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Administrative Measures for Mining Rights Appraisals (Trial) (Draft for Opinion)

矿业权评估管理办法（试行）（征求意见稿）

Issued By **Ministry of Land and Resources**
Subject **Mining Rights Appraisal**
Promulgated on **July 18th 2008**
Source **<http://www.chinalaw.gov.cn>**

The new Administrative Measures for Mining Rights Appraisals (Trial) (Draft for Opinion, hereinafter “Draft”) was released by the Ministry of Land and Resources on July 18th, 2008, soliciting comments from the general public till July 28th, 2008.

The Draft applies to the relevant practicing activities and administration concerning appraisal of exploration rights and mining rights (“mining rights”). A qualification administration system on mining rights appraisal institutions and mining rights appraisers has been formulated in the Draft.

A mining rights appraisal should be conducted when collecting payments for mining rights formed by the contribution of the state for the reason of transferring, assigning and extending mining rights.

Compared to the former regulations regarding mining rights appraisals, the draft has made a clear distinction between the appraisal institution and the government, in order to ensure the fair result of the appraisal report. Any agency applying for registration as a mining right appraisal institution shall have no actual or concealed affiliated or attached personnel relationship with the government, public institution or social organization (Article 22). Higher qualification is required to set up a mining right appraisal institution: at least 3 full time mining right appraisers for a partnership agency and at least 4 full time mining right appraisers for an incorporated agency; its appraisal professionals shall consist of staff specialized in diverse areas, including mining, mineral selection, geology, economic and law.

Any person shall not be registered as a mining rights appraiser under the following circumstances: (1) Civil servant; (2) Public officer in the public institution; (3) Full Time Personnel in the social organization; (4) Having no civil capacity; (5) 5 years have not elapsed since the completion date of the execution of the criminal penalty; or (6) 3 years have not elapsed since the completion date of the execution of an administrative punishment.

The appraisal report shall be signed by the legal representative and a full time mining rights appraiser. No institution seal is needed anymore. The competent land and resource authority shall examine the appraisal report for mining rights which is assigned in accordance with the appraisal contract, laws and regulations and shall make public announcement. Those reports without objection after expiration of the publicity period shall be accepted and put on file. For those mining rights, which are transferred or extended or for any other reason, the appraisal institution shall firstly submit the report to the competent land and resource authority. The filed appraisal result will give publicity through the website of the Ministry of Land and Resources and Chinese Association of Mining Right Assessors.

The Ministry of Land and Resources and the Chinese Association of Mining Right Assessors are entitled to make compliance and reasonableness spot check on the appraisal reports which has been put on file.

Administrative Measures for Law Firms

律师事务所管理办法

Issued By **Ministry of Justice**

Subject **Law Firms**

Promulgated on **July 18th 2008**

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Consequent to the new Lawyers' Law (effective from June 01st, 2008), a law firm may be formed and funded by lawyers in the form of a partnership, or by an individual lawyer, or by the state. In the Administrative Measures for Law firms (the "Measures"), the conditions and procedures for establishing a law firm are detailed. Worth mentioning it that, these Measures is not applicable to the administration of the offices established by foreign law firms within the territory of the People's Republic of China to provide legal services, which shall be specially regulated by the State Council.

Main preconditions for an application for the establishment of a law firm are an application form, the name and articles of association of the proposed law firm, the list, resumes, identity certificates and lawyer's practicing certificates of lawyers; the certificate of residence; the certificate of assets. The promoter of the to be established firm shall be a full time lawyer with certain practicing experience and without having suffered a penalty of cessation of practicing within three years (Article 6).

To form a partnership law firm, a partnership agreement shall also be submitted. Partnership law firms are divided into general partnership law firms and special general partnership law firms (similar to limited liability partnership). For a general partnership law firm, there shall be at least three partners and the promoter with practicing experience as a full time lawyer for three or more years. Assets of more than RMB 300,000 are required. Strict conditions are set for the establishment of a special general partnership law firm: i.e. over 20 partner lawyers, over RMB10, 000,000 in capital, etc. (Article 7, 8)

A full time lawyer with over five years practicing experience must contribute at least 100,000 RMB to form his own law firm. He shall be unlimitedly liable for the debts of the law firm (Article 9).

A law firm funded by the state shall be prepared by the local justice authority at the country level, at least two full time lawyers in compliance with the Lawyers' Law are required for such a firm (Article 10).

The Measures also urge law firms to set aside funds for practice risks, business development and social security.

The Measures has a separate chapter concerning alteration and termination of the law firms, and the relevant procedures are prepared for dissolution and liquidation of the law firms. The Measures also standardize the practices and management of law firms, stipulate specific and strict responsibilities and penalty rules for law firms and lawyers in order to ensure the effectiveness of the new Lawyers' Law.

In practice, the local provincial justice authority may enact the specific implementation rules of the Measures in accordance with the local circumstances, but shall submit to the Ministry of Justice for file at first.

Administrative Measures for Practicing Lawyers

《律师执业管理办法》

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Subject **Practicing Lawyers**
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The Administrative Measures for Practicing Lawyers (the “Measures”) are enacted with the purpose of implementing the new Lawyers’ Law on the Administration of Practicing Lawyers area. The Measures shall apply to licenses obtaining, approval procedure, practicing rules and supervision duties of judicial authorities.

The requirements for a lawyer to obtain the practicing license referred to in the Measures shall include the following: (1) Upholding the Constitution of the People’s Republic of China; (2) Passed the uniform national judicial examination; (3) Completing one-year internship at a law firm; and (4) Having good character and conduct. Further more, a person who is engaged in the legal education or research work in a high-level college or research institute may, with the consent of his work unit, apply for practicing law as a part-time lawyer.

Should any of the following circumstance occur, a person shall not be eligible to become a practicing lawyer: (1) Having no capacity or limited capacity in civil conduct; (2) Having a record of criminal punishment, except for a crime of negligence; or (3) Having been expelled from a public office or having his lawyer’s practicing certificate revoked.

Otherwise, a civil servant shall not concurrently serve as a practicing lawyer. A lawyer, who serves as a member of a standing committee of a people’s congress at any level, shall not be engaged in the practice of representation or defense in litigation during his term of membership. A lawyer who once served as a judge or prosecutor shall not act as an agent ad litem or defender within two years after leaving his post in the people’s court or the people’s procuratorate.

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