value of yearly purchase exceed NT\$ 600,000,000, the expenses for social entertainment shall not exceed 0.025% of the portion in excess of NT\$ 600,000,000 and, in the case of an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.05%;

2. If the value of yearly sales of an enterprise is less than NT\$ 30,000,000, direct expenses for social entertainment incurred at the time and for the purpose of sales shall not exceed 0.45% of the value of sales for the whole year and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.6% of the value of sales for the whole year. If the value of yearly sales is between NT\$ 30,000,000 and NT\$ 150,000,000, the expenses for social entertainment shall not exceed 0.3% for the portion of the value of sales in excess of NT\$ 30,000,000 to NT\$ 150,000,000 and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.4%. If the value of yearly sales is between NT\$ 150,000,000 and NT\$ 600,000,000, the expenses for social entertainment shall not exceed 0.2% for the portion of the value of sales between NT\$ 150,000,000 and NT\$ 600,000,000 and for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.3%. If the value of yearly sales is exceeds NT\$ 600,000,000, the expenses for social entertainment shall not exceed 0.1% for the portion of the value of sales in excess of NT\$600,000,000, and for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.15%.

3. If the amount of yearly freight charges of an enterprise is less than NT\$ 30,000,000, direct expenses for social entertainment incurred at the time and for the purpose of transportation of goods, shall not exceed 0.6% of the freight charge for the whole year and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.7% of the freight charges for the whole year. If the amount of yearly freight charges is

between NT\$ 30,000,000 and NT\$ 150,000,000, the expenses for social entertainment shall not exceed 0.5% for the portion of the freight charges between NT\$ 30,000,000 to NT\$ 150,000,000 and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.6%. If the yearly freight charges in excess of NT\$ 150,000,000, the expenses for social entertainment shall not exceed 0.4% for the portion of the value of the freight charges for the whole year and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.5%.

4. If the yearly business income of those businesses engaged in providing services or credit is less than NT\$9,000,000, direct expenses for social entertainment incurred at the time and for the purpose of consummating business transaction for the supply of services or credit shall not exceed 1% of the business income for the whole year and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 1.2% of the business income for the whole year. If the yearly business income is between NT\$ 9,000,000 and NT\$ 45,000,000, the expenses for social entertainment shall not exceed 0.6% for the portion of business income is between NT\$ 9,000,000 and NT\$ 45,000,000 and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.8%. If the yearly business income exceeds NT\$ 45,000,000, the expenses for social entertainment shall not exceed 0.4% for the portion of business income in excess NT\$ 45,000,000 and, for an enterprise approved to use the Blue Returns, such expenses shall not exceed 0.6%.

The limit of various entertainment expenses allowed for disbursement by state-owned enterprises shall be determined by the authority-in-charge and included in their budgets. For a profit-seeking enterprise which engages in export trade and earns foreign exchange receipts, besides listing as expenses the payment of social entertainment expenses as prescribed in the provisions of the sup-paragraphs of the preceding Paragraphs a special social entertainment expense may also be listed as expenses, not exceeding 2% of its total foreign exchange receipt settlement of the current year.

## Article 38

Losses incurred not in the course of operation of business or subsidiary business, family expenses, and such fines and surcharges for delinquent

reporting, non-reporting, and delinquent payment of tax as provided in various tax acts shall not be included as expenses or losses.

#### Article 39

Losses incurred in the operation of business in previous shall not be included in the computation for the current year provided, however, that in the case of a profit-seeking enterprise organized as a company that keeps a complete set of account books, uses the Blue Returns as provided in Article 77 in the years such losses occurred and in the year of declaring such losses, or such losses have been duly certified by a certified public accountant and declared within the prescribed period, taxation may be made on its net income after deduction of losses incurred in the preceding five years as verified and determined by the local collection authority-in-charge.

#### Article 40

Where the period of business operation is under one year, the amount of income derived for such period shall first be converted into corresponding annual income according to the proportion of the length of the period to the year, and the amount of income tax shall then be determined by the tax rate applicable to such annual income but paid basing on the original proportion for the period in which business is actually operated.

Where the period of business operation is under one month it shall be taken as one month.

#### Article 41

If a profit-seeking enterprise whose head office is outside the territory of the Republic of China has a fixed place of business or business agent is located inside the territory of the Republic of China, the fixed place of business or business agent shall keep separate accounting books and its profit-seeking enterprise income tax shall be assessed accordingly.

#### Article 42

The net dividend or net surplus earning received by a profit-seeking enterprise organized as a company from its investment in another domestic profit-seeking enterprise shall not be included in its taxable income, and

the amount of tax deductible from such income shall be included in the balance in its shareholder deductible tax account in accordance with the provisions of Article 66-3 hereof.

Where an education, culture, public welfare, or charity institution or organization has received any net dividend or net surplus earning as described in the preceding Paragraph, such income shall not be included in its taxable income, and the amount of tax deductible from such income shall not be used to offset the income tax payable by it, nor may it apply for refund thereof.

#### Article 43

(Deleted)

#### Article 43-1

A profit-seeking enterprise which has an affiliated relationship with, or is directly or indirectly owned or controlled by another enterprise within or without the territory of the Republic of China, whereof, if it is found that arrangement of their mutual income, cost, expense, profit or loss distribution does not conform with the regular business practice, hence, results in a tax evasion or reduction, the collection authority-in-charge for the purpose of computing the accurate income of the enterprise may report it to the Ministry of Finance for approval in effecting an adjustment in accordance with the regular business practice.

### Section 4 Evaluation of Assets

#### Article 44

Inventories of merchandise, raw materials, supplies, goods-in-process, finished goods and by-products shall be evaluated on the basis of cost. Where the cost is higher than the market value, the taxpayer may take the market value as the basis of evaluation. In case the cost or the market value is not ascertainable, the local collection authority-in-charge shall determine it on the basis of expert opinion or by appraisal.

Cost as provided in the preceding paragraph may either be the actual cost or the cost arrived at by the first-in first-out, last-in first-out, weighted average, moving average or simple average method or other methods as

prescribed by the competent authority-in-charge in accordance with the class or nature of an asset; provided that where the last-in first-out method is adopted, evaluation on the basis of cost or market value, whichever is the lower, as provided in the preceding paragraph, shall not apply.

The adoption of any of the methods of cost computation as provided in the preceding paragraph and any subsequent change thereof for justifiable reasons shall be reported to and approved by the local collection authority-in-charge prior to annual estimate of yearly income. Where no application has been made for the adoption of method for cost computation, it shall be taken that the weighted average method has been adopted. Where no application has been made for change of method for cost computation, it shall be taken that the original method has been continuously employed.

#### Article 45

Actual cost means the price paid for acquisition of an asset where such is paid, and includes not only the purchase price paid at time of acquisition but also all necessary expenses incidental to acquisition or incurred in making it fit for use in the operation of business. Where an asset is manufactured or constructed instead of purchased, the cost includes materials, labor and all expenses incurred in designing, manufacture, construction and installation necessary to make it fit for use in the operation of business. In the case of an asset brought forward at the beginning of a period, the cost means the original inventory price.

Expense incurred in the expansion, replacement, improvement or repair of any asset as a result of which its value or efficiency is increased may, to the extent of such increase, be added to the balance of the actual cost for computation.

#### Article 46

Market value means the current price prevailing at the locality concerned on the day of making final report of the account.

#### Article 47

The cost of goods-in-transit is the cost standing at time of commencement of transit, and the market value thereof is the market value prevailing at the place of destination.

Evaluation of a by-product shall be in accordance with the provisions of Article 44 of this Act where cost thereof is verifiable; and on the basis of the market value after deduction of selling expenses where cost thereof is not available.

#### Article 48

The provisions of Article 44 of this Act shall apply mutatis mutandis in the evaluation of short-terms investments in valuable securities. Where the market value of such securities at the close of a financial period has been subject to violent fluctuations, the average price during the immediately preceding month may be taken as their market value on the day of making final report of the account.

#### Article 49

Accounts receivable and notes receivable shall be evaluated at their respective amounts less deductions for estimated allowance for bad debts. Allowance for bad debts as set forth in the preceding Paragraph, shall be estimated and set aside in an amount not exceeding 1% of the amount of outstanding balance of the accounts receivable and the notes receivable, or of the amount of outstanding balance of credits in the case of a financial institution.

Where the percentage of bad debt losses actually incurred and declarable by a profit-seeking enterprise under the act exceeds the percentage specified in the preceding Paragraph, the allowance for such bad debts may be estimated and set aside in an amount not exceeding the average of the percentages of actual bad debts declarable by the said profit-seeking enterprise under the act in the preceding three years.

For a profit-seeking enterprise if it is found in the following year that the amount of all ascertained loss in bad debts differs from that of the estimated losses, adjustment shall be made in the estimation of loss in bad debts for the current year to conform to the allowable percentage.

Under any of the following circumstances, an account receivable or note receivable or any other item of uncollected credit may be deemed as an

ascertained bad debts loss:

1. Where the outstanding amount is wholly or partially uncollectible by reason of insolvency, dodging of the debtor, compromise or adjudication of bankruptcy, or any other cause;
2. Where the outstanding amount has been past due for a period over two years during which neither the principal nor the interest accrued thereon has been paid despite demands made therefor.

If the outstanding amount as set forth in the preceding Paragraph is collected after being written off as loss, the amount actually collected shall be deemed as a profit for the year in which it is collected.

#### Article 50

Buildings, fixtures, appurtenant equipment, vessels, machinery, tools apparatus appliances and other fixed assets shall be evaluated at cost less prescribed depreciation.

#### Article 51

In the depreciation of fixed assets, either the straight-line method or the fixed percentage on diminishing book value method or working-hour method may be adopted. The provision of Paragraph 3 of Article 44 of this Act shall apply mutatis mutandis in the adoption or change of the aforementioned methods. Where no application has been made, the straight-line method shall be deemed to have been adopted.

The service life of various kinds of fixed assets shall be such as is prescribed in the Table of Service Life of Fixed Assets; however, the service life of equipment installed to the prevention of water pollution or air pollution may be accelerated to two years.

In the computation of depreciation of each kind of fixed assets, the service life of such fixed assets shall not be shorter than the minimum years of service life specified in the said table unless special permission has been granted by the Government to adopt the shortening as a measure of encouragement.

#### Article 51-1

When a passenger sedan newly purchased by a profit-seeking enterprise is depreciated in accordance with the provision of paragraph 1 of the

preceding Article, its actual cost shall not exceed the criteria prescribed by the Ministry of Finance.

If the aforementioned sedan, after having been used, is sold, destroyed or scrapped, its income or loss shall be also be computed on the basis of underpreciated value which is calculated in accordance with the formal method of depreciation prescribed by this act.

#### Article 52

Where the actual cost of the fixed assets is increased or decreased after a number of years of use, the depreciation of such assets shall be computed on the basis of the cost after such increase or decrease at the prescribed rate of depreciation with the remaining portion of the service life taken as their service life.

#### Article 53

Where the fixed assets have at the time of acquisition been used for a number of years, the depreciation thereof shall be computed at the prescribed rate of depreciation with the remaining portion of the service life taken as their service life.

Where it is foreseeable at the time of acquisition of the fixed assets that they will not have the normal length of service on account of certain special circumstances, the actual useful years may, upon presentation of documentary evidence, be taken as their service life for computing depreciation at the prescribed rate.

#### Article 54

Where the straight-line method is adopted in the computation of fixed assets, the residual value, if any, which is aticipatable, shall first be deducted from the cost, and the depreciation shall then be computed on the basis of the balance.

Where the straight-line method is adopted and the residual value, if any, has been previously deducted, the undepreciated value in the last year shall be equal to the residual value. In the absence of residual value, the assets shall be so depreciated that the total depreciation up to the last year is equal to the full amount of the original cost of the asset. Where the fixed percentage on diminishing-book-value method is adopted, the

undepreciated value in the last year shall be equal to 10 per cent of the cost.

#### Article 55

Where the fixed assets have reached the full period of their prescribed useful years but the accumulation of depreciation thereof has not amounted to the cost thereof, depreciation at the original rate may be made until full depreciation has been made.

#### Article 56

(Deleted)

#### Article 57

If the fixed assets which have been completely depreciated are destroyed or become obsolete at the expiration of their useful years, the difference, if any, of the residual value previously estimated over the proceeds from sale of scraps may be charged to loss for the current year. In case the proceeds from sale of scraps exceed the residual value previously estimated, the difference shall be charged to income of the current year.

Where the fixed assets are destroyed or become obsolete on account of specific reasons, at any time before the end of their prescribed service years, their undepreciated value may, upon submission of reliable documentary evidence, be charged to loss for the proper fiscal year, provided, that proceeds from the sale of scraps, if any, shall be considered as income.

#### Article 58

Where the service life of the fixed assets is less than two years, the cost thereof may be listed as loss for the fiscal year in which such assets are acquired, manufactured or constructed, and annual depreciation thereof is not required.

#### Article 59

Depletion assets shall be valued on the basis of the value left over after deducting from the cost of such assets the depletion charge for each period. Computation of the depletion charge may be made according to

one of the following formulas; provided that whichever is used shall not be changed afterwards:

1. To compute at the close of the business year the depletion charge deductible for the current year on the basis of the quantity actually exploited within the current year multiplied by the estimated unit depletion charge, which is worked out by dividing the cost of the depletion assets against the quantity exploitable;

2. To set aside annually from the gross amount of proceeds realized from the exploitation or sale of products the depletion charge according to the Table of Depletion Assets; provided that the depletion charge set aside annually shall not exceed fifty per cent of the amount of gain derived in the current year from the assets before deducting therefrom the depletion charge; and that the aggregation of such depletion charge shall in no case exceed the cost of the assets. In the case of depletion assets producing petroleum or natural gas a depletion in the amount of 27.5 per cent of the gross amount of proceeds realized from sale of the production in the current year may be set aside therefrom annually till the assets are completely exhausted; provided that the depletion charge set aside annually shall not exceed fifty per cent of the amount of gain derived in the current year from the assets before deducting therefrom the depletion charge.

In the case of a drastic appreciation of prices of the depletion assets, a reserve for compensation of assets appreciation may be computed and set aside on the basis of the depletion charge by application of the provision of Article 56 pertaining to the setting aside of reserve for compensation of assets appreciation for fixed assets.

## Article 60

Business rights, trademarks, copyrights, patents and other franchises are assets only if they are acquired by purchase.

Such intangible assets as referred to in the preceding paragraph shall be valued at cost less the amount amortized for each period.

The cost of intangible assets shall be amortized in equal annual installments in accordance with the following prescribed number of years of amortization; provided that Where an intangible asset after acquisition cannot be amortized according to the prescribed number of years of

amortization on account of specific reasons, an application stating the reasons therefore may be submitted to the collection authority-in-charge for permission to amortize in a different manner:

1. Amortization of business rights shall be based on a period of ten years;
2. Amortization of copyrights shall be based on a period of fifteen years;
3. Amortization of trademarks, patents and all other franchises may be based on the number of years of enjoyment of such rights after acquisition.

#### Article 61

In the case of a 25 per cent rise in prices, the fixed assets depletion assets and intangible assets as referred to in this Act may be revalued. Rules governing the conduction of assets revaluation and formulas of revaluation shall be separately prescribed by the Executive Yuan.

#### Article 62

Deposits, loans, or bonds for long-term investment shall be valued at the current value computed based on the period for amortization. Computation of the current value shall be based on the interest at the contracted rate if the debt is interest-bearing, or at the average interest rate prevailing among local banks on deposit at fixed term of one year if the debt is not interest-bearing.

