

# 注册会计师的 法律责任

The Legal Responsibilities of CPA

文光伟◎著



企业管理出版社

ENTERPRISE MANAGEMENT PUBLISHING HOUSE

# 注册会计师的法律责任

文光伟 著

企业管理出版社

## 图书在版编目 (CIP) 数据

注册会计师的法律责任/文光伟著. —北京:  
企业管理出版社, 2002.4

ISBN 7-80147-686-7

I. 注.. II. 文.. III. 会计师—法律责任  
—研究—中国 IV. D922.264

中国版本图书馆 CIP 数据核字 (2002) 第 021677 号

---

书 名: 注册会计师的法律责任

作 者: 文光伟 著

责任编辑: 申先菊 刘景山 技术编辑: 穆子

书 号: ISBN 7-80147-686-7/F·684

出版发行: 企业管理出版社

地 址: 北京市海淀区紫竹院南路17号 邮编: 100044

网 址: <http://www.cec-eda.org.cn/cbs>

电 话: 出版部 68414643 发行部 68414644 编辑部 68428387

电子信箱: 80147@sina.com emph1979@yahoo.com

印 刷: 三河市欣欣印刷有限公司印刷

经 销: 新华书店

规 格: 850 毫米×1168 毫米 32 开本 5.75 印张 110 千字

版 次: 2002 年 5 月第 1 版 2002 年 5 月第 1 次印刷

定 价: 12.00 元

---

版权所有 翻印必究·印装有误 负责调换

## 前 言

---

# 前 言

注册会计师的法律责任问题，历来是会计界及法律界共同关注的问题。自 20 世纪 60 年代以来，世界各国针对注册会计师的诉讼案件急剧增加，被戏称为“诉讼爆炸”时代的到来，有关注册会计师的法律责任问题就更加显得尖锐和突出了。究其原因，这其中既有注册会计师法律责任被不断加大的因素，也包括了社会各界与注册会计师之间期望差距日益增大的因素。因此，注册会计师在不断加深对有关法律责任问题的认识的同时，还需要加强本行业与社会各界的沟通，以缩小相互间的期望差距。

中国注册会计师行业自恢复注册会计师制度以来仅有二十余年的历史，它在渡过了一个法律环境相对宽松和平静的时期之后，也同世界各地的同行们一样，进入了自己的“诉讼爆炸”年代。特别是以法函 [1996] 56 号为标志，中国注册会计师在经历了验资业务领域中出现的一系列诉讼案件之后，正逐步被卷入“诉讼浪潮”之中。面对着诸如“原野”、“长城”、“中水”和“银广夏”等涉及注册会计师法律责任的事件，中国的注册会计师行业已由开始的心理准备不足、茫然不知所措，逐渐发展到勇敢面对法律责任问题，并积极地从自身出发，通过对注册会计师事务所进行全面体制改革入手，加强注册会计师的独立性；通过建立健全行业管理制

度，加强行业自律，并提高执业水平；同时还积极主动地与法律界进行沟通，以维护注册会计师的合法权益。

我国的法制建设目前正处在一个不断发展和完善的时期，特别是在加入 WTO 后，许多现行的法律规范也将发生较大的变化。因此，从理论上对注册会计师法律责任进行深入的探讨，对注册会计师行业的发展，以及对相关法制的建设来说，都具有十分重要的理论意义和实践价值。

本文的研究目标是希望通过对注册会计师法律责任的规范研究，加强注册会计师与社会各界的沟通；为法律界裁定注册会计师法律责任提供理论依据；以及为完善中国注册会计师法律责任制度提出可操作性的建议。

本文采取以规范研究为主，并与案例分析相结合的研究方法。具体研究思路是在充分了解国内外注册会计师行业法律责任发展历史与现状的基础上，通过对比和分析，从理论上阐述法律责任的界定、注册会计师应承担的法律责任、社会各界对注册会计师行业的期望、注册会计师行业对该问题的认识以及国际法律界对此问题的探讨，以缩小社会各界与注册会计师行业间的期望差距；为注册会计师行业加强自身完善，减少诉讼风险提供参考；同时也为制订相关法律条例提供理论依据。针对我国注册会计师法律责任中存在的“重行政和刑事的法律处罚，轻民事法律调节”的倾向，针对我国有关注册会计师的民事赔偿制度（证券市场虚假陈述民事赔偿机制）尚不健全的现状，以及没有真正按照市场经济的要求，充分发挥民事赔偿制度的作用，以有效地遏制住虚假财务报告的现象，本文以注册会计师的法律责任为主要论述对象，在参考和借鉴国外有关经验的基础上，着重围绕注册

