

**Civil Code**  
**of**  
**the People's Republic of China**

(Adopted at the Third Session of the Thirteenth National People's Congress on  
May 28, 2020)

**Book One**  
**General Part**

**Chapter I**  
**General Provisions**

**Article 1**

This Law is formulated in accordance with the Constitution of the People's Republic of China for the purposes of protecting the lawful rights and interests of the persons of the civil law, regulating civil-law relations, maintaining social and economic order, meet the needs for developing socialism with Chinese characteristics, and carrying forward the core socialist values.

**Article 2**

The civil law regulates personal and proprietary relationships among the persons of the civil law, namely, natural persons, legal persons, and unincorporated organizations that are equal in status.

### **Article 3**

The personal rights, proprietary rights, and other lawful rights and interests of the persons of the civil law are protected by law and free from infringement by any organization or individual.

### **Article 4**

All persons of the civil law are equal in legal status when conducting civil activities.

### **Article 5**

When conducting a civil activity, a person of the civil law shall, in compliance with the principle of voluntariness, create, alter, or terminate a civil juristic relationship according to his own will.

### **Article 6**

When conducting a civil activity, a person of the civil law shall, in compliance with the principle of fairness, reasonably clarify the rights and obligations of each party.

### **Article 7**

When conducting a civil activity, a person of the civil law shall, in compliance with the principle of good faith, uphold honesty and honor commitments.

### **Article 8**

When conducting a civil activity, no person of the civil law shall violate the law, or offend public order or good morals.

### **Article 9**

When conducting a civil activity, a person of the civil law shall act in a manner that facilitates conservation of resources and protection of the ecological environment.

### **Article 10**

Civil disputes shall be resolved in accordance with law. Where the law does not specify, custom may be applied, provided that public order and good morals may not be offended.

### **Article 11**

Where there are other laws providing special provisions regulating civil-law relations, such provisions shall be followed.

### **Article 12**

The laws of the People's Republic of China shall apply to the civil activities taking place within the territory of the People's Republic of China, except as otherwise provided by law.

## **Chapter II**

### **Natural Persons**

#### **Section 1**

### **Capacity for Enjoying Civil-law Rights and Capacity for Performing Civil Juristic Acts**

#### **Article 13**

A natural person shall, from the time of birth until the time of death, have the capacity for enjoying civil-law rights, and may enjoy civil-law rights and assume civil-law duties in accordance with law.

#### **Article 14**

All natural persons are equal in their capacity for enjoying civil-law rights.

#### **Article 15**

The time of birth and time of death of a natural person are determined by the time recorded on his birth or death certificate as applied, or, if there is no birth or death certificate, by the time recorded in the natural person's household registration or other valid identity certificate. If there is sufficient evidence overturning the time recorded in the aforementioned documents, the time that is established by such evidence shall prevail.

#### **Article 16**

A fetus is deemed as having the capacity for enjoying civil-law rights in estate succession, acceptance of gift, and other situations where protection of a fetus' interests is involved. However, a stillborn fetus does not have such capacity ab initio.

#### **Article 17**

A natural person aged 18 or above is an adult. A natural person under the age of 18 is a minor.

#### **Article 18**

An adult has full capacity for performing civil juristic acts and may independently perform civil juristic acts.

A minor aged 16 or above whose main source of support is the income from his own labor is deemed as a person with full capacity for performing civil juristic acts.

### **Article 19**

A minor aged 8 or above has limited capacity for performing civil juristic acts, and may perform a civil juristic act through or upon consent or ratification of his legal representative, provided that such a minor may independently perform a civil juristic act that is purely beneficial to him or that is appropriate to his age and intelligence.

### **Article 20**

A minor under the age of 8 has no capacity for performing civil juristic acts, and may perform a civil juristic act only through his legal representative.

### **Article 21**

An adult unable to comprehend his own conduct has no capacity for performing civil juristic acts, and may perform a civil juristic act only through his legal representative.

The preceding paragraph is applicable to a minor aged 8 or above who is unable to comprehend his own conduct.

### **Article 22**

An adult unable to fully comprehend his own conduct has limited capacity for performing civil juristic acts, and may perform a civil juristic act through or upon consent or ratification of his legal representative, provided that such an adult may independently perform a civil juristic act that is purely beneficial to him or that is appropriate to his intelligence and mental status.

### **Article 23**

The guardian of a person who has no or limited capacity for performing civil juristic acts is the legal representative of the person.

### **Article 24**

Where an adult is unable to comprehend or fully comprehend his conduct, any interested person of such an adult or a relevant organization may request the people's court to declare that the said adult be identified as a person with no or limited capacity for performing civil juristic acts.

Where a person has been identified by a people's court as a person with no or limited capacity for performing civil juristic acts, the people's court may, upon request of the person, an interested person thereof, or a relevant organization, and based on the recovery of his intelligence and mental health, declare that the said person becomes a person with limited or full capacity for performing civil juristic acts.

A relevant organization referred to in this Article includes a residents' committee, a villagers' committee, a school, a medical institution, the women's federation, the disabled person's federation, a legally established organization for senior people, the civil affairs department, and the like.

## **Article 25**

The domicile of a natural person is the residence recorded in the household or other valid identification registration system; if a natural person's habitual residence is different from his domicile, the habitual residence is deemed as his domicile.

## **Section 2**

### **Guardianship**

## **Article 26**

Parents have the duty to raise, educate, and protect their minor children.

Adult children have the duty to support, assist, and protect their parents.

## **Article 27**

The parents of a minor are his guardians.

Where the parents of a minor are deceased or incompetent to be his guardians, the following persons, if competent, shall act as his guardians in the following order:

(1) his paternal grandparents and maternal grandparents;

(2) his elder brothers and sisters; or

(3) any other individual or organization that is willing to act as his guardian, provided that consent must be obtained from the residents' committee, the villagers' committee, or the civil affairs department in the place where the minor's domicile is located.

## **Article 28**

For an adult who has no or limited capacity for performing civil juristic acts, the following persons, if competent, shall act as his guardians in the following order:

(1) his spouse;

(2) his parents and his children;

(3) any other close relatives of him; or

(4) any other individual or organization that is willing to act as his guardian, provided that consent must be obtained from the residents' committee, the villagers' committee, or the civil affairs department in the place where the adult's domicile is located.

## **Article 29**

A parent who is the guardian of his child may, in his will, designate a succeeding

guardian for his child.

### **Article 30**

A guardian may be determined through agreement among the persons who are legally qualified to be guardians. The true will of the ward shall be respected in determining the guardian through agreement.

### **Article 31**

Where a dispute arises over the determination of a guardian, the guardian shall be appointed by the residents' committee, the villagers' committee, or the civil affairs department in the place where the ward's domicile is located, and a party not satisfied with such an appointment may request the people's court to appoint a guardian; the relevant parties may also directly request the people's court to make such an appointment.

When appointing a guardian, the residents' committee, the villagers' committee, the civil affairs department, or the people's court shall respect the true will of the ward and appoint a guardian in the best interest of the ward from among the legally qualified persons.

Where the personal, proprietary, and other lawful rights and interests of a ward are not under any protection before a guardian is appointed in accordance with the first paragraph of this Article, the residents' committee, the villager's committee, a relevant organization designated by law, or the civil affairs department in the place where the ward's domicile is located shall act as a temporary guardian.

Once appointed, a guardian shall not be replaced without authorization; where a guardian has been replaced without authorization, the responsibility of the originally appointed guardian is not discharged.

### **Article 32**

Where there is no person legally qualified as a guardian, the civil affairs department shall act as the guardian, and the residents' committee or villagers' committee in the place where the ward's domicile is located may also act as the guardian if they are competent in performing the duties of guardian.

### **Article 33**

An adult with full capacity for performing civil juristic acts may, in anticipation of incapacity in the future, consult his close relatives, or other individuals or organizations willing to be his guardian, and appoint in writing a guardian for himself, who shall perform the duties of guardian when the adult loses all or part of the capacity for performing civil juristic acts.

### **Article 34**

The duties of a guardian are to represent the ward to perform civil juristic acts and to protect the personal, proprietary, and other lawful rights and interests of the ward.

A guardian's rights arising from performance of his duties as required by law are protected by law.

A guardian who fails to perform his duties or infringes upon the lawful rights or interests of the ward shall bear legal liability.

Where a guardian is temporarily unable to perform his duties owing to an emergency such as an unexpected incident, thus leaving the ward in an unattended situation, the residents' committee, the villagers' committee, or the civil affairs department in the place where the ward's domicile is located shall make arrangement as a temporary measure to provide necessary life care for the ward.

### **Article 35**

A guardian shall perform his duties in the best interest of the ward. A guardian shall not dispose of the ward's property unless it is for protecting the interests of the ward.

When performing his duties and making decisions relating to a minor's interests, a guardian of a minor shall respect the true will of the minor based on the latter's age and intelligence.

When performing his duties, a guardian of an adult shall respect the true will of the adult to the greatest extent possible, and ensure and aid the ward in performing civil juristic acts appropriate to his intelligence and mental status. The guardian shall not interfere with the matters that the ward is capable of independently managing.

### **Article 36**

Where a guardian has performed any of the following acts, the people's court shall, upon request of a relevant individual or organization, disqualify the guardian, adopt necessary temporary measures, and appoint a new guardian in the best interest of the ward in accordance with law:

(1) engaging in any acts which severely harm the physical or mental health of the ward;

(2) failing to perform the duties of guardian, or being unable to perform such duties but refusing to delegate all or part of the duties to others, thus placing the ward in a desperate situation; or

(3) engaging in other acts which severely infringe upon the lawful rights and interests of the ward.

The relevant individual and organization referred to in this Article include any other person legally qualified to be a guardian, the residents' committee, the villagers' committee, a school, a medical institution, the women's federation, the disabled persons' federation, a child protection organization, a legally established organization for senior people, the civil affairs department, and the like.

Where the aforementioned individual and organization other than the civil affairs department, as stated in the preceding paragraph, fail to request the people's court to disqualify the guardian in a timely manner, the civil affairs department shall initiate such a request to the people's court.

### **Article 37**

A parent, child, or spouse legally obligated to pay for his ward's support shall

continue to perform such obligations after being disqualified as a guardian by the people's court.

#### **Article 38**

Where a ward's parent or child, who has been disqualified as a guardian by the people's court for reasons other than having committed an intentional crime against the ward, and who has truly repented and mended his ways, applies to the people's court for being reinstated, the people's court may, upon considering the actual situation and upon the satisfaction of the prerequisite that the true will of the ward is respected, reinstate the guardian, and the guardianship between the ward and the guardian subsequently appointed by the people's court after the disqualification of the original guardian shall thus be terminated simultaneously.

#### **Article 39**

A guardianship is terminated under any of the following circumstances:

- (1) the ward has obtained or regained full capacity for performing civil juristic acts;
- (2) the guardian has become incompetent to be a guardian;
- (3) the ward or the guardian deceases; or
- (4) Any other circumstance in which the people's court determines to terminate the guardianship.

Where a ward is still in need of a guardian after the termination of the guardianship, a new guardian shall be appointed in accordance with law.

### **Section 3**

#### **Declaration of A Missing Person and Declaration of Death**

#### **Article 40**

If a natural person's whereabouts have been unknown for two years, an interested person may request the people's court to declare the natural person as a missing person.

#### **Article 41**

The period of time during which a natural person's whereabouts is unknown shall be counted from the date when the natural person has not been heard of ever since. If a person is missing during a war, the time of his whereabouts becoming unknown shall be counted from the date the war is ended or from the date as determined by the relevant authority.

## **Article 42**

A missing person's property shall be placed in the custody of his spouse, adult children, parents, or any other persons willing to take such custody.

Where a dispute arises over the custody of a missing person's property, or the persons provided in the preceding paragraph are unavailable or incompetent for such a purpose, the property shall be placed in the custody of a person appointed by the people's court.

## **Article 43**

A custodian shall properly manage the missing person's property and safeguard his proprietary interests.

The taxes, debts, and other due payment obligations owed by a missing person, if any, shall be paid by the custodian out of the missing person's property.

A custodian who, intentionally or due to gross negligence, causes damage to the property of the missing person shall be liable for compensation.

## **Article 44**

Where a custodian fails to perform his duties of custodian, infringes upon the proprietary rights or interests of the missing person, or if the custodian becomes incompetent to be a custodian, an interested person of the missing person may request the people's court to replace the custodian.

A custodian may, with just cause, request the people's court to appoint a new custodian to replace himself.

Where the people's court appoints a new custodian, the new custodian is entitled to request the former custodian to deliver the relevant property and a property management report in a timely manner.

## **Article 45**

Where a missing person reappears, the people's court shall, upon request of the said person or an interested person thereof, revoke the declaration of his being missing.

A missing person who reappears is entitled to request the custodian to deliver the relevant property and a property management report in a timely manner.

## **Article 46**

An interested person may request the people's court to make a declaration of the death of a natural person under either of the following circumstances:

- (1) the natural person's whereabouts have been unknown for four years; or
- (2) the natural person's whereabouts have been unknown for two years as a result of an accident.

The two-year requirement for a natural person to be declared dead does not apply where the person's whereabouts have been unknown as a result of an accident and if a relevant authority certifies that it is impossible for the said natural person to still be

alive.

#### **Article 47**

Where an interested person requests the people's court to declare the death of a natural person, while another interested person requests to declare the person being missing, the people's court shall declare that the person is dead if the conditions for declaration of death as prescribed in this Code are satisfied.

#### **Article 48**

For a person declared dead, the date when the people's court makes a judgment declaring his death is deemed as the date of his death; for a person declared dead because his whereabouts is unknown as a result of an accident, the date of the occurrence of the accident is deemed as the date of his death.

#### **Article 49**

The declaration of the death of a natural person who is still alive does not affect the effects of the civil juristic acts performed by the person during the period the death declaration is effective.

#### **Article 50**

Where a person declared dead reappears, the people's court shall, upon request of the person or an interested person thereof, revoke the declaration of his death.

#### **Article 51**

The marital relationship with a person declared dead ceases to exist from the date the declaration of his death is made. Where the declaration of death is revoked, the aforementioned marital relationship shall be automatically resumed from the date the declaration of death is revoked, except where the spouse has married to someone else or states in writing to the marriage registration authority the unwillingness to resume the marriage.

#### **Article 52**

Where a child of a person declared dead has been legally adopted by others during the period when the declaration of death is effective, the person declared dead shall not, after the declaration of his death is revoked, claim that the adoption is invalid on the ground that his child is adopted without his consent.

#### **Article 53**

Where a declaration of the death of a person is revoked, the person is entitled to request those who have obtained his property under Book VI of this Code to return the property, or make appropriate compensation if the property cannot be returned.

Where an interested person conceals the true information and causes a natural person to be declared dead so as to obtain the latter's property, the interested person shall, in addition to returning the wrongfully obtained property, make compensation for any loss thus caused.

## **Section 4**

### **Individual-Run Industrial and Commercial Households and Rural-land Contractual Management Households**

#### **Article 54**

A natural person who operates an industrial or commercial business may register it, in accordance with law, as an individual-run industrial and commercial household. An industrial and commercial household may have a trade name.

#### **Article 55**

Members of a rural economic collective who, in accordance with law, have been granted an original contract to operate a parcel of rural land and engages in the operation of the land on a household basis are rural-land contractual management households.

#### **Article 56**

The debts of an individual-run industrial and commercial household shall be paid from the assets of the individual who operates the business in his own name or from the individual's family assets if the business is operated in the name of the household, or, if it is impossible to determine whether the business is operated in the name of the individual or in the name of the individual's household, from the individual's family assets.

The debts of a rural-land contractual management household shall be paid from the assets of the household that is engaged in the operation on the contracted rural land, or from the portion of the assets of the family members who actually engage in such operation.

## **Chapter III**

### **Legal Persons**

#### **Section 1**

### **General Rules**

**Article 57**

A legal person is an organization that has the capacity for enjoying civil-law rights and the capacity for performing civil juristic acts, and that independently enjoys civil-law rights and assumes civil-law obligations in accordance with law.

**Article 58**

A legal person shall be established in accordance with law.

A legal person shall have its own name, governance structure, domicile, and assets or funds. The specific conditions and procedures for the establishment of a legal person shall be in accordance with laws and administrative regulations.

Where there are laws or administrative regulations providing that the establishment of a legal person shall be subject to the approval of a relevant authority, such provisions shall be followed.

**Article 59**

A legal person's capacity for enjoying civil-law rights and capacity for performing civil juristic acts are acquired when the legal person is established, and cease when the legal person is terminated.

**Article 60**

A legal person independently assumes civil liability to the extent of all of its assets.

**Article 61**

The person with the responsibility of representing a legal person in conducting civil activities in accordance with law or the legal person's articles of association is the legal representative of the legal person.

The legal consequences of the civil activities conducted by the legal representative in the legal person's name shall be assumed by the legal person.

Any restrictions on the legal representative's power to represent the legal person which is stipulated in the articles of association or imposed by the governing body of the legal person shall not be asserted against a bona fide third person.

**Article 62**

Where a legal representative of a legal person causes damage to others while performing his responsibilities, the civil liability thus incurred shall be assumed by the legal person.

After assuming the aforementioned civil liability, the legal person has the right to indemnification, in accordance with law or its articles of association, against its legal representative who is at fault.

**Article 63**

The domicile of a legal person is the place where its principal administrative office is located. Where a legal person is required by law to be registered, the place of

its principal administrative office shall be registered as its domicile.

#### **Article 64**

Where there is any change in any matter that has been registered during the term of existence of a legal person, the legal person shall apply to the registration authority for modification of its registration in accordance with law.

#### **Article 65**

The actual situation of a legal person, which is inconsistent with what is recorded upon registration, shall not be asserted against a bona fide third person.

#### **Article 66**

The registration authority shall, in accordance with law, post in a timely manner a public notice of the information recorded by a legal person upon registration.

#### **Article 67**

In case of a merger between or among legal persons, the rights and obligations of such legal persons shall be enjoyed and assumed by the surviving legal person.

In case of a division of a legal person, the rights and obligations of the legal person shall be enjoyed and assumed jointly and severally by the legal persons established after division, unless otherwise agreed by its creditors and debtors.

#### **Article 68**

If any of the following causes exists, a legal person is terminated after it has completed liquidation and de-registration in accordance with law:

- (1) the legal person is dissolved;
- (2) the legal person is declared bankrupt; or
- (3) another cause as provided by law exists.

Where there are laws or administrative regulations providing that the termination of a legal person shall be subject to the approval of the relevant authority, such provisions shall be followed.

#### **Article 69**

A legal person is dissolved under any of the following circumstances:

(1) the term stipulated in its articles of association expires, or any other cause for dissolution as is stipulated in the articles of association exists;

(2) the governing body of the legal person makes a resolution to dissolve the legal person;

(3) the legal person has to be dissolved because of a merger or division;

(4) the legal person's business license or registration certificate is legally withdrawn, or the legal person has received an order of closure or been dissolved; or

(5) another circumstance as provided by law exists.

## **Article 70**

Where a legal person is dissolved for reasons other than a merger or division, a liquidation committee shall be formed in a timely manner by the persons with the duty of liquidation to liquidate the legal person.

Unless otherwise provided by laws or administrative regulations, members of the legal person's executive or decision-making body such as the directors or councilors, are the persons with the duty to liquidate the legal person.

The persons with the duty to liquidate the legal person who fail to perform their duties in time and cause damage to others shall bear civil liability; the competent authority or an interested person may request the people's court to appoint the relevant persons to form a liquidation committee to liquidate the legal person.

## **Article 71**

The procedure for liquidating a legal person and the authorities of a liquidation committee shall be in compliance with the provisions of relevant laws; in the absence of such a provision, the relevant rules provided in corporate laws shall be applied *mutatis mutandis*.

## **Article 72**

During the period of liquidation, a legal person continues to exist but may not engage in any activity unrelated to the liquidation.

Unless otherwise provided by law, upon completion of liquidation, any residual assets of a liquidated legal person shall be distributed in accordance with its articles of association or the resolution made by its governing body.

A legal person is terminated after liquidation and de-registration is completed; a legal person that is not required by law to be registered ceases to exist upon completion of the liquidation.

## **Article 73**

A legal person declared bankrupt is terminated upon completion of the bankruptcy liquidation and de-registration in accordance with law.

## **Article 74**

A legal person may establish branches in accordance with law. Where there are laws or administrative regulations providing that such a branch shall be registered, such provisions shall be followed.

Where a branch of a legal person engages in civil activities in its own name, the civil liability thus incurred shall be assumed by the legal person; the civil liability may be paid first from the assets managed by the branch, and any deficiency shall be satisfied by the legal person.

