



## CHINA LEGAL BRIEFING 136

W E N G E R & V I E L I B E I J I N G O F F I C E

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### 1. National

#### Company Law

公司法

**【Issued by】** Standing Committee of the National People's Congress

**【Subject】** Company Law

**【Promulgated on】** October 27<sup>th</sup> 2005

**【Effective from】** January 1<sup>st</sup> 2006

**【Source】** <http://www.china.com.cn/>

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- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

The Company Law of the People's Republic of China was revised at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005. The amendments almost cover every article of the prevailing Company Law. The major amendments to the prevailing Company Law are as follows:

As to the minimal registered capital of the company, the prevailing Company Law sets RMB 100,000 as the bottom line, designates different limitations on the basis of the types of the company and demands the registered capital to be paid in lump-sum. The amendment sets the bottom line as RMB 30,000 for the limited liability company and allows the investors to pay the capital by installment within two years.

The amendments set limitation on the authority of the chairman of the board of directors and provide that the vice chairman of the board shall call and preside over the meeting of the board in case the chairman is unable to or incline to perform his duty. If the vice chairman is unable to or incline to perform his duty, the meeting shall be called and presided over by the director elected by the half of the directors.

Moreover, the amendments accept the concept of "one person company" which means the limited liability company established by the only one shareholder. The amendment provides that the minimal registered capital of the one person company shall be RMB 100,000 and the investor shall pay the capital in lump-sum. A natural person can establish only one person limited liability company which shall not thereafter establish another new one person company.

Furthermore, the amendment authorizes the shareholder to consult the accounting books and records of the company. If the company rejects the application of the shareholder, the company shall notify the shareholder with reasonable causes in written form within fifteen days after the shareholder's writing application. Otherwise the shareholder can resort to the People's court for the consultation of the accounting books and records.

In addition, the amendment elaborates that the shareholder opposing the resolution of the meeting of the shareholders is entitled to request the company to purchase at a reasonable price his equity in the company. If the share transfer agreement can not be executed within sixty days after the adoption of the resolution of the meeting of the shareholders, the shareholder has the right to sue at the People's court within ninety days after the adoption of the resolution of the meeting of the shareholders.

The amendments to the prevailing Company Law shall come into effect on January 1, 2006. It is estimated that the necessary systems devised by the new law will contribute to safeguard the security of the transaction, protect the interests of the creditors and maintain the social economic order.

**Securities Law**

证券法

**【 Issued by 】** Standing Committee of the National People's Congress**【 Subject 】** Securities Law**【 Promulgated on 】** October 27<sup>th</sup> 2005**【 Effective from 】** January 1<sup>st</sup> 2006**【 Source 】** <http://www.china.com.cn/>

The Securities Law of the People's Republic of China was revised at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005. The amendments cover 40 percent of the prevailing Securities Law. The major amendments to the prevailing Securities Law are as follows:

According to the prevailing Securities Law, the stocks can only be traded in spot transactions and time-bargain is strictly prohibited. Instead the amendments provide that the stock transaction may be proceeded in spot form or in other forms stipulated by the State Council. It is believed that this provision leaves room for the time-bargain. Also the amendments eliminate the restriction on the financing of funds and stocks by the securities company and provide that the financing services of the securities company are subjected to the approval by the State Council.

As to such unlawful acts in practice by the securities company as the embezzlement of the deposits by the investors, the amendment provides expressly that the investor is the owner of trading funds and any embezzlement is strictly prohibited. In case of the bankruptcy of the securities company, neither the settlement funds nor the stocks of the client shall fall into the bankrupt assets or liquidating assets.

In addition, comparing with the separation system of securities industry, bank industry, insurance industry and trust industry in the prevailing Security Law, the amendment adds a sentence to Article 6 of the law which reads "except the State provides otherwise". Also the amendments make it possible for the entrance of bank fund into the stock market by declaring that "broaden the channel for the funds entering into stock market in accordance with laws and regulations".

Furthermore, the amendment provides that the State shall establish the securities investor's protection fund which is composed of capitals submitted by the securities company and capitals financed in other ways. The State Council shall promulgate the detailed rules as to the financing, administration and use of the securities investor's protection fund.

As what Mr. Zhouzhengqing, the vice chairman of the Finance and Economic Committee of National People's Congress, said, the principle of the amendments is the insurance of the healthy development of the capital market, the prevention of risks, the safe operation of the capital market and the protection of the legitimate interests of the investors.

**Decision of the Standing Committee of the National People's Congress on the Amendment of the Individual Income Tax Law of the People's Republic of China**

全国人民代表大会常务委员会关于修改《中华人民共和国个人所得税法》的决定

**【Issued by】** Standing Committee of the National People's Congress

**【Subject】** Tax Law

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The 18<sup>th</sup> Session of the Standing Committee of the Tenth National People's Congress has come to the decision that amendments shall be made to the Individual Income Tax Law of the People's Republic of China as follows:

For incomes from wages and salaries, a standard allowance of RMB 1600 shall be given for a person and the amount in excess of the allowance shall be taxable.

For individual income tax, the income earner shall be the taxpayer and the paying unit or persons shall be the withholding agent. Taxpayers whose income exceeds the amount designated by the State Council, who derive income from wages and salaries from two or more units or without a withholding agent or under other circumstances as provided for by the State Council are required to file tax returns and pay taxes themselves in accordance with laws and regulations. The withholding agent shall file tax returns in full amount for the whole staff in accordance with laws and regulations.

Individual Income Tax Law of the People's Republic of China shall be amended accordingly in conformity with this Decision and shall be promulgated anew.

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