会计师的民事责任问题进行讨论。

本文将分六个部分展开论述。

第一部分为“注册会计师面临的诉讼危机”，内容包括：问题的提出——注册会计师面临的诉讼危机；研究的主要内容——以注册会计师民事责任为重点；研究的意义——促进注册会计师制度的健康发展；以及研究方法及其架构——规范研究与案例分析相结合。在该部分中，作者提出本文将着重论述的七个方面的问题：

(1) 如何正确认识注册会计师的职业责任？

(2) 如何正确认识法律规范、政策要求和道德约束的关系？

(3) 注册会计师民事责任的性质与特点是什么？

(4) 英美法系国家与中国的注册会计师法律责任分别经历了怎样的发展历程，各具有什么特点？

(5) 注册会计师在验资业务领域所承担的法律 responsibility 是否规范？

(6) 从证券市场的典型案例中，我们应汲取什么样的教训？

(7) 中国注册会计师应以怎样的姿态面对加入 WTO 后所面临的机遇和挑战？

本文将围绕以上问题展开讨论。

第二部分为“注册会计师的职业责任与法律责任”，主要包括三个方面的内容：

首先以注册会计师职业责任与法律责任的关系为起点，通过对注册会计师审计产生与发展历史的回顾，简要总结注册会计师职业责任的发展、变化过程，以及职业责任与法律

责任的内在联系，从而揭示“诉讼爆炸”的根本原因；其次，从法理学的角度对法律责任进行一般性的界定，主要从法律责任的含义、特点、分类及功能，从法律责任的制定原则、基础以及从法律责任、政策要求与道德约束的关系等角度进行总结和论述，从而为后面的问题研究进行理论铺垫；最后，重点研究注册会计师法律责任的性质与特点，特别是注册会计师民事法律责任的性质与特点，其中包括对注册会计师民事责任的构成要件、注册会计师对第三者民事责任的判定，以及加强注册会计师民事责任的意义等方面的研究。

第三部分为“比较与借鉴”，通过比较英美法系国家、大陆法系国家及我国注册会计师法律责任的特点与差异，达到借鉴国外历史经验和教训的目的。主要包括：比较的目的在于借鉴；英美法系国家注册会计师法律责任的特点；大陆法系国家注册会计师法律责任的特点；我国注册会计师现行法律制度的特点；以及通过比较得到的启示等内容。

第四部分为验资专题，主要针对有关注册会计师验资业务的法律责任问题进行专题研究，分析其中可能存在的各种问题。之所以选择验资领域的法律责任作为研究注册会计师法律责任的突破口，是因为这是一种可以用较小的代价换取较大收获的科学方法。本部分的主要内容有：验资业务的由来；由验资业务带来的认识误区；以及由法函〔1996〕56号引发的争论与思考，其中包括：

(1) 正确理解法函〔1996〕56号的法律效力；

(2) 合理区分出资责任、会计责任和验资责任，以及验资报告的使用责任；

(3) 不实验资报告的判定标准及鉴定机构；

(4) 地方法院在贯彻实施法函〔1996〕56号文过程中可能存在的问题；

(5) 我国验资业务发展前景展望。

第五部分为“案例分析”，主要通过“银广夏事件”这一典型案例的分析，进一步明确注册会计师职业的法律责任。此部分的主要内容有：案例分析的目的与方法；有关银广夏公司的背景资料及已审财务报表及说明等方面的研究基础数据；对“银广夏管理层虚增利润是典型的舞弊和违法行为”和“深圳中天勤会计师事务所在审计过程中存在重大的过失行为”等问题的具体分析以及对上述问题所产生的法律责任问题进行总结。

第六部分为“机遇与挑战”，重点考虑注册会计师如何面对挑战，迎接加入WTO后的诸多变化，提出进一步完善中国注册会计师制度的政策建议。此部分内容主要为：WTO与中国会计市场的对外开放；加入WTO给我国注册会计师行业带来的机遇与挑战；以及我国注册会计师行业应采取的对策。其中包括：

- (1) 完善注册会计师的法律责任体系；
- (2) 建立健全注册会计师民事责任的新机制；
- (3) 加快《注册会计师法》的修订工作；
- (4) 扩大会计师事务所的规模，提高执业质量；
- (5) 建立健全中国注册会计师执业责任保险制度。



## ABSTRACT

The legal responsibilities of CPA are always the difficult problems discussed and researched by the professional accountants and the professional lawyers. Since 1960s', the audit litigation to CPA has been increased dramatically all over the world, and it is so called: "explosion of litigation". For the reasons, it included the increase of the legal responsibility of CPA and also the increase of "Expecting gap" between CPA and society. In order to decrease the "Expecting gap", CPA need to understand the legal responsibilities of the CPA and also need to communicate with the society.