## **Article 75**

The legal consequences of the civil activities conducted by an incorporator for the purpose of establishing a legal person shall be assumed by the legal person; or, in the event that no legal person is successfully established, by the incorporator, or the

incorporators jointly and severally if there are two or more of them.

Where an incorporator engages in civil activities in his own name for the purpose of establishing a legal person and thus incurs civil liability, a third person creditor may elect to request either the legal person or the incorporator to bear the liability.

## **Section 2**

### **For-profit Legal Persons**

#### **Article 76**

A for-profit legal person is a legal person established for the purpose of making profits and distributing the profits among its shareholders and other capital contributors.

For-profit legal persons include limited liability companies, joint stock companies limited by shares, and other enterprises that have the legal person status.

#### **Article 77**

A for-profit legal person is established upon registration in accordance with law.

#### **Article 78**

The registration authority shall issue a business license to a legally established for-profit legal person. The date of issuance of the business license is the date of establishment of the for-profit legal person.

#### **Article 79**

To establish a for-profit legal person, there shall be articles of association formulated in accordance with law.

#### **Article 80**

A for-profit legal person shall establish a governing body.

The governing body has the authority to revise the articles of association of the legal person, elect or replace members of the executive or supervisory body, and perform other responsibilities stipulated in the articles of association.

#### **Article 81**

A for-profit legal person shall establish an executive body.

The executive body has the authority to convene meetings of the governing body, decide on business and investment plans, establish internal management structure, and perform other responsibilities stipulated in the articles of association of the legal person.

Where the executive body of a legal person is the board of directors or the executive director, the legal representative shall be the chairman of the board of directors, the executive director, or the manager, as is stipulated in the articles of association. Where there is no board of directors or executive director established, the person with principal responsibilities as stipulated in the articles of association shall be the executive body and the legal representative of the legal person.

#### **Article 82**

Where a for-profit legal person establishes a supervisory body such as a board of supervisors or a supervisor, the supervisory body has, in accordance with law, the authority to inspect the financial matters of the legal person, supervise the performance of duty by the members of the executive body and the senior management officers of the legal person, and perform other responsibilities stipulated in the articles of association.

#### **Article 83**

A capital contributor of a for-profit legal person shall not abuse his rights as such to harm the interests of the legal person or any other capital contributor. A capital contributor abusing such rights and causing harm to the legal person or any other capital contributor shall bear civil liability in accordance with law.

A capital contributor of a for-profit legal person shall not abuse the legal person's independent status and his own limited liability status to harm the interests of the legal person's creditors. A capital contributor abusing the legal person's independent status or its own limited liability status to evade repayment of debts and thus severely harming the interests of the legal person's creditors shall be jointly and severally liable for the legal person's obligations.

#### **Article 84**

The controlling capital contributors, actual controllers, directors, supervisors, and senior management officers of a for-profit legal person shall not harm the legal person's interests by taking advantage of any affiliated relations, and shall compensate for any loss thus caused to the legal person.

#### **Article 85**

A capital contributor of a for-profit legal person may request the people's court to revoke a resolution which is made at a meeting of the governing body or executive body of the legal person if the procedure for convening the meeting or the voting method thereof is in violation of the laws, administrative regulations, or the legal person's articles of association, or, if the content of the resolution violates the articles of association, provided that any civil juristic relationship already formed between the legal person and a bona fide third person based on such a resolution shall not be affected.

#### **Article 86**

A for-profit legal person shall, when engaging in operational activities, observe commercial ethics, maintain the security of transactions, subject itself to the supervision of the government and the public, and assume social responsibilities.

## **Section 3**

### **Non-profit Legal Persons**

#### **Article 87**

A non-profit legal person is a legal person established for public welfare or other non-profit purposes which shall not distribute any profit to its capital contributors, incorporators, or members.

Non-profit legal persons include public institutions, social organizations, foundations, social service institutions, and the like.

#### **Article 88**

A public institution established for the purpose of providing public services to meet the needs for economic and social development attains the status of a public-institution legal person if it satisfies the requirements for being a legal person and is legally registered as such; where the law does not require such a public institution to be registered, it attains the status of a public-institution legal person from the date of its establishment.

#### **Article 89**

Where a public-institution legal person establishes a council, the council is its decision-making body unless otherwise provided by law. The legal representative of a public-institution legal person is elected in accordance with the provisions of laws, administrative regulations, or the legal person's articles of association.

#### **Article 90**

A social organization established upon the common will of its members for a non-profit purpose, such as public welfare or the common interest of all members, attains the status of a social-organization legal person if it satisfies the requirements for being a legal person and is legally registered as such. Where the law does not require such a social organization to be registered, it attains the status of a social-organization legal person from the date of its establishment.

#### **Article 91**

To establish a social-organization legal person, there shall be articles of association formulated in accordance with law.

A social-organization legal person shall establish a governing body such as a members' assembly or a meeting of the members' representatives.

A social-organization legal person shall establish an executive body such as a council. The chairman of the council, the president, or an individual with similar

responsibilities shall, in accordance with the articles of association, act as the legal representative of the legal person.

#### **Article 92**

A foundation or a social service institution established with donated property for the purpose of public welfare attains the status of an endowed legal person if it meets the requirements for being a legal person and is legally registered as such.

A site legally established to hold religious activities may be registered as a legal person and attains the status of an endowed legal person if it meets the requirements for being a legal person. Where there are laws or administrative regulations providing for the religious sites, such provisions shall be followed.

#### **Article 93**

To establish an endowed legal person, there shall be articles of association formulated in accordance with law.

An endowed legal person shall establish a decision-making body such as a council or any other form of democratic management body, and an executive body. The chairman of the council or an individual with similar responsibilities shall, in accordance with the articles of association, act as the legal representative of the legal person.

An endowed legal person shall establish a supervisory body such as a board of supervisors.

#### **Article 94**

A donor has the right to inquire into and provide comments and suggestions on the expenditure and management of the property he has donated to an endowed legal person, and the endowed legal person shall respond honestly and in a timely manner.

Where a decision is made by the decision-making body, executive body, or the legal representative of an endowed legal person, if the decision-making procedure is in violation of the laws, administrative regulations, or the legal person's articles of association, or, if the content of the decision violates the articles of association, a donor or any other interested person, or the competent authority may request the people's court to revoke the decision, provided that any civil juristic relationship already formed between the endowed legal person and a bona fide third person based on such a decision shall not be affected.

#### **Article 95**

When a non-profit legal person established for the purpose of public welfare terminates, it shall not distribute the residual assets among its capital contributors, incorporators, or members. The residual assets shall continue to be used for the purpose of public welfare, as is stipulated in the articles of association or the resolution made by the governing body; where it is not possible to dispose of such residual assets in accordance with the articles of association or the resolution made by the governing body, the competent authority shall take the charge transferring the assets to another legal person with the same or similar purposes and then make a public notice.

## **Section 4**

### **Special Legal Persons**

#### **Article 96**

For the purposes of this Section, State-organ legal persons, rural economic collective legal persons, urban and rural cooperative economic organization legal persons, and primary-level self-governing organization legal persons are special types of legal persons.

#### **Article 97**

A State organ with independent budgets or a legally chartered institution assuming administrative functions is qualified as a State-organ legal person from the date of its establishment and may engage in civil activities that are necessary for the performance of its responsibilities.

#### **Article 98**

A State-organ legal person terminates when the State organ is closed, and its civil-law rights and obligations are enjoyed and assumed by the succeeding State-organ legal person; in the absence of a succeeding State organ, the said rights and obligations shall be enjoyed and assumed by the State-organ legal person that has made the decision to close it.

#### **Article 99**

A rural economic collective attains the status of a legal person in accordance with law.

Where there are laws or administrative regulations providing for rural economic collectives, such provisions shall be followed.

#### **Article 100**

An urban or rural economic cooperative attains the status of a legal person in accordance with law.

Where there are laws or administrative regulations providing for urban and rural economic cooperatives, such provisions shall be followed.

#### **Article 101**

An urban residents' committee or a villagers' committee, as a primary-level self-governing organization, attains the status of a legal person, and may engage in civil activities necessary for the performance of their responsibilities.

Where there is no village economic collective established, the villagers'

committee may, in accordance with law, perform the responsibilities of a village economic collective.

## **Chapter IV**

### **Unincorporated Organizations**

#### **Article 102**

An unincorporated organization is an organization which does not have the legal person status but may engage in civil activities in its own name in accordance with law.

Unincorporated organizations include sole proprietorships, partnerships, professional service institutions that do not have the legal person status, and the like.

#### **Article 103**

Unincorporated organizations shall be registered in accordance with law.

Where laws or administrative regulations provide that establishment of an unincorporated organization shall be subject to approval by the relevant authority, such provisions shall be followed.

#### **Article 104**

Where an unincorporated organization becomes insolvent, its capital contributors or promoters shall assume unlimited liability for the debts of the organization, unless otherwise provided by law.

#### **Article 105**

An unincorporated organization may designate one or more members to represent the organization to engage in civil activities.

#### **Article 106**

An unincorporated organization shall be dissolved under any of the following circumstances:

- (1) where the term stipulated in its articles of association expires or any other cause for dissolution as is stipulated in the articles of association exists;
- (2) where its capital contributors or promoters decide to dissolve it; or
- (3) where dissolution is required under any other circumstances as provided by law.

**Article 107**

Upon dissolution, an unincorporated organization shall be liquidated in accordance with law.

**Article 108**

In addition to the provisions in this Chapter, the provisions in Section 1 of Chapter III of this Book shall be applied to unincorporated organizations mutatis mutandis.

## **Chapter V**

### **Civil-law Rights**

**Article 109**

The personal liberty and dignity of a natural person is protected by law.

**Article 110**

A natural person enjoys the right to life, the right to corporeal integrity, the right to health, the right to name, the right to likeness, the right to reputation, the right to honor, the right to privacy, and the right to freedom of marriage.

A legal person or an unincorporated organization enjoys the right to entity name, the right to reputation, and the right to honor.

**Article 111**

A natural person's personal information is protected by law. Any organization or individual that needs to access other's personal information must do so in accordance with law and guarantee the safety of such information, and may not illegally collect, use, process, or transmit other's personal information, or illegally trade, provide, or publicize such information.

**Article 112**

The personal rights of a natural person arising from a marital or familial relationship are protected by law.

**Article 113**

The proprietary rights of the persons of the civil law are equally protected by law.

**Article 114**

Persons of the civil law enjoy real rights in accordance with law.

Real rights are the rights to directly and exclusively control a specific thing by the right holder in accordance with law, which consists of the ownership, right to usufruct, and security interests in the property.

#### **Article 115**

Property consists of immovable and movable property. Where the law provides that a right shall be treated as property over which a real right lies, such provisions shall be followed.

#### **Article 116**

The categories and content of the real rights are provided by law.

#### **Article 117**

Where, for the purpose of public interests, an immovable or movable property is expropriated or requisitioned according to the scope of authority and the procedure provided by law, fair and reasonable compensation shall be paid.

#### **Article 118**

Persons of the civil law have rights in personam in accordance with law.

A right in personam is the right of an obligee to request a specific obligor to do or not to do a certain act, as arising from a contract, a tortious act, a negotiorum gestio, or unjust enrichment, or otherwise arising by operation of law.

#### **Article 119**

A contract formed in accordance with law is legally binding on the parties to the contract.

#### **Article 120**

Where a person's civil-law rights and interests are infringed upon due to a tortious act, the person is entitled to request the tortfeasor to bear tort liability.

#### **Article 121**

A person who, without a statutory or contractual obligation, engages in management activities to prevent another person from suffering loss of interests, is entitled to request the said other person who receives benefit therefrom to reimburse the necessary expenses thus incurred.

#### **Article 122**

Where a person obtains unjust interests at the expense of another person's loss without a legal cause, the person thus harmed is entitled to request the enriched person to make restitution.

#### **Article 123**

The persons of the civil law enjoy intellectual property rights in accordance with law.

Intellectual property rights are the exclusive rights enjoyed by the right holders

in accordance with law over the following subject matters:

- (1) works;
- (2) inventions, new utility models, or designs;
- (3) trademarks;
- (4) geographical indications;
- (5) trade secrets;
- (6) layout designs of integrated circuits;
- (7) new plant varieties; and
- (8) the other subject matters as provided by law.

**Article 124**

A natural person has the right to succession in accordance with law.

Private property lawfully owned by a natural person may be transferred through inheritance in accordance with law.

**Article 125**

The persons of the civil law enjoy shareholder rights and other investor rights in accordance with law.

**Article 126**

The persons of the civil law enjoy other civil-law rights and interests as provided by law.

**Article 127**

Where there are laws particularly providing for the protection of data and online virtual assets, such provisions shall be followed.

**Article 128**

Where there are laws particularly providing for the protection of the civil-law rights of the minors, the elderly, the disabled, women, or the consumers, such provisions shall be followed.

**Article 129**

Civil-law rights may be acquired through the performance of a civil juristic act, the occurrence of an act de facto, the occurrence of an event as prescribed by law, or by other means provided by law.

**Article 130**

The persons of the civil law enjoy their civil-law rights according to their own will and in accordance with law free from any interference.

### **Article 131**

While exercising civil-law rights, the persons of the civil law shall perform their obligations which are provided by law and agreed with the other parties.

### **Article 132**

No person of the civil law shall abuse his civil-law rights and harm the interests of the state, the public interests, or the lawful rights and interests of others.

## **Chapter VI**

### **Civil Juristic Acts**

### **Section 1**

#### **General Rules**

### **Article 133**

A civil juristic act is an act through which a person of the civil law, by expression of intent, creates, alters, or terminates a civil juristic relationship.

### **Article 134**

A civil juristic act may be accomplished through unanimous consent of two or more parties, or through one party's unilateral expression of intent.

Where a legal person or an unincorporated organization makes a resolution in accordance with the procedure and voting method provided by law or stipulated in its articles of association, such a resolution is accomplished as a civil juristic act.

### **Article 135**

A civil juristic act may be done in writing, orally, or in any other form; where a specific form is required by laws or administrative regulations, or agreed by the parties, it shall be done in such a form.

### **Article 136**

Unless otherwise provided by law or agreed by the parties, a civil juristic act takes effect at the time it is accomplished.

A person that performs a civil juristic act may not change or revoke the act without authorization, unless doing so is in compliance with law or as consented to by the other party.

## **Section 2**

### **Expression of Intent**

#### **Article 137**

An expression of intent made in a real-time communication becomes effective from the time the person to whom the intent is expressed is aware of its content.

An expression of intent made in a form other than a real-time communication becomes effective from the time it reaches the person to whom the intent is expressed. Where such an expression of intent is made through an electronic data message and the person to whom the intent is expressed has designated a specific data-receiving system, it becomes effective from the time such a data message enters that system; where no data-receiving system is specifically designated, it becomes effective from the time the person to whom the intent is expressed knows or should have known that the data message has entered the system. Where the parties have agreed otherwise on the effective time of the expression of intent made in the form of an electronic data message, such an agreement shall prevail.

#### **Article 138**

Where an expression of intent is not made to any specific person, it becomes effective when the expression is completed, unless otherwise provided by law.

#### **Article 139**

An expression of intent made through public notice becomes effective upon the time the public notice is posted.

#### **Article 140**

A person performing a civil juristic act may make an expression of intent either expressly or implicitly.

Silence is deemed as an expression of intent only when it is so provided by law, agreed by the parties, or accords with the course of dealing between the parties.

#### **Article 141**

A person performing a civil juristic act may withdraw an expression of intent. The notice of withdrawal of the expression of intent shall reach the counterparty prior to or at the same time with the counterparty's receipt of the expression of intent.

#### **Article 142**

Where an expression of intent is made to another person, the meaning of the expression shall be interpreted according to the words and sentences used, with

reference to the relevant terms, the nature and purpose of the civil juristic act, the custom, and the principle of good faith.

Where an expression of intent is not made to any specific person, the true intent of the person performing a civil juristic act shall not be interpreted solely on the words and sentences used, but along with the relevant terms, the nature and purpose of the civil juristic act, custom, and the principle of good faith.

### **Section 3**

#### **Effect of a Civil Juristic Act**

##### **Article 143**

A civil juristic act is valid if the following conditions are satisfied:

(1) the person performing the act has the required capacity for performing civil juristic acts;

(2) the intent expressed by the person is true; and

(3) the act does not violate any mandatory provisions of laws or administrative regulations, nor offend public order or good morals.

##### **Article 144**

A civil juristic act performed by a person who has no capacity for performing civil juristic acts is void.

##### **Article 145**

A civil juristic act, performed by a person with limited capacity for performing civil juristic acts that is purely beneficial to the person or is appropriate to the age, intelligence, or mental status of the person is valid; any other civil juristic act performed by such a person is valid if a consent or ratification is obtained from his legal representative.

A third person involved in the act performed by a person with limited capacity for performing civil juristic acts may request the legal representative of the latter to ratify the act within 30 days from receipt of the notification. Inaction of the legal representative is deemed as refusal of ratification. Before such an act is ratified, a bona fide third person is entitled to revoke the act. The Revocation shall be made by notice.

##### **Article 146**

A civil juristic act performed by a person and another person based on a false expression of intent is void.

Where an expression of intent deliberately conceals a civil juristic act, the validity of the concealed act shall be determined in accordance with the relevant laws.

#### **Article 147**

Where a civil juristic act is performed based on serious misunderstanding, the person who performs the act has the right to request the people's court or an arbitration institution to revoke the act.

#### **Article 148**

Where a party by fraudulent means induces the other party to perform a civil juristic act against the latter's true intention, the defrauded party has the right to request the people's court or an arbitration institution to revoke the act.

#### **Article 149**

Where a party knows or should have known that a civil juristic act performed by the other party is based on a third person's fraudulent act and is against the other party's true intention, the defrauded party has the right to request the people's court or an arbitration institution to revoke the civil juristic act.

#### **Article 150**

Where a party performs a civil juristic act against its true intention owing to duress of the other party or a third person, the coerced party has the right to request the people's court or an arbitration institution to revoke the civil juristic act.

#### **Article 151**

In situations such as where one party takes advantage of the other party that is in a desperate situation or lacks the ability of making judgment, and as a result the civil juristic act thus performed is obviously unfair, the damaged party is entitled to request the people's court or an arbitration institution to revoke the act.

#### **Article 152**

A party's right to revoke a civil juristic act is extinguished under any of the following circumstances:

(1) the party has failed to exercise the right to revocation within one year from the date when it knows or should have known of the cause for revocation, or within 90 days from the date when the party who has performed the act with serious misunderstanding knows or should have known of the cause for revocation;

(2) the party acting under duress has failed to exercise the right to revocation within one year from the date when the duress ceases; or

(3) the party who becomes aware of the cause for revocation waives the right to revocation expressly or through its own conduct.

The right to revocation is extinguished if the party fails to exercise it within five years from the date when the civil juristic act has been performed.

### **Article 153**

A civil juristic act in violation of the mandatory provisions of laws or administrative regulations is void, unless such mandatory provisions do not lead to invalidity of such a civil juristic act.

A civil juristic act that offends the public order or good morals is void.

### **Article 154**

A civil juristic act is void if it is conducted through malicious collusion between a person who performs the act and a counterparty thereof and thus harms the lawful rights and interests of another person.

### **Article 155**

A void or revoked civil juristic act does not have any legal force ab initio.

### **Article 156**

If invalidation of a part of a civil juristic act does not affect the validity of the other part, the other part of the act remains valid.

### **Article 157**

Where a civil juristic act is void, revoked, or is determined to have no legal effect, the property thus obtained by a person as a result of the act shall be returned, or compensation be made based on the appraised value of the property if it is impossible or unnecessary to return the property. Unless otherwise provided by law, the loss thus incurred upon the other party shall be compensated by the party at fault, or, if both parties are at fault, by the parties proportionally.

## **Section 4**

### **A Civil Juristic Act Subject to a Condition or a Term**

### **Article 158**

A condition may be attached to a civil juristic act unless the nature of the act denies such an attachment. A civil juristic act subject to a condition precedent becomes effective when the condition is fulfilled. A civil juristic act subject to a condition subsequent becomes invalid when the condition is fulfilled.

### **Article 159**

Where a condition is attached to a civil juristic act, if a party, for the sake of its own interests, improperly obstructs the fulfillment of the condition, the condition is deemed as having been fulfilled; if a party improperly facilitates the fulfillment of the condition, the condition is deemed as not having been fulfilled.

## **Article 160**

A term may be attached to a civil juristic act, unless the nature of such act denies such an attachment. A civil juristic act subject to a term of effectiveness becomes effective when the term begins. A civil juristic act subject to a term of termination becomes ineffective upon expiration of the term.

# **Chapter VII**

## **Agency**

### **Section 1**

#### **General Rules**

## **Article 161**

A person of the civil law may perform a civil juristic act through his agent.