When the debt as referred to in the preceding paragraph is recovered at maturity, the portion of interest accruing from the value in excess of the current value shall be listed as profit for the year in which the debt is recovered.

#### Article 63

Where a long-term investment is made to hold all the shares or more than one-half of the shares of a subsidiary enterprise, it shall be valued on the basis of the total net worth of the assets of such an enterprise or a part thereof proportionate to the amount of shares held. Where the amount of long-term investment in any other enterprise is less than a majority of its total amount of capital, the valuation of the investment shall be based on the cost.

#### Article 64

Evaluation of the prepaid expenses and inventory of supplies shall be based on the portion of amount covering the unexpired period or the unused supplies. Organization expenditures and other deferred expenses shall be valued at the amount of actual disbursements less the amount amortized for each period.

The amount of amortization of the organization expenditures as referred to in the preceding paragraph shall not exceed 20 per cent of the original amount per annum; provided that the expenses defrayed for the issue of corporate bonds and the difference resulting from the discounted issuance of corporate bonds against their face value shall, where a definite period of amortization is provided for, be amortized in installments according to such a period.

Where a profit-seeking enterprise is established for a definite number of business years or is established exclusively for the exploration of a certain kind of resources and will be discontinued upon depletion of such resources, its organization expenditures shall be amortized according the predetermined number of business years or the estimated number of years for depletion of such resources.

#### Article 65

In the case of dissolution, discontinuance, merger or consolidation, or transfer of ownership of a profit-seeking enterprise, evaluation of its assets shall be based on the current value or the actual price at which the transaction is made.

#### Article 66

A taxpayer shall keep an inventory stating therein the quantity, unit, unit price, total price and location of all his assets as well as that whether the price indicated is the cost, or the current value or the appraised value.

Where a taxpayer fails to produce reliable documentary evidence in support of the valuation of his assets, the collection authority-in-charge may directly determine the value of such assets by way of appraisement.

### Section 5 Shareholder Deductible Tax Account

#### Article 66-1

Beginning from 1998, any profit-seeking enterprise subject to assessment of profit-seeking tax under this Act shall set up a shareholder tax offsetting account separate from its regular accounting books for recording the amount of income tax leviable on the dividends and surplus earnings distributable to its shareholders, and shall keep and make available for inspection by tax collection authorities any and all receipts, vouchers and records which are sufficient for making accurate calculation of the amount recorded in the said account. Any profit-seeking enterprise newly incorporated after 1998 shall set up such account and keep such records from the date of its incorporation.

Any of the following profit-seeking enterprises, institutions or organizations may be exempted from establishing the shareholder tax offsetting account, if:

1. Its head office is located outside the territory of the Republic of China;
  2. Is a wholly owned entity or a partnership;
  3. Is an education, culture, public welfare, or charity institution or organization in accordance with the provisions of Paragraph Four, Article 11;
- or
4. Is an entity or organization which is not permitted to make distribution of surplus profits or earnings under the provisions of other acts and regulations or its Articles of Incorporation.

#### Article 66-2

The accounting period for a profit-seeking enterprise to enter the records into its shareholder tax offsetting account shall commence from January 1 and end on December 31 of each year provided, however, that if the from and to dates of the fiscal year of a profit-seeking enterprise is changed and approved in accordance with the provisions of Article 23 hereof, the profit-seeking enterprise shall apply to the competent tax collection authority for an approval of its use of the from and to dates of its fiscal year for the accounting purpose set forth in this Paragraph.

For the shareholder tax offsetting account which is set up in the year 1998 by an existing profit-seeking enterprise and/or a newly incorporated profit-seeking enterprise, the beginning balance of the said account for that current year shall be zero. The beginning balance thereof for each ensuing year thereafter shall be equal to the closing balance for the immediately

preceding year.

### Article 66-3

A profit-seeking enterprise shall include the following amounts in the then current year balance of its shareholder tax offsetting account:

1. The amount for payment of additional income tax and/or the amount of tax on the undistributed earnings or profits as assessed by the tax collection authority after its examination and investigation of the amount of tax payable as declared in the annual income tax return filed by the profit-seeking-enterprise for the year 1998 or each ensuing year thereafter;
2. The amount of deductible tax contained in the aggregate of dividends or surplus earnings distributed to the said profit-seeking-enterprise in the year 1998 or each ensuing year thereafter for its investment in other profit-seeking-enterprise(s) located within the territory of the Republic of China;
3. The amount of tax withheld from the interest income on short term bills as calculated based on the period of possession of such bills by the said profit-seeking-enterprise in the year 1998 or any ensuing year thereafter;
4. The amount of deductible tax which has been deducted in accordance with the provisions of Item 3, Paragraph One, Article 66-4 thereof from the capitalized legal reserve or special reserve;
5. The amount of the balance in the shareholder deductible tax account of the extinguished company succeeded by the said profit-seeking-enterprise after a consolidation or merger arrangement provided, however, that it shall not exceed the amount of tax as calculated in accordance with the upper limit of the tax deduction ratio applicable to the aggregate amount of undistributed surplus earnings as originally booked by the extinguished company; and
6. Other accounting items and amount thereof as determined by the Ministry of Finance.

Under the circumstances set out in the preceding Paragraph, the reference dates for a profit-seeking-enterprise to enter the deductible tax in its shareholder deductible tax account for each current year are fixed as follows:

1. In the case as described in Item 1 of the preceding Paragraph: the payment date of the tax, if the tax is paid in cash; or the settlement date of annual accounts, if the income tax payable as declared in the annual

income tax return is paid with temporary tax payment or by offsetting against the income tax withheld;

2. In the case as described in Item 2 of the preceding Paragraph: the date of receipt of the distributed dividends or surplus earnings;

3. In the case as described in Item 3 of the preceding Paragraph: the date of transfer of the short term bills or the date of receipt of the interest;

4. In the case as described in Item 4 of the preceding Paragraph: the date of capitalization of the legal reserve or the special reserve;

5. In the case as described in Item 5 of the preceding Paragraph: the effective date of the consolidation or merger;

6. In the case as described in Item 6 of the preceding Paragraph: the date to be decided by the Ministry of Finance.

None of the following amounts may be included in the balance of the shareholder deductible tax account maintained by a profit-seeking-enterprise for any current year:

1. The amount of profit-seeking-enterprise income tax withheld under Article 98-1 hereof;

2. The amount of profit-seeking-enterprise income tax paid by it, and the amount of deductible tax on the distributed dividend or surplus earnings received by it in the capacity as a trustee for the operation of trust business;

3. The amount of profit-seeking-enterprise income tax paid up before setting up the shareholder deductible tax account pursuant to this amendment;

4. The amount of profit-seeking-enterprise income tax paid for the year 1997 or any previous year; and

5. The amount of the paid-up surcharge for delayed tax declaration, surcharge for delinquency in filing tax return, surcharge or fine for delayed payment of tax, and the interest accrued upon the delinquent tax payment.

#### **Article 66-4**

The following amounts shall be deducted from the balance in the shareholder deductible tax account of a profit-seeking-enterprise being kept for any current accounting year:

1. The amount of deductible tax included in the aggregate of dividends or surplus earnings distributed for the year 1998 or each ensuing year

thereafter;

2. The amount of deductible income tax as approved by the tax collection authority after its examination and verification of the amount of profit-seeking-enterprise income tax payable in the Republic of China as declared in the annual income return filed for the year 1998 or any ensuing year thereafter;

3. The amount of the profit-seeking-enterprise income tax which was included in the legal earned surplus reserve, legal reserve, public interest reserve or special surplus reserve set aside in accordance with the Company Act or other relevant acts and regulations and has been paid up for the then current year;

4. The amount of profit-seeking-enterprise income tax which was included in the bonus distributed to directors, supervisors and employees in accordance with the Company Act and has been paid up for the then current year; and

5. Other items and the amount thereof as determined by the Ministry of Finance.

Under the circumstances set out in the preceding Paragraph, the reference dates for a profit-seeking enterprise to make tax deduction from its shareholder deductible tax account for each current year are fixed as follows:

1. In the case as described in Item 1 of the preceding Paragraph: the distribution date;

2. In the case as described in Item 2 of the preceding Paragraph: the date of service of the tax refund notice;

3. In the case as described in Item 3 of the preceding Paragraph: the date on which such reserve funds are set aside;

4. In the case as described in Item 4 of the preceding Paragraph: the date of distribution of the bonus; and

5. In the case as described in Item 5 of the preceding Paragraph: the date to be decided by the Ministry of Finance.

#### **Article 66-5**

The amount of deductible tax distributable by a profit-seeking-enterprise to its shareholders or members in accordance with the provisions of Article 3 hereof shall be limited to an amount not exceeding the amount of the

balance being kept in its shareholder deductible tax account on the date of distribution of the dividends or surplus earnings, as the case may be.

Upon dissolution, a profit-seeking-enterprise shall cancel the amount of the balance in the shareholder deductible tax account after completion of liquidation and distribution of its residual assets.

Upon consolidation or merger of profit-seeking-enterprises, the balance being kept in the shareholder deductible tax account of the company to be extinguished after the consolidation or merger shall be canceled on the effective date of the consolidation or merger.

#### Article 66-6

When making surplus earning distribution for the year 1998 or each ensuing year thereafter, a profit-seeking-enterprise shall use the ratio of the amount of balance in its shareholder deductible tax account to the booked amount of balance in its undistributed surplus earning account as the tax deduction ratio in calculating the amount of deductible tax based on the net amount of dividend or surplus earnings distributable to each shareholder or member, and shall have the amount of deductible tax so calculated plus the amount of distributable dividend or surplus earnings distributed to each shareholder or member accordingly. The following formula shall be used for the purpose of this Article:

Tax deduction ratio = amount of balance in the shareholder deductible tax account/ the aggregate amount of balance in the undistributed surplus earnings

Amount of shareholder (member) deductible tax = amount of the net dividend (or surplus earnings) × tax deduction ratio

In case the tax deduction ratio as calculated using the formula given in the preceding Paragraph is higher than the upper limit of the tax deduction ratio, the said upper limit of tax deduction ratio shall prevail in calculating the amount of shareholder (or member) deductible tax. The applicable upper limits of the tax deduction ratio are fixed as follows:

1. For an aggregate amount of undistributed surplus earnings not having been assessed with a 10% profit-seeking-enterprise income tax: 33.33%.
2. For an aggregate amount of undistributed surplus earnings having been assessed with a 10% profit-seeking-enterprise income tax: 48.15%.
3. For an aggregate amount of undistributed surplus earnings partially

assessed and partially not assessed with a 10% profit-seeking-enterprise income tax: the sum of the amounts of deductible tax to be calculated respectively based on the applicable tax deduction ratios specified in the preceding two Items in respect of the different proportions of the aforesaid two parts of undistributed surplus earnings to the aggregate amount of the undistributed surplus earnings.

The term "booked aggregate amount of undistributed surplus earnings of a profit-seeking-enterprise" shall refer to the amount of the aggregate undistributed surplus earnings as calculated by a profit-seeking-enterprise in accordance with the commercial accounting rules for the year 1998 or each ensuing year there after.

The amount of deductible tax to be calculated based on the tax deduction ratios specified in Paragraph One of this Article shall be rounded off to the nearest ten thousandth; and if the last figure of the amount of deductible tax for each shareholder or member is less than one dollar, such figure shall be rounded off.

#### **Article 66-7**

Any profit-seeking-enterprise which is exempted from setting up a shareholder deductible tax account under Paragraph Two, Article 66-1 hereof shall not allocate any amount of deductible tax to its shareholders or members for offsetting the tax payable by them respectively, except for the profit-seeking-enterprises organized in the form of a wholly-owned enterprise or a partnership which shall be subject to the provisions otherwise provided for in this Act.

#### **Article 66-8**

In case any individual person of profit-seeking-enterprise is discovered to have improperly evaded or reduced the tax burden for himself or for other person(s) by means of transfer of shareholder's equity or any other false arrangement, the tax collection authority may, with the approval of the Ministry of Finance and based on the information acquired during investigation, make necessary adjustment in accordance with the amount of dividend, surplus earnings or deductible tax distributable to or receivable by such individual person or profit-seeking-enterprise.

## Section 6 Taxation on Undistributed Surplus Earnings

### Article 66-9

Beginning from the year 1998, if there is any surplus earnings of the then current year not distributed by a profit-seeking enterprise, an additional profit-seeking income tax shall be levied at the rate of ten percent on such undistributed surplus earnings.

The term "undistributed surplus earnings" as referred to in the preceding Paragraph, beginning from the year 2005, shall denote the amount of income after tax as calculated by a profit-seeking enterprise in accordance with the Commercial Accounting Act, less the following sums:

1. (deleted);
2. Make-up of the losses in previous years and the next-year-loss which has been duly audited and certified by a certificated public accountant;
3. Net dividends or net earnings which have been distributed from the earnings gained in the current year;
4. Legal earned surplus reserve having been set aside from the surplus earnings of the current year in accordance with the Company Act or other acts, the legal reserve and the public interest reserve having been set aside in accordance with the Cooperative Act;
5. Sinking fund reserve or restricted distributable surplus earnings which were required to be set aside or restricted from distribution under any treaty signed by the nation with another country, or under any agreement signed in accordance with the economic assistance or loan agreement signed by the nation with any international organization;
6. Bonus or remuneration paid to directors, governors and employees from the surplus earnings in accordance with the provisions of the Articles of Incorporation of the company or cooperative;
7. Special reserve or restricted distributable surplus earnings which were required to be set aside or restricted from distribution of the surplus earnings of the current year pursuant to the order given by the competent authority in accordance with the provisions of other laws;
8. Capital reserve which was required to be transformed from income after tax pursuant to the provisions of other laws;
- 9.(deleted); and
10. Other accounts as approved by the Ministry of Finance.

The amount of the accounts specifies in Items 3 through 8 of the preceding Paragraph shall be limited to those actually occurred prior to the end of the fiscal year following the year in which the respective incomes are taxable.

The term "income after tax" referred in Paragraph 2 of this Article, in the case where the financial statements in the current year of a profit-seeking enterprise were duly audited and certified by a certified public accountant, shall be based on the amount which was assessed by such certified public accountant. However, if thereafter the authority in charge conducts an assessment of such financial statements and makes an adjustment to the amount of income after tax, the original amount shall be replaced by the amount after such adjustment of which the authority in charge has informed the enterprise.

If the reasons why distributable surplus earnings were restricted from distribution pursuant to the provisions of Items 5 and 7 of Paragraph 2 of this Article are no longer pertaining, the part of which the distributable surplus earnings therefrom have been undistributed prior to the end of the fiscal year following the year when the reasons no longer pertain shall be added to the surplus earnings of the year when the reasons no longer pertain and be subject to the levy of an additional profit-seeking income tax at the rate of ten percent.

## Chapter IV Assessment & Collection Procedure

### Section 1 Provisional Payment

#### Article 67

A profit-seeking enterprise, except those that conform to the provisions of Article 69, shall within one month from September 1 to September 30 of each year, take one-half of the amount of tax payable as declared in its profit-seeking enterprise income tax return filed in the preceding year as the amount of provisional payment of tax and pay to the public treasury and file with the local collection authority-in-charge a declaration for provisional payment of tax on a prescribed form along with the receipt of the provisional payment. Notwithstanding the provisions of paragraph 1, a profit-seeking enterprise organized as a company which keeps a complete

set of account books and evidential documents, uses the Blue Return as provided in Article 77 or entrusts a certified public accountant to examine and certify its provisional tax return, and files the return within the said period, may alternatively compute the amount of provisional tax payment, which is based on the operating income incurred for the first six months of the current year under the relevant provisions of the Income Tax Act and applied with the tax rates.

#### Article 68

In the case where a profit-seeking enterprise fails to make the provisional tax payment within the period as specified in Paragraph 1 of the preceding Article but has since filed the return and paid the amount of provisional tax payment, which is computed in accordance with the said provision, of his own accord to the collection authority before 31 October, an interest accruable thereon as calculated on a daily basis at the banking rate for deposits as specified in Article 123 from 1 October until the date of the payment shall be collected together with the aforesaid amount of provisional tax payment.

In the case where a profit-seeking enterprise fails to make the provisional payment in accordance with Paragraph 1 of the preceding Article, before October 31, the collection authority shall compute the amount of provisional tax payable by it in accordance with the provisions of the preceding paragraph and issue to the said profit-seeking enterprise a tax demand notice covering the provisional payment plus one month's interest to be calculated at the banking interest rate for deposits as specified in Article 123, requiring the said profit-seeking enterprise to make the payment to the public treasury in fifteen days.

#### Article 69

The provisions of the preceding two Article shall not apply to the following cases:

1. (Deleted);
2. A profit-seeking enterprise without permanent establishment in the territory of the Republic of China, having its profit-seeking enterprise income tax withheld by business agent or the payer in accordance with the provisions of Article 98-1;

3. Approved small-scale profit-seeking enterprise;
4. Any profit-seeking enterprise not subject to profit-seeking enterprise income tax in accordance with this Act or other relevant acts;
5. (Deleted).

#### Article 70

(Deleted)

### Section 2 Annual Income Tax Return

#### Article 71

A taxpayer shall, within the period from May 1 to May 31 of each year, fill out and file to the local tax collection authority and annual income return declaring therein the items and amounts that make up his gross consolidated income (for an individual person) or the gross profit-seeking income (for a profit-seeking enterprise) for the preceding year together with the tax deductions/exemptions, and/or offsets associated therewith, if any. The taxpayer shall further calculate the amount of income tax actually payable by him/it by deducting from the amount of income tax payable for the whole year the provisional income tax payment, the unpaid withholding and the amount of credit tax, and shall make payment voluntarily of the same before filing the annual income tax return. However, the withholding tax from the income of interest accrued on short-term papers, and withholding tax from the income of interest accrued on short-term papers, and the credit tax included in the total amount of dividends or earnings paid to a profit-seeking enterprise shall not be deductible.

Filing of an annual income tax return shall be exempt for an individual residing in the territory of the Republic of China whose annual gross consolidated income does not exceed the sum of the amount of exemption plus the standard deduction for the current year provided, however, that if an application has been filed for refund of the tax withheld and the tax credit, the said taxpayer shall still be required to file the annual income tax return.

The term "amount of credit tax" set forth in the preceding two Paragraphs shall refer to the amount of tax paid as indicated in the dividend distribution voucher, and the amount of profit-seeking enterprise income

tax paid up by an enterprise operated either by a sole proprietor or by the partners of a partnership.

#### Article 71-1

In case an individual residing in the territory of the Republic of China dies in the taxable year, his taxable income occurred in the year of his death and in the previous year, except those who are exempt from filing an annual income tax return as provided in Article 71, shall be subject to the annual income tax return which shall be filed by the will executors, heirs or estate administrators within three months from the date of death of the decedent. In such a case, the will executors, heirs or estate administrators shall, within the total value of the estate, be responsible for all the obligations concerning the tax return. However in case the deceased is survived by his spouse who is an individual residing in the territory of the Republic of China, the spouse shall file the annual income tax return and make tax payment thereof in accordance with the provision of Article 71.

Any individual residing in the territory of the Republic of China, who abolishes his domicile or residence in the territory of the Republic of China and is going to leave the territory of the Republic of China, shall file his annual income tax return in the taxable year before his departure. However, in case the spouse is an individual residing in the territory of the Republic of China, and continues to live in the territory of the Republic of China, he(she) shall file the annual income tax return and make tax payment in accordance with the provisions of Article 71.

In conformity with the provisions of Paragraph 13 Article 4, an organization or institution established for educational, cultural, public welfare or charitable purposes or its operating subsidiary shall file its income tax return in accordance with the provisions of Article 71, and still shall pay income tax, if it is not qualified to be exempt from income tax.

#### Article 72

The period for filing annual income tax return as provided in Paragraph 1 of Article 71-1 may, before the time limit and under special circumstances, through the application of the will executors, or heirs, or estate administrator and upon the approval of the collection authority, be extended to a date not later than the time limit prescribed for filing estate

tax.

Any taxpayer as provided in Paragraph 2 of Article 71–1 and Article 73 may, under special circumstances, not being able to file his tax return within the time limit personally and upon the approval of the collection authority, appoint an individual residing in the territory of the Republic of China to file tax return and make tax payment on his behalf. In the case of delinquent payment of failure to entrust a legally registered accountant or any other lawful agent to file the tax return and make tax payment on his behalf, the collection authority-in-charge may notify the exit/entry control office to deny exit clearance to such a taxpayer.

### Article 73

In the case of an individual not residing in the territory of the Republic of China or a profit-seeking enterprise having no permanent establishment or business agent within the territory of the Republic of China, in the event of having income within the territory of the Republic of China as provided in Article 88, the income reporting provisions under Article 71 shall not apply and the tax withholder shall withhold the income tax payable in accordance with prescribed withholding rates. In case the taxpayer has income which does not fall within the withholding scope as provided in Article 88, and is going to leave the territory of the Republic of China prior to the time limit prescribed for filing income tax return in the taxable year, he shall file a tax return with the local collection authority-in-charge prior to his departure and make tax payment according to the prescribed tax rates, and in case he does not leave within the time limit prescribed for filing income tax return in the taxable year, he shall file a tax return and make tax payment in accordance with the regulations concerned.

In the case of a profit-seeking enterprise with no permanent establishment but having a business agent in the territory of the Republic of China, except where computation of income is made in accordance with Article 25 and 26 where income tax is withheld and paid in accordance with the provisions concerned, the business agent concerned shall be responsible for filing of income return with the local collection authority-in-charge and for payment of income tax in accordance with the provisions of this Act.

### Article 73–1

Except for those which are tax-exempt according to the Act, all interests derived from loans extended to individuals, legal entities, government agencies or financial institutions within the territory of the Republic of China, by branches of international banking business institutions (Off-shore Banking Branches) shall be reported for tax assessment based on the total amount of interest received against the prescribed tax withholding rates within the time limit as stipulated in the provision of Article 71 of this Act.

#### Article 73-2

The provisions of Article 3-1 hereof does not apply to the amount of taxes included in the total amount of dividends or the total amount of surplus earnings distributed to an individual person not residing in the territory of the Republic of China, and any profit-seeking enterprise which is subject to pay profit-seeking enterprise income tax in accordance with the provisions of Article 73. However, in case that the total amount of dividends or the total amount of surplus earnings received by such individual person or profit-seeking enterprise contains any income subject to a 10% surcharge of profit-seeking income tax under the provisions of Article 66-9 hereof, then the surcharged amount of profit-seeking income tax may offset the amount of income tax which should be withheld from the payment of the net amount of such dividends or surplus earnings.

The amount of offsetting tax set forth in the preceding Paragraph shall be at the rate of 10% of the net dividends or the net surplus earnings received, and shall be calculated using the percentage of the amount of surplus earnings, which has been surcharged with a 10% profit-seeking income tax, in the accumulated amount of undistributed surplus earnings.

#### Article 74

Where a profit-seeking enterprise changes its fiscal year with the approval of the local collection authority-in-charge, it shall. Within one month from the date of change, file with the local collection authority-in-charge on a prescribed form the amount of income accrued prior to the change, compute the income tax payable in accordance with the provisions of Article 49 and effect payment thereof voluntarily prior to filing its income tax return.

## Article 75

A profit-seeking enterprise shall make its current final report up to the date of dissolution, closure, amalgamation or ownership transfer, and then its total business income and taxable amount on a prescribed form to the local collection authority-in-charge within forty-five days, and further make tax payment by itself before filing its income tax return.

Any income earned from liquidation during the period of liquidation shall be reported on a prescribed form to the local collection authority-in-charge within thirty days from the date of completion of liquidation, and the taxpayer shall, before filing his tax return, make tax payment by himself at the prescribed rates applicable to the profit-seeking enterprise in the taxable year. But this is not applicable to those enterprises which are exempt from the liquidation process in accordance with other acts.

The term "period of liquidation" as referred to in the preceding paragraph shall be the time limit as provided in the Company Act, if the profit-seeking enterprise is organized in the form of corporation; and shall be three months from the date of dissolution, closure, amalgamation or ownership transfer, if it is not organized in the form of corporation.

In the case of failure in submitting a current final report on total business income and income earned from liquidation within the time limit as provided in this Article, the collection authority shall assess and determine the amount of business income and tax payable according to the finding made by itself.

In the event of bankruptcy, a profit-seeking enterprise shall, within ten days prior to the time limit prescribed for credit registration announced by the court, file its current business income tax return with the local collection authority-in-charge. In the case of failure in filing tax return within the time limit, the collection authority shall assess and determine its amount of business income and taxable amount immediately according to the findings made by itself. The court shall, at the same time of announcement of credit registration, notify the local collection authority of the bankruptcy declared on that profit-seeking enterprise.

## Article 76

A taxpayer shall attach to his annual income tax return, receipts for taxes

paid voluntarily, and other related documents of evidences and, in the case of a profit-seeking enterprise, also the balance sheet, inventory of properties and profit and loss statement.

At the time of filing an income tax return by a company or cooperative, its responsible person shall submit a statement listing the names and residences of shareholders or members and the amount of dividends or profits paid. In the case of partnership, its responsible person shall submit a statement listing the names and residences of partners and their respective percentages of investment and profit or loss allocation.

#### Article 76-1

(Deleted)

#### Article 77

Profit-seeking income tax return forms shall be used in accordance with the following provisions:

1. Ordinary return – to be used by profit-seeking enterprises other than those authorized to use the Blue return or simplified return;
2. Blue return – to be used by profit-seeking enterprises duly authorized by tax collection authority. The Blue return refers to the tax form which is printed according to the prescribed form on blue paper and designed for encouraging profit – seeking enterprises to make honest reporting of their income. Rules governing the use of blue and simplified income return forms shall be prescribed by the Ministry of Finance;
3. Simplified return – to be used by small size profit-seeking enterprise.

There are two kinds of consolidated income return forms namely the general return and the simplified return. The forms and the usages thereof shall be prescribed by the Ministry of Finance.

#### Article 78

The local collection authority-in-charge shall at all times assist and urge taxpayers to file annual income tax returns within the prescribed period and shall, fifteen days prior to expiration thereof, send a reminder pointing out the responsibility associated with belated reporting.

Reminder as provided in the preceding paragraph may be sent in the form of a public notice.

## Article 79

Where a taxpayer fails to file an annual income tax return within the prescribed period the collection authority shall serve on him a delinquent notice, requesting him to complete his annual income tax return within fifteen days from the date of his receipt of the notice. In the event of failure in filing the annual income tax return after expiration of the prescribed period, the collection authority shall make provisional assessment of the amount of income and tax payable on the basis of available taxation data or the profit standard of the same trade and serve on the taxpayer the assessment notices along with a tax demand notice. In case other taxation information is afterwards found out by the collection authority, the case shall be handled in accordance with the relevant provisions of the Tax Collection Act.

The provisions of the preceding paragraph shall not apply to a taxpayer subject to consolidated income tax or a small-size profit-seeking enterprise using simplified profit-seeking income tax return. In the event of failure on the part of such a taxpayer in filing annual income tax return after expiration of the prescribed period, the collection authority shall forthwith determine the amount of income and tax payable based on the available taxation data or the profit standard of the same trade and notify the taxpayer of making tax payment within the time limit. In case any additional taxation data one afterwards discovered upon investigation by the collection authority, the case shall be still dealt with in accordance with the relevant provisions of the Tax Collection Act.

## Section 3 Investigation

## Article 80

The collection authority shall, after receipt of an annual income tax return, appoint a person to make investigation thereof and determine the amount of income and tax payable.

Where there is great number of taxpayers in a locality, the collection authority-in-charge may, in lieu of individual investigation as provided in the preceding paragraph, conduct random checks by trade and determine the income standard of each trade.

Where the amount of income reported by a taxpayer is above such standard, the reported income shall be taken as the basis for taxation. Income reported as lower than the standard shall be determined after an individual check.

Opinions of trade associations may be sought in determining income standards of taxpayers in the various trades.

The measure governing how the collection authority-in-charge conducts an assessment of an income tax return by paper reviewing, auditing or any other method of investigation, as well as the criteria governing how the aforesaid authority audits the items affecting the amounts of income, tax payable and tax credits of an income tax return, shall be prescribed by the Ministry of Finance.

#### **Article 81**

The collection authority-in-charge shall, on the basis of its findings, work out and serve upon the taxpayer a notice showing the amount of tax leviable as determined as well as the tabulation of amounts of various items which make up the tax.

Where the notice carries any erroneous entries or miscalculations, the taxpayer may, within 10 days after receipt of the said notice, check with the collection authority-in-charge or request for corrections.

#### **Article 82**

(Deleted)

#### **Article 82-1**

(Deleted)

#### **Article 83**

A taxpayer shall, in the course of an investigation or reinvestigation conducted by the collection authority, produce account books and related documents of evidence that will prove the amount of his income. Where such account books and documents of evidence are not produced, the collection authority may determine the amount of his income based on the available taxation data or the profit standard of the same trade concerned. The taxpayer shall present the account books and documents of evidence

as referred to in the preceding paragraph to the collection authority for investigation within the prescribed time limit. Under special circumstances, if it is requested by the taxpayer or deemed necessary by the collection authority, investigation at the taxpayer's place of business may be made by a designated official.

Where a taxpayer has already filed the income tax return in accordance with the established regulation but failed to produce the account books and documents of evidence to prove the amount of his income within a prescribed time limit when notified by the local collection authority conducting an investigation, the local collection authority may determine the amount of his income based on the available taxation data or the profit standard of the same trade concerned. If more taxation data are subsequently discovered upon investigation, the case it shall be still dealt with according to act.

#### **Article 83-1**

If the collection authority or a tax investigators designated by the Ministry of Finance discovers a taxpayer is suspected of tax evasion or omission in substantial amounts, the authority or investigator may, as the case merits, report to the Ministry of Finance for approval, to institute a further investigation on the taxpayer's net assets, fund flowing, and other business data which are not conformable to the regular business practice. If the result of further investigation, as prescribed in the preceding paragraph, conducted by the collection authority or tax investigator proves that the taxpayer has evaded and/or omitted taxes payment the taxpayer shall be responsible for the submission of evidence favorable to himself.

#### **Article 84**

The collection authority may, when making investigation or reinvestigation, call for the presence of the taxpayer or his agent at the office of the collection authority to answer question.

The taxpayer, if unable to present himself to answer questions at the indicated time for justifiable reasons, shall submit a statement to the collection authority within seven days from the date of receipt of the notice.

#### **Article 85**

The household registration agency shall, when effecting household movement registration in accordance with act, make out and send duplicate copies of such registration to the collection authority concerned.

#### Article 86

The local collection authority-in-charge shall issue receipts for any account books or documents of evidence submitted by the taxpayer or concerned parties and shall return the same within seven days from the date of completion of submission of all account books and documents of evidence called for. Under special circumstances and subject to the approval of the head of the local collection authority-in-charge, the time of retention may be extended for a period of seven days.

#### Article 87

(Deleted)

### Section 4 Withholding of Tax

#### Article 88

For a taxpayer having any income of the following categories, the tax withholder involved shall withhold tax payable at the time of payment as per the prescribed tax rates and withholding procedures, and pay the tax withheld in accordance with the provisions of Article 92 of this Act:

1. Net dividends distributed by a company to an individual not residing in the territory of the Republic of China or a profit-seeking enterprise having its head office outside the territory of the Republic of China; or the net surplus profits distributed by a cooperative, partnership or a wholly-owned organization to its member, partner, or sole investor not residing in the territory of the Republic of China;
2. Salary, interest, rental, commission, royalty, cash award or prize given in a contest or game competition, prizes of a chance winning, retirement pay, severance pay, separation pay, resignation pay, life-time pension, old-age pension not covered by insurance benefits, reward for information or accusation, and fees for professional practices paid by any organization, institution, school, enterprise, bankruptcy estate, or practitioner of profession, and the income paid to a foreign profit-seeking enterprise

having no fixed place of business or business agent within the territory of the Republic of China;

3. Profit-seeking enterprise income derived from operations by a profit-seeking enterprise as provided in Article 25 having its income tax withheld by a business agent or the payer in accordance with the provision of Article 98-1; or

4. Profit-seeking enterprise income derived from business in the Republic of China by a foreign motion picture enterprise which has no branch office in the territory of the Republic of China as provided in Article 26 of this Act. The withholding rates and withholding procedures applicable to the various kinds of income as prescribed in this Article shall be drafted and established by the Ministry of Finance and submitted to the Executive Yuan for approval.

#### Article 89

For tax to be levied on different categories of income as set forth in the preceding Article, the tax withholders and taxpayers are designated as follows;

1. For the net dividends distributed by a company to an individual person not residing in the territory of the Republic of China and a profit-seeking enterprise having its head office outside the territory of the Republic of China; or the net surplus profits distributed by a cooperative, partnership, or a wholly-owned organization to its members, partners or sole investor, the tax withholder shall be the said company, cooperative, partnership or wholly-owned organization; while the tax payer(s) shall be the said individual shareholder not residing in the territory of the Republic of China, or the profit-seeking enterprise shareholder having its head office outside the territory of the Republic of China, or the member, partner, or the sole investor not residing in the territory of the Republic of China;

2. For the income from salary, interest, rental, commission, royalty, fee for professional practices, cash award or prize given in any contest or game competition prizes from chance winning, retirement pay, severance pay, separation pay, resignation pay, life-time pension, old-age pension not covered by insurance benefits, reward for information or accusation, and the income payable to a foreign profit-seeking enterprise having no fixed place of business or business agent within the territory of the Republic of

China the tax withholders shall be the head of the unit responsible for tax withholding in charge of the relevant organizations or institutions, schools, the responsible persons of enterprises, the trustees of bankrupt estates and the practitioners of professions, as the case may be, while, the taxpayers shall be the recipients of such income;

3. Withholder of profit-seeking enterprise income tax on income as provided in Item 3 of Paragraph 1 of the preceding Article shall be the business agent or the payer of such income, while the taxpayer shall be the profit-seeking enterprise having its head office outside the territory of the Republic of China;

4. Withholder of profit-seeking enterprise income tax or income receivable by a foreign motion picture enterprise shall be the business agent thereof or the payer of such income, while, the taxpayer shall be the foreign motion picture enterprise.

Where a withholder fails to fulfill his obligation of making tax withholding, and where demanding has become impossible by reason that the whereabouts of the withholder is unknown or for other causes, the collection authority may collect the tax directly from the tax payers concerned.

For a payment made in each year by an organization, institution, school, enterprise, bankrupt estate, or professional practitioner of any income which is subject to tax withholding under the provisions of the preceding Article, and a payment of any other income as prescribed under Category 10, paragraph 1 of Article 14 of this Act, if the tax is not withheld because the amount paid does not reach the minimum amount of income subject to tax withholding, or any payment which does not come under the categories subject to tax withholding stipulated in this Act, a list containing detailed information of the name, address, and uniform serial numbers of identification card of the recipients of such payments, as well as the total amount paid during the year shall be prepared in accordance with the prescribed form and submitted to the tax collection authority-in-charge before the end of January of each year. In addition, a withholding exemption certificate shall be prepared and issued to taxpayers concerned before February 10 of each year.

#### **Article 89-1**

With regard to the revenue arising from the trust property referred to in

Article 3-4 hereof, the tax withholder concerned shall, at the time of payment thereof, name the trustee of the said trust deed as the tax payer for that payment and shall completing the tax withholding process in accordance with the provisions of the preceding two Articles. However, for the trust benefits, except for the interest on short-term bills and securities and/or the monetary prizes payable to the price-winners of lottery tickets sponsored by the government, payable by the tax withholder in respect of a public trust set forth in Paragraph Five, Article 3-4 hereof, such payments shall be exempt from the assessment of withholding tax which is otherwise payable under the provisions of Article 88 hereof.

When issuing a withholding certificate in accordance with the provisions of Article 92-1 hereof, the trustee of a trust deed shall take the amount of tax withheld from each category of the trust benefits paid to a trust beneficiary as the amount of income tax withheld for the said trust beneficiary provided, however, that if there are two or more trust beneficiaries, the trustee shall calculate the withholding tax paid by each trust beneficiary in accordance with the proportion to be determined under Paragraph Two, Article 3-4 hereof.

Where the trust beneficiary is an individual who is not residing in the territory of the Republic of China or a profit-seeking enterprise which does not have a fixed business place in the territory of the Republic of China, the trustee of the said trust deed shall be regarded as the tax withholder, and shall, in accordance with the provisions of Article 88 hereof, withhold the income tax from various income payments payable to said trust beneficiary as calculated under the provisions of Paragraphs One and Two, Article 3-4 hereof provided, however, that the withholding tax already paid up by the trust beneficiary/beneficiaries as set forth in the preceding Paragraph may be deductible from the withholding tax payable by such trust beneficiary/beneficiaries under this Paragraph.

When making distribution of trust benefits in respect of a public trust or a trust fund as set forth in Paragraphs Five and Six, Article 3-4 hereof, the trustee thereof shall be considered as the tax withholder who shall complete the withholding process in accordance with the provisions of the preceding two Articles.

#### Article 90

For purchases or sales of goods on behalf of a client, a profit-seeking enterprise shall record in detail the name and address of the client, the description and classification of the goods, quantity, price, date and amount of commission, and preserve all relevant documents of evidence.

#### Article 91

All warehouses or godowns accepting goods for storage shall report on a prescribed form the name and address of client, the description, kind, quantity and assessed value of the goods stored, amount of storage charge and the dates of receipt and delivery of the goods, to the local collection authority-in-charge within three days from the date of receipt of goods.

The collection authority may dispatch personnel for regular inspection of warehouses and godowns, accounting books and records.

#### Article 92

The tax withholders of various kinds of income as provided in Article 88 shall, within the first ten days of each month, effect payment to the national treasury of all the taxes withheld in the previous month, and shall, before the end of January of each year, make out withholding certificates and submit them to the local collection authority-in-charge for verifying the amounts of tax withholdings from the taxpayers in the preceding year, and shall issue a receipt of the withholding certificate to each of the taxpayers before February 10 of each year. However, in the case of dissolution, closure, merger or transfer of ownership of a profit-seeking enterprise, or deactivation or change of an agency or organization, the tax withholder concerned shall immediately make out withholding certificates for the amount withheld and submit them to the local collection authority-in-charge within ten days thereafter.

In the case of a non-resident individual or a profit-seeking enterprise without permanent establishment in the Republic of China but having income as enumerated under Article 88, the tax withholder, shall within ten days from the date of withholding, effect payment to the national treasury of all the taxes withheld, make out withholding certificates and submit them to the local collection authority-in-charge for verification.

#### Article 92-1

The trustee of trust deed(s) shall, prior to the end of January of each year, prepare, in prescribed format, the inventory of property, the revenue and expenditure statements, the statement of trust benefits accrued and payable to trust beneficiaries under Paragraphs One, Two and Paragraphs Five and Six, Article 3-4 hereof, and the statement of withholding tax and other relevant documents as required under Article 89-1 of this Act and shall submit the same to the competent tax collection authority, and shall prepare and issue, prior to the 10th day of February, the withholding certificates or withholding free certificates and relevant certificates and receipts to tax payers concerned.

#### Article 93

The collection authority shall, immediately upon receipt of withholding report from a tax withholder, review the amount of income and tax withheld. It may further appoint a person to make an investigation thereof.

#### Article 94

Any tax withholder shall notify the taxpayers of withholding at time thereof and shall make out and issue to the taxpayers tax withholding certificates in accordance with Article 92 of this Act. In case the amount withheld differs from that determined by the collection authority for assessment, the tax withholder shall return to the taxpayer the amount over-withheld or shall make additional payment of the deficit, which the tax withholder may claim from the taxpayer.

With respect to any tax withheld from an individual not residing in the territory of the Republic of China or from a profit-seeking enterprise without a fixed place of business in the territory of the Republic of China, the tax withholder shall make out a tax withholding certificate and issue it to the taxpayer after verification thereof by the collection authority.

#### Article 95

The local collection authority-in-charge shall at various times check on tax withholders to see whether their withholding reports are accurate and shall urge them to withhold tax and make tax payment according to the

provisions of this Act.

#### Article 96

(Deleted)

#### Article 97

The provisions of the Article 83 through Article 86 shall apply mutatis mutandis to withholding of tax.

### Section 5 Payment of Tax

#### Article 98

Voluntary payment of tax by a taxpayer and payment of tax withheld by a tax withholder as provided in this Act shall each be made with a paying-in-slip completed by the payer.

Payment of tax against demand notice issued by the collection authority as provided in this Act shall be made by the taxpayer within ten days from the date of receipt of the demand notice.

#### Article 98-1

A profit-seeking enterprise having its head office outside the territory of the Republic of China which has been approved as in compliance with the provision of Article 25 or by application of the provision of that Article by the Ministry of Finance to compute its profit-seeking enterprise income tax in accordance with the following provisions:

1. For an enterprise having a branch office in the territory of the Republic of China, the branch office shall make the provisional tax payment and file a declaration on such provisional payment in accordance with the provision of Article 67 and at the close of the year, shall further compute the tax for annual settlement, make payment of the same and file annual income tax return in accordance with the provision of Article 71;
2. For an enterprise without a branch office but maintaining a business agent in the territory of the Republic of China, the business agent shall be responsible for withholding the tax. In the event that the business agent does not collect the price of goods pursuant to contractual agreement, it shall be responsible for reporting and paying the tax in accordance with

the relevant withholding provisions or the payer shall withhold the tax at the time of payment under the approval of the competent collection authority;

3. For an enterprise having neither branch office nor business agent in the territory of the Republic of China, the payer shall withhold the tax at the time of payment.

#### Article 99

A taxpayer may, at time of making provisional tax payment, offset there from tax withheld evidenced by withholding certificates and pay the balance in cash. Where the tax withheld exceeds the provisional payment, the portion in excess thereof may be offset from the tax payable for annual settlement for the same year.

#### Article 100

The tax collection authority shall, after having determined the annual income of a taxpayer, make out and serve on him a tax demand notice giving the balance of the tax payable for the full taxing year after deducting the provisional payment, the tax withheld yet to be offset, the amount of deductible income tax, and the voluntary payment of tax made provided however, that the amount of tax withholding on the interest from short term bills, the amount of deductible tax on the total amount of the distributed dividends or on the total amount of distributed surplus profits received by a profit-seeking enterprise shall not be deductible.

In case the tax as determined payable for annual settlement falls short of the total amount of tax paid, the collection authority shall make out and issue to the taxpayer a refund notice or an exchequer's check for refunding the overpaid amount of income tax.

If, thereafter any tax is decided upon as additionally payable or refundable pursuant to reinvestigation result, or a decision made on an administrative appeal or an administrative proceeding, the tax collection authority shall make out and serve to the taxpayer a tax demand notice, or a revenue refund notice, or an exchequer's check for refunding underpaid tax and for demanding the full payment of the tax payable. The taxpayer shall, within 10 days after service of the foregoing tax demand notice, make the full payment of the income tax payable by him/it.

In the case of refund as provided in the preceding two Paragraphs, the tax

collection authority shall, promptly and no later than ten days from the date of verification, fill out and serve to the taxpayer an over-paid tax refund notice or an exchequer's check. The period for refund of overpaid tax shall be three months commencing from the date of service of the over-paid tax refund notice to the taxpayer. Upon expiration of the said refunding period, no refund will be made.

Where the amount of retained surplus profits declared by a taxpayer under the provisions of Article 102-2 hereof is verified as being under-declared or overdeclared, the supplemental payment of the shortfall tax or the refund of the overpaid tax shall be governed by the provisions set out in Paragraphs One through Four of this Article.

#### Article 100-1

When refunding, in accordance with the provisions of Paragraph Three of Article 100 hereof, the income tax overpaid by a profit-seeking enterprise for the year of 1998 or any ensuing year thereafter, the tax collection authority shall make the refund out of the balance in the deductible tax account credited to the shareholders of the said profit-seeking enterprise as of the date of refunding; whereas if there is any additional balance left over in the said account, such balance may be retained by the profit-seeking enterprise for offsetting the profit-seeking enterprise income tax which shall become payable by it in any ensuing year afterwards.

Where the amount of tax which should be made good by a taxpayer or should be refunded by the tax collection authority is trifling to the extent less than a specific amount, the Ministry of Finance may, depending upon the actual situation and after obtaining the approval of the Executive Yuan, decide not to demand supplemental payment from or to refund to the taxpayer of such a trifling amount of income tax.

#### Article 100-2

In the case where the items or the amounts of tax exemptions and various kinds of deductions declared in the annual income tax return filed by a taxpayer subject to consolidated income tax, or the deductions of various kinds of costs, expenses, or losses declared in the annual income tax return filed by a taxpayer subject to profit-seeking enterprise income tax exceed the limitations prescribed by this Act and other subordinate acts

and thus the voluntary payment of tax falls short, the amount of tax as determined by the collection authority as additionally payable shall be levied and together with the interest to be calculated on a daily basis at the banking interest rate as specified in Article 123 hereof deposit from the date immediately following the expiry date prescribed for filing annual income tax return until the date of payment. However, the interest to be charged shall be limited to the amount accruable for a period of one year. In the case where the amount of interest to be charged under the preceding paragraph does not exceed NT\$1,500, such charge shall be exempted.

#### Article 101

The provisions of all Sections and Articles of this Chapter relating to the computation of various time limits shall apply mutatis mutandis where the fiscal year comes under the provision of Article 23.

#### Article 102

A taxpayer may appoint a legally registered accountant or any other lawful agent to act on his behalf in such matters relating to income estimation and filing of statement, income return, application for reinvestigation, administrative appeal or administrative proceedings as provided in this chapter. The measures governing such appointment shall be prescribed by the Ministry of Finance.

The annual income tax return of a profit-seeking enterprise within a certain scope shall be examined and signed by a legally registered accountant or any other lawful agent appointed by the profit-seeking enterprise. The regulations governing such appointments shall be prescribed by the Ministry of Finance.

In the case of business income tax return filed and signed by a legally registered accountant or any other lawful agent, the profit-seeking enterprise may enjoy the various benefits conferred by using the Blue Return in accordance with this Act.

### Section 6 Declaration of Surplus Earnings

#### Article 102-1

Where a profit-seeking enterprise is required, by the provisions of Article 66-1 hereof, to set up a shareholder tax offsetting account, it shall, prior to the end of January in each year, consolidate the data of dividends distributable to its shareholders or the surplus earnings distributable to its members for the whole year of the preceding year and submit the same to the local tax collection authority for verification; and shall further fill out the dividend distribution vouchers for issuance to all shareholders not later than February 10 of each year. However, if the profit-seeking enterprise enters into the process of dissolution or merger, it shall forthwith fill out the dividend vouchers in respect of the dividends or surplus earnings which have been distributed, and shall declare such information to the local tax collection authority within 10 days.

The profit-seeking enterprise referred to in the preceding Paragraph shall, when filing its tax return, prepare, in an established format, a statement of changes occurred in the preceding year in the shareholder tax offsetting account and file the said statement along with the filled out tax return form with the local tax collection authority for its auditing and verification. However, it shall file the tax return upon the completion date of the liquidation process, if it enters into the process of dissolution; or on the effective date of merger, if it enters into the process of merger, except in the case as described in Item 5, Paragraph One, article hereof.

The statement of changes in the shareholder tax offsetting accounts referred to in the preceding Paragraph shall mean the amount of beginning balance, the amount of increases and decreases in the then current year, and the current balance in the said account.

## **Article 102-2**

A profit-seeking enterprise shall, during the period from May 1 to May 31 in the year following the year for which an income tax return shall be filed, fill out and file to the local tax collection authority a tax return indicating therein the retained earnings as calculated in accordance with the provisions of Paragraph 2, Article 66-9 hereof and the amount of additional income tax leviable thereon which shall be paid before the filing of the tax return. This tax return shall still be filed even if the amount of the retained earnings so calculated turns out to zero or a negative figure.

In the case where a profit-seeking enterprise is dissolved or merged with

another profit-seeking enterprise prior to its filing of the income tax return under the provisions of the preceding paragraph, it shall, within 45 days from the date of dissolution or merger, file to the local tax collection authority a tax return in respect of its retained earnings which have not been surcharged with an additional 10% profit-seeking income tax up to the date of its dissolution or merger, and shall calculate and make the payment of such surcharged tax before filing the tax return. Upon failure of a profit-seeking enterprise to declare such portion of retained earnings within the aforementioned filing period, the tax collection authority shall forthwith investigate the case, assess the amount of the surcharge income tax on such retained earnings, and advise, by a notice, the said profit-seeking enterprise to pay the surcharge tax accordingly.

Where a profit-seeking enterprise has obtained from the local tax collection authority an approval to the change of its fiscal year, it shall include its retained earnings which have not been surcharged with a 10% additional profit-seeking income tax prior to such change of its fiscal year into the amount of its retained earnings in the fiscal year after the change of fiscal year, and shall take appropriate action in accordance with the provisions of Paragraph 1 of this Article.

When filing its tax return in accordance with the provisions of Paragraphs 1 and 2 of this Article, the profit-seeking enterprise shall submit along with the tax return the receipt of its voluntary tax payment and other relevant evidential documents.

### **Article 102-3**

A competent tax collection authority shall assist profit-seeking enterprises to file the declaration of their respective retained surplus earnings prior to the cut-off date of the filing period, and shall issue a remainder notice at least 15 days prior to the expiration date of the filing period stating therein the responsibility of taxpayer for the delay in filing the tax return. The remainder notice may be issued by means of a public notice.

Where a profit-seeking enterprise fails to file the income tax return for its retained surplus earnings within the prescribed filing period, the competent tax collection authority shall forthwith serve to it a late declaration notice requiring the profit-seeking enterprise to file the tax return in rarer within 15 days from the date of its receipt of the said late declaration notice. If

the profit-seeking enterprise further fails to file the tax return after expiry of the given time limit, the competent tax collection authority shall, based on the investigation results, assess the amount of undeclared retained surplus earnings and amount of additional profit-seeking enterprise income tax leviable on thereon, and shall issue to the said profit-seeking enterprise a tax assessment notice together with a tax payment slip for its payment of the tax due within a given time limit. In case any other information is found afterwards by the tax collection authority, the case shall be handled in accordance with the relevant provisions of the Taxation Act.

#### Article 102-4

After receiving a tax return filed by a profit-seeking enterprise for its retained earnings, the tax collection authority shall appoint personnel to conduct an investigation and to verify the amount of its retained earnings and the amount of income tax leviable thereon. For implementation of the investigation and verification, the provisions of Articles 80 through 86 of this Act shall govern.

### Chapter V Reward and Penalty

#### Article 103

When receiving information or accusation to the effect that a taxpayer or tax withholder is evading tax payment through concealment, under-reporting, fraud or other improper means, the collection authority, upon verification of the information or accusation, shall grant the informant or accuser a reward of twenty per cent of the fine and keep his name in strict confidence.

The collection authority shall notify the informant or accuser of the reward as provided in the preceding paragraph when the judgment for fine is confirmed by the court and within three days from receipt of the fine and set a time limit for his collection of the reward.

An informant or accuser who has participated in the tax evasion shall not be entitled to the reward.

Where the informant or accuser is a public functionary, the provisions of this Article relating to grant of reward shall not apply.

#### Article 104

(Deleted)

#### Article 105

(Deleted)

#### Article 106

Under any of the following circumstances, the local collection authority-in-charge shall, in addition to requiring submission of report or amendment of report entries within a specified time period, impose upon the violator a fine of not exceeding NT\$300:

1. (Deleted)
2. Where the responsible person of a profit-seeking enterprise organized as a company or of a cooperative fails, in violation of the provisions of Article 76, to report within the prescribed time period the dividends or profits payable or paid to shareholders or members;
3. Where the responsible person of a partnership fails, in violation of the provisions of Article 76, to report the names and residences of partners, the amount of their respective investments and the percentage of allocation of profit or loss in a detailed list;
4. Where the responsible person of a profit-seeking enterprise fails to record the necessary information in the account books required by the provisions of Article 90;
5. Where the responsible person of a warehouse or godown fails to report the necessary information as required by the provisions of the Paragraph one of Article 91;
6. Where the responsible person of a trade association fails to submit a roster of its members as required by the provisions of Article 20.

#### Article 107

Where a taxpayer fails in violation of the provisions of Article 83, to produce account books and documentary evidences within the specified time period, the collection authority shall impose upon him a fine of not exceeding NT\$1,500.

Where a taxpayer refused to accept a tax demand notice without furnishing

justifiable reasons, the local collection authority-in-charge shall, in addition to accomplishing the service of such notice in accordance with the provisions of Article 18 of the Tax Collection Act, impose upon him a fine of not exceeding NT\$500.

#### Article 107-1

(Deleted)

#### Article 108

Where a taxpayer failed to file his annual income return within the period as specified in the provisions of Article 71 but has subsequently filed it in accordance with the provisions of Paragraph 1 of Article 79, the collection authority shall, after determining the amount of its income and the amount of tax payable through investigation, collect a delinquent reporting surcharge in an amount equal to ten per cent of the tax determined as payable. The amount of delinquent reporting surcharge shall not be less than NT\$1,500.

Where a taxpayer still fails to file his annual income tax return within the prescribed period as provided in Article 79, and amount of his income and the amount tax payable have been determined by the collection authority based on the available data or the profit standard of the same trade, the collection authority shall collect a delinquent reporting surcharge in an amount equal to twenty per cent of the tax determined as payable. The delinquent reporting surcharge shall not be less than NT\$4,500.

The provisions of Paragraphs 1 and 2 shall not apply to taxpayers subject to consolidated income tax, small size business using simplified income tax return and those who are exempt from filing annual income tax returns according to Article 71 of this Act.

#### Article 108-1

Where a profit-seeking enterprise had failed to file the income tax return for its retained surplus earnings before the filing deadline required by the provisions of Article 102-2, but subsequently completed the tax filing procedure in accordance with the provisions of Paragraph Two, Article 102-3 hereof, the tax collection authority shall, after having verified the actual amount of such retained surplus earnings and assessed the amount

of additional income tax payable, surcharge a delinquent fee at the rate equal to 10% of the amount of additional income tax payable so assessed. In no case shall the amount of delinquent fee be less than NT\$1,500.

Where a profit-seeking enterprise further fails to file the tax return within the time limit fixed in accordance with the provisions of Paragraph Two, Article 102-3 hereof, the tax collection authority shall, after having verified the actual amount of the retained surplus earnings and assessed the amount of additional income tax payable and assessed, surcharge a late filing fee at the rate equal to 20% of the assessed amount of additional income tax payable. In no case shall the amount of late filing fee be less than NT\$ 4,500.

#### Article 109

(Deleted)

#### Article 110

In the case of a taxpayer who has filed annual income tax return in accordance with the provisions of this Act, any omission or under-reporting of income taxable hereunder shall be subject to a fine of no more than twice the amount of the tax evaded.

In the case of a taxpayer who fails to file annual income tax return in accordance with the provisions of this Act and who is found by the collection authority to have income taxable hereunder, the collection authority shall, in addition to determining the tax payable in accordance with act, impose a fine of no more than three times the amount of tax determined as payable.

Where a profit-seeking enterprise, due to tax exemption provided under the incentive statute or because of business deficit, shall not have a taxable income even though the amount of income omitted or under-reported is added to it, a fine shall be imposed separately at prescribed times according to the preceding two paragraphs on the taxable omission and under-reporting of income calculated at the profit-seeking enterprise income tax rate applicable in the current year.

#### Article 110-1

In case a taxpayer has, after an additional tax payment notice has been

served, for his tax evasion or omission, been found out by the collection authority indications of suspected concealment of his properties or making ownership transfer in order to avoid enforced execution, the collection authority may, with a statement of detailed facts, apply to the court for an attachment on the taxpayer's properties and may be exempt from furnishing guaranty against attachment. But if the taxpayer has furnished appropriate guarantee in property or a surety from a reliable businessman, the collection authority may file an application to the court for a withdrawal of the case or lifting the attachment.

#### Article 110-2

Where a profit-seeking enterprise has filed the income tax return in accordance with the provisions of Article 102-2 hereof, but did not declare or under-declared its retained surplus earnings in such tax return, it shall be imposed with a fine for such failure in an amount not more than twice as much as the amount of short-declared or under-declared profit-seeking enterprise income tax.

Where a profit-seeking enterprise failed to make voluntary filing of income tax return in accordance with the provisions of Article 102-2 hereof, and was discovered by the tax collection authority to have failed to declare a retained surplus earnings which should be declared under the act, the tax collection authority shall, in addition to assess the amount of additional income tax leviable, also impose on the said profit-seeking enterprise a fine in an amount of not more than twice as much as the amount of additional tax leviable.

#### Article 111

Where the head of the unit responsible for the tax withholding personnel of a government agency, public school or enterprise, in violation of the provisions of Paragraph 3 for Article 89 of this Act, fails to submit a prescribed report in time or to submit a truthful report or to issue withholding exemption certificate in time; a notice shall be served upon the competent authority concerned to take disciplinary action. The head of the unit responsible for the tax withholding personnel of a private institution or school; the responsible person of an enterprise; the trustee of a bankrupt estate, or the practitioner of a profession who fails to prepare and submit a

report within the prescribed time limit or fail to make a truthful report or to issue withholding exemption certificate as required by the provisions of Paragraph 3 of Article 89 of this Act shall be subject to a fine of NT\$1,500, and a notice shall be served demanding supplemental report within a prescribed time limit. In case of failure to do so in time, the institution or enterprise shall be subject to a fine at the rate of five per cent of the amount of payment made by the said enterprise or institution. However, the maximum amount of the fine shall not be more than NT\$90,000, and the minimum amount shall not be less than NT\$3,000.

#### Article 111-1

Where the trustee of a trust deed is found to have under-declared or omitted the declaration of any revenue accrued on the trust property, or made false declaration of any relevant costs, necessary expenses and/or losses, and thus has caused under-calculation of the amount of trust beneficiaries' income as required in Paragraphs One and Two and Paragraphs Five and Six, Article 3-4; or has failed to make accurate sort the categories of the beneficiaries' income, and thus has caused reduction of trust beneficiaries' tax-paying obligation, the trustee shall be imposed a fine in an amount equal to 5% of the amount of under-declared or evaded income of trust beneficiaries or the amount of incorrectly sorted income of such beneficiaries, but not less than a minimum amount of New Taiwan Dollar Fifteen Thousand (NTD 15,000).

Where the trustee of a trust deed fails to calculate the amount of trust beneficiaries' income from different categories of income in accordance with the proportions set out in Paragraph Two, Article 3-4 of this Act, the said trustee shall be imposed a fine in an amount equal to 5% of the deficit between the amount of income calculated by the trustee and the amount of income to be calculated in accordance with the applicable proportions; but not be less than a minimum amount of New Taiwan Dollar Fifteen Thousand (NTD 15,000).

Where the trustee of a trust deed fails to file or to file accurate tax withholding return, or to prepare and issue the relevant documents or withholding certificates or withholding free certificates or other relevant certificates or receipts as required in Article 92-1 hereof, the said trustee shall be impose a fine in the amount of New Taiwan Dollar Seventy Five

Hundred (NTD 7,500), and in addition thereto, shall be required to make supplemental filing or issuing within a given time limit. Failure to make such supplemental filing or issuing beyond the given deadline shall subject the trustee to a fine in an amount equal to 5% of the amount of revenue accrued on the trust property in the then current year; but in no case shall the amount of such fine be less than New Taiwan Dollar Fifteen Thousand (NTD 15,000).

#### Article 112

A taxpayer who fails to pay within the prescribed time limit any amount of income tax, or surcharge for delinquent reporting or non-reporting shall be subject to a surcharge for delinquent payment at the rate of one per cent of the amount of the payment due for every two days of delay. If the payment is still not made within thirty days after the time limit, the collection authority may, in addition to referring the case to the court for compulsory execution, in the case of a profit-seeking enterprise, order a suspension of business until the date of payment.

Any amount of income tax or surcharge for delinquent reporting, non-reporting, or delinquent payment is not paid within the time limit as provided in the preceding Paragraph, an interest accruable thereon as calculated on a daily basis at the interest rate for deposits as specified in Article 123 hereof for the period from the date immediately following the date of expiration of the time limit till the date of payment shall be collectable together with the amount of aforesaid income tax or surcharge due.

Business suspension as provided in this Act shall be enforced by the collection authority with the assistance of the police.

#### Article 113

To an agent or business agent as provided in Article 73 of this Act who violates the provisions hereof, the respective penalty provisions applicable to taxpayers shall apply.

#### Article 114

Under any of the following circumstances, the tax withholder shall be subject to the applicable punishment as set forth respectively herein

below:

1. A tax withholder who fails to withhold tax in accordance with the provision of Article 88 shall, in addition to being instructed to pay the tax amount which should be withheld but was not withheld or has short withheld and to submit supplemental tax-withholding certificates within a given time limit, be subject to a fine in an amount equal to the tax amount that should be withheld but was not withheld or was short withheld. If the withholder still does not comply with the instruction to pay the tax amount or to submit supplemental tax-withholding certificates truthfully within the given time limit, he shall be subject to a fine in an amount equal to three times the amount which should be withheld but was not withheld or was short withheld;

2. A tax withholder who has withheld taxes in accordance with this Act but fails to fill out the tax-withholding certificates truthfully within the time limit prescribed in Article 92, shall be instructed to make a supplemental report and be subject to a fine at the rate of twenty per cent of the tax amount withheld. The amount of the fine, however, shall not exceed NT\$ 22,500 or be less than NT\$ 1,500. If the report is filed after the deadline as a result of the tax withholder's own initiative, the fine shall be reduced by fifty per cent. The tax withholder, who is instructed to make a supplemental report on the tax withholding certificates within a time limit prescribed by the tax authority but fails to do so, shall be subject to a fine in an amount equal to three times the amount of the tax withheld. It is not, however, to exceed NT\$ 45,000 or be less than NT\$ 3,000;

3. A tax withholder who fails to pay the tax withheld within the time limit prescribed in Article 92 shall be subject to a surcharge for delinquent payment at the rate of one per cent of the amount of the payment due for every two days delay.

#### **Article 114-1**

Where a profit-seeking enterprise fails to set up a shareholder tax offsetting account which should be set up under this Act, or fails to update the records in such account as required, it shall be imposed with a fine in the amount of not less than NT\$ 3,000 but not more than NT\$ 7,500 and shall be ordered, by a notice, to set up that account or to update the records in that account within one month accordingly. If the profit-seeking

enterprise again fails to set up or to update the shareholder tax offsetting account after expiry of the one month time limit, it shall be imposed with a fine in the amount not less than NT\$ 7,500 but not more than NT\$ 15,000 and shall be ordered, by a notice, to set up or to update such an account accordingly. Any further failure of the profit-seeking enterprise to set up or to update the shareholder tax offsetting account shall be subject the same punishment successively on a monthly basis until the said account has been set up and is regularly updated in accordance with the act.

#### Article 114-2

Under any of the following circumstances, the act violating profit-seeking enterprise shall be ordered to pay up the income tax which shall otherwise be offset in respect of the amount of over-distributed surplus earnings, and shall imposed with a fine in an amount twice as much as the said amount of over-distributed surplus earnings:

1. The profit-seeking enterprise has violated the provisions of Paragraph Two, Article 66-2, or Article 66-3, or Article 66-4 of this Act by falsely increasing the amount in the shareholder tax offsetting account, or short-declaring the amount of balance in the account of booked cumulating of retained surplus earnings set forth in Article 66-6 hereof, to the extent that the amount of deductible income tax actually allocated to shareholders or members has exceeded the amount of deductible income tax which may be allocated to shareholders.
2. The profit-seeking enterprise has violated the provisions of Paragraph One, Article 66-5 hereof because the amount of deductible income tax allocated by it to its shareholders or members has exceeded the amount of balance in its shareholder tax offsetting account as booked as of the date of distribution of dividends or other surplus earnings.
3. The profit-seeking enterprise has violated the provisions of Article 66-6 hereof when distributing the net dividend by using a tax deduction ratio which is higher than the designated ratio for such purpose, whereby the amount of deductible income tax actually allocated to its shareholders has exceeded the amount of deductible income tax to be calculated in accordance with the act.

Where a profit-seeking enterprise has violated the provisions of Article 66-7 hereof by allocating amount of deductible tax to its shareholders or

members for them to offset the income tax payable by them, the said profit-seeking enterprise shall be ordered to pay, within a given time limit, the amount of deductible tax so allocated by it, and shall be imposed with a fine in an amount twice as much as the amount allocated.

In case the profit-seeking enterprise set forth in the preceding two Paragraphs has wound up, closed down or moved to an unknown place, the competent tax collection authority shall collect from the shareholders or members of the said enterprise the amount of deductible tax which was over-allocated or unlawfully allocated by the said enterprise to its shareholders or members.

### Article 114-3

A Profit-seeking enterprise which has failed to enter correct data in or to issue the dividend voucher (warrant) by the deadline as fixed in Paragraph One, Article 102-1 hereof shall be ordered to correct the entries of or to issue the dividend warrant, and shall further be imposed with a fine in an amount equal to 20% of the total amount of deductible tax indicated in the dividend voucher (warrant) provided that the amount of the fine shall not exceed NT\$ 30,000, nor may it be less than NT\$ 1,500, but may be reduced by one half if the said enterprise takes initiative to declare the dividend or to issue the dividend voucher (warrant) after expiry of the foregoing deadline. In case the profit-seeking enterprise further fails to declare correct dividend or to issue the dividend voucher (warrant) within a given time limit after having been ordered to do so, it shall be subject to a fine in an amount equal to three times the total amount of deductible tax provided that the amount of such fine shall not exceed NT\$ 60,000 or be less than NT\$ 3,000.

A profit-seeking enterprise which has violated the provisions of Paragraph Two, Article 102-1 hereof by failing to file timely or accurate statement of changes in shareholder tax offsetting account shall be imposed with a fine of NT\$ 7,500 and shall be ordered, by a notice, to file such statement within a given time limit. If the said profit-seeking enterprise further fails to do so after expiry of the deadline, the fine shall be imposed on a monthly basis until the time of its filing of the statement required.

### Article 115

(Deleted)

#### Article 116

Any surcharge for reporting or non-reporting and under estimation as provided in this Chapter shall be made known to the party at default by the collection authority by serving a surcharge assessment notice in which the facts and the basis of imposition thereof shall be given. Where the notice carries a wrong entry or computation error, the party at default may, within ten days from receipt thereof, apply to the collection authority for recheck or correction.

Upon expiration of the time limit as provided in the preceding Paragraph, the collection authority shall issue a surcharge demand notice requiring payment by the party at default within ten days.

#### Article 117

(Deleted)

#### Article 118

Where a legally registered accountant or any other lawful agent, when acting on behalf of a taxpayer in matters relating to income estimation, filing of returns, application for reinvestigation, administrative appeal or administrative proceedings, certification of contents of account books or other affairs connected with taxation, commits a breach of any of the provisions of this Act, the local collection authority-in-charge may report the matter through channels to the Ministry of Finance.

#### Article 119

All personnel of the collection authority shall keep in strict confidence, except to concerned parties and agencies, the amounts of income and income tax of any taxpayer, documentary evidences, and statements or documents made or produced by other parties. Any person found guilty thereof by the authority-in-charge or upon information of the injured party shall be subject to severe disciplinary action. Where such a person is also guilty of violating the Criminal Code, Code, he shall further be referred to the court to be dealt with in accordance with act.

Concerned parties and agencies as provided in the preceding paragraph

refer to the taxpayer himself, his agent, attorneys, partners, successors, tax withholders, taxation agencies, control agencies, agencies receiving administrative appeal or handing administrative proceedings related to taxation, and such other agencies and personnel thereof as determined by the Ministry of Finance.

The furnishing of information by a collection authority to other government agencies for statistical purposes involving no disclosure of name of taxpayers is not subject to the confidence keeping restriction.

Personnel of government agencies disclosing such information furnished by tax agencies as provided in the first paragraph of this Article shall be subject to punishment comparable to that imposable on personnel of tax agencies.

#### **Article 120**

Tax assessors and collectors violating the provisional of Article 68, 78 or 103 of this Act shall be punished.

### **Chapter VI Supplementary Provisions**

#### **Article 121**

The enforcement rules of this Act, the tabulation of minimum estimated service life in years of fixed assets, and the tabulation of depletion rates of assets subject to depletion shall be prescribed by the Ministry of Finance.

#### **Article 122**

Except as otherwise provided by act, all forms of applications, registrations, books and certificates herein specified shall be prescribed by the Ministry of Finance.

#### **Article 123**

The term "the prevailing deposit interest rate (Or bid rate) adopted by local banking industries" shall refer to the fixed interest rate of postal savings for a one-year time deposit.

#### **Article 124**

Where there are special provisions in income tax agreement signed by the

Republic of China with a foreign country, such special provisions shall prevail.

## Article 125

(Deleted)

## Article 125-1

A worker who was employed by an employer to do work, received wages and paid tax on the pension, retirement pay, severance pay, and old-age pension not covered by insurance benefits received by him/her after Aug 1, 1984 and before amendment and implementation of this Act, may apply for refund of over paid tax within five (5) years after amendment and implementation of this Act and shall not apply for such refund again if he/she failed to apply for it within the time limit. The refundable amount of tax approved by concerned taxation authority shall be refunded together with interest accrued thereon calculated on daily basis for the period from the date of payment thereof by the taxpayer to the date of issuance of a national treasury check for the refunded amount at the fixed interest rate of postal savings for a one-year time deposit on the day when the refundable amount was paid.


Refund based on provisions in the preceding Paragraph of tax paid within five (5) years before amendment and implementation of this Act shall be applied for by the taxpayer concerned; however, if said five-year period is exceeded, the taxpayer shall submit concrete supporting evidence when filing an application.

## Article 126

This Act shall come into force from the date of its original promulgation provided with the condition, however that the amended text of Article 17 shall come into force on January 1, 2005.

The effective date of the amendments made on May 29, 2001 shall be decided by the Executive Yuan.

Title :

[Labor Standards Act](#) ( 2002.12.25 Modified ) 

## Article Content

### Chapter I General Provisions

[Article 1](#) The Act is enacted to provide minimum standards for working conditions, protect workers' rights and interests, improve employee-employer relationships and promote social and economic developments. Matters not provided for herein shall be governed by other applicable statutes.

The terms and conditions of any agreement between an employer and a worker shall not be below the minimum standards provided herein.

[Article 2](#) The terms used in the Act shall be defined as follows:

1. Worker means a person who is hired by an employer to do a job for which wages are paid.
2. Employer means the owner of a business entity which hires workers, the responsible person of business operations, or the person who represents the business owner in handling labor matters.
3. Wage means the compensation which a worker receives for his work, including wages、 salaries、 bonuses、 allowances, whether computed on an hourly, daily, monthly or piecework basis, whether payable in cash or in kind, and any other regular payments under whatever name.
4. Average wage means the figure arrived at by taking the total wages for the six months preceding the day on which an event requiring that a computation be made occurs, divided by the total number of days in that period. In the case of a period of service not exceeding six months, the term "average wage" means the figure arrived at by taking the total wages for the service period divided by the total number of days of that period. In the case of wages which are computed on a daily, hourly, or piecework basis, if the "average wage" figure arrived at according to the preceding formula is less than sixty percent of a figure determined by dividing the total wages for the particular service period by the actual number of work days, the "average wage" in this case shall be the sixty percent figure.
5. Business entity means any entity engaged in any of the lines of business that are governed by this act, which employs workers to do work.
6. Labor contract means a contract that establishes an employee-employer

relationship.

[Article 3](#)

The Act shall be applicable to the following lines of business:

1. Agriculture, forestry, fishery and animal husbandry.
2. Mining and quarrying.
3. Manufacturing.
4. Construction.
5. Water, electricity and gas supply.
6. Transportation, warehousing and telecommunications.
7. Mass communication.
8. Other lines of business as may be designated by the Central Competent Authority.

When making designation referred to in Item 8 of the proceeding paragraph, a portion of the workplace or part of workers in the business entity may be designated as applicable.

The Act shall apply to all forms of employee-employer relationships. However, this principle shall not apply, if it is discovered that the application of the Act will genuinely cause undue hardship to the business entities involved due to the factors relating to the types of management, the administration system and the characteristic of work involved and if it belongs to the lines of business or work designated and publicly declared by the Central Competent Authority.

The total number of workers employed in the business entities which will encounter genuinely undue hardships and shall not be applicable to the Act, shall not exceed one-fifth of the total number of workers employed in the lines of business as stipulated in Items 1-7 of Paragraph 1 to this Article.

[Article 4](#)

For the purposed of the Act, the term competent authorities used herein shall refer to the Council of Labor Affairs of the Executive Yuan at the central government level, the municipal city governments at the municipal government level and the county/city governments at the county/city government level.

[Article 5](#)

No other employer shall, by force, coercion, detention, or other illegal practices, compel a worker to perform work.

[Article 6](#)

No person shall interfere in the labor contract of other persons and obtain illegal benefits.

[Article 7](#)

An employer shall provide and maintain a worker record card indicating the name, sex, birth date, place of ancestral origin, educational background, address, uniform identification card number, employment starting date, wage,

labor insurance starting date, merits and demerits, injury and disease and other significant facts of each worker.

The worker record card referred to in the preceding paragraph shall be kept on file by the employer for five years after the date a particular worker ceases to be employed.

[Article 8](#) An employer shall take precautions for the benefit of his (or her) hired workers against occupational hazards, create a proper working conditions and provide welfare facilities. All safety, sanitation and welfare matters related thereto shall be governed by the stipulations of applicable statutes.

## **Chapter II Labor Contracts**

[Article 9](#) Labor contracts may be divided into two categories: fixed term contracts and non-fixed term contracts. A contract for temporary, short-term, seasonal or special work may be considered as a fixed-term contract and a contract for continuous work, as a non-fixed-term contract.

In any one of the following situations, a fixed-term contract shall be deemed as to be a non-fixed-term upon the expiration of the contract:

1. Where an employer raises no immediate objection when a worker continues his (or her) work.
2. Where, despite the execution of a new contract, the prior contract and the new one together cover a period of more than ninety days and the period of time between expiration of the prior contract and execution of the new one does not exceed thirty days.

The preceding paragraph shall not apply in the case of a fixed-term contract for special and seasonal work.

[Article 10](#) If a new contract is executed, or an existing contract is renewed, within three months after the expiration of a fixed-term contract or the termination of a non-fixed-term contract for cause, the service period which accrued before the execution or renewal of the contract shall be combined with the service period of the new or renewed contract in any computation of service period.

[Article 11](#) No employer shall, even by advance notice to a worker, terminate a labor contract unless one of the following situation arises:

1. The business ceases to operate or has been transferred.
2. The business suffers an operating loss or contraction.
3. Business suspension for more than one month is necessitated by force majeure.

4. A change in business nature requires a reduction of workers and the particular workers cannot be assigned to another suitable position.

5. A particular worker is clearly not able to perform satisfactorily the duties required of the position held.

[Article 12](#)

In any of the following situations, any employer may terminate a labor contract without advance notice:

1. Where a worker misrepresents any fact at the time of signing of a labor contract in a manner which might mislead his employer and cause him to sustain damage therefrom.

2. Where a worker commits a violent act against or grossly insults the employer, his (or her) family member or agent of the employer, or a fellow worker.

3. Where a worker has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine.

4. Where a worker is in serious breach of the labor contract or in serious violation of work rules.

5. Where a member deliberately damages or abuses any machinery, tool, raw materials, product or other property of the employer or deliberately disclose any technical or confidential information of the employer thereby causing damage to the employer.

6. Where a worker is, without good cause, absent from work for three consecutive days, or for a total six days in any month.

Where an employer desires to terminate a labor contract pursuant to Items 1 and 2, Items 4 to 6 of the preceding paragraph, he (or she) shall do so within thirty days from the date he (or she) becomes aware of the particular situation.

[Article 13](#)

An employer shall not terminate a contract with a worker who is on leave from work pursuant to Article 50, is receiving medical treatment pursuant to Article 59, unless the employer cannot continue operating the business due to an act of God, catastrophe or other force majeure and prior approval has been obtained from the competent authorities.

[Article 14](#)

A worker may terminate a labor contract without giving advance notice to the employer in any of the following situations:

1. Where an employer misrepresents any fact at the time of signing a labor contract in a manner which might mislead his (or her) worker and cause him (or her) to sustain damage therefrom.

2. Where an employer, his (or her) family member or his (or her) agent commits violence or grossly insults the worker.
3. Where the work specified in a labor contract is likely to be injurious to the worker's health and the worker has without success requested his (or her) employer to improve working conditions.
4. Where an employer, an agent of the employer or a fellow worker contracts a harmful, contagious disease and there is a possibility that the worker may contract this disease.
5. Where an employer fails to pay for work in accordance with the labor contract or to give sufficient work to a worker who is paid on a piecework basis.
6. Where an employer breaches a labor contract or violates any labor statute or administrative regulation in a manner likely to adversely affect the rights and interests of the particular worker.

Where a worker desires to terminate a labor contract pursuant to Items 1 or 6 of the preceding paragraph, he shall do so within thirty days from the date he becomes aware of the particular situation.

Where there exists any of the situations provided in Item 2 or 4 of the Paragraph 1 to this Article, and the employer has already discharged the agent concerned or has hospitalized or discharged the person suffering from such harmful, contagious disease, the worker may not terminate the labor contract.

The stipulations of Article 17 shall apply, mutatis mutandis, to the termination of labor contracts pursuant to this Article.

#### Article 15

In the case of a special fix-term contract for a term of more than three years, a worker may, upon completion of three years' work, terminate the contract by giving the employer thirty days advance notice.

In the case of a worker terminating a non-fixed term contract, the provisions of Paragraph one of Article 16 pertaining to the prescribed time limit for serving advance notice shall apply mutatis.

#### Article 16

Where an employer terminates a labor contract pursuant to Article 11 or the exception in Article 13, the stipulations described below shall govern the minimum period of advance notice:

1. Where a worker has worked continuously for more than three months but less than one year, the notice shall be given ten days in advance.
2. Where a worker has worked continuously for more than one year but less than three years, the notice shall be given twenty days in advance.

3. Where a worker has worked continuously for more than three years, the notice shall be given thirty days in advance.

After receiving the advance notice referred to the proceeding paragraph, a worker may, during hours of work, ask for leave of absence for the purpose of finding a new job. Such leave of absence may not exceed two work days per week. Wages shall be paid during such leave of absence.

Where an employer terminates the contract without serving an advance notice within the time limit prescribed in the first paragraph of this Article, he shall pay the worker wages for the advance notice period.

[Article 17](#)

When an employer terminates a labor contract pursuant to the preceding article, he shall pay severance fee to the worker in accordance with the terms prescribed below:

1. A worker who has continuously worked for a business entity owned by the same employer shall be entitled to severance payment equal to one month of average wage for each year of service.
2. Severance payment shall be paid in proportion to months of service not comprising a full year and not take into consideration under the computation in the preceding paragraph or where the period of service is less than one year. Any fraction of one month shall be deemed to be one month.

[Article 18](#)

In either of the following situations, a worker shall not claim from the employer either additional wages for the advance notice period or severance payment:

1. A labor contract is terminated pursuant to Article 12 or 15.
2. Where the worker terminates his service upon expiration of a fixed-term contract.

[Article 19](#)

Upon termination of a labor contract, neither an employer nor the employer's agent shall reject a request from the worker for an employment reference.

[Article 20](#)

When a business entity is restructured or changes ownership, except for those workers to be retained through negotiations between the old and the new employers, the employer shall terminate labor contracts with the remaining workers by giving the minimum advance notice prescribed by Article 16 and shall pay severance payment in accordance with Article 17. The new employer shall recognize the prior period of service of those workers to be retained.

### **Chapter III Wages**

[Article 21](#)

A worker shall be paid such wages as determined through negotiations with the

employer, provided, however, that such wages shall not fall below the basic wage.

The basic wage referred to in the preceding paragraph shall be prescribed by the basic wage deliberation committee of Central Competent Authority and submitted to the Executive Yuan for approval.

The matters of organization and procedure of proceeding basic wage deliberation committee, shall be regulated specially by Central Comptent Authority.

[Article 22](#)

Wages shall be paid in legal, circulating currency, provided, however, that part of such wages may, by custom or business nature, be paid in kind in accordance with the labor contract. If part of the wages is paid in kind, the conversion price of such wages in kind shall be fair and reasonable and the articles shall serve the needs of both worker and his family members.

Wages shall be paid in full directly to the worker, unless otherwise prescribed by applicable statutes or administrative regulations or agreed to by both the employer and the worker.

[Article 23](#)

Except as otherwise agreed to by parties to a labor contract, or where wages are paid in advance on a monthly basis, wages shall be paid on a regular basis at least twice a month. This shall also apply to wages computed on a piecework basis.

An employer shall keep a worker payroll roster in order to record entries such as wages payable, the items of wage computation and the total sum of wage payment. This payroll roster shall be kept on file for at least five years.

[Article 24](#)

An employer shall pay a worker overtime wages on the following basis:

1. Where the overtime work does not exceed two hours, the worker shall be paid, in addition to the regular hourly wage, at least an additional one-third of the regular hourly rate.
2. Where the overtime work is over two hours, but does not exceed four hours, the worker shall be paid, in addition to the regular hourly wage, at least an additional two-thirds of the regular hourly rate.
3. Where the overtime work is requested in accordance with Paragraph 3 to Article 32, the worker shall be paid two times the regular hourly rate.

[Article 25](#)

An employer shall under no condition discriminate between the sexes in the payment of wages. Worker shall receive equal wages for equal work of equal efficiency.

[Article 26](#) An employer shall not make advance deduction of wages as penalty for breach of contract or as indemnity.

[Article 27](#) If wages are not paid on schedule, the competent authority may order the particular employer to pay them within the prescribed period.

[Article 28](#) In the case of an employer winding up or liquidating his business or being adjudicated bankrupt, the worker shall have a preferred right to payment of wages which are payable under the labor contracts and which have been overdue for a period not exceeding six months.

An employer shall make a monthly deduction at a fixed rate of the insurance-wage of workers and deposit the same in an "arrear wage payment fund" created for the purpose of paying the arrear wages referred to in the preceding paragraph. When the said fund has accumulated to a certain sum, either the ratio shall be reduced or the collection of such payment shall be suspended.

The ratio referred to in the preceding paragraph shall be determined by the Central Competent Authority at less than zero point one percent of the insurance-wage of all workers and shall be reported to the Executive Yuan for approval.

Where a worker is not paid arrear wages after having requested payment from the employer, the arrear wages shall be disbursed from the said arrear wage payment fund, whereupon the employer shall reimburse the said fund within the prescribed time limit.

The arrear wage payment fund shall be managed by a commission established by the central competent authority. Matters concerning the collection and custody of contributions to the fund shall be managed by the Labor Insurance Agency at the request of the Central Competent Authority. The amount stipulated in paragraph 2, the payment procedure, collection and management rules, and organizational regulations of the said commission shall be determined by the Central Competent Authority.

[Article 29](#) After the closing of books of account at the end of the business year, a business entity shall, after paying taxes, covering losses for the previous year and setting aside stock dividends and legal reserves shall pay allowances or bonus out of the balance of net profits, if any, to workers who have worked the entire preceding year without committing fault and misconduct.

#### **Chapter IV Working Hours, Recess and Holidays**

[Article 30](#) A worker shall not have regular working time in excess of eight hours a day and

eighty-four hours every two weeks.

With the consent of a labor union, or if there is no labor union exists in a business entity, with the approval of a labor-management conference, an employer may distribute the regular working hours, referred to in the proceeding paragraph, of any two workdays in every two weeks, to other workdays, provided that no more than two hours shall be distributed to each of the other workdays. However, the total number of working hours shall not exceed forty-eight hours every week.

With the prior consent of the labor union, or if there is no labor union exists in a business entity, with the agreement of a labor-management conference, an employer may distribute the regular working hours, referred to in the first paragraph, in every eight weeks, provided that the regular working time shall not in excess of eight hours a day and the total number of working hours shall not exceed forty-eight hours every week.

Paragraphs 2 and 3 are only applicable to the lines of business designated by the Central Competent Authority.

The employer shall keep worker sign-in books or time cards to record worker attendance on a day-to-day basis. These books and cards are to be kept on file for at least one year.

[Article 30-1](#) For the lines of business designated by the Central Competent Authority, upon the consent of a labor union, or if there is no labor union exists in a business entity, with the approval of a labor-management conference, an employer may change his (or her) working hours under the following principles:

1. The distribution of regular working hours to other work days in four weeks shall not exceed two hours a day and is not subject to the restrictions referred to in paragraphs 2 to 4 to the preceding Article.
2. When the regular workday is ten hours a day, the overtime work shall not exceed two hours for that particular day.
3. Every two weeks shall have at least two days off as a regular leave and is not subject to the restrictions referred to in Article 36.
4. Female workers on night shift, except for those who are pregnant or are feeding their babies, are no longer subject to the restrictions referred to in paragraph 1 to Article 49, however, the employer must provide satisfactory safety and health facilities.

The lines of business that are applicable to Article 3, which was amended and enforced before December 27, 1996, except for agriculture, forestry, fishery, and

pasturage business, referred to in Item 1, Paragraph 1, are not applicable to the preceding paragraph.

[Article 31](#) The working hours of a worker operating in a pit or tunnel shall begin from the time of entrance to the pit or tunnel and shall end at the time of departure therefrom.

[Article 32](#) When an employer has a necessity to have his (or her) employee to perform the work besides regular working hours, he (or she), with the consent of a labor union, or if there is no labor union exists in a business entity, with the approval of a labor-management conference, may extend the working hours.

The extension of working hours referred to in the preceding paragraph, combined with the regular working hours, shall not exceed twelve hours a day. The total number of overtime shall not exceed forty-six hours a month.

Due to the occurrence of an act of God, an accident, or an unexpected matter and when an employer has a necessity to have his (or her) employee to perform the work besides regular working hours, may extend the working hours.

However, the employer shall notify the labor union within twenty-four hours after the beginning of the extension. If there is no labor union exists, shall report to the local competent authority for registration. Subsequent to the over time, the employer shall offer worker suitable time off.

Except for supervisory duties or in any of the situations referred to in the preceding paragraph, the working hours of a worker in a pit or tunnel shall not be extended.

[Article 33](#) Where the convenience of the public or other special cause necessitates the adjustment of regular working hours and overtime hours for lines of business under Article 3 other than manufacturing and mining in a manner not contemplated in Articles 30 and 32, the local competent authorities, may if necessary, by order permit such adjustment after having consulted the competent authority with jurisdiction over the line of business and the labor union.

[Article 34](#) If a rotation system of a day and night shift is adopted, workers on such shifts shall be rotated on a weekly basis except as otherwise consented by the worker. Those workers who are rotated in accordance with the preceding paragraph shall be granted appropriate recess.

[Article 35](#) A worker shall be permitted to have a break for at least thirty minutes after having worked for four continuous hours; provided, however, that such break

may be rescheduled by the employer to be taken within other working hours if a rotation system is adopted or work of a continuous or urgent nature is involved.

[Article 36](#) A worker shall have at least one regular day off in every seven days.

[Article 37](#) A worker shall be granted recess on all holidays, the Labor Day and other days prescribed by the Central Competent Authority.

[Article 38](#) Where a worker continues to work for one and the same employer or business entity for a certain period of time he (or she) shall be granted special leave on an annual basis on the following basis:

1. Seven days for the services of more than one year but less than three years.
2. Ten days for the service of more than three years but less than five years.
3. Fourteen days for the service of more than five years but less than ten years.
4. One additional day for each year of service over ten years up to a maximum of thirty days.

[Article 39](#) Wages shall be paid by an employer to a worker for taking a regular day off under Article 36, a holiday under Article 37 and a special leave under Article 38. When an employer has obtained the consent of a worker to work on a holiday, he shall pay the worker at double the regular rate for such work. This shall also apply where, with the consent of the worker or the labor union, the worker is required to work to meet urgent, seasonal requirements.

[Article 40](#) An employer may require workers to suspend all leaves of absence referred to in Articles 36 to 38 inclusive, if an act of God, catastrophe or unexpected event requires continuance of work; provided, however, that the worker concerned shall receive wages at double the regular rate for work during the suspended leave, and then also be granted leave to make up for the suspended leave of absence.

In respect of the suspended leaves of absence referred to in the preceding paragraph, the employer shall within twenty-four hours after the suspension file a report with the local competent authorities for the approval and registration of the suspension. Such a report shall contain full details and reasons for suspension.

[Article 41](#) If it is deemed necessary by the local competent authorities, the special leave of workers in public utilities referred to in Article 38 may be suspended, for which the employer shall pay wages at double the regular rate.

[Article 42](#) An employer shall not compel a worker to accept work beyond regular working hours if the worker is unable to do so on account of poor health or other proper

reasons.

[Article 43](#) A worker may take time off for wedding, funeral, sickness or other proper causes. The duration of such leave and the minimum wage standards for leaves other than unspecified casual leave shall be prescribed by the Central Competent Authority.

## **Chapter V Child Workers and Female Workers**

[Article 44](#) Workers over fifteen years of age, but less than sixteen, shall be considered as child workers.

No child worker shall be permitted to do heavy and hazardous work.

[Article 45](#) No employer may employ a worker below fifteen years of age, unless the worker has graduated from junior high school or the competent authority has determined that the nature and circumstances of the work are such that no harm will result to the worker's physical and mental health.

The stipulations for the protection of child workers shall apply, mutatus mutandis, to the employees referred to in the preceding paragraph.

[Article 46](#) Employer of workers below sixteen years of age shall keep on file letters of consent from the legal guardians of such workers and certificates of age for such workers.

[Article 47](#) Child workers shall not work more than eight hours per day. No child worker shall be permitted to work on a regular day off.

[Article 48](#) No child worker shall be permitted to work between eight o'clock in the evening and six o'clock in the following morning.

[Article 49](#) An employer shall not make his (her) female worker perform her work between ten o'clock in the evening and six o'clock in the following morning. However, with the consent of a labor union, or if there is no labor union exists in a business entity, with the approval of a labor-management conference, and the following requirements in each item are met, the preceding restrictions are not applied:

1. The necessary safety and health facilities are provided.
2. When there is no public transportation facilities available, transportation facilities are provided or dormitories for female workers are arranged.

For the necessary safety and health facilities referred to in Item 1 of the preceding Paragraph, their standards shall be determined by the Central Competent Authority.

When a female worker is unable to work between ten o'clock in the evening and

six o'clock in the following morning due to health or other justifiable reasons, the employer shall not force her to work.

Due to the occurrence of act of God, an accident, or an unexpected matter, and the employer has a necessity to make his (or her) female worker perform her work between ten o'clock in the evening and six o'clock in the following morning, the requirements in the first paragraph shall not be applied.

For those female workers who are pregnant or are feeding their babies, the provisory clause of Paragraph 1 and the preceding paragraph shall not be applied.

[Article 50](#) A female worker shall be granted maternity leave before and after childbirth for a combined period of eight weeks. In the case of a miscarriage after the first three months of pregnancy, the female worker shall be permitted to discontinue her work and shall be granted maternity leave for a period of four weeks.

If the female worker referred to in the preceding paragraph has been employed for more than six months she shall be paid regular wages during the maternity leave; if her period of service is less than six months, she shall be paid wages at half of the regular payment.

[Article 51](#) A female worker may apply to be transferred to less strenuous work during pregnancy. The employer shall neither reject the application nor reduce her wage.

[Article 52](#) Where a female worker is required to breast-feed her baby of less than one year of age, the employer shall permit her to do so twice a day, each for thirty minutes, besides the break period stipulated in Article 35.

The breast feeding time referred to in the preceding paragraph shall be deemed as working time.

## **Chapter VI Retirement**

[Article 53](#) A worker may apply for voluntary retirement under either of the following conditions:

1. Where the worker attains the age of fifty-five and has worked for fifteen years.
2. Where the worker has worked for more than twenty-five years.

[Article 54](#) An employer shall not force a worker to retire unless either of the following situations has occurred:

1. Where the worker attains the age of sixty.
2. Where the worker is unable to perform his duties due to mental handicap or

physical disability.

A business entity may request the central competent authority to adjust the age prescribed in Item 1 of the preceding paragraph if the specific job entails risk, requires substantial physical strength or otherwise of a special nature; provided, however, that the age shall not be reduced below fifty-five.

Article 55

Retirement payments shall be paid to worker on the basis of the following standards:

1. A lump sum payment of retirement payments equal to two base units shall be paid for each year of service, provided that each year of service exceeding fifteen years shall be entitled to only one unit of base wage, and that the maximum shall be forty-five units. Any fraction of a year which is equal to or more than six months shall be counted as one year of service, and any fraction of a year which is less than six months shall be counted as half a year of service.
2. An additional twenty percent of the retirement payments provided for in the preceding subparagraphs shall be paid to the worker whose retirement is mandated by Item 2, Paragraph 1 to Article 54 and whose mental handicap or physical disability is caused during the performance of work.

The base unit for payment of retirement benefits, referred to in item 1 of the preceding paragraph, is a standard measure which denotes the average monthly wage received by a particular worker at the time of the application for retirement is approved.

If an employer is unable to make a lump sum payment of the retirement payments required by the Paragraph 1 to this Article, he may seek approval from the central competent authority for paying the said payments in installments. Where the retirement standards adopted by a business entity before this act becomes effective contain more favorable terms than those provided herein, such standards shall effect.

Article 56

An employer shall deduct a certain sum of money every month and deposit the same in a special account as the reserve fund of retirement payment for workers. This fund shall not be permitted to be used for transference, mortgage, cancellation or guarantee. The deduction and the deposit rate, its measure for the matters related to its procedure and administration shall be determined by Central Competent Authority and approved by the Executive Yuan. The reserve funds of retirement payment for workers deducted and deposited by employers each month mentioned in the preceding paragraph, shall be collected

as a Labor retirement Fund. The fund shall be administered by a Supervisory Committee of Labor Retirement Fund. The organization meetings and other related matters of the Fund shall be prescribed by the Central Competent Authority.

The income and outlay, safekeeping and utilization of the Fund mentioned in the preceding paragraph shall be handled by the financial institutions assigned jointly by the Central Competence Authority and the Ministry of Finance.

The minimum earnings shall not be below that of a two-year deposit interest rate of a local banking institution. Any loss sustained shall be compensated by the National Treasury. The measures related to the matters of income and outlay, safekeeping and utilization of the Fund shall be prescribed by the Central Competent Authority and approved by the Executive Yuan.

Workers' retirement reserve funds deducted and deposited by the employers shall be under the direction and supervision of the committees composed of workers and employer. Worker representatives shall not be less than two-thirds of the total membership of these committees. The organizational guidelines of these committees shall be prescribed by the Central Competent Authority.

[Article 57](#) Workers' years of service shall be limited to years of employment by the same business entity. In determining the years of service of a worker who is transferred to another business entity owned by the same employer, and in determining accumulated service years recognized by a new employer on a continued basis under Article 20 of the Act, the years of service at the different business entities shall be combined for calculation purposes.

[Article 58](#) The right of a worker to claim retirement payments shall not be recognized if not exercised within five years from the month following the effective date of retirement.

## **Chapter VII Compensation for Occupational Accidents**

[Article 59](#) An employer shall pay compensation to a worker who is injured, sick, incapacitated or killed due to occupational accidents on the following basis; provided that if, in respect of the same accident the employer has already paid as compensation to the worker concerned in accordance with the provisions of the Labor Insurance Act or other applicable statutes and administrative regulations, he may be exempted therefrom:

1. When a worker is injured or suffers from any occupational disease, the employer shall compensate him the necessary medical expenses. The

categories of occupation-related diseases and the scope of medical treatment covered shall be governed by the relevant provisions of the Labor Insurance Act.

2. When a worker under medical treatment is not able to work, the employer shall pay him compensation according to his original wage. The employer shall be released from such compensation obligation upon making to the worker a lump sum payment equal to forty-months' average wages if the worker does not recover after two years of medical treatment, has been diagnosed and confirmed by a designated hospital as being unable to perform the original work, and yet does not meet the disability requirements under Item 3 hereof.

3. When after the termination of medical treatment the designated hospital has definitely diagnosed that the worker is disabled, the employer shall pay him a lump sum as disability compensation in accordance with the average wage, the degree of disability, and the standard of disability compensation prescribed in the applicable provisions of the Labor Insurance Act.

4. When a worker dies of occupational injury or disease, his employer shall pay funeral subsidy equal to five months of average wage and a lump sum survivors compensation equal to forty months of average wage. The said death compensation shall be paid to survivors in the following order:

- a. Spouse and children
- b. Parents
- c. Grandparents
- d. Grandchildren
- e. Brothers and sisters

[Article 60](#) The compensation paid by an employer in accordance with the preceding Article may be applied toward the payment of compensation for damages arising out of the same accident.

[Article 61](#) The right to receive compensation prescribed in Article 59 shall not be recognized if not exercised within two years from the date the employee becomes entitled to receive the said compensation.

The right to receive compensation shall not be prejudiced by the severance of service by the particular worker, nor shall it be used for transference, cancellation, mortgage or guarantee.

[Article 62](#) The owner of a business entity who contracts his work to a subcontractor who subsequently subcontracts, the contractor, the subcontractor, and the last subcontractor shall be jointly and severally liable to pay the compensation

prescribed in this Chapter for occupational accidents related to the work performed by the workers hired by the contractor and the subcontractor. When a business entity or contractor or subcontractor pays compensation for occupational accidents in accordance with the provisions of the preceding paragraph, each may claim reimbursement for the portion borne from the last subcontractor.

[Article 63](#) Where a contractor's or subcontractor's work site is located within the sphere of work site of the business entity or provided for by the same, the owner shall supervise the contractor or subcontractor to provide their hired workers with such labor conditions as stipulated in applicable statutes and administrative regulations.

A business entity shall be jointly and severally liable with the contractor or subcontractor for the compensation of occupational accidents caused by workers hired by the contractor or subcontractor for having violated the stipulations of the Labor Safety and Health Act pertaining to obligations which the contractor or subcontractor are required to perform.

## **Chapter VIII Apprentices**

[Article 64](#) No employer shall be permitted to recruit any apprentice of less than fifteen years of age, unless such apprentice has graduated from junior high school. For the purposes of this act, the term apprentice shall refer to a person whose objective is to learn technical skills in a job category prescribed by the competent authorities for apprentice training, and who receives training from an employer in accordance with the stipulations of this Chapter.

The stipulations of this Chapter shall apply, *mutatis mutandis*, to foster workers and interns of a business entity, students under any business-education cooperation project, and other persons similar to apprentices in nature.

[Article 65](#) In recruiting an apprentice, an employer shall sign a written training contract in triplicate with each apprentice, providing for training subjects, training period, board and lodging arrangements, living allowances, relevant teaching subjects, labor insurance, certificate of completion of training, the effective date of contract, the conditions for the termination of the contract, and other clauses relating to the rights and obligations of both parties to the contract. One copy of the contract shall be kept by each member of the party thereto, and the remaining copy shall be forwarded to the competent authorities for registration. Without the prior consent of his legal guardian, no apprentice referred to in the

preceding paragraph shall be allowed to sign an apprenticeship training contract if he is a minor.

[Article 66](#) No employer shall be permitted to collect training fees from an apprentice.

[Article 67](#) An employer may retain an apprentice upon expiration of his training period and shall pay him the same wage rate payable to other workers doing the same work. The retention period, if specified in an apprenticeship training contract, shall not be longer than the training period.

[Article 68](#) The number of apprentices shall not exceed one fourth one fourth of the total number of workers. The number of workers shall be deemed four for calculation purposes even if it is below that number.

[Article 69](#) The provisions of Chapter IV pertaining to working hours, recess and holidays, Chapter V pertaining to child workers and female workers, and Chapter VII pertaining to compensation for occupational accidents and other related insurance matters shall apply mutatis mutandis to apprentices.  
The standards for calculating the wages of an apprentice in connection with compensation for occupational accidents shall not fall below the minimum wage.

## **Chapter IX Work Rules**

[Article 70](#) An employer hiring more than thirty workers shall set up work rules in accordance with the nature of the business, and shall publicly display the said rules after they have been submitted to the competent authorities for approval and registration. The rules shall specify the following subject matters:

1. Working hours, recess, holidays, special leave of absence and the rotation of shifts for continuous operations.
2. Wage standards, method of calculation and pay day.
3. Overtime work.
4. Allowances and bonuses.
5. Disciplinary measures.
6. Rules for attendance, leave taking, commendations or penalties, promotions and transfer.
7. Rules for recruitment, discharge, severance, termination and retirement.
8. Compensation and pension for accident, injury or disease.
9. Welfare Measures.
10. Safety and health regulations which both employer and worker are required to observe.

11. Methods for communication of views and enhancement of cooperation between employer and worker.
12. Miscellaneous matters.

[Article 71](#) The work rules shall be null and void if they contravene any mandatory or prohibitive stipulations of statutes, administrative regulations, or collective agreements applicable to the particular line of business.

## **Chapter X Supervision and Inspection**

[Article 72](#) To enforce the Act, other labor statutes and administrative regulations, the Central Competent Authority shall either establish a labor inspection agency or delegate this power to the competent authorities in the municipal cities. The local competent authority may also as necessary, dispatch staff members to conduct inspections.

The organizational structure of the labor inspection agency referred to in the preceding paragraph shall be prescribed by the Central Competent Authority.

[Article 73](#) An inspector in the course of performing his official duties shall display an inspection certificate. No business entity may reject such inspection. In the event the said business entity rejects inspection, the inspector may enforce the visit in concert with the local competent authority or the police.

An inspector in the course of performing official visit may request the business entity to produce necessary reports, records, books of account and other relevant documents of written explanations as prescribed by the provisions of this act. If it becomes necessary for the inspector to obtain any raw materials, supplies, samples, or information, a prior notice shall be given to the employer or his agent and a receipt shall be issued to acknowledge the materials given to him.

[Article 74](#) A worker may, upon discovery of any violation by the business entity of the Act and other labor statutes and administrative regulations, file a complaint of the employer, the competent authorities or the inspection agencies.

An employer may not discharge, transfer or take any unfavorable measure against the worker who files a complaint according to the preceding paragraph.

## **Chapter XI Penal Provisions**

[Article 75](#) An employer who violates the stipulations of Article 5 shall be imprisoned for a term not exceeding five years, detained and/or fined a sum less than 50,000 yuan.

<a href="#">Article 76</a>	Any person who violates the stipulations of Article 6 shall be imprisoned for a term not exceeding three years, detained and/or fined a sum less than 30,000 yuan.
<a href="#">Article 77</a>	An employer who violates the stipulations of Article 42, Paragraph 2 to Article 44, Articles 45, 47-49 or Paragraph 1 to Article 64 shall be imprisoned for a term not exceeding six months, detained and/or fined a sum less than 20,000 yuan.
<a href="#">Article 78</a>	An employer who violates the stipulations of Articles 13, 17, 26, 50, 51 or Paragraph 1 to Article 55 shall be fined a sum less than 30,000 yuan.
<a href="#">Article 79</a>	<p>An employer who commits any one of the following acts shall be punished by an administrative fine of not less than 2,000 yuan but not exceeding 20,000 yuan:</p> <ol style="list-style-type: none"> <li>1. Violation of Article 7, Paragraph 1 to Article 9, Articles 16 and 19, Paragraph 1 to Article 21, 22, 23, 24, 25 paragraph 2 to article 28, Articles 30, 32, 34, 41 and 46, Paragraph 1 to Article 56, Article 59, Paragraph 1 to Article 65, Articles 66-68 and 70 or Paragraph 2 to Article 74.</li> <li>2. Violation of order of the competent authorities concerning wage payment within the time limit as stipulated in Article 27, or adjustment of working hours as stipulated in Article 33.</li> <li>3. Violation of stipulations concerning recess or the minimum wage rates payable during leave of absence other than casual leave prescribed by the competent authorities in accordance with Article 43.</li> </ol> <p>Violation of Paragraph 5 to Article 49 shall be punished by an administrative fine of not less 10,000 yuan but not exceeding 50,000 yuan. For those administrative fine is imposed but remain unimproved, the administrative fine can be imposed continuedly.</p>
<a href="#">Article 80</a>	Any person who refuses, avoids or obstructs a labor inspector in the performance of his (or her) official duties shall be punished by an administrative fine of not less than 10,000 yuan but not exceeding 50,000 yuan.
<a href="#">Article 81</a>	<p>If the representative of a legal entity, the agent of a legal entity or a natural person, an employee or any other staff member violates the Act in the rendering of his respective services, the violator shall be punished pursuant to this Chapter; in addition, the legal entity itself or the natural person shall also be subject to punishment by such fine or administrative fine as prescribed in the respective Articles of the Act; unless the representative of the legal entity or the natural person has done his best to avoid the occurrence of the violation.</p> <p>The representative of a legal entity or natural person shall be deemed as</p>

offender, if the representative instigates or encourages the violation.

[Article 82](#) Where an administrative fine remains unpaid after a demand for payment from the competent authority, the case shall be referred to the court for compulsory execution.

## **Chapter XII Supplementary Provisions**

[Article 83](#) A business entity shall hold meeting to coordinate worker-employer relationships and promote worker-employer cooperation and increase work efficiency. The rules for calling such meetings shall be drawn up by the Central Competent Authority in concert with the Ministry of Economic Affairs and then reported to the Executive Yuan for approval.

[Article 84](#) In the case of a civil servant who also has the legal status of a worker, civil service laws and regulations shall govern such matters as appointment, discharge, wage, salary, commendation, punishment, retirement, death compensation and insurance (including that for occupational accidents). If the rest of the labor conditions is more favorable than the relevant provisions of the Act, the more favorable part shall apply.

[Article 84-1](#) After the approval and public announcement of the Central Competent Authority, the following types of workers may arrange their own working hours, regular days off, national holidays and female workers' night work through other agreements with their employers. These agreements shall be submitted to the local competent authorities for approval and registration and shall not subject to the restrictions imposed by Articles 30, 32, 36, 37 and 49 of the Act:

1. Supervisory, managerial personnel or authorized specialists.
2. Monitoring or intermittent jobs.
3. Other types of job of special nature.

The agreement made under the preceding paragraph shall be in the form of written document. They shall use the basic standards contained in the Act as reference and shall not be detrimental to the health and well-being of the workers.

[Article 84-2](#) The seniority of a worker is calculated from the first day of his/her employment. The standards of severance pays and retirement benefits for the seniority accumulated before the application of the Act shall be calculated in accordance with the applicable laws and administrative regulations effective during that time . In cases there were no applicable laws and administrative regulations, these

standards shall be calculated in accordance with the rules promulgated by the respective business entities or the agreements reached by workers and employers themselves. After the application of the Act, the standards of severance pays and retirement benefits for the seniority accumulated shall be calculated in accordance with Articles 17 and 55 of the Act.

[Article 85](#) The regulations for enforcing the Act shall be prescribed by the Central Competent Authority and reported to the Executive Yuan for approval.

[Article 86](#) The Act shall become effective on the date of promulgation.