For the Chinese CPA, which has only 20 years' history, after a wide and peaceful environment, some litigation to CPA such as "YuanYe", "ChangChen", "ZhongShui" and "YingGuangXia" also happened, especially the laws and decrees of 1996 No. 56 was the symbol of litigation on the field of verification of capital. It brought an explanation of litigation to CPA of China. The Chinese CPA was not ready for such litigation, then they began to consider the legal responsibilities of CPA, and to reform the system of the CPA firm, improving the independence of CPA and communicating with the professional lawyers, for the purpose of safeguarding the rights of CPA.

The construction of our legal system has been developed and perfected very fast, especially after join the WTO, a lot of rules and regulations will change greatly under the WTO agreement. So re-researching on the legal responsibilities of CPA theoretically has very important meanings and values to the development of CPA and also to the construction of legal systems.

The aim of this paper is to provide the basis of law to judge the legal responsibilities of CPA, enhancing the communication between CPA and society, providing the practicable suggestions for the construction of Chinese CPA legal system.

This paper will mainly use the standard research methods, and will also combine the case study method. The detail is as follows:

- To understand the history and situation of legal responsibilities of CPA all over the world.

- To define the legal responsibilities theoretically through the comparison and analysis. To define the responsibilities of CPA, the expecting of society to CPA, the CPA's view to this problem and re-research of the problem by legal profession of the world. Then to try to narrow the expecting gap between society and CPA.

- To provide the guild for CPA to minimize the litigation risk and to enhance CPA itself, meanwhile to provide the theoretical basis for the construction of relevant rules and regulations. To counter the tendency of "emphasizing the punishment of administration and criminal law, despising the adjustment of civil law", the paper will mainly focus on the legal responsibilities of CPA, especially the civil liabilities of CPA. The paper will also discuss the verification of

## ABSTRACT

---

capital and the “Yin Guang Xia” case.

The paper consists six parts as follows:

Part 1 is “The crisis of litigation faced by CPA”. The main content includes: “the matter arising – – – the crisis of litigation faced by CPA”; “the main content of research – – – focus on the civil liabilities”; “the importance of research – – – to improve the CPA’s system”; and “the method and framework of research – – – to combine the standard research and case study”. In this part, the author raised 7 questions that will be discussed in this paper. They are:

1. How to understand the professional responsibilities of CPA correctly?

2. How to understand the relationship of law requirement, policy requirement and ethic conduct correctly?

3. What is the nature and distinguishing feature of CPA’s civil liabilities?

4. The history of legal responsibilities of civil law system, common law system and Chinese CPA, and what is the nature and distinguishing feature?

5. Is it a proper arrangement for CPA taking the legal responsibilities in the field of verification of capital?

6. What can we learn from the “Yin Guang Xia” case?

7. How will Chinese CPA face the challenge and opportunity of the WTO?

The paper will discuss the questions mentioned above.

Part 2 is “CPA’s Professional responsibilities and legal respon-

sibilities”. The main content includes:

Firstly, taking the relationship of professional responsibilities and legal responsibilities as the starting point, briefly summarize the development and changes of CPA professional responsibilities by recalling the history of CPA auditing. Introduce the inner relationship of professional responsibilities and legal responsibilities, and then promulgate the real reason of “explosion of litigation”.

Secondly, generally define the legal responsibilities from the law point of view – includes the meaning, characteristic, types and functions of the legal responsibilities. Define the formulating principle and basis of legal responsibilities. Summarize the relationship of legal responsibilities, policy requirement and ethic conduct. All of these foreshadow the research theoretically.

Finally, research mainly on the nature and distinguishing feature of CPA’s civil liabilities to third parties and research on the significance of enhance the civil liabilities.

Part 3 is “comparison and reference”. Through the comparison of the feature and difference of CPA’s legal responsibilities among the common law, civil law and our law system, to take the experience of foreign country as a reference. The main content includes:

The purpose of comparison is to reference;

The distinguishing feature of CPA’s legal responsibilities of common law system;

The distinguishing feature of CPA’s legal responsibilities of civil law system;

The distinguishing feature of CPA’s legal responsibilities of our

## ABSTRACT

---

law system;

The enlightenment arising from the comparison.

Part 4 is "special topic of verification of capital". Mainly consider the legal responsibilities of CPA on the field of capital verification. To analysis the problem which may exist. The main reason of doing such kind of research is that it is a scientific method of getting the larger gain at a lower cost. The main content of this part includes:

The origin of capital verification;

The misunderstand area on capital verification;

The disputes and considerations of the decrees of 1996 No. 56 including: How to understand the legal power of the decrees of 1996 No. 56; How to distinguish the responsibilities of investment, accountabilities, the responsibilities of capital verification and responsibilities of applying the capital verification report; The criterion of judgement and the appraisal organization of fraud capital verification report; The problems which may exist during the judgment by the local court; The prospective of capital verification.

Part 5 is "case study". To determine the legal responsibilities of CPA properly through the analysis of "Yin Guang Xia" case. The main content includes:

The purpose and method of case study;

The background and audited financial statement of "Yin Guang Xia";

It is a fraudulent practice and illegal action to increase the profit by the "Yin Guang Xia" management falsely;

Serious fault may exist during audit of ShenZhen Zhong Tian Qin CPA firm;

Summarize the legal responsibilities' problem which may arise from the case.

Part 6 is “the opportunity and the challenge”. Focus on how to face the challenge by Chinese CPA after WTO, providing some policy of enhancing the system construction of Chinese CPA. The content of this part includes:

WTO and the accounting market open to outside;

The opportunity and challenges faced by the Chinese CPA;

The countermeasure taken by our CPA, including:

- (1) To perfect the legal responsibilities system of CPA.
- (2) To set up and perfect the new mechanical of civil liabilities of CPA.
- (3) To amendment of the “CPA law”.
- (4) To enlarge the scale of CPA firm and improve the quality of the auditing.
- (5) To set up and perfect the responsibilities insurance system of CPA.

## 目 录

<b>第 1 章 注册会计师面临的诉讼危机 .....</b>	<b>( 1 )</b>
一、问题的提出——注册会计师面临的诉讼危机 .....	( 3 )
二、研究的主要内容——以注册会计师民事责任为重点 .....	( 16 )
三、研究的意义——促进注册会计师制度的正常发展 .....	( 17 )
四、研究方法及其架构——规范研究与案例分析相结合 .....	( 19 )
<b>第 2 章 注册会计师的职业责任与法律责任 .....</b>	<b>( 21 )</b>
一、注册会计师审计的职业责任 .....	( 21 )
1. 西方注册会计师审计的产生与发展历史 .....	( 21 )
2. 注册会计师的审计与职责 .....	( 27 )
二、对法律责任的一般界定 .....	( 31 )
1. 法律责任的含义 .....	( 31 )
2. 法律责任的特点 .....	( 32 )
3. 法律责任的目的和功能 .....	( 33 )
4. 法律责任的分类 .....	( 35 )
三、法律责任的归责原则、基础及实施保障 .....	( 38 )
1. 归责原则及其基础 .....	( 38 )

## 注册会计师的法律责任

2. 实施保障 .....	(41)
四、法律责任、政策要求与道德约束的关系 .....	(42)
五、注册会计师的民事责任 .....	(46)
1. 注册会计师民事责任的性质和特点 .....	(46)
2. 注册会计师民事责任的构成要件 .....	(51)
3. 加强注册会计师民事责任的意义 .....	(59)
<b>第3章 比较与借鉴 .....</b>	<b>(62)</b>
一、比较的目的在于借鉴 .....	(62)
二、英美法系国家注册会计师法律责任的特点 .....	(63)
1. 普通法下注册会计师对客户的责任 .....	(63)
2. 普通法下注册会计师对第三者的责任 .....	(65)
3. 成文法下注册会计师对第三者的责任 .....	(70)
三、大陆法系国家注册会计师法律责任的特点 .....	(72)
1. 法国 .....	(74)
2. 日本 .....	(76)
四、我国注册会计师现行法律制度的特点 .....	(77)
1. 我国注册会计师承担法律责任的历史沿革 .....	(77)
2. 我国有关法律规定中,对注册会计师法律责任 的规定 .....	(81)
五、启示 .....	(84)
1 与相关法规的协调 .....	(84)
2. 执行中存在的问题 .....	(85)
3. 建立民事赔偿制度 .....	(85)
<b>第4章 验资专题研究 .....</b>	<b>(88)</b>
一、验资业务的由来 .....	(89)



二、由验资业务带来的认识误区 .....	(93)
三、法函〔1996〕56号引发的争论与思考 .....	(97)
<b>第5章 案例分析</b> .....	<b>(106)</b>
一、分析目的和方法 .....	(106)
二、基础数据 .....	(108)
1. 背景资料 .....	(108)
2. 已审财务报表及说明 .....	(111)
三、具体分析 .....	(123)
1. 银广夏管理层虚增利润是典型的舞弊和违法行为 .....	(123)
2. 深圳中天勤会计师事务所在审计过程中存在重大的过失行为 .....	(125)
四、总结 .....	(133)
<b>第6章 机遇与挑战</b> .....	<b>(141)</b>
一、WTO与中国会计市场的对外开放 .....	(142)
二、加入WTO给我国注册会计师行业带来的机遇与挑战 .....	(144)
1. 良好的机遇 .....	(145)
2. 巨大的挑战 .....	(148)
三、我国注册会计师行业应采取的对策 .....	(152)
1. 完善注册会计师的法律责任体系 .....	(152)
2. 建立健全注册会计师民事责任的新机制 .....	(153)
3. 加快《注册会计师法》的修订工作 .....	(154)
4. 扩大会计师事务所的规模,提高执业质量 .....	(156)
5. 建立健全中国注册会计师执业责任保险制度 .....	