A civil juristic act shall not be performed through an agent if the act must be performed by the principal himself in accordance with law, as agreed by the parties, or based on the nature of the act.

## **Article 162**

A civil juristic act performed by an agent in the principal's name within the scope of authority is binding on the principal.

## **Article 163**

Agency consists of agency by agreement and agency by operation of law.

An agent under agreement shall act in accordance with the principal's authorization. An agent by operation of law shall act in accordance with law.

## **Article 164**

An agent who fails to perform or fully perform his duty and thus causes harm to the principal shall bear civil liability.

Where an agent maliciously collides with a third person, thus harming the lawful rights and interests of the principal, the agent and the third person shall bear joint and several liability.

## **Section 2**

### **Agency by Agreement**

#### **Article 165**

In an agency by agreement, if authority is conferred in writing, it shall clearly state in the letter of authorization the name of the agent, the authorized matters, as well as the scope and duration of the authority, and it shall be signed or sealed by the principal.

#### **Article 166**

Where two or more agents are authorized to deal with the same matter for the principal, the agents shall collectively exercise the authority unless otherwise agreed by the parties.

#### **Article 167**

Where an agent knows or should have known that doing the authorized matter is in violation of law but still acts as authorized, or, if a principal knows or should have known that an act of the agent is in violation of law but raises no objection thereto, the principal and the agent shall bear joint and several liability.

#### **Article 168**

An agent shall not, in the principal's name, perform a civil juristic act with himself, unless it is consented to or ratified by the principal.

An agent who has been designated by two or more principals shall not in the name of one principal perform a civil juristic act with another principal whom he concurrently represents, unless it is consented to or ratified by both principals.

#### **Article 169**

Where an agent needs to re-delegate his authority to a third person, he shall obtain consent or ratification from the principal.

If the re-delegation of authority to a third person is consented to or ratified by the principal, the principal may directly instruct the third person to do the authorized task, and the agent shall be liable only for the selection of such a third person and the instructions given to the third person by the agent himself.

If re-delegation of authority to a third person is not consented to or ratified by the principal, the agent shall be liable for the acts performed by the third person, unless the agent re-delegates his authority to a third person in an emergency situation in order to protect the interests of the principal.

### **Article 170**

A civil juristic act performed by a person for fulfilling his responsibilities assigned by a legal person or an unincorporated organization, within the scope of authority and in the name of the legal person or the unincorporated organization, is binding on the legal person or unincorporated organization.

Restrictions imposed by a legal person or an unincorporated organization on the scope of authority of a person who performs the responsibilities assigned by the legal person or unincorporated organization are not effective against a bona fide third person.

### **Article 171**

An act performed by a person without authority, beyond the authority, or after the authority is terminated is not effective against the principal who has not ratified it.

A counterparty may urge the principal to ratify such an act within 30 days after receipt of the notification. Inaction of the principal is deemed as a refusal of ratification. Before such an act is ratified, a bona fide counterparty has the right to revoke the act. Revocation shall be made by notice.

Where the aforementioned act is not ratified, a bona fide counterparty has the right to request the person who has performed the act to fulfill the obligations or compensate for the loss thus incurred, provided that the amount of compensation shall not exceed the amount of benefit the counterparty would have received had the principal ratified the act.

Where a counterparty knows or should have known that the person performing the act has no authority, the counterparty and the said person shall bear the liability in proportion to their fault.

### **Article 172**

An act performed by a person without authority, beyond the authority, or after the authority is terminated is effective if the counterparty has reasons to believe that the said person has authority.

## **Section 3**

### **Termination of Agency**

### **Article 173**

An agency by agreement is terminated under any of the following circumstances:

- (1) the term of agency expires or the authorized tasks have been completed;
- (2) the principal revokes the agency or the agent resigns;

- (3) the agent loses his capacity for performing civil juristic acts;
- (4) the agent or the principal deceases; or
- (5) the legal person or unincorporated organization who is the agent or the principal is terminated.

**Article 174**

An act performed by an agent under agreement after the principal deceases remains valid under any of the following circumstances:

- (1) the agent does not know or should not have known of the death of the principal;
- (2) the act is ratified by the heirs of the principal;
- (3) it is clearly stated in the letter of authorization that the agency ceases only upon completion of the authorized tasks; or
- (4) the agent has started the act before the principal deceases and continues to act in the interests of the heirs of the principal.

The preceding paragraph shall be applied mutatis mutandis where the principal who is a legal person or an unincorporated organization is terminated.

**Article 175**

An agency by operation of law is terminated under any of the following circumstances:

- (1) the principal obtains or regains full capacity for performing civil juristic acts;
- (2) the agent loses the capacity for performing civil juristic acts;
- (3) the agent or the principal deceases; or
- (4) any other circumstance as provided by law exists.

## **Chapter VIII**

### **Civil Liability**

**Article 176**

The persons of the civil law shall perform civil-law obligations and bear civil liability in accordance with law or the agreement of the parties.

**Article 177**

Where two or more persons assume shared liability in accordance with law, each

person shall bear the liability in proportion to their respective share of fault if such share can be determined, or in equal share if such share cannot be determined.

#### **Article 178**

Where two or more persons assume joint and several liability in accordance with law, the right holder has the right to request some or all of them to bear the liability.

The persons subjected to joint and several liability shall each bear the liability in proportion to their respective share of fault, or in equal share if such share cannot be determined. A person who has assumed the liability more than his share of fault has the right to contribution against the other person(s) subjected to the joint and several liability.

Joint and several liability shall be either imposed by law or stipulated in the agreement of the parties.

#### **Article 179**

The main forms of civil liability include:

- (1) cessation of the infringement;
- (2) removal of the nuisance;
- (3) elimination of the danger;
- (4) restitution;
- (5) restoration;
- (6) repair, redoing or replacement;
- (7) continuance of performance;
- (8) compensation for losses;
- (9) payment of liquidated damages;
- (10) elimination of adverse effects and rehabilitation of reputation; and
- (11) extension of apologies.

Where punitive damages are provided by law, such provisions shall be followed.

The forms of civil liability provided in this Article may be applied separately or concurrently.

#### **Article 180**

A person who is unable to perform his civil-law obligations due to force majeure bears no civil liability, unless otherwise provided by law.

“Force majeure” means objective conditions which are unforeseeable, unavoidable, and insurmountable.

**Article 181**

A person who causes harm to the tortfeasor out of a justifiable defense bears no civil liability.

A person who, when acting out of justifiable defense, exceeds the necessary limit and thus causes undue harm to the tortfeasor shall bear appropriate civil liability.

**Article 182**

Where a person, when seeking to avoid a peril in response to an emergency, causes harm to others, the person who creates the peril shall bear civil liability.

Where the peril is caused by natural forces, the person who causes harm to others by seeking to avoid the peril bears no civil liability, provided that he may make appropriate compensation.

Where the measures adopted by a person seeking to avoid a peril in response to an emergency are improper or exceed the necessary limit and thus cause undue harm to others, the person shall bear appropriate civil liability.

**Article 183**

Where a party is injured for protecting the civil-law rights and interests of another person, the tortfeasor shall bear civil liability, and the beneficiary may make appropriate compensation to the injured person. In the absence of a tortfeasor, or if the tortfeasor flees or is incapable of assuming civil liability, upon request of the injured person, the beneficiary shall make appropriate compensation.

**Article 184**

A person who voluntarily engages in rescuing another person in an emergency situation and thus causes harm to the latter person bears no civil liability.

**Article 185**

A person who infringes upon the name, likeness, reputation, or honor of a hero or a martyr and thus harms the social public interests shall bear civil liability.

**Article 186**

Where a party's breach of contract causes harm to the other party's personal or proprietary rights and interests, the latter party may elect to request the former to bear liability either for breach of contract or for commission of tort.

**Article 187**

Where a person of the civil law has to concurrently bear civil, administrative, and criminal liabilities as a result of the same act performed by him, the assumption of administrative or criminal liabilities by the person shall not affect the civil liability he should bear. If the assets of the person are insufficient to pay for all the liabilities, the civil liability shall be paid first.

## **Chapter IX**

### **Limitation of Action**

#### **Article 188**

The limitation period for a person to request the people's court to protect his civil-law rights is three years, unless otherwise provided by law.

Unless otherwise provided by law, the limitation period begins from the date when the right holder knows or should have known that his right has been harmed and that who is the obligor. However, no protection to a right is to be granted by the people's court if 20 years have lapsed since the date when the injury occurs, except that the people's court may, upon request of the right holder, extend the limitation period under special circumstances.

#### **Article 189**

Where the parties agree on payment of a debt by installment, the limitation period begins from the date when the last installment is due.

#### **Article 190**

The limitation period for a person with no or limited capacity for performing civil juristic acts to bring a claim against his legal representative begins from the date when the agency by operation of law is terminated.

#### **Article 191**

The limitation period for a minor to bring a sexual molestation claim against the offender begins from the date when the minor reaches the age of 18.

#### **Article 192**

Expiration of the limitation period may be used by an obligor as a defense against a claim of non-performance.

An obligor who agrees to perform a prior obligation after the limitation period expires may not later on use the expiration of the limitation period as a defense, and an obligor who has voluntarily performed such a prior obligation may not later on demand for restitution.

#### **Article 193**

The people's court shall not apply the provisions on limitation periods on its own initiative.

#### **Article 194**

The limitation period is suspended if, within the last six months of the limitation period, a right holder is unable to exercise the right to claim owing to the existence of one of the following obstacles:

- (1) where there is force majeure;
- (2) where the right holder with no or limited capacity for performing civil juristic acts has no legal representative, or his legal representative deceases or loses the capacity for performing civil juristic acts or the right to representation;
- (3) where no heir or administrator of estate has been determined after the opening of succession;
- (4) where the right holder is controlled by the obligor or another person; or
- (5) where there are other obstacles that cause the right holder unable to exercise the right to claim.

The limitation period shall expire six months after the date when the cause for suspension is removed.

#### **Article 195**

A limitation period is interrupted under any of the following circumstances, and the limitation period shall run anew from the time of interruption or the time when the relevant proceeding is completed:

- (1) the right holder requests the obligor to perform the obligation;
- (2) the obligor agrees to perform the obligation;
- (3) the right holder initiates a lawsuit or arbitration proceeding against the obligor; or
- (4) there exists any other circumstance that has the same effect as initiating a lawsuit or arbitration proceeding by the right holder.

#### **Article 196**

The limitation period does not apply to the following rights to claim:

- (1) a claim for cessation of the infringement, removal of the nuisance, or elimination of the danger;
- (2) a claim for return of property of a person who has a real right in an immovable or a registered movable property;
- (3) a claim for payment of child support or support for other family members; or
- (4) any other claims to which the limitation period is not applicable in accordance with law.

#### **Article 197**

The time period, counting methods, and the grounds for suspension and interruption of the limitation period are provided by law, and any arrangement otherwise agreed by the parties is void.

An anticipatory waiver of one's interests in the limitation period made by the parties is void.

**Article 198**

Any provisions of law regulating the limitation period for arbitration shall be followed; in the absence of such provisions, the provisions on limitation period for litigation provided herein shall be applied mutatis mutandis.

**Article 199**

The time period within which a right holder may exercise certain rights, such as the right to revocation and the right to rescission, which are provided by law or agreed by the parties shall begin, unless otherwise provided by law, from the date when the right holder knows or should have known that he has such a right, and the provisions on the suspension, interruption, or extension of the limitation period shall not be applicable. Upon expiration of the time period, the right to revocation, the right to rescission, and the like rights are extinguished.

**Chapter X**  
**Counting of Periods of Time**

**Article 200**

Time periods referred to in the civil law are counted by year, month, day, and hour according to the Gregorian calendar.

**Article 201**

Where a time period is counted by year, month, and day, the day on which the time period begins shall not be counted in and the period runs from the following day.

Where a time period is counted by hour, the period begins to run from the hour as provided by law or agreed by the parties.

**Article 202**

Where a time period is counted by year and month, the corresponding date of the due month is the last day of the time period; in the absence of such a corresponding date, the last day of that month is the last day of the time period.

**Article 203**

Where the last day of a time period falls on a legal holiday, the day after the holiday is deemed as the last day of the period.

The last day shall end at 24:00 hours; where a business hour is applied, the last day shall end at the time the business is closed.

## **Article 204**

The counting of a time period shall be governed by the provisions of this Code, unless otherwise provided by law or agreed by the parties.

# **Book Two**

## **Real Rights**

### **Part One**

#### **General Provisions**

### **Chapter I**

#### **General Rules**

## **Article 205**

This Book regulates the civil-law relations arising from the attribution and utilization of things.

## **Article 206**

The State upholds and improves the fundamental socialist economic systems, such as the ownership system under which diverse forms of ownership co-develop with public ownership as the mainstay, the distribution system under which multiple forms of distribution co-exist with distribution according to work as the mainstay, as well as the system of socialist market economy.

The State consolidates and develops the public sector of the economy, and encourages, supports, and guides the development of the non-public sector of the economy.

The State implements a socialist market economy and protects the equal legal status and development rights of all market participants.

## **Article 207**

The real rights of the State, collectives, private individuals, and the other right

holders are equally protected by law and free from infringement by any organization or individual.

#### **Article 208**

The creation, alteration, alienation, or extinguishment of the real rights in immovable property shall be registered in accordance with law. The creation and alienation of real rights in movable property shall be subject to the delivery of the movable property in accordance with law.

## **Chapter II**

### **Creation, Alteration, Alienation, and Extinguishment of Real Rights**

#### **Section 1**

#### **Registration of Immovable property**

#### **Article 209**

The creation, alteration, alienation, or extinguishment of a real right in immovable property shall become effective upon registration in accordance with law, and shall not take effect without registration, unless otherwise provided by law.

Ownership registration is not required for natural resources that are owned by the State in accordance with law.

#### **Article 210**

The registration of immovable property shall be handled by the registration authority at the place where the immovable property is located.

The State implements a unified registration system with respect to immovable property. The scope, authorities, and measures for the unified registration shall be specified by laws and administrative regulations.

#### **Article 211**

When applying for registration of immovable property, an applicant shall, in light of the different items to be registered, provide necessary materials such as the proof of real rights, metes and bounds, and area of the immovable property.

#### **Article 212**

The registration authority shall perform the following responsibilities:

(1) to examine the proof of real rights and other necessary materials provided by the applicant;

(2) to inquire the relevant registration items of the applicant;

(3) to register the relevant items truthfully and in a timely manner; and

(4) to perform other responsibilities as provided by laws and administrative regulations.

Where further proof is required for the relevant information of the immovable property to be registered, the registration authority may require the applicant to provide supplementary materials, and may conduct onsite inspection where necessary.

### **Article 213**

A registration authority may not engage in the following acts:

(1) to require an appraisal of the immovable property;

(2) to carry out repeated registration in the name of annual inspection, and the like; or

(3) to engage in other acts that exceed the scope of its responsibilities for registration.

### **Article 214**

The creation, alteration, alienation, or extinguishment of a real right of the immovable property that is required by law to be registered becomes effective at the time when it is recorded in the register of immovable property.

### **Article 215**

A contract concluded by the parties on the creation, alteration, alienation, or extinguishment of a real right becomes effective upon its formation, unless it is otherwise provided by law or agreed upon by the parties, and the validity of the contract is not affected by the fact that the real right is not registered.

### **Article 216**

The register of immovable property is the basis for determining the attribution and contents of the real rights in immovable property.

The register of immovable property shall be kept by the registration authority.

### **Article 217**

The real right certificate for immovable property is a proof of a right holder's entitlement to the real right in the immovable property. The items recorded in the real right certificate for immovable property shall be consistent with what are recorded in the register of immovable property; in case of inconsistency between the two, what is recorded in the register of immovable property shall prevail, unless there is evidence establishing a clear error in the register of immovable property.

### **Article 218**

A right holder or an interested person may apply for retrieving and making copies of the information of the registered immovable property, and the registration authority shall provide the information.

### **Article 219**

An interested person may not disclose or illegally use the registered information of a right holder's immovable property.

### **Article 220**

A right holder or an interested person may apply for rectification of the registration if he believes that an item is incorrectly recorded in the register of immovable property. Where the right holder as recorded in the register of immovable property agrees in writing to make rectification, or where there is evidence establishing a clear error in the register, the registration authority shall rectify it.

Where the right holder as recorded in the register of immovable property does not agree to make rectification, an interested person may apply for registration of a demurrer. Where the registration authority registers the demurrer but the applicant fails to file a lawsuit within 15 days from the date of such a registration, the registration of demurrer becomes ineffective. Where a demurrer is improperly registered and damage is thus caused to the right holder, the right holder may request the applicant to pay damages.

### **Article 221**

Where the parties enter into an agreement for the sale of a house or on any other real right in immovable property, they may apply for registration of a priority notice to a registration authority in accordance with the agreement so as to ensure the realization of the real right in the future. Where, after the priority notice is registered, the immovable property is disposed of without the consent of the right holder as registered in the priority notice, the disposition is not effective in terms of the real right.

Where, after the priority notice is registered, no application for registration of the real right of immovable property has been made within 90 days from the date on which the creditor's claim extinguishes or the immovable property is eligible for registration, the registration of the priority notice becomes ineffective.

### **Article 222**

A party who provides false materials upon application for registration and thus causes damage to another person shall be liable for compensation.

Where damage is caused to another person due to a clerical error upon registration, the registration authority shall be liable for compensation. After having made such compensation, the registration authority has the right to indemnification against the person who has made the error.

### **Article 223**

The fee for the registration of immovable property shall be collected on a

piece-by-piece basis and may not be collected in proportion to the area, size, or purchase price of the immovable property.

## **Section 2**

### **Delivery of Movable Property**

#### **Article 224**

The creation or alienation of a real right in movable property shall take effect upon delivery, unless otherwise provided by law.

#### **Article 225**

The creation, alteration, alienation, or extinguishment of the real rights in vessels, aircrafts, motor vehicles, and the like, that have not been registered is not effective against a bona fide third person.

#### **Article 226**

Where a right holder is already in possession of a movable property before a real right in the movable property is created or alienated, the real right in the movable property becomes effective at the time when the civil juristic act is effected.

#### **Article 227**

Where a third person is in possession of a movable property before a real right in the movable property is created or alienated, the person obligated to deliver the movable property may transfer his right to restitution against the third person as substitute for delivery.

#### **Article 228**

Where, upon alienation of a real right in movable property, the parties agree that the transferor continues to be in possession of the movable property, the real right in the movable property becomes effective at the time when such an agreement enters into effect.

## **Section 3**

### **Other Rules**

#### **Article 229**

Where a real right is created, altered, alienated, or extinguished as a result of a legal document issued by the people's court or an arbitration institution, or based on an expropriation decision made by the people's government, the creation, alteration, alienation, or extinguishment of the real right becomes effective at the time when the legal document or expropriation decision enters into effect.

#### **Article 230**

Where a real right is acquired through succession, the real right as inherited becomes effective at the time when the succession opens.

#### **Article 231**

Where a real right is created or extinguished as a result of a de facto act such as lawful construction or demolition of a house, the creation or extinguishment of the real right becomes effective when the de facto act is accomplished.

#### **Article 232**

Where disposition of a real right in immovable property as provided in this Section is required by law to be registered, the disposition of the real right, if not so registered, is not effective.

### **Chapter III**

#### **Protection of Real Rights**

#### **Article 233**

Where a real right is infringed upon, the right holder may have the problem solved by means of settlement, mediation, arbitration, litigation, and the like.

#### **Article 234**

Where a dispute arises over the attribution or contents of a real right, an interested person may request for confirmation of the right.

#### **Article 235**

Where an immovable or movable property is possessed by a person not entitled to do so, the right holder may request for restitution.

#### **Article 236**

Where there is a nuisance or a potential nuisance against a real right, the right holder may request for removal of the nuisance or elimination of the danger.

### **Article 237**

Where an immovable or movable property is destructed or damaged, the right holder may request for the repair, redoing, replacement, or restoration to the original condition in accordance with law.

### **Article 238**

Where a real right is infringed upon and damage is thus caused, the right holder may, in accordance with law, request the infringing person to pay damages or bear other civil liabilities.

### **Article 239**

The forms of real right protection provided in this Chapter may be applied either separately or concurrently according to the circumstances of the infringement of a right.

## **Part Two**

## **Ownership**

### **Chapter IV**

### **General Rules**

### **Article 240**

An owner is entitled to possess, use, benefit from, and dispose of his own immovable or movable property in accordance with law.

### **Article 241**

An owner of immovable or movable property is entitled to create a right to usufruct and a security interest on his own immovable or movable property. A usufructuary or security interest holder, when exercising their rights, shall not harm the rights and interests of the owner.

### **Article 242**

Where an immovable or movable property is provided by law to be exclusively owned by the State, no organization or individual may acquire ownership of it.

### **Article 243**

For the need of the public interest, the collectively-owned land and the houses

and other immovable property of an organization or individual may be expropriated within the scope of authority and pursuant to the procedures provided by law.

In the case of expropriation of collectively-owned land, land compensation fees, resettlement subsidies, and compensation fees for rural villagers' dwellings and other ground attachments as well as young crops shall be paid in full in a timely manner in accordance with law, and social security premiums of the farmers whose land has been expropriated shall be arranged, their lives secured, and their lawful rights and interests safeguarded.

In the case of expropriation of houses or other immovable property of organizations or individuals, compensation for the expropriation shall be made in accordance with law in order to safeguard the lawful rights and interests of the person whose immovable property has been expropriated. In the case of expropriation of individuals' dwelling houses, the housing conditions of such individuals shall also be guaranteed.

No organization or individual may embezzle, misappropriate, secretly distribute, intercept, default on the payment of the expropriation compensation fees, or the like.

#### **Article 244**

The State provides special protection to cultivated land, strictly restricts the conversion of agricultural land into land used for construction purposes, and controls the overall volume of the land used for construction purposes. Collectively-owned land may not be expropriated exceeding the scope of authority or in violation of the procedures provided by law.

#### **Article 245**

An immovable or movable property of an organization or individual may, in response to an emergency such as providing disaster relief and preventing and controlling pandemics, be requisitioned within the scope of authority and pursuant to the procedures provided by law. The requisitioned immovable or movable property shall be returned to the aforementioned organization or individual after use. Where the immovable or movable property of an organization or individual is requisitioned, or where it is destructed, damaged, or lost after being requisitioned, compensation shall be made.

## **Chapter V**

### **State Ownership, Collective Ownership and Private Ownership**

#### **Article 246**

Where a property is provided by law to be owned by the State, the property belongs to the State, namely, to the whole people.

The ownership rights over the State-owned property shall be exercised by the State Council on behalf of the State, unless otherwise provided by law.

**Article 247**

Mineral deposits, waters, and sea areas are owned by the State.

**Article 248**

Uninhabited islands are owned by the State, and the State Council exercises the ownership rights over the uninhabited islands on behalf of the State.

**Article 249**

Urban land is owned by the State. Land in rural and urban suburbs that is provided by law to be owned by the State is owned by the State.

**Article 250**

Natural resources, such as forests, mountain ridges, grasslands, unreclaimed lands, and mudflats, other than those provided by law to be collectively-owned, are owned by the State.

**Article 251**

The wild animal and plant resources that are provided by law to be owned by the State are owned by the State.

**Article 252**

Radio-frequency spectrum resources are owned by the State.

**Article 253**

The cultural relics that are provided by law to be owned by the State are owned by the State.

**Article 254**

The assets for national defense are owned by the State.

Infrastructures such as railways, roads, electric power facilities, telecommunication facilities, as well as oil and gas pipelines that are provided by law to be owned by the State are owned by the State.

**Article 255**

A State organ has the right to possess and use the immovable and movable property directly under its control and to dispose of such property in accordance with law and the relevant regulations made by the State Council.

**Article 256**

A public institution established by the State has the right to possess and use the immovable and movable property directly under its control, and to benefit from and dispose of such property in accordance with law and the relevant regulations made by the State Council.

### **Article 257**

With respect to enterprises invested by the State, the State Council and the local people's governments shall, on behalf of the State, perform the investor's duties and enjoy the investor's rights and interests respectively in accordance with laws and administrative regulations.

### **Article 258**

The State-owned property is protected by law, and no organization or individual may misappropriate, loot, secretly distribute, intercept, or destroy such property.

### **Article 259**

Institutions and their staff with the duties of administration and supervision over the State-owned property shall strengthen the administration and supervision of the State-owned property in accordance with law, strive to preserve and increase the value of such property and prevent any loss thereof; they shall assume legal liabilities in accordance with law if losses are caused to the State-owned property as a result of their abuse of powers or dereliction of duties.

A person, who causes losses to the State-owned property by transferring it at low prices, secretly distributing it in conspiracy with other persons, creating a security interest on it without authorization, or by other means in the course of enterprise restructuring, merger or division, affiliated transactions, and the like, in violation of the provisions on the administration of the State-owned property, shall bear legal liability in accordance with law.

### **Article 260**

The collectively-owned immovable and movable property include:

(1) the land, forests, mountain ridges, grasslands, unreclaimed land and mudflats that are provided by law to be owned by collectives;

(2) the buildings, production facilities, and farmland water conservancy facilities that are owned by collectives;

(3) the educational, scientific, cultural, public health, sports, and other facilities that are owned by collectives; and

(4) any other immovable and movable property that are owned by collectives.

### **Article 261**

The immovable and movable property of a farmer collective are collectively owned by the members of this collective.

The following matters shall be decided by the collective's members in accordance with statutory procedures:

(1) land contracting schemes, and the subcontracting of land to any organization or individual outside this collective;

(2) adjustment to the contracted land among the persons who have the right to contractual management of land;

- (3) methods for the use and distribution of funds such as land compensation fees;
- (4) matters such as changes in the ownership of enterprises invested by the collective; and
- (5) other matters as provided by law.

#### **Article 262**

With respect to the collectively-owned land, forests, mountain ridges, grasslands, unreclaimed land, mudflats, and the like, the ownership thereof shall be exercised in accordance with the following provisions:

- (1) where they are owned by the farmer collective of a village, the ownership shall be exercised collectively by the collective economic organization of the village or the villagers' committee on behalf of the collective in accordance with law;
- (2) where they are owned by two or more farmer collectives within a village, the ownership shall be exercised by the respective collective economic organizations or the villagers' groups on behalf of the collectives in accordance with law; and
- (3) where they are owned collectively by the farmer collective of a rural-town, the ownership shall be exercised by the economic organizations of the town on behalf of the collective.

#### **Article 263**

With respect to the immovable and movable property owned by an urban-town collective, the collective is entitled to possess, use, benefit from, and dispose of such property in accordance with laws and administrative regulations.

#### **Article 264**

Rural collective economic organizations, villagers' committees, and villagers' groups shall make the situation of the collectively-owned property known to the members of this collective in accordance with laws, administrative regulations, and their articles of association, as well as the local covenants. Members of the collective have the right to retrieve and make copies of the relevant materials.

#### **Article 265**

The property owned by a collective is protected by law, and no organization or individual may misappropriate, loot, secretly distribute, or destruct such property.

Where a decision made by a rural collective economic organization, a villagers' committee, or the person in charge thereof infringes upon the lawful rights and interests of a member of the collective, the infringed member may request the people's court to revoke the decision.

#### **Article 266**

A private individual has the right to own his lawful income, houses, articles for daily use, production tools, raw materials, as well as other immovable and movable property.

**Article 267**

The property lawfully owned by a private individual is protected by law, and no organization or individual may misappropriate, loot, or destruct such property.

**Article 268**

The State, collectives, and private individuals may establish companies with limited liabilities, joint stock companies limited by shares, or other enterprises through making capital contributions in accordance with law. Where the immovable or movable property of the State, collectives, and private individuals are invested in an enterprise, the investors are, in accordance with their agreement or in proportion to their investment, entitled to receive returns on the assets, make major decisions, and select business managers, and obligated to perform their duties.

**Article 269**

A for-profit legal person has the right to possess, use, benefit from, and dispose of its immovable and movable property in accordance with laws, administrative regulations, and its articles of association.

The provisions of the relevant laws, administrative regulations, and articles of association shall apply to the rights of a legal person other than a for-profit legal person with respect to its immovable and movable property.

**Article 270**

The immovable and movable property that is lawfully owned by a social-organization legal person or an endowed legal person is protected by law.

## **Chapter VI**

### **Ownership of a Building's Units**

**Article 271**

A unit owner has the ownership over an exclusive unit of a building, such as a dwelling space or a space used for operating businesses, and has the right to co-own and jointly manage the common space other than the unit.

**Article 272**

A unit owner has the right to possess, use, benefit from, and dispose of his exclusive unit of a building. The unit owner may not, when exercising his rights, endanger the safety of the building or impair the lawful rights and interests of other unit owners.

**Article 273**

A unit owner has rights and assumes duties with respect to the common space outside his exclusive unit of a building, and may not refuse to perform such duties on the ground that he has waived such rights.

While a unit owner transfers a dwelling space or the space used for business operations owned by him in a building, his rights to co-own and jointly manage the common space therein shall be transferred concomitantly.

**Article 274**

Roads within the construction zone are co-owned by all unit owners, except for those that are part of the urban public roads. Green spaces within the construction zone are co-owned by all unit owners, except for those that are part of the urban public green spaces and those expressly indicated to be owned by private individuals. Other public places, public facilities, and spaces used for property management service within the construction zone are co-owned by all unit owners.

**Article 275**

The ownership of the parking spaces and garages planned for parking vehicles within the construction zone shall be agreed upon by the parties by way of selling, giving away as gifts, leasing, and the like.

The parking spaces for parking vehicles that occupy the roads or other spaces co-owned by all unit owners are co-owned by all unit owners.

**Article 276**

The parking spaces and garages planned for parking vehicles within the construction zone shall first meet the needs of the unit owners.

**Article 277**

The unit owners may establish the owners' assembly and elect the members of the owners' committee. The specific conditions of and procedures for the establishment of the owners' assembly and the owners' committee shall be in accordance with laws and regulations.

The relevant department of the local people's government and the residents' committee shall provide guidance to and assistance in the establishment of the owners' assembly and the election of the members of the owners' committee.

**Article 278**

The following matters shall be jointly decided by the unit owners:

- (1) to formulate and amend the procedural rules of the owners' assembly;
- (2) to formulate and amend the stipulations on management;
- (3) to elect or replace members of the owners' committee;
- (4) to employ and remove the property management service enterprise or other managers;

- (5) to use maintenance funds for buildings and auxiliary facilities thereof;
- (6) to raise maintenance funds for buildings and auxiliary facilities thereof;
- (7) to renovate and reconstruct buildings and auxiliary facilities thereof;
- (8) to change the intended use of the co-owned space or making use of the co-owned space to engage in business activities; and
- (9) to handle other major matters relating to co-ownership and the right to joint management.

The quorum for matters subject to the unit owners' joint decision shall be two thirds or more of the exclusive units both by area and by number of unit owners. Decisions of matters provided in Subparagraphs (6) through (8) shall be subject to the consent of the unit owners representing three quarters or more of the participating exclusive units both by area and by number of unit owners. Decisions of other matters provided in the preceding Paragraph shall be subject to the consent of the unit owners representing more than half of the participating exclusive units both by area and by number of unit owners.

**Article 279**

No unit owner may turn a dwelling space into a space used for operating businesses in violation of laws, regulations, or the stipulations on management. A unit owner who intends to turn a dwelling space into a space used for operating businesses shall, in addition to abiding by laws, regulations, and the stipulations on management, obtain unanimous consent from all interested unit owners.

**Article 280**

Decisions of the owners' assembly or the owners' committee are legally binding on unit owners.

Where a decision made by the owners' assembly or the owners' committee infringes upon the lawful rights and interests of a unit owner, the infringed owner may request the people's court to revoke it.

**Article 281**

The maintenance funds for buildings and their auxiliary facilities are co-owned by the unit owners. The funds may, upon joint decision of the unit owners, be used for the maintenance, renewal, and renovation of the co-owned spaces, such as elevators, roofs, exterior walls, and barrier-free facilities. Information on raising and using the maintenance funds for buildings and their auxiliary facilities shall be publicized on a regular basis.

Where a building and its auxiliary facilities need to be maintained in an emergency situation, the owners' assembly or the owners' committee may, in accordance with law, apply for the use of the maintenance funds for the building and its auxiliary facilities.

**Article 282**

The income generated from the space co-owned by the unit owners that is

received by the developer, the property management service enterprise, or other managers are co-owned by all unit owners after reasonable costs are deducted.

### **Article 283**

Where there is an agreement on matters such as allocation of expenses on and distribution of income gained from a building and its auxiliary facilities, such matters shall be determined in accordance with the agreement; where there is no agreement or the agreement is unclear, such matters shall be determined in proportion to the area of each unit owner's exclusive unit to the total area.

### **Article 284**

The unit owners may either manage the buildings and the auxiliary facilities on their own, or entrust a property management service enterprise or another manager for such a purpose.

The unit owners have the right to replace, in accordance with law, the property management service enterprise or the other managers employed by the developer.

### **Article 285**

The property management service enterprise or otherwise a manager shall, as entrusted by the unit owners, manage the buildings and their auxiliary facilities within the construction zone in accordance with the provisions of Book Three of this Code relating to contracts for property management service, subject itself to the supervision of the unit owners, and respond to the unit owners' inquiries about property management services in a timely manner.

The property management service enterprise or other managers shall carry out emergency measures and other management measures implemented by the government in accordance with law and actively cooperate in the performance of the relevant work.

### **Article 286**

The unit owners shall abide by laws, regulations, and the stipulations on management, and their relevant acts shall meet the requirements of conserving resources and protecting the ecological environment. With respect to the emergency measures and other management measures implemented by the government in accordance with law that are carried out by the property management service enterprise or other managers, the unit owners shall, in accordance with law, be cooperative.

With respect to an act impairing the lawful rights and interests of others, such as arbitrarily discarding garbage, discharging pollutants or noises, feeding and keeping animals in violation of the stipulations, constructing structures against rules and regulations, encroaching on passages, and refusing to pay property management fees, the owners' assembly or the owners' committee has the right to request the actor to discontinue such infringements, remove the nuisance, eliminate the danger, restore to the original condition, and compensate for the losses entailed.

Where a unit owner or an actor refuses to perform the relevant duties, the party concerned may make a report to, or lodge a complaint with the competent

administrative department, which shall handle the case in accordance with law.

**Article 287**

A unit owner has the right to request the developer, the property management service enterprise or other managers, and other unit owners to bear civil liability for any act done by them that infringes upon his lawful rights and interests.

**Chapter VII**  
**Adjacent Relationships**

**Article 288**

The persons entitled to adjacent rights in immovable property shall properly deal with adjacent relationships in accordance with the principles of facilitation to production, convenience for daily lives, solidarity and mutual assistance, and fairness and reasonableness.

**Article 289**

Where there are laws and regulations providing for adjacent relationships, those provisions shall be applied. Where there are no such provisions, local customs may be followed.

**Article 290**

A person entitled to the real rights in immovable property shall provide a person entitled to an adjacent right the necessary convenience for the use of water or drainage.

The right to utilization of natural flowing water shall be reasonably allocated among the persons entitled to the adjacent rights of the immovable property. When discharging the water, the direction of the natural water flow shall be respected.

**Article 291**

A person entitled to the real rights in immovable property shall provide necessary convenience to the persons entitled to an adjacent right who have to utilize his land for passage, and the like.

**Article 292**

Where a person entitled to the real rights in immovable property has to utilize the adjacent land or building for constructing or maintaining a building, or for laying electrical wires, cables, or the pipelines for water, heating, gas, or the like, the person entitled to the real rights in the adjacent land or building shall provide the necessary

convenience.

**Article 293**

The construction of a building may not violate the relevant construction standards of the State or obstruct the ventilation, lighting, or sunlight of the adjacent buildings.

**Article 294**

A person entitled to the real rights in immovable property may not, in violation of the regulations of the State, discard solid wastes or emit harmful substances such as atmospheric pollutants, water pollutants, soil pollutants, noises, light radiation, and electromagnetic radiation.

**Article 295**

A person entitled to the real rights in immovable property may not endanger the safety of the adjacent immovable property when excavating land, constructing buildings, laying pipelines, installing facilities, or the like.

**Article 296**

A person entitled to the real rights in immovable property who utilizes the adjacent immovable property for the purpose of using water, drainage, passage, laying pipelines, and the like, shall spare no effort to avoid causing damage to the person entitled to the real rights in the adjacent immovable property.

**Chapter VIII**

**Co-ownership**

**Article 297**

Immovable or movable property may be co-owned by two or more organizations or individuals. Co-ownership consists of co-ownership by shares and joint co-ownership.

**Article 298**

Co-owners by shares have the ownership of the co-owned immovable or movable property according to their shares.

**Article 299**

Joint co-owners jointly have the ownership of the co-owned immovable or movable property.

### **Article 300**

The co-owners shall manage the co-owned immovable or movable property in accordance with their agreement. Where there is no agreement or the agreement is unclear, each co-owner is entitled and obligated to manage it.

### **Article 301**

Unless otherwise agreed by the co-owners, any disposition of the co-owned immovable or movable property, or any major repair or change of the nature or intended use of the co-owned immovable or movable property shall be subject to the consent of the co-owners by shares whose shares account for two thirds or more of the total shares, or to the consent of all joint co-owners.

### **Article 302**

The management expenses of and other burdens on a thing co-owned by the co-owners shall be borne according to the agreement among the co-owners where there is such an agreement; where there is no agreement or the agreement is unclear, these expenses shall be borne by the co-owners by shares proportionally, and by the joint co-owners jointly.

### **Article 303**

Where the co-owners have agreed not to partition the co-owned immovable or movable property in order to maintain the co-ownership, the agreement shall be followed, provided that a co-owner may request partition if there is a compelling reason for partition. Where there is no agreement or the agreement is unclear, a co-owner by shares may request partition at any time, whereas a joint co-owner may request partition in case the basis for the joint ownership ceases to exist or there is a compelling reason for partition. Compensation shall be made if partition causes damage to the other co-owners.

### **Article 304**

The co-owners may determine through negotiation the way of partition of the co-owned thing. Where they fail to reach an agreement, and where the co-owned immovable or movable property is divisible and its value is not diminished upon division, partition in kind shall be effected; where it is difficult to divide the co-owned thing or where its value would be impaired upon division, partition shall be carried out through dividing the proceeds based on appraisal or obtained from auction or a sale of it.

Where the immovable or movable property acquired by a co-owner by means of partition is defective, the other co-owners shall share the losses.

### **Article 305**

A co-owner by shares may transfer the portion of shares he owned in the co-owned immovable or movable property. The other co-owners have the right of pre-emption to buy the shares under equivalent conditions.

### **Article 306**

Where a co-owner by shares transfers the portion of shares he owned in the

co-owned immovable or movable property, he shall notify the other co-owners of the conditions of transfer in a timely manner. The other co-owners shall exercise their right of pre-emption within a reasonable period of time.

Where two or more co-owners assert their rights of pre-emption, they shall determine through negotiation the proportion of shares each may purchase; where no agreement is reached, they shall exercise their right of pre-emption in proportion to the shares they each own at the time of transfer.

#### **Article 307**

In terms of external relations, the co-owners are jointly and severally entitled to claims and are jointly and severally obligated to perform obligations arising from the co-owned immovable or movable property, unless it is otherwise provided by law or where the third person is aware that the co-owners are not in a relationship of joint and several claims and obligations. In terms of internal relations, unless otherwise agreed by the co-owners, the co-owners by shares are entitled to claims and obligated to perform obligations in proportion to the shares they each own, and the joint co-owners are jointly entitled to claims and obligated to perform obligations. A co-owner by shares who has performed the obligation in excess of his shares has the right of contribution against the other co-owners.

#### **Article 308**

Where there is no agreement among the co-owners or the agreement is unclear as to whether the co-owned immovable or movable property is under co-ownership by shares or under joint co-ownership, the immovable or movable property shall be deemed to be under co-ownership by shares, unless the co-owners are in a relationship such as familial relationship and the like.

#### **Article 309**

The share of a co-owner by shares in the immovable or movable property shall be determined according to his capital contribution where there is no agreement or the agreement is unclear. Where it is impossible to determine the amount of capital contribution, each co-owner by shares shall be entitled to an equal share.

#### **Article 310**

Where two or more organizations or individuals are jointly entitled to a right to usufruct or a security interest, the relevant provisions of this Chapter shall be applied *mutatis mutandis*.

## **Chapter IX**

### **Special Provisions on the Acquisition of Ownership**

### **Article 311**

Where a person with no right to dispose of an immovable or movable property transfers it to another person, the owner has the right to recover it; unless otherwise provided by law, the transferee acquires the ownership of the immovable or movable property under the following circumstances:

(1) the transferee is in good faith at the time when the immovable or movable property is transferred to him;

(2) the transfer is made at a reasonable price; and

(3) the transferred immovable or movable property has been registered as required by law, or has been delivered to the transferee where registration is not required.

Where a transferee acquires the ownership of the immovable or movable property in accordance with the provisions of the preceding paragraph, the original owner has the right to claim damages against the person who disposes of the property without a right.

Where a party acquires, in good faith, a real right other than ownership, the provisions of the preceding two paragraphs shall be applied *mutatis mutandis*.

### **Article 312**

An owner or any other right holder has the right to recover a lost thing. Where the lost thing is possessed by another person by way of transfer, the right holder has the right to claim damages against the person who disposes of the thing without the right to disposition, or to request the transferee to return the original thing within two years from the date on which the right holder knows or should have known of the transferee, provided that where the transferee has acquired the lost thing at auction or from a qualified business operator, the right holder shall, at the time of requesting the return of the original thing, reimburse the expenses that have been paid by the transferee. The right holder has, after having reimbursed the expenses paid by the transferee, the right to indemnification against the person who disposes of the thing without the right to disposition.

### **Article 313**

After a bona fide transferee acquires the movable property, the original rights in the movable property is extinguished, unless the bona fide transferee knows or should have known of such rights at the time of the transfer.

### **Article 314**

Where a lost thing is found, it shall be returned to its right holder. The finder shall, in a timely manner, notify its right holder or hand it over to the relevant departments such as the department for public security.

### **Article 315**

Where the relevant department receives a lost thing and knows who is its right

holder, the department shall, in a timely manner, notify him to collect the lost thing; where the department does not know who is the right holder, it shall issue a lost-and-found notice in a timely manner.

#### **Article 316**

A finder shall well keep a lost thing before it is delivered to the relevant department, and the relevant department shall well keep it before it is collected. A person who, intentionally or by gross negligence, causes the lost thing in his custody to be destructed, damaged, or lost shall bear civil liability.

#### **Article 317**

The right holder of a lost thing shall, at the time of collecting it, pay to the finder or the relevant department the necessary expenses, such as the expense for safekeeping the lost thing.

Where a right holder has offered a reward for finding the lost thing, he shall, at the time of collecting the lost thing, perform his obligations as promised.

Where a finder misappropriates the lost thing, he is neither entitled to request reimbursement of expenses such as the expense for safekeeping the lost thing, nor entitled to request the right holder to perform the obligations as promised.

#### **Article 318**

Where a lost thing has not been claimed by anybody within one year from the date the lost-and-found notice is publicized, the lost thing is to be escheated to the State.

#### **Article 319**

Where a drifting thing is found or a thing buried underground or hidden is discovered, the provisions relating to the finding of lost things shall be applied *mutatis mutandis*, unless otherwise provided by law.

#### **Article 320**

Where a principal thing is transferred, the accessory thereof shall be transferred concomitantly, unless otherwise agreed by the parties.

#### **Article 321**

Unless otherwise agreed by the parties, the natural fruits of a thing shall be acquired by the owner of the thing, or by a usufructuary if there are both an owner and a usufructuary of the thing.

The legal proceeds of a thing shall be acquired as agreed by the parties if there is such an agreement, or, where there is no agreement or the agreement is unclear, in accordance with the course of dealing.

#### **Article 322**

A thing, that is created as a result of processing, or combining or mixing with another thing or things, shall be owned as agreed if there is such an agreement, or in accordance with law if there is no agreement or the agreement is unclear, or, in the

absence of any provisions in law, be determined in compliance with the principles of making full use of the thing and protecting the party without fault. Where damage is caused to another party owing to one party's fault or owing to the determination of the attribution of the thing, indemnity or compensation shall be paid.

## **Part Three**

### **Rights of Usufruct**

## **Chapter X**

### **General Rules**

#### **Article 323**

A usufructuary has the right to possess, use, and benefit from the immovable or movable property owned by another person in accordance with law.

#### **Article 324**

Organizations and individuals may, in accordance with law, possess, use, and benefit from the natural resources owned by the State, the State-owned natural resources that are used by collectives, and the natural resources that are owned by collectives as provided by law.

#### **Article 325**

The State implements a system of compensation for the use of natural resources, unless otherwise provided by law.

#### **Article 326**

A usufructuary shall, when exercising his right, abide by the provisions of laws on the protection, rational exploitation, and utilization of resources and the protection of the ecological environment. The owner may not interfere with the exercise of such rights by the usufructuary.

#### **Article 327**

Where a right to usufruct is extinguished or adversely affected due to expropriation or requisition of the immovable or movable property, the usufructuary has the right to compensation according to the provisions of Articles 243 and 245 of this Code.

**Article 328**

The right to use the sea areas that is acquired in accordance with law is protected by law.

**Article 329**

The right to explore and mine minerals, to draw water, and to use waters and mudflats to engage in aquaculture or fishing that are acquired in accordance with law is protected by law.

**Chapter XI****Right to Contractual Management of Land****Article 330**

Rural collective economic organizations shall adopt a two-tier management system, with household contractual management as the basis and integrated with the collective management.

A system of contractual management of land is adopted in accordance with law for cultivated land, forestland, grassland, and other land used for agricultural purposes which are owned by farmers collectively, or owned by the State and used by farmers collectively.

**Article 331**

A person who has the right to contractual management of land is, in accordance with law, entitled to possess, use, and benefit from the cultivated land, forestland, and grassland contracted and managed by him, and to engage in agricultural production such as crop cultivation, forestry, and animal husbandry.

**Article 332**

The term of a contract for cultivated land is 30 years. The term of a contract for grassland ranges from 30 to 50 years. The term of a contract for forestland ranges from 30 to 70 years.

Upon expiration of the term of contract as provided in the preceding paragraph, the person with the right to contractual management of land is entitled to renew the contract in accordance with the provisions of laws on rural land contracting.

**Article 333**

A right to contractual management of land is created at the time when the contract on the right to contractual management of land enters into effect.

The registration authority shall issue a certificate, such as a certificate of the right to contractual management of land, a certificate of the right to forestry, and the like, to the person entitled to the respective right to contractual management of land, and establish a register for this purpose to record and confirm such rights.

#### **Article 334**

The persons with the rights to contractual management of land are entitled to exchange or transfer such rights in accordance with law. The contracted land may not be used for non-agricultural construction purposes without being approved in accordance with law.

#### **Article 335**

Where the rights to contractual management of land are exchanged or transferred, the parties may apply to the registration authority for registration; without registration, such exchange or transfer may not be asserted against a bona fide third person.

#### **Article 336**

Within the term of contract, the party offering the contract may not adjust the contracted land.

Under special circumstances such as severe deterioration on the contracted land caused by natural disasters, appropriate adjustments shall be made in accordance with the provisions of laws on rural land contracting where necessary.

#### **Article 337**

Within the term of contract, the party offering the contract may not take back the contracted land, unless otherwise provided by law.

#### **Article 338**

Where the contracted land is expropriated, the affected person with the right to contractual management of land is entitled to the corresponding compensation according to the provisions of Article 243 of this Code.

#### **Article 339**

A person with the right to contractual management of land may decide on his own to transfer the right to management of land to others by leasing, contributing it as shares, or other means in accordance with law.

#### **Article 340**

Within the time limit as agreed in the contract, the person with the right to management of land is entitled to possess the rural land, to carry out agricultural production and operation on his own, and to benefit therefrom.

#### **Article 341**

The right to management of land which is transferred for a term of five years or longer is created when the contract for the transfer enters into force. The parties may apply to the registration authority for registration of the right to management of land; without registration, such a right may not be asserted against a bona fide third person.

#### **Article 342**

Where rural land is contracted by means including bidding, auction, or open negotiation, for which a title certificate is obtained through registration in accordance with law, the right to manage such land may, in accordance with law, be transferred by means of leasing, contributing it as shares, mortgaging, or by other means.

#### **Article 343**

Where contractual management is adopted for the State-owned land that is used for agricultural purposes, the relevant provisions of this Book shall be applied *mutatis mutandis*.

## **Chapter XII**

### **Right to Use Land for Construction Purposes**

#### **Article 344**

With respect to the State-owned land zoned for construction purposes, a person with the right to use a lot of such land is entitled to possess, use, and benefit from the lot, and to use it to construct buildings, structures, and auxiliary facilities.

#### **Article 345**

The right to use a lot of land for construction purposes may be created separately on the surface of, above, or below the lot of land.

#### **Article 346**

The right to use a lot of land for construction purposes shall be created in conformity with the requirements for conservation of resources and protection of the ecological environment, and in compliance with the provisions of laws and administrative regulations on the planned use of the lot, and may not impair the rights to usufruct already created thereon.

#### **Article 347**

The right to use a lot of land for construction purposes may be created by way of transfer or gratuitous grant.

The bidding, auction, or other means of public bidding shall be adopted in transferring a lot of land used for business purposes, such as for industrial, commercial, tourism, recreational, and commercial residential purposes, or where there are two or more intended users competing for the right to use the same lot of land .

The creation of a right to use a lot of land for construction purposes by way of

gratuitous grant is strictly restricted.

#### **Article 348**

Where a right to use a lot of land for construction purposes is created through bidding, auction, agreement, or other means of transfer, the parties shall enter into a contract in writing for the transfer of the right to use the lot of land for construction purposes.

A contract for the transfer of the right to use a lot of land for construction purposes generally contains the following clauses:

- (1) the name and address of each party;
- (2) the metes and bounds and area of the lot of land;
- (3) the space occupied by the buildings, structures, and the auxiliary facilities thereof;
- (4) the planned use and zoning conditions of the lot;
- (5) the term of the right to use the lot of land for construction purposes;
- (6) the transfer fee and other fees, and the mode of payment thereof; and
- (7) the means of dispute resolution.

#### **Article 349**

To create a right to use a lot of land for construction purposes, application shall be filed with the registration authority for the registration of the right. The right to use a lot of land for construction purposes is created upon registration. The registration authority shall issue a title certificate to the person entitled to the right.

#### **Article 350**

A person who has the right to use a lot of land for construction purposes shall make reasonable use of the lot and may not change its planned use. Where it is necessary to change the planned use of the lot, approval shall be obtained from the competent administrative department in accordance with law.

#### **Article 351**

A person who has the right to use a lot of land for construction purposes shall pay the transfer fee and other fees in accordance with law and the contract.

#### **Article 352**

The ownership of buildings, structures, and auxiliary facilities thereof constructed by a person with the right to use the lot of land for construction purposes belongs to the person, unless it is proved by evidence to the contrary.

#### **Article 353**

Unless otherwise provided by law, the persons with a right to use a lot of land for construction purposes are entitled to transfer, exchange, offer as capital contribution, give away as a gift, or mortgage their rights.

#### **Article 354**

Where a right to use a lot of land for construction purposes is transferred, exchanged, offered as capital contribution, given away as a gift, or mortgaged, the parties shall enter into a contract thereon in writing. The term of the use shall be agreed upon by the parties, provided that it may not exceed the remaining term of the right to use the lot of land for construction purposes.

#### **Article 355**

Where a right to use a lot of land for construction purposes is transferred, exchanged, offered as capital contribution, or given away as a gift, an application for registration of the change shall be filed with the registration authority.

#### **Article 356**

Where a right to use a lot of land for construction purposes is transferred, exchanged, offered as capital contribution, or given away as a gift, the buildings, structures, and auxiliary facilities thereof attached to the land shall be disposed of concomitantly.

#### **Article 357**

Where a building or structure, and auxiliary facilities thereof are transferred, exchanged, offered as capital contribution, or given away as a gift, the right to use the lot of land for construction purposes in the lot of land occupied by the building, structure, and auxiliary facilities thereof shall be disposed of concomitantly.

#### **Article 358**

Where a right to use a lot of land for construction purposes needs to be taken back prior to expiration of its term for public interest purposes, compensation shall be paid for the houses and other immovable property on the land according to the provisions of Article 243 of this Code, and the portion of the unused transfer fee shall be refunded.

#### **Article 359**

The right to use a lot of land for construction of residential buildings is automatically renewed upon expiration of the term. The payment, reduction, or exemption of the renewal fees shall be dealt with in accordance with the provisions of laws and administrative regulations.

The renewal of the right to use a lot of land for construction of buildings other than residences, upon expiration of the term, shall be dealt with in accordance with the provisions of the laws. The ownership of the buildings and other immovable property on such lot of land shall be determined in accordance with the agreement, or, where there is no agreement or the agreement is unclear, in accordance with the provisions of laws and administrative regulations .

#### **Article 360**

Where a right to use a lot of land for construction purposes is extinguished, the transferor of the right shall deregister the right in a timely manner. The registration authority shall withdraw the title certificate thereof.

### **Article 361**

The using of a lot of collectively-owned land for construction purposes shall be dealt with in accordance with the provisions of the laws on land administration.

## **Chapter XIII**

### **Right to Use a House Site**

#### **Article 362**

A person who has the right to use a house site is entitled to possess and use the lot of land owned by the collective, and to utilize such lot of land to build a dwelling and auxiliary facilities in accordance with law.

#### **Article 363**

The acquisition, exercise, and transfer of the right to use a house site are governed by the laws on land administration and the relevant regulations of the State.

#### **Article 364**

Where a house site is destroyed due to natural disasters or for other reasons, the right to use the house site is extinguished. A new house site shall be allocated in accordance with law to the villagers who have lost their house site.

#### **Article 365**

Where a registered right to use a house site is transferred or extinguished, registration of the change or deregistration of the right shall be made in a timely manner.

## **Chapter XIV**

### **Right of Habitation**

#### **Article 366**

A person with a right of habitation is entitled to the right to usufruct of possessing and using another person's dwelling as agreed in the contract, so as to meet his needs of habitation.

### **Article 367**

To create a right of habitation, the parties shall enter into a contract on such a right in writing.

A contract on a right of habitation generally contains the following clauses:

- (1) the name and address of each party;
- (2) the location of the dwelling;
- (3) the conditions and requirements for the habitation;
- (4) the duration of the right of habitation; and
- (5) the means of dispute resolution.

### **Article 368**

A right of habitation shall be created free of charge, unless otherwise agreed by the parties. To create a right of habitation, an application for the registration of the right shall be filed with the registration authority. The right of habitation is created upon registration.

### **Article 369**

A right of habitation may not be transferred or inherited. The dwelling in which a right of habitation is created may not be let on lease, unless otherwise agreed by the parties.

### **Article 370**

A right of habitation is extinguished if the term of the right expires, or if the person entitled to the right deceases. Where a right of habitation is extinguished, deregistration of the right shall be made in a timely manner.

### **Article 371**

Where a right of habitation is created by will, the relevant provisions of this Chapter shall be applied *mutatis mutandis*.

## **Chapter XV**

### **Easements**

### **Article 372**

A person who has a right to easement is entitled to utilize the immovable property of another person as agreed in a contract so as to enhance the efficiency of his own immovable property.

The immovable property of another person referred to in the preceding paragraph is the servient land, and the immovable property of the person entitled to the easement is the dominant land.

### **Article 373**

To create an easement, the parties shall enter into an easement contract in writing.

An easement contract generally contains the following clauses:

- (1) the name and address of each party;
- (2) the location of the servient land and the dominant land;
- (3) the purposes and methods of utilizing the servient land;
- (4) the duration of the easement;
- (5) the fees and the mode of payment; and
- (6) the means of dispute resolution.

### **Article 374**

An easement is created at the time the easement contract enters into effect. Where the parties request for registration, applications may be filed with the registration authority for the registration of the easement; without registration, such an easement may not be asserted against a bona fide third person.

### **Article 375**

A right holder of the immovable property served as the servient land shall allow the person entitled to an easement to utilize the immovable property as agreed in the contract and may not interfere with the exercise of the right to easement by such person.

### **Article 376**

A person entitled to an easement shall utilize the servient land in accordance with the purposes and methods of utilization as agreed in the contract, and minimize restrictions on the real rights of the right holder in the servient land.

### **Article 377**

The duration of an easement shall be agreed upon by the parties, provided that it may not exceed the remaining term of the right to usufruct, such as the right to contractual management of land or the right to use a lot of land for construction purposes.

### **Article 378**

Where an owner of a lot of land is entitled to or is encumbered with an easement, when a right to usufruct, such as a right to contractual management of land or a right to use a house site is created on the lot of land, the usufructuary shall continue to be entitled to or be encumbered with the easement thereon that has already been created.

### **Article 379**

Where a right to usufruct, such as a right to contractual management of land, a right to use a lot of land for construction purposes, and a right to use a house site, has already been created on a lot of land, the owner of the lot of land may not create an easement on the lot without the consent of the usufructuary.

### **Article 380**

An easement may not be transferred separately. Where a right to contractual management of land, a right to use a lot of land for construction purposes and the like rights are transferred, the easement shall be transferred concomitantly, unless otherwise agreed in the contract.

### **Article 381**

An easement may not be mortgaged separately. Where a right to contractual management of land, a right to use a lot of land for construction purposes, and the like rights are mortgaged, the easement shall be transferred concomitantly upon enforcement of the mortgage.

### **Article 382**

Where a right to easement is involved when the dominant land and a right to contractual management of land, a right to use a lot of land for construction purposes, and the like rights thereon are partially transferred, the transferee is simultaneously entitled to the easement.

### **Article 383**

Where a right to easement is involved when the servient land and a right to contractual management of land, a right to use a lot of land for construction purposes, and the like rights thereon are partially transferred, the easement is legally binding on the transferee.

### **Article 384**

Where a person entitled to an easement is under any of the following circumstances, the person who has the right to the servient land is entitled to rescind the easement contract to extinguish the easement:

(1) abusing the right to easement in violation of the provisions of laws or the contract; or

(2) in case of paid use of the servient land, failing to pay the relevant fees despite of receipt of two warning notices within a reasonable period of time after the payment is due according to the agreement.

### **Article 385**

Where a registered easement is altered, transferred, or extinguished, the registration of the change or deregistration shall be made in a timely manner.

## **Part Four**

### **Security Interests**

#### **Chapter XVI**

#### **General Rules**

##### **Article 386**

Where a debtor fails to perform his obligations due, or any event upon which an security interest is to be enforced as agreed upon by the parties occurs, the person entitled to the security interest has priority to be paid from the collateral in accordance with law, unless otherwise provided by law.

##### **Article 387**

Where a creditor needs to secure his claims in a civil activity such as lending, buying and selling, and the like, he may create a security interest in accordance with the provisions of this Code and other laws.

Where a third person provides security to the creditor for the debtor, the debtor may be requested to provide a counter-security. Counter-security shall be governed by the provisions of this Code and other laws.

##### **Article 388**

To create a security interest, a security contract shall be entered into in accordance with the provisions of this Code and other laws. Security contracts include mortgage contracts, pledge contracts, and other contracts with a function of security. A security contract is a contract secondary to the principal contract with the principal claims and obligations. Where the principal contract is void, the security contract is also void, unless otherwise provided by law.

Where a security contract is determined to be void, if the debtor, the security provider, and the creditor are at fault, they shall each bear civil liability in proportion to their fault.

##### **Article 389**

Unless otherwise agreed by the parties, the scope covered by a security interest includes the principal claim and its interests based on the principal contract, liquidated damages, compensatory damages, and the expenses arising from safekeeping the collateral and enforcing the security interests.

### **Article 390**

Where a collateral is destructed, damaged, or lost, or is expropriated during the secured period, the person entitled to a security interest has priority to be paid from the insurance payment, compensation, or indemnity received on the collateral. Where the collateral is destructed, damaged, or lost, or is expropriated prior to the due date of performance of the secured claim, the insurance payment, compensation, or indemnity may also be placed in escrow.

### **Article 391**

Where a third person provides security and the creditor allows the debtor to transfer all or part of the secured obligations without the third person's written consent, the security provider is no longer liable for securing the part of the obligations so transferred.

### **Article 392**

Where a claim is secured by both a collateral and a surety, and the debtor fails to perform his obligations due or any event upon which a security interest is to be enforced as agreed upon by the parties occurs, the creditor shall enforce the claim in accordance with the agreement. Where there is no agreement or the agreement is unclear, if the collateral is provided by the debtor, the creditor shall first enforce the claim against the collateral, and if the collateral is provided by a third person, the creditor may elect to enforce the claim against the collateral or request the surety to assume liability. After the third person who provides security has assumed such liability, he has the right of indemnification against the debtor.

### **Article 393**

A security interest is extinguished under any of the following circumstances:

- (1) the claim under the principal contract is extinguished;
- (2) the security interest is enforced;
- (3) the creditor waives his security interest; or
- (4) there exists any other circumstance in which security interest is extinguished as provided by law.

## **Chapter XVII**

### **Mortgage**

## **Section 1**

### **General Mortgage**

#### **Article 394**

Where a debtor or a third person, in order to secure the performance of an obligation, mortgages his property to the creditor without relinquishing the possession of the property, the creditor has priority to be paid from the collateral if the debtor fails to perform his obligation due or an event upon the occurrence of which the security interest in the collateral is to be enforced as agreed by the parties occurs.

The debtor or the third person as specified in the preceding paragraph is the mortgagor, the creditor is the mortgagee, and the collateral mortgaged to secure the claim is the mortgaged property.

#### **Article 395**

The following property, which the debtor or a third person is entitled to dispose of, may be mortgaged:

- (1) buildings and other things attached to the land;
- (2) the right to use a lot of land for construction purposes;
- (3) the right to use the sea areas;
- (4) production equipment, raw materials, work in process, and finished products;
- (5) buildings, vessels, and aircraft under construction;
- (6) vehicles for transport; and

(7) other property not prohibited by laws or administrative regulations from being mortgaged.

A mortgagor may mortgage the property listed in the preceding paragraph concurrently.

#### **Article 396**

An enterprise, an individual-run industrial and commercial household, or an agricultural production operator may mortgage their production equipment, raw materials, work in process, and finished products that they currently own or thereafter acquired, and if the debtor fails to perform his obligations due or any event upon which a security interest in the mortgaged property is to be enforced as agreed by the parties occurs, the creditor has priority to be paid from the movable property determined at the time when the mortgaged property is ascertained.

#### **Article 397**

Where a building is mortgaged, the right to use the lot of land in the area occupied by the building for construction purposes shall be mortgaged concomitantly.

Where a right to use a lot of land for construction purposes is mortgaged, any building on the lot of land shall be mortgaged concomitantly.

Where a mortgagor fails to concomitantly mortgage the property as provided in the preceding paragraph, the unmortgaged property in question shall be deemed to be concomitantly mortgaged.

#### **Article 398**

A right to use a lot of land for construction purposes of a township or village enterprise may not be mortgaged separately. Where a factory premise or any other building of a township or village enterprise is mortgaged, the right to use the lot of land in the area occupied by the building for construction purposes shall be concomitantly mortgaged.

#### **Article 399**

The following property may not be mortgaged:

- (1) land ownership;
- (2) the right to use the land owned by a collective, such as house sites, land and hills retained for household use, unless it may be mortgaged as provided by law;
- (3) educational facilities, medical and health facilities, and other public welfare facilities of non-profit legal persons established for public welfare purposes, such as schools, kindergartens, and medical institutions;
- (4) property of which the ownership or right to the use is unclear or disputed;
- (5) property that has been seized, detained, or placed under custody in accordance with law; and
- (6) other property that may not be mortgaged as provided by laws or administrative regulations.

#### **Article 400**

To create a mortgage, the parties shall enter into a mortgage contract in writing.

A mortgage contract generally contains the following terms:

- (1) the type and amount of the secured claim;
- (2) the term during which the debtor shall perform obligations;
- (3) such particulars as the name and quantity of the mortgaged property; and
- (4) the scope of the security interest covered.

#### **Article 401**

Where, prior to the due date of performance of an obligation, the mortgagee reaches an agreement with the mortgagor under which the mortgaged property belongs to the creditor in the event that the debtor fails to perform the obligation due, the mortgagee, regardless, may only have priority to be paid from the mortgaged property in accordance with law.

## **Article 402**

To create a mortgage on the property as specified in Subparagraphs (1) through (3) of the first paragraph of Article 395, or on the building under construction as specified in Subparagraph (5) of the first paragraph of this Code, registration shall be made for the mortgage. The mortgage shall be created upon registration.

## **Article 403**

A mortgage on movable property shall be created at the time when the mortgage contract enters into effect; without registration, such a mortgage may not be asserted against a bona fide third person.

## **Article 404**

A mortgage on movable property may not be asserted against a buyer who has paid a reasonable purchase price and acquired the mortgaged property in the ordinary course of business.

## **Article 405**

Where a mortgaged property has been let to and possessed by another person prior to creation of the mortgage, the lease relationship shall not be affected by the mortgage.

## **Article 406**

A mortgagor may transfer the mortgaged property to another person during the term of the mortgage unless otherwise agreed by the parties. The transfer of the mortgaged property shall not affect the mortgage.

A mortgagor who transfers the mortgaged property to another person shall notify the mortgagee in a timely manner. The mortgagee may request the mortgagor to apply the proceeds of the transfer to pay off the obligation before it is due, or place such proceeds in escrow where he may establish that the transfer of the mortgaged property may impair his right to the mortgage. The portion of the proceeds obtained from the transfer in excess of the amount of the obligation owed shall belong to the mortgagor, while any deficiency shall be satisfied by the debtor.

## **Article 407**

A mortgage may not be transferred separately from the underlying claim or be used as security for another claim. Where a claim is transferred, the mortgage securing the claim shall be transferred concomitantly with it, unless otherwise provided by law or agreed by the parties.

## **Article 408**

Where an act of a mortgagor suffices to reduce the value of the mortgaged property, the mortgagee is entitled to request the mortgagor to refrain from performing such an act. Where the value of the mortgaged property is reduced, the mortgagee is entitled to request the mortgagor to restore its value or provide additional security to the extent of the reduced value. Where the mortgagor neither restores the original value of the mortgaged property, nor provides additional security therefor, the mortgagee is entitled to request the debtor to pay off the debt before it is

due.

#### **Article 409**

A mortgagee may waive his right to the mortgage, or waive his priority order in the line of the mortgagees. A mortgagee and the mortgagor may reach an agreement to change such things as the mortgagee's priority order in the line of the mortgagees and the amount of the secured claim, provided that any change to the mortgage may not adversely affect the other mortgagees without their written consent.

Where a debtor creates a mortgage on his own property, and the mortgagee waives his right to the mortgage and his priority order in the line of mortgagees, or changes the mortgage, the other security providers shall be exempted from the security liability to the extent of the rights and interests of the mortgagee that are forfeited owing to the waiver of his priority to be paid from the mortgaged property, unless the other security providers are committed to still provide security.

#### **Article 410**

Where a debtor fails to perform his obligation due or an event upon which a mortgage is to be enforced as agreed upon by the parties occurs, the mortgagee may, upon agreement with the mortgagor, have the priority right to appraise and accept the mortgaged property, or apply the proceeds obtained from auction or sale of the mortgaged property to satisfy his claim against the mortgagor. Where the agreement is detrimental to the interests of other creditors, the other creditors may request the people's court to rescind the agreement.

Where a mortgagee and a mortgagor fail to reach an agreement on the methods of enforcing the mortgage, the mortgagee may request the people's court to have the mortgaged property sold at auction or in a sale.

The appraisal or sale of the mortgaged property shall be based on the market price thereof.

#### **Article 411**

Where a mortgage is created in accordance with the provisions of Article 396 of this Code, the mortgaged property shall be ascertained at the time when one of the following circumstances occurs:

- (1) the claim is not satisfied upon expiration of the term of performance of the obligation;
- (2) the mortgagor is declared bankrupt or dissolved;
- (3) an event upon which the mortgage is to be enforced as agreed upon by the parties occurs; or
- (4) any other circumstance that seriously affects the enforcement of the claim.

#### **Article 412**

Where a debtor fails to perform his obligation due or an event upon the occurrence of which the mortgage is to be enforced as agreed upon by the parties occurs, resulting in the seizure of the mortgaged property by the people's court in

accordance with law, the mortgagee is entitled to collect the natural fruits or legal proceeds accrued from the mortgaged property as of the date of the seizure, unless the mortgagee fails to notify the person who is obligated to pay off the legal proceeds.

The fruits or proceeds as specified in the preceding paragraph shall first be applied to offset the expenses of collecting them.

#### **Article 413**

Where the appraised value of a mortgaged property or the proceeds obtained from auction or sale of it is in excess of the amount of the obligation owed, the excessive portion shall belong to the mortgagor, while any deficiency shall be satisfied by the debtor.

#### **Article 414**

Where a property is mortgaged to two or more creditors, the proceeds obtained from auction or sale of the mortgaged property shall be applied in accordance with the following provisions:

(1) where the mortgages have all been registered, the order of payment is based on the priority in time of registration;

(2) a registered mortgage has priority over an unregistered mortgage to be paid; and

(3) where none of the mortgages are registered, payment shall be made on a pro rata basis against the claims.

The preceding paragraph shall be applied *mutatis mutandis* with regard to the priority order of payment for other security interests that are registrable.

#### **Article 415**

Where both a mortgage and a pledge are created on the same property, the priority order of payment with the proceeds obtained from auction or sale of the property shall be based on the priority in time of registration and delivery of the property.

#### **Article 416**

Where a principal claim secured by a mortgage on movable property is the purchase price of the mortgaged property, and registration for the mortgage is made within 10 days after delivery of the property, the mortgagee has the priority to be paid over the other persons, other than a lienholder, who have security interests thereon in relation to the purchaser of the mortgaged property.

#### **Article 417**

Where a right to use a lot of land for construction purposes is mortgaged, any newly added buildings on the lot of land are not part of the mortgaged property. Upon enforcement of the mortgage on the right to use the lot of land for construction purposes, the newly added buildings on such land shall be disposed of concomitantly with the right to use such land for construction purposes, provided that the mortgagee has no priority to be paid from the proceeds obtained from disposition of the newly

added buildings.

#### **Article 418**

Where a right to use a lot of land owned by a collective is mortgaged in accordance with law, the nature of the ownership and the purpose of use of the land may not be altered without going through statutory procedures after the mortgage is enforced.

#### **Article 419**

A mortgagee shall exercise his right to mortgage within the limitation period for claiming against the principal obligation; otherwise no protection may be provided by the people's court.

## **Section 2**

### **Maximum Mortgage for Floating Claims**

#### **Article 420**

Where a debtor or a third person provides a collateral for future claims that will arise consecutively within a certain period of time to secure performance of the obligations, if the debtor fails to perform an obligation due or an event upon which such a mortgage is to be enforced as agreed upon by the parties occurs, the mortgagee has the priority to be paid from the mortgaged property up to the maximum amount of his claim.

A claim that exists prior to the creation of the maximum mortgage for floating claims may, upon consent of the parties, be included in the claims secured by such a mortgage.

#### **Article 421**

Before the claims secured by the maximum mortgage for floating claims are ascertained, where part of the claims is transferred, the mortgage may not be transferred unless otherwise agreed by the parties.

#### **Article 422**

Before the claims secured by a maximum mortgage for floating claims are ascertained, the mortgagee and the mortgagor may change by agreement the period of time for the ascertainment of the claims, the scope of the claims, and the maximum amount of the claims, provided that such changes may not adversely affect other mortgagees.

### **Article 423**

The claims of the mortgagee are ascertained under one of the following circumstances:

- (1) where the agreed period of time for the claims to be ascertained expires;
- (2) where there is no agreement on the period of time for the claims to be ascertained or the agreement is unclear, and the mortgagee or the mortgagor requests for ascertainment of the claims after the lapse of two years from the date of the creation of the mortgage;
- (3) where it is impossible for a new claim to arise;
- (4) where the mortgagee knows or should have known that the mortgaged property has been seized or detained;
- (5) where the debtor or the mortgagor is declared bankrupt or dissolved; or
- (6) any other circumstance under which the claims are to be ascertained as provided by law.

### **Article 424**

In addition to the provisions of this Section, the relevant provisions of Section 1 of this Chapter shall be applied to the maximum mortgage for floating claims.

## **Chapter XVIII**

### **Pledge**

#### **Section 1**

#### **Pledge in Movable Property**

### **Article 425**

Where a debtor or a third person pledges his movable property to the creditor for possession in order to secure the performance of an obligation, if the debtor fails to perform the obligation due or an event upon the occurrence of which the pledge is to be enforced as agreed upon by the parties occurs, the creditor has priority to be paid from the movable property.

The debtor or third person as specified in the preceding paragraph is the pledgor, the creditor is the pledgee, and the movable property delivered is the pledged

property .

#### **Article 426**

Movable property may not be pledged where its transfer is prohibited by laws or administrative regulations.

#### **Article 427**

To create a pledge, the parties shall enter into a pledge contract in writing.

A pledge contract generally contains the following clauses:

- (1) the type and amount of the secured claim;
- (2) the term for the debtor to perform the obligation;
- (3) such particulars as the name and quantity of the pledged property;
- (4) the scope of the security covered; and
- (5) the time for and the mode of the delivery of the pledged property.

#### **Article 428**

Where, prior to the due date of performance of an obligation, the pledgee reaches an agreement with the pledgor under which the pledged property belongs to the creditor in the event that the debtor fails to perform the obligation due, the pledgee, regardless, may only have priority to be paid from the pledged property in accordance with law.

#### **Article 429**

A pledge is created upon delivery of the pledged property by the pledgor.

#### **Article 430**

A pledgee has the right to collect the fruits and proceeds accrued from the pledged property unless otherwise agreed in the contract.

The fruits and proceeds as specified in the preceding paragraph shall first be applied to offset the expenses of collection of them.

#### **Article 431**

A pledgee who, during the effective period of the pledge, uses or disposes of the pledged property without the consent of the pledgor and thus causes damage to the latter shall be liable for compensation.

#### **Article 432**

A pledgee is obligated to well keep the pledged property, and shall be liable for compensation where the pledged property is destructed, damaged, or lost due to his improper custody.

Where the pledgee's act is likely to cause the pledged property to be destructed, damaged, or lost, the pledgor may request the pledgee to place the pledged property in escrow, or request the pledgee to discharge the obligation before it is due and return

the pledged property.

#### **Article 433**

Where, due to a cause the pledgee is not responsible for, the pledged property is likely to be damaged or significantly diminished in value which suffices to jeopardize the pledgee's rights, the pledgee has the right to request the pledgor to provide additional security; where the pledgor fails to do so, the pledgee may have the pledged property sold at auction or in a sale and may, by agreement with the pledgor, apply the proceeds obtained from the auction or sale to discharge the obligation before it is due or place such proceeds in escrow.

#### **Article 434**

A pledgee shall be liable for compensation where he, during the effective period of the pledge, repledges the pledged property without the consent of the pledgor to a third person and thus causes destruction, damage, or loss to the pledged property.

#### **Article 435**

A pledgee may waive his right to the pledge. Where a debtor creates a pledge on his own property and the pledgee waives his right to the pledge, the other security providers shall be exempted from the security liability to the extent of the rights and interests of the pledgee that are forfeited owing to the waiver of his priority to be paid from the collateral, unless the other security providers are committed to still provide security.

#### **Article 436**

A pledgee shall return the pledged property after the debtor has performed his obligation or the pledgor has paid the secured claim before it is due.

Where a debtor fails to perform an obligation due or an event upon the occurrence of which the pledge is to be enforced as agreed upon by the parties occurs, the pledgee may, by agreement with the pledgor, appraise and accept the pledged property as satisfaction of his claim, or have priority to be paid from the proceeds obtained from auction or sale of the pledged property.

The appraisal or sale of the pledged property shall be based on the market price.

#### **Article 437**

A pledgor may request the pledgee to enforce the pledge in a timely manner after expiration of the period for the performance of the obligation; where the pledgee fails to do so, the pledgor may request the people's court to have the pledged property sold at auction or in a sale.

Where a pledgor requests the pledgee to enforce the pledge in a timely manner, and damage is caused to the pledgor owing to the pledgee's indolence in doing so, the pledgee shall be liable for compensation.

#### **Article 438**

After a pledged property is appraised and accepted by the pledgee as full or partial satisfaction of his claim, or is sold at auction or in a sale, where the value of

the pledged property as appraised or the proceeds obtained from auction or sale is in excess of the amount of the obligation owed, the excessive portion shall belong to the pledgor, while any deficiency shall be satisfied by the debtor.

#### **Article 439**

A pledgor and a pledgee may create a maximum pledge for floating claims upon agreement.

In addition to the relevant provisions of this Section, the relevant provisions of Section 2 of Chapter 17 of this Book shall be applied mutatis mutandis to the maximum pledge for floating claims.

## **Section 2**

### **Pledge on a Right**

#### **Article 440**

The following rights, which a debtor or a third person is entitled to dispose of, may be pledged:

- (1) bills of exchange, promissory notes, and checks;
- (2) bonds and certificates of deposits;
- (3) warehouse receipts and bills of lading;
- (4) transferable fund shares and equity;
- (5) transferable proprietary rights consisted in intellectual property such as the right to the exclusive use of registered trademarks, patent rights, and copyrights;
- (6) existing and after-acquired accounts receivables; and
- (7) other proprietary rights that may be pledged in accordance with the provisions of laws and administrative regulations.

#### **Article 441**

Unless otherwise provided by law, a pledge on a bill of exchange, promissory note, check, bond, certificate of deposits, warehouse receipt, or bill of lading is created at the time when the certificate of such a right is delivered to the pledgee, or, in the absence of such a certificate, at the time when the pledge is registered.

#### **Article 442**

Where the maturity date for the payment or the delivery of goods against a pledged bill of exchange, promissory note, check, bond, certificate of deposits,

warehouse receipt, or bill of lading precedes the due date of the principal claim, the pledgee may cash the certificate or take delivery of the goods, and, upon agreement with the pledgor, apply the purchase price or the goods accepted to discharge the obligation before it is due or place it in escrow.

#### **Article 443**

A pledge on fund shares or equity is created upon registration of the pledge.

The fund shares or equity, after being pledged, may not be transferred unless otherwise agreed by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor from the transfer of the pledged fund shares or equity shall be applied to pay to the pledgee to discharge the obligation before it is due or be placed in escrow.

#### **Article 444**

A pledge on a proprietary right in intellectual property, such as the right to the exclusive use of a registered trademark, a patent right, or copyright, is created upon registration.

A proprietary right in intellectual property, after being pledged, may not be transferred or licensed by the pledgor to another person, unless otherwise agreed by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor from the transfer or licensing of the proprietary right in the pledged intellectual property shall be applied to pay to the pledgee to discharge the obligation before it is due or be placed in escrow.

#### **Article 445**

A pledge on an account receivable is created upon registration.

An account receivable, after being pledged, may not be transferred unless otherwise agreed by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor from the transfer of the account receivable shall be applied to pay to the pledgee to discharge the obligation before it is due or be placed in escrow.

#### **Article 446**

In addition to the provisions of this Section, the relevant provisions of Section 1 of this Chapter shall be applied to the pledge on rights.

## **Chapter XIX**

### **Lien**

**Article 447**

Where a debtor fails to perform his obligation due, the creditor may retain the debtor's movable property which is already in the lawful possession of the creditor and has priority to be paid from the movable property.

The creditor as specified in the preceding paragraph is the lienholder, the movable property in his possession for this purpose is the property under lien.

**Article 448**

The movable property retained under a lien by the creditor shall be in the same legal relationship as the underlying claim, unless the lienholder and the debtor are both enterprises.

**Article 449**

The movable property that may not be retained under a lien as provided by law or agreed by the parties may not be so retained.

**Article 450**

Where the property retained under a lien is a divisible thing, the value of the retained property shall be equivalent to the amount of the obligation.

**Article 451**

A lienholder is obligated to well keep the retained property and shall be liable for compensation where the retained property is destructed, damaged, or lost due to improper custody.

**Article 452**

A lienholder has the right to collect the fruits and proceeds accrued from the property retained under a lien.

The fruits and proceeds as specified in the preceding paragraph shall first be applied to offset the expenses for collecting them.

**Article 453**

A lienholder and the debtor shall reach an agreement on the term of performance of the obligation after the property is retained under the lien; where there is no agreement or the agreement is unclear, the lienholder shall give the debtor a period of 60 or more days as the term of performance, unless the retained movable property is fresh, living, or perishable so that it is hard to keep it for long. Where a debtor defaults upon expiration of the term of performance, the lienholder may, upon agreement with the debtor, appraise and accept the retained property to fully or partially satisfy the obligation, or be paid with priority from the proceeds obtained from auction or sale of the retained property.

The appraisal or sale of the retained property shall be based on the market price.

**Article 454**

A debtor may request the lienholder to enforce the lien after expiration of the

term of performance of the obligation; where the lienholder fails to do so, the debtor may request the people's court to have the retained property sold at auction or in a sale.

#### **Article 455**

After the property retained under a lien is appraised and accepted by the lienholder as full or partial satisfaction of his claim, or is sold at auction or in a sale, where the value of the retained property or the proceeds obtained from auction or sale of the retained property is in excess of the amount of the obligation owed, the excessive portion shall belong to the debtor, while any deficiency shall be satisfied by the debtor.

#### **Article 456**

Where a lien is created on a movable property on which a mortgage or pledge has already been created, the lienholder has priority to be paid.

#### **Article 457**

A lien is extinguished where the lienholder loses possession of the retained property or accepts another form of security provided by the debtor.

## **Part Five**

### **Possession**

#### **Chapter XX.**

### **Possession**

#### **Article 458**

In the case of possession of immovable or movable property based on a contractual relationship, matters such as the use of the immovable or movable property, the benefits therefrom, and the default liability shall be subject to the agreement in the contract; where there is no agreement thereon in the contract or the agreement is unclear, the relevant provisions of laws shall be applied.

#### **Article 459**

Where damage is caused to the immovable or movable property by its possessor as a result of use of the property, a mala fide possessor shall be liable for compensation.

### **Article 460**

Where an immovable or movable property is in the possession of another person, a person holding a right in the property may request the possessor to return the original property and its fruits and proceeds, provided that the necessary expenses incurred by a bona fide possessor for the maintenance of the immovable or movable property shall be paid.

### **Article 461**

Where the immovable or movable property in another person's possession is destructed, damaged, or lost, and a person holding a right in the property requests for compensation, the possessor shall return to the right holder the amount of insurance payment, compensation or indemnity he has received for the property destructed, damaged, or lost; where the right holder has not been fully compensated, a possessor mala fide shall also compensate for the loss.

### **Article 462**

Where an immovable or movable property is trespassed or converted, its possessor is entitled to request restitution. Where there is a nuisance against the possession, the possessor has the right to request the removal of the nuisance or the elimination of the danger. Where damage is caused as a result of the trespass, conversion, or nuisance, the possessor has the right to request compensatory damages in accordance with law.

The possessor's right to request for restitution is extinguished if such a right has not been exercised within one year from the date the trespass or conversion occurs.

## **Book Three**

### **Contracts**

#### **Part One**

#### **General Provisions**

## **Chapter I**

### **General Rules**

#### **Article 463**

This Book regulates the civil-law relations arising from contracts.

#### **Article 464**

A contract is an agreement on the establishment, modification, or termination of a civil juristic relationship between persons of the civil law.

An agreement on establishing a marriage, adoption, guardianship, or the like personal relationships shall be governed by the provisions of laws providing for such personal relationships; in the absence of such provisions, the provisions of this Book may be applied *mutatis mutandis* according to the nature of such agreements.

#### **Article 465**

A contract formed in accordance with law is protected by law.

A contract formed in accordance with law is legally binding only on the parties thereto, unless otherwise provided by law.

#### **Article 466**

Where the parties have a dispute on the understanding of a contract clause, the meaning of the disputed clause shall be determined according to the provisions in the first paragraph of Article 142 of this Code.

Where a contract is made in two or more languages which are agreed to be equally authentic, the words and sentences used in each text shall be presumed to have the same meaning. Where the words and sentences used in each text are inconsistent, interpretation thereof shall be made in accordance with the related clauses, nature, and purpose of the contract, and the principle of good faith, and the like.

#### **Article 467**

For a contract not explicitly provided in this Code or other laws, the General Provisions of this Book shall be applied, and the provisions provided in this Book and other laws on a contract which is most similar to the said contract may be applied *mutatis mutandis*.

The laws of the People's Republic of China shall apply to the contracts of Sino-foreign equity joint venture, contracts of Sino-foreign contractual joint venture, or contracts of Sino-foreign cooperation in the exploration and exploitation of natural resources that to be performed within the territory of the People's Republic of China.

### **Article 468**

For a creditor-debtor relation not arising from a contract, the provisions of laws relating to such relations shall be applied; in the absence of such provisions, the relevant provisions of the General Provisions of this Book shall be applied, unless they shall not be applied based on the nature of the creditor-debtor relation.

## **Chapter II**

### **Conclusion of Contracts**

### **Article 469**

The parties may conclude a contract in writing, orally, or in other forms.

A writing refers to any form that renders the content contained therein capable of being represented in a tangible form, such as a written agreement, letter, telegram, telex, or facsimile.

A data message in any form, such as electronic data interchange and e-mails, that renders the content contained therein capable of being represented in a tangible form and accessible for reference and use at any time shall be deemed as a writing.

### **Article 470**

The content of a contract shall be agreed by the parties and generally includes the following clauses:

- (1) name or designation and domicile of each party;
- (2) objects;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) time period, place, and manner of performance;
- (7) default liability; and
- (8) dispute resolution.

The parties may conclude a contract with reference to the various types of model contracts.

### **Article 471**

The parties may conclude a contract by making an offer and acceptance or other means.

#### **Article 472**

An offer is an expression of intent to conclude a contract with another person, and the expression of intent shall conform to the following conditions:

(1) the content shall be specific and definite; and

(2) it is indicated therein that the offeror is to be bound by his expression of intent upon acceptance thereof by an offeree.

#### **Article 473**

An invitation to offer is a manifestation that a person expects another person to make an offer to him. Auction announcements, bidding announcements, stock prospectuses, bond prospectuses, fund prospectuses, commercial advertisements and promotions, and mailed price catalogs, and the like, are invitations to offer.

A commercial advertisement and promotion shall constitute an offer if its content conforms to the conditions for an offer.

#### **Article 474**

The time when an offer becomes effective shall be governed by the provisions of Article 137 of this Code.

#### **Article 475**

An offer may be withdrawn. The withdrawal of an offer shall be governed by the provisions of Article 141 of this Code.

#### **Article 476**

An offer may be revoked, unless under any of the following circumstances:

(1) the offeror has explicitly indicated that the offer is irrevocable by specifying a time limit for acceptance or in any other manner; or

(2) the offeree has reasons to believe that the offer is irrevocable and the offeree has made reasonable preparations to perform the contract.

#### **Article 477**

Where an expression of intent to revoke an offer is made in a real-time communication, the content of such expression of intent shall be known to the offeree before the offeree makes an acceptance; where an expression of intent to revoke an offer is not made in a real-time communication, it shall reach the offeree before the offeree makes an acceptance.

#### **Article 478**

An offer becomes invalid under any of the following circumstances:

(1) the offer is rejected;

(2) the offer is revoked in accordance with law;

(3) the offeree makes no acceptance prior to expiration of the time limit for acceptance; or

(4) the offeree materially alters the content of the offer.

**Article 479**

An acceptance is an expression of intent of the offeree to accept an offer.

**Article 480**

An acceptance shall be made by means of notice, except that an acceptance may be made by performing an act according to the parties' course of dealing or as indicated in the offer.

**Article 481**

An acceptance shall reach the offeror within the time limit specified in the offer.

Where no time limit for acceptance is specified in the offer, an acceptance shall reach the offeror in accordance with the following provisions:

(1) where an offer is made in a real-time communication, acceptance shall be made promptly; or

(2) where an offer is not made in a real-time communication, the acceptance notice shall reach the offeror within a reasonable period of time.

**Article 482**

Where an offer is made through a letter or a telegram, the time limit for acceptance shall be counted from the date shown on the letter or the date the telegram is handed in for dispatch or, if no such a date is shown on the letter, from the mailing date shown by the postmark of the letter. Where an offer is made by means of instantaneous communications such as telephone calls, facsimiles, or e-mails, the time limit for acceptance shall be counted from the moment the offer reaches the offeree.

**Article 483**

A contract is formed at the time when an acceptance becomes effective, unless otherwise provided by law or agreed by the parties.

**Article 484**

Where an acceptance is made by means of notice, the time when the acceptance becomes effective shall be governed by the provisions of Article 137 of this Code.

Where an acceptance notice is not required, the acceptance becomes effective when an act of acceptance is performed according to the parties' course of dealing or as indicated by the offer.

**Article 485**

An acceptance may be withdrawn. The provisions of Article 141 of this Code shall apply to the withdrawal of an acceptance.

**Article 486**

Where an offeree makes an acceptance beyond the time limit for acceptance, or where the acceptance is made within the time limit for acceptance but it cannot reach

the offeror in time under normal circumstances, such an acceptance constitutes a new offer unless the offeror timely notifies the offeree that the acceptance is effective.

#### **Article 487**

Where an offeree makes an acceptance notice within the time limit for acceptance, if the notice would have reached the offeror in time under normal circumstances but reaches the offeror beyond the time limit for other reasons, the acceptance shall be effective unless the offeror timely notifies the offeree that the acceptance is not accepted as it exceeds the time limit for acceptance.

#### **Article 488**

The content of an acceptance shall be consistent with the content of the offer. Where the offeree proposes in the acceptance any material alteration to the content of the offer, it shall constitute a new offer. An alteration concerning the object of the contract, the quantity, quality, price or remuneration, time period of performance, place and manner of performance, default liability, the methods of dispute resolution, or the like is a material alteration to the content of an offer.

#### **Article 489**

Where an acceptance makes a non-material alteration to the offer, the acceptance shall be effective and the content of the contract shall be as altered by the acceptance, unless the offeror objects in time, or the offer indicates that an acceptance may not make any alteration to the content of the offer.

#### **Article 490**

Where the parties conclude a contract in the form of a written agreement, the contract is formed at the time when the parties all sign, stamp, or put their fingerprints on the memorandum. Prior to signing, stamping, or putting their fingerprints thereon, where one of the parties has already performed the principal obligation and the other party has accepted the performance, the contract is formed at the time of such acceptance.

Where a contract is required to be concluded in writing in accordance with laws or administrative regulations or agreed by the parties and the parties fail to make the contract in writing, if one of the parties has already performed the principal obligation and the other party has accepted the performance, the contract is formed at the time of such acceptance.

#### **Article 491**

Where the parties conclude a contract in the form of a letter, data message, or the like, and a confirmation letter is required to be signed, the contract is formed when the confirmation letter is signed.

Where the information about goods or services published by a party via information network, such as internet, conforms to the conditions for an offer, unless otherwise agreed by the parties, a contract is formed at the time when the other party chooses such product or service and successfully submits the order.

## **Article 492**

The place where an acceptance becomes effective is the place where the contract is formed.

Where a contract is concluded in the form of data message, unless otherwise agreed by the parties, the recipient's principal place of business is the place where the contract is formed; in the absence of a principal place of business, the recipient's domicile is the place where the contract is formed.

## **Article 493**

Where the parties conclude a contract in the form of a memorandum of contract, unless otherwise agreed by them, the place where the contract is finally signed, stamped, or fingerprinted is the place where the contract is formed.

## **Article 494**

Where the State issues a State purchase order or a mandatory assignment in accordance with the needs such as emergency and disaster relief, pandemic prevention and control, or the like, the persons of the civil law concerned shall conclude a contract in accordance with the rights and obligations provided by the relevant laws and administrative regulations.

The party that has an obligation to make an offer in accordance with the provisions of laws and administrative regulations shall make a reasonable offer in a timely manner.

The party that has an obligation to make an acceptance in accordance with the provisions of laws and administrative regulations shall not reject the reasonable request of the other party to conclude a contract.

## **Article 495**

A letter of subscription, letter of order, and letter of reservation, and the like, in which the parties agree to conclude a contract within a certain period of time in the future, constitutes a preliminary contract.

Where one of the parties fails to perform the obligation to conclude a contract agreed in the preliminary contract, the other party may request such party to bear the liability for breach of the preliminary contract.

## **Article 496**

A standard clause refers to a clause formulated in advance by a party for the purpose of repeated use which has not been negotiated with the other party when concluding the contract.

Upon concluding a contract, where a standard clause is used, the party providing the standard clause shall determine the parties' rights and obligations in accordance with the principle of fairness, and shall, in a reasonable manner, call the other party's attention to the clause concerning the other party's major interests and concerns, such as a clause that exempts or alleviates the liability of the party providing the standard clause, and give explanations of such clause upon request of the other party. Where the party providing the standard clause fails to perform the aforementioned obligation

of calling attention or giving explanations, thus resulting in the other party's failure to pay attention to or understand the clause concerning his major interests and concerns, the other party may claim that such clause does not become part of the contract.

#### **Article 497**

A standard clause is void under any of the following circumstances:

(1) existence of a circumstance under which the clause is void as provided in Section 3 of Chapter VI of Book One and Article 506 of this Code;

(2) the party providing the standard clause unreasonably exempts or alleviates himself from the liability, imposes heavier liability on the other party, or restricts the main rights of the other party; or

(3) the party providing the standard clause deprives the other party of his main rights.

#### **Article 498**

Where a dispute arises over the understanding of a standard clause, the clause shall be interpreted in accordance with its common understanding. Where there are two or more interpretations of a standard clause, the clause shall be interpreted in a manner unfavorable to the party providing the standard clause. Where a standard clause is inconsistent with a non-standard clause, the non-standard clause shall prevail.

#### **Article 499**

Where a rewarder through making a public announcement promises to pay a reward to anyone who has completed a particular act, the person who has completed the act may request the rewarder to pay.

#### **Article 500**

During the course of concluding a contract, the party that falls under any of the following circumstances and causes loss to the other party shall bear the liability for compensation:

(1) under the guise of concluding a contract, engaging in consultation with malicious intention;

(2) intentionally concealing material facts or providing false information concerning the conclusion of the contract; or

(3) conducting any other acts contrary to the principle of good faith.

#### **Article 501**

The parties shall not disclose or improperly use the trade secrets or other confidential information that are obtained in the course of concluding a contract, regardless of whether the contract is formed or not. The party that discloses or improperly uses such trade secrets or information and thus causes losses to the other party shall bear the liability for compensation.

## **Chapter III**

### **Effect of Contracts**

#### **Article 502**

A contract formed in accordance with law becomes effective upon its formation, unless otherwise provided by law or agreed by the parties.

Where there are laws or administrative regulations providing that a contract shall be subject to the approval and other procedures, such provisions shall be followed. Where failure to complete the approval or other procedures is to affect the validity of the contract, the validity of the clauses concerning the performance of an obligation of filing for approval, and the like, and the other relevant clauses in the contract shall not be affected. Where the party obligated to complete application for approval or other procedures fails to do so, the other party may request the former party to bear the liability for breach of such obligation.

Where there are laws or administrative regulations providing that modification, assignment, or rescission of a contract shall be subject to approval or other procedures, such provisions shall be followed.

#### **Article 503**

Where a person without authority concludes a contract in the name of a principal, and if the principal has already started performing the contractual obligations or accepted the performance of the other party, the contract is deemed ratified.

#### **Article 504**

Where the legal representative of a legal person or the responsible person of an unincorporated organization concludes a contract *ultra vires*, such an act is effective and the contract is binding on the legal person or the unincorporated organization unless the other party knows or should have known that the legal representative or the responsible person acts *ultra vires*.

#### **Article 505**

Where the parties conclude a contract beyond their scope of business, the validity of the contract shall be determined according to the provisions in Section 3 of Chapter VI of Book One of this Code and this Book, and the contract shall not be determined as invalid solely on the ground that it is beyond their scope of business.

#### **Article 506**

An exculpatory clause in a contract exempting the liability on the following acts are void:

- (1) causing physical injury to the other party; or

(2) causing losses to the other party's property intentionally or due to gross negligence.

#### **Article 507**

Where a contract does not take effect, or is void, revoked, or terminated, the validity of a clause concerning dispute resolution shall not be affected.

#### **Article 508**

The validity of a contract which is not covered by the provisions in this Book shall be governed by the relevant provisions in Chapter VI of Book One of this Code.

## **Chapter IV**

### **Performance of Contracts**

#### **Article 509**

The parties shall fully perform their respective obligations as contracted.

The parties shall comply with the principle of good faith, and perform such obligations as sending notices, rendering assistances, and keeping confidentiality in accordance with the nature and purpose of the contract and the course of dealing .

The parties shall avoid wasting the resources, polluting the environment, or damaging the ecology in the course of performance of the contract.

#### **Article 510**

Where the parties have not agreed on such content as the quality, price or remuneration, or the place of performance, and the like, or the agreement is unclear, after the contract becomes effective, the parties may make a supplementary agreement; where the parties fail to reach a supplementary agreement, such content shall be determined according to the relevant clauses of the contract or the course of dealing.

#### **Article 511**

Where an agreement between the parties concerning the content of their contract is unclear and such content cannot be determined according to the provisions of the preceding Article, the following provisions shall be applied:

(1) where the quality requirements are not clearly stipulated, the contract shall be performed in accordance with a mandatory national standard, or a recommendatory national standard in the absence of a mandatory national standard, or the standard of the industry in the absence of a recommendatory national standard. In the absence of any national or industrial standards, the contract shall be performed in accordance with the general standard or a specific standard conforming to the purpose of the contract.

(2) where the price or remuneration is not clearly stipulated, the contract shall be performed in accordance with the market price in the place of performance at the time the contract is concluded. Where the government-set or government-guided price shall be applied as required by law, the contract shall be performed on such a price.

(3) where the place of performance is not clearly stipulated, the contract shall be performed at the place of the party receiving money where payment of money is involved, or, where real estate is to be delivered, at the place where the real estate is located. For other subject matters, the contract shall be performed at the place where the party performing the obligation is located.

(4) where the period of performance is not clearly stipulated, the debtor may perform his obligations at any time, and the creditor may request the debtor to perform at any time, provided that he shall give the debtor necessary time for preparation;

(5) where the mode of performance is not clearly stipulated, the contract shall be performed in a manner conducive to realizing the purpose of the contract; and

(6) where the allocation of expenses for performance is not clearly stipulated, the expenses shall be borne by the party performing the obligation; where the expenses for performance are increased owing to the creditor's reason, the creditor shall bear the increased part of the expenses.

#### **Article 512**

Where the object of an electronic contract concluded through internet or other information network is the delivery of goods and the goods are to be delivered by express delivery services, the time of delivery is the time of acknowledging receipt of the goods by the recipient. Where the object of the said electronic contract is the provision of services, the time for provision of the service is the time stated in the automatic generated electronic certificate or physical certificate. Where there is no time stated in such a certificate or the time stated therein is inconsistent with the actual time for provision of the service, the actual time for provision of the service shall prevail.

Where the subject matter of the said electronic contract is delivered by online transmission, the time of delivery is the time when the subject matter of the contract enters the specific system designated by the other party and can be searched and identified.

Where the parties to the said electronic contract agree otherwise on the mode and time of delivery of goods or provision of services, such agreement shall be complied with.

#### **Article 513**

Where a government-set or government-guided price is adopted in a contract, if the said price is adjusted within the delivery period stipulated in the contract, the contract price shall be the price as adjusted at the time of delivery. Where an overdue delivery of the subject matter occurs, the contract price shall be the original price if the price rises at the time of delivery, or the price as adjusted if the price falls at the time of delivery. Where a delayed delivery of the subject matter or an overdue

payment occurs, the contract price shall be the price as adjusted if the price rises, or the original price if the price falls.

#### **Article 514**

Where an obligation is payment of money, unless otherwise provided by law or agreed by the parties, the creditor may request the debtor to perform the obligation by the lawful currency of the place of actual performance.

#### **Article 515**

Where a contract has multiple objects and the debtor is required to perform only one of them, the debtor has the right of choice to choose the object to perform, unless otherwise provided by law or agreed by the parties, or otherwise determined by the course of dealing.

Where the party with the right of choice fails to make the choice within the agreed period or upon expiration of the period of performance, and still fails to make the choice within a reasonable period of time after being demanded, the right of choice shall be shifted to the other party.

#### **Article 516**

A party shall promptly notify the other party when exercising the right of choice, and the object of the contract to be performed shall be ascertained at the time when such notice reaches the other party. The ascertained object shall not be changed, unless otherwise consented to by the other party.

Where one of the objects available for choice becomes impossible to perform, the party with the right of choice shall not choose such object to perform, unless the impossibility to perform is caused by the other party.

#### **Article 517**

Where there are two or more creditors, if the object is divisible and each creditor is entitled to the claim in proportion to his own share, then the claim is a claim by share; where there are two or more debtors, if the object is divisible and each debtor assumes the obligation in proportion to his own share, then the obligation is an obligation by share.

Where it is difficult to determine the share among the creditors with a claim by share or the debtors with an obligation by share, each is deemed to have or assume an equal share.

#### **Article 518**

Where there are two or more creditors, and any or all of the creditors may request the debtor to perform the obligation, their claim is a joint and several claim; where there are two or more debtors, and the creditor can request any or all of the debtors to perform the full obligation, the obligation is a joint and several obligation.

A joint and several claim or a joint and several obligation shall be provided by law or agreed by the parties.

### **Article 519**

Where it is difficult to determine the share of obligation among the debtors assuming joint and several liabilities, each debtor is deemed to owe an equal share.

A debtor assuming joint and several liabilities who has assumed obligation in excess of his own share has the right to contribution against the other debtors assuming joint and several liabilities to the extent of the share not performed by the other debtors, and accordingly shall be entitled to the rights of a creditor, provided that the other creditors' interests shall not be harmed. The defenses of the other debtors assuming joint and several liabilities against the creditor may be asserted against such a debtor.

Where a debtor assuming joint and several liabilities against whom the right to contribution is claimed is unable to perform the share he is liable to assume, the other debtors assuming joint and several liabilities shall be liable for the relevant part of the obligation on a pro rata basis.

### **Article 520**

Where one of the debtors assuming joint and several liabilities has performed his obligation, offset his obligation, or placed the subject matter of the obligation in escrow, the obligation of the other debtors owed to the creditor is extinguished to the corresponding extent, and such a debtor has the right to contribution against the other debtors in accordance with the provisions of the preceding Article.

Where the obligation of one of the debtors assuming joint and several liabilities is discharged by the creditor, the obligation of the other debtors assuming joint and several liabilities owed to the creditor is extinguished to the extent of the share that such a debtor assumes.

Where the obligation of one of the debtors assuming joint and several liabilities has merged with the claim of the creditor to be held by the same person, after deducting such share of obligation, the creditor's claim against the other debtors assuming joint and several liabilities continues to exist.

Where a creditor delays in accepting the performance of one of the debtors assuming joint and several liabilities, such delay takes effect on the other debtors assuming joint and several liabilities.

### **Article 521**

Where it is difficult to determine the share among the creditors with joint and several claims, each creditor is deemed to have an equal share.

A creditor who has accepted the performance of obligation in excess of his own share shall reimburse the other creditors with joint and several claims with him on a pro rata basis.

The relevant provisions on a joint and several obligation in this Chapter may be applied to a joint and several claim *mutatis mutandis*.

### **Article 522**

Where the parties agree that the debtor shall perform the obligation to a third

person, if the debtor fails to perform the obligation to the third person or the performance does not conform to the agreement, the debtor shall bear default liability to the creditor.

Where it is provided by law or agreed by the parties that a third person may directly request the debtor to perform the obligation to him, and the third person does not explicitly reject it within a reasonable period of time, if the debtor fails to perform the obligation to the third person or the performance does not conform to the agreement, the third person may request the debtor to bear default liability. The defenses that the debtor has against the creditor may be asserted against the third person.

### **Article 523**

Where the parties agree that the obligation shall be performed by a third person to the creditor, if the third person fails to perform the obligation or the performance does not conform to the agreement, the debtor shall bear default liability to the creditor.

### **Article 524**

Where a debtor fails to perform an obligation, and a third person has a lawful interest in the performance of the obligation, the third person is entitled to perform it to the creditor on behalf of the debtor, unless the obligation may only be performed by the debtor based on the nature of the obligation, as agreed by the parties, or as provided by law.

After the creditor accepts the performance of such obligation by the third person, his claim against the debtor shall be assigned to the third person, unless otherwise agreed by the debtor and the third person.

### **Article 525**

Where the parties have mutual obligations to each other and there is an order of performance of the obligations, the parties shall perform the obligations at the same time. Any party has the right to reject the other party's request for performance before the other party performs. Any party has the right to reject the other party's request for the corresponding performance if the other party's performance does not conform to the agreement.

### **Article 526**

Where the parties have mutual obligations to each other and there is an order of performance of the obligations, if the party obligated to perform first fails to perform the obligation, the party obligated to perform later has the right to reject the request for performance made by that party. Where the performance of the party obligated to perform first does not conform to the agreement, the party obligated to perform later has the right to reject the request made by the former party for performance of the corresponding obligation.

### **Article 527**

A party obligated to perform the obligation first may suspend his performance if there is definite evidence proving that the other party falls under any of the following situations:

- (1) its operating conditions are seriously deteriorated;
- (2) it transfers property or withdraws capital to evade debts;
- (3) the good will of its business has been lost; or
- (4) there's another circumstance under which it has lost or is losing its ability to perform the obligation.

A party that suspends the performance with no such definite evidence shall bear default liability.

#### **Article 528**

A party who suspends performance in accordance with the provisions of the preceding Article shall notify the other party in a timely manner. The performance shall be resumed if the other party provides an appropriate bond. After a party suspends its performance, where the other party fails to restore his ability to perform the obligation and fails to provide an appropriate bond within a reasonable period of time, it shall be deemed to be an indication through his act that the party will not perform his principal obligation, and the party that suspends the performance may cancel the contract and may request the other party to bear default liability.

#### **Article 529**

Where a debtor's performance of an obligation has become difficult owing to the reason that the creditor fails to notify the debtor that it has split into two or more entities, merges with another entity, or changed its domicile, the debtor may suspend performance or place the subject matter in escrow.

#### **Article 530**

A creditor may reject the debtor's early performance of the obligation, unless the early performance is not detrimental to the interests of the creditor.

Any additional expenses incurred to the creditor due to the debtor's early performance of the obligation shall be borne by the debtor.

#### **Article 531**

A creditor may reject the debtor's partial performance of the obligation, unless the partial performance is not detrimental to the interests of the creditor.

Any additional expenses incurred to the creditor due to the debtor's partial performance of the obligation shall be borne by the debtor.

#### **Article 532**

After a contract becomes effective, any party shall not fail to perform its contractual obligations on the ground that either party's name or entity name, legal representative, the responsible person, or the person handling the contract has been changed.

#### **Article 533**

After a contract is formed, where a fundamental condition upon which the

contract is concluded is significantly changed which are unforeseeable by the parties upon conclusion of the contract and which is not one of the commercial risks, if continuing performance of the contract is obviously unfair to one of the parties, the party that is adversely affected may re-negotiate with the other party; where such an agreement cannot be reached within a reasonable period of time, the parties may request the people's court or an arbitration institution to rectify or rescind the contract.

The people's court or an arbitration institution shall rectify or rescind the contract in compliance with the principle of fairness, taking into account the actual circumstances of the case.

#### **Article 534**

Where the parties take advantage of the contract to commit an act that endangers the State's interests and public interests, the market regulatory authority and other relevant administrative authorities shall be responsible for supervising and handling it in accordance with the provisions of laws and administrative regulations.

## **Chapter V**

### **Preservation of Contracts**

#### **Article 535**

Where a debtor's right against a counterparty, or an accessory right related thereto, has not been claimed against the counterparty owing to the debtor's indolence, and the enforcement of the creditor's due claim is thus adversely affected, the creditor may request the people's court to allow him to exercise by subrogation the debtor's claim against the counterparty of the debtor in his own name, unless such claim belongs exclusively to the debtor himself.

The scope of the right of subrogation is limited to the creditor's due claim. The necessary expenses for the creditor to exercise the right of subrogation shall be borne by the debtor.

The counterparty's defenses against the debtor may be asserted against the creditor.

#### **Article 536**

Prior to the due date of the creditor's claim, where there exists a circumstance under which the limitation period for the debtor's principal claim or an accessory claim related thereto is to expire, or the debtor fails to timely declare his claim in a bankruptcy proceeding, and the enforcement of the creditor's claim is thus adversely affected, the creditor may, by subrogation, request the counterparty of the debtor to perform his obligation to the debtor, declare the debtor's claim to the bankruptcy administrator, or take other necessary acts.

### **Article 537**

Where the people's court determines that the right of subrogation has been established, the counterparty of the debtor shall perform the obligation to the creditor. After the performance is accepted by the creditor, the corresponding rights and obligations between the creditor and the debtor, and those between the debtor and the counterparty, are terminated. Where the debtor's claim or an accessory claim related thereto against the counterparty is subject to preservation or enforcement measures, or where the debtor becomes bankrupt, it shall be dealt with in accordance with the provisions of the relevant laws.

### **Article 538**

Where a debtor gratuitously disposes of his proprietary rights and interests by waiving his claims, waiving the security for his claims, or transferring his properties without consideration, and the like, or maliciously extends the period of performance of his due claim, and the enforcement of the creditor's claim is thus adversely affected, the creditor may request the people's court to revoke the debtor's act.

### **Article 539**

Where a debtor transfers his property at an obviously unreasonably low price, takes another's property or provides security for another's obligation at an obviously unreasonable high price, and the enforcement of the creditor's claim is thus adversely affected, the creditor may request the people's court to revoke the debtor's act if the counterparty of the debtor knows or should have known such circumstance.

### **Article 540**

The scope of the right to revocation shall be limited to the creditor's claim. The necessary expenses for the creditor to exercise the right to revocation shall be borne by the debtor.

### **Article 541**

The right to revocation shall be exercised within one year from the date on which the creditor knows or should have known the cause for the revocation. The right to revocation shall be extinguished where a creditor does not exercise such right within five years since the date on which the act of the debtor occurs.

### **Article 542**

Where an act of the debtor adversely affecting the enforcement of the creditor's claim is revoked, such act does not have legal effect *ab initio*.

## **Chapter VI**

### **Modification and Assignment of Contracts**

### **Article 543**

The parties may modify the contract upon agreement through consultation.

### **Article 544**

Where the content of the contract that the parties agree to modify is not clear, it is presumed that the contract has not been modified.

### **Article 545**

A creditor may assign his claim in whole or in part to a third person, except that:

- (1) a claim is not assignable by virtue of its nature;
- (2) a claim is not assignable as agreed by the parties; or
- (3) a claim is not assignable in accordance with law.

Where the parties agree that a non-pecuniary claim may not be assigned, such agreement shall not be asserted against a *bona fide* third person. Where the parties agree that a pecuniary claim may not be assigned, such agreement shall not be asserted against a third person.

### **Article 546**

Where a creditor assigns his claim but fails to notify the debtor thereof, the assignment is not effective against the debtor.

The notice of the assignment of a claim may not be revoked, unless consented to by the assignee.

### **Article 547**

Where a creditor assigns his claim, the assignee shall acquire the accessory right related to the claim, unless the accessory right belongs exclusively to the creditor.

Failure to register the assignment of the accessory right or failure to change the possession thereof shall not affect the acquisition of the accessory right by the assignee.

### **Article 548**

After a debtor receives a notice of assignment of a claim, the debtor's defenses against the assignor may be asserted against the assignee.

### **Article 549**

A debtor may claim a set-off against the assignee under any of the following circumstances:

- (1) when the debtor receives the notice of assignment of a claim, the debtor has a claim against the assignor which becomes due prior to or at the same time of the due date of the assigned claim; or
- (2) the debtor's claim and the assigned claim are generated on the basis of the same contract.

**Article 550**

The expenses for performance increased due to the assignment of a claim shall be borne by the assignor.

**Article 551**

Where a debtor delegates his obligation in whole or in part to a third person, the consent of the creditor shall be obtained.

The debtor or the third person may demand the creditor to give his consent within a reasonable period of time. Where the creditor makes no indication, it shall be deemed as no consent given.

**Article 552**

Where a third person agrees with the debtor to join in the obligation and notifies the creditor thereof, or a third person indicates to the creditor his willingness to join in the obligation, if the creditor fails to explicitly make a rejection within a reasonable period of time, the creditor may request the third person to assume the joint and several obligation with the debtor to the extent of the obligation the third person is willing to assume.

**Article 553**

Where a debtor delegates his obligation, the new debtor may assert a defense of the original debtor against the creditor; where the original debtor has a claim against the creditor, the new debtor may not claim a set-off against the creditor.

**Article 554**

Where a debtor delegates his obligation, the new debtor shall assume the accessory obligation related to the principal obligation, unless the accessory obligation belongs exclusively to the original debtor.

**Article 555**

A party may assign his rights and delegate his obligations under a contract to a third person with the consent of the other party.

**Article 556**

Where the rights and obligations under a contract are assigned and delegated together, the provisions on assignment of claims and delegation of obligations shall be applied.

**Chapter VII****Termination of Rights and Obligations under a Contract**

### **Article 557**

A claim or obligation shall be terminated under any of the following circumstances:

- (1) the obligation has been performed;
- (2) the obligations are offset against each other;
- (3) the debtor has placed the subject matter in escrow in accordance with law;
- (4) the creditor has exempted the obligation;
- (5) the claim and obligation are merged to be held by the same person; or
- (6) any other circumstance under which the parties' agreement is terminated as provided by law or agreed by the parties.

The relationship of rights and obligations under a contract shall be terminated upon rescission of the contract.

### **Article 558**

After the parties' claims and obligations are terminated, the parties shall, in compliance with the principle of good faith and the like, perform such obligations as sending notification, rendering assistance, keeping confidentiality, and retrieving the used items according to the course of dealing.

### **Article 559**

Upon termination of a claim and an obligation, a right accessory to the claim shall be extinguished concomitantly, unless otherwise provided by law or agreed by the parties.

### **Article 560**

Where a debtor owes to a creditor multiple obligations of the same kind, and the debtor's performance is not sufficient to discharge all of the obligations, upon making performance, the debtor shall designate which obligation is to be discharged, unless otherwise agreed by the parties.

Where the debtor fails to make such a designation, the due obligation shall be performed first. Where multiple obligations are all due, the obligation not secured or with the least security shall be performed first. Where none of the obligations are secured or the obligations are equally secured, the obligation with which the debtor assumes the heaviest burden shall be performed first. Where the burdens are the same, the obligations shall be performed in the order of their due dates. Where the due dates are the same, the obligations shall be performed on a pro rata basis.

### **Article 561**

In addition to performing the principal obligation, a debtor shall pay to the creditor interests and other expenses related to the enforcement of the obligation. Where the payment is not sufficient to discharge all of the obligations, unless otherwise agreed by the parties, he shall perform the obligation in accordance with the following order:

- (1) the relevant expenses incurred by the creditor for enforcing his claim;
- (2) the interests; and
- (3) the principal obligation.

#### **Article 562**

The parties may rescind the contract upon agreement through consultation.

The parties may agree on the causes for rescission of the contract by a party. When a cause for rescission of contract arises, the party with the right to rescission may rescind the contract.

#### **Article 563**

The parties may rescind the contract under any of the following circumstances:

- (1) the purpose of a contract is not able to be achieved due to *force majeure*;
- (2) prior to expiration of the period of performance, one of the parties explicitly expresses or indicates by his act that he will not perform the principal obligation;
- (3) one of the parties delays his performance of the principal obligation and still fails to perform it within a reasonable period of time after being demanded;
- (4) one of the parties delays his performance of the obligation or has otherwise acted in breach of the contract, thus makes it impossible for the purpose of the contract to be achieved; or
- (5) any other circumstance as provided by law.

For a contract under which the debtor is required to continuously perform an obligation for an indefinite period of time, the parties thereto may rescind the contract at any time, provided that the other party shall be notified within a reasonable period of time.

#### **Article 564**

Where a time limit for exercising the right to rescind the contract is provided by law or agreed by the parties, if the parties have not exercised such right upon expiration of the period, such a right shall be extinguished.

Where no time limit for exercising the right to rescind the contract is provided by law or agreed by the parties, such a right shall be extinguished if the party with the right to rescission does not exercise such right within one year after he knows or should have known the causes for rescission, or within a reasonable period of time after being demanded by the other party.

#### **Article 565**

Where one of the parties requests to rescind the contract in accordance with law, the other party shall be duly notified. The contract shall be rescinded at the time the notice reaches the other party, or, where the notice states that the contract shall be automatically rescinded if the debtor fails to perform his obligation within a specified period of time, the contract shall be rescinded when the debtor fails to perform the obligation upon expiration of such specified period of time. Where the other party has

objections to the rescission of the contract, either party may request the people's court or an arbitration institution to determine the validity of the rescission.

Where one of the parties, without notifying the other party, requests the rescission of the contract by directly filing a lawsuit or applying for arbitration in accordance with law, and the people's court or arbitration institution confirms such request, the contract shall be rescinded when a duplicated copy of the complaint or the application letter for arbitration is served on the other party.

#### **Article 566**

After a contract is rescinded, where the obligations have not yet been performed, the performance shall cease; where the obligations have already been performed, the parties may, taking into account the performance status and the nature of the contract, request restoration to the original status or other remedial measures taken, and have the right to request for compensation for losses.

Where a contract is rescinded due to a default, the party with the right to rescind the contract may request the breaching party to bear default liability, unless otherwise agreed by the parties.

After the principal contract is rescinded, a security provider shall still be obligated to secure the debtor's liability, unless otherwise agreed in the security contract.

#### **Article 567**

Termination of the relationship of rights and obligations under a contract does not affect the validity of the contract clauses regarding settlement and liquidation.

#### **Article 568**

Where the parties mutually owe obligations to each other, and the subject matter of the obligations are of the same kind and quality, any party may offset his obligation against the due obligation of the other party, unless the obligation cannot be offset by virtue of the nature of the obligations, or in accordance with the agreements by the parties or the provisions of law.

A party who claims a set-off shall notify the other party. The notice shall become effective when it reaches the other party. No conditions or time limit may be attached to the set-off.

#### **Article 569**

Where the parties mutually owe obligations to each other and the subject matter of the obligations are not of the same kind or quality, the obligations may also be offset upon agreement by the parties through consultation.

#### **Article 570**

Where it is difficult to perform an obligation under any of the following circumstances, a debtor may place the subject matter in escrow:

- (1) the creditor refuses to accept the performance without just course;
- (2) the creditor cannot be located;

(3) the creditor dies with his heirs or estate administrator not determined, or the creditor loses his capacity for performing civil juristic acts with no guardian determined; or

(4) any other circumstance as provided by law.

Where the subject matter is not suitable for being placed in escrow or the expenses therefor are too high, the debtor may sell the subject matter through auction or sale and place the proceeds thus obtained in escrow in accordance with law.

#### **Article 571**

A subject matter or the proceeds obtained from auction or sale of the subject matter is placed in escrow where the debtor delivers the subject matter or proceeds thereof to the escrow agency in accordance with law.

Where a subject matter or its proceeds has been placed in escrow, the debtor is deemed to have delivered the subject matter to such extent.

#### **Article 572**

After a subject matter is placed in escrow, the debtor shall promptly notify the creditor or the creditor's heir, estate administrator, guardian, or custodian for his property.

#### **Article 573**

After a subject matter is placed in escrow, the risk of destruction, damage, or loss thereof shall be assumed by the creditor. During the period the subject matter is placed in escrow, the accrued proceeds of the subject matter shall belong to the creditor. The expenses thus incurred shall be borne by the creditor.

#### **Article 574**

The creditor may collect the subject matter placed in escrow at any time, except that where the creditor owes due obligation to the debtor, the escrow agency shall reject the creditor's request for collecting it before the creditor performs such obligation or providing security therefor.

The creditor's right to collect the subject matter placed in escrow is extinguished if such right is not exercised within five years from the date the subject matter is delivered to the escrow agency, and such subject matter shall be escheated to the State after the escrow agency's expenses are deducted. However, where a creditor fails to perform his due obligation to the debtor, or where the creditor waives his right to collect the subject matter placed in escrow in writing to the escrow agency, the debtor has the right to take back the subject matter after paying the escrow agency's expenses.

#### **Article 575**

Where a creditor exempts part or all of the debtor's obligations, the claims and obligations shall be terminated in part or in whole, unless the debtor objects within a reasonable period of time.

### **Article 576**

Where a claim and an obligation are merged to be held by the same person, the claim and obligation shall be terminated, unless it is detrimental to the interests of a third person.

## **Chapter VIII**

### **Default Liability**

### **Article 577**

Where a party fails to perform his contractual obligation or his performance does not conform to the agreement, he shall bear default liability such as continuing to perform his obligations, taking remedial measures, or compensating for losses.

### **Article 578**

Where a party explicitly expresses or indicates by his act that he will not perform his contractual obligation, the other party may request the former party to bear default liability before expiration of the time period of performance.

### **Article 579**

Where a party fails to pay the price, remuneration, rent, or interests, or fails to perform another pecuniary obligation, the other party may request for such payment or performance.

### **Article 580**

Where a party fails to perform a non-pecuniary obligation or his performance does not conform to the agreement, the other party may request for such performance unless:

- (1) the performance is impossible either *de jure* or *de facto*;
- (2) the object of the obligation is not suitable for a compulsory performance or the expenses for the performance are too high; or
- (3) the creditor fails to request for performance within a reasonable period of time.

Where one of the situations specified in the preceding paragraph exists so that the purpose of the contract cannot be achieved, the people's court or an arbitration institution may terminate the contractual relationship of rights and obligations upon request by a party, but the default liability shall still be borne without being affected.

**Article 581**

Where a party fails to perform his obligation or his performance does not conform to the agreement, if the obligation shall not be enforced by virtue of the nature of the obligation, the other party may request such party to bear the expenses of a substitute performance by a third person.

**Article 582**

Where the performance does not conform to the agreement, default liability shall be borne in accordance with the contract between the parties. Where the default liability is not stipulated or is not clearly stipulated in the contract, and if it cannot be determined according to the provisions of Article 510 of this Code, the aggrieved party may, by virtue of the nature of the object and according to the degree of the loss, reasonably request the other party to bear the default liability such as repair, redoing, replacement, return of the object, decrease in price or remuneration, and the like.

**Article 583**

Where a party fails to perform his contractual obligation or his performance does not conform to the agreement, he shall make compensation if, after he has performed his obligation or has taken remedial measures, the other party still suffers loss.

**Article 584**

Where a party fails to perform his contractual obligation or his performance does not conform to the agreement so that the other party suffers loss, the amount of compensation shall be equivalent to the loss caused by the breach of contract, including the benefits expected to be obtained should the contract had been performed, except that it shall not exceed the loss that may be caused by the breach that the breaching party foresees or should have foreseen at the time of conclusion of the contract.

**Article 585**

The parties may agree that, upon default by a party, a certain amount of liquidated damages shall be paid to the other party according to the circumstance of the breach, or the parties may agree on the method of calculating the compensation for losses arising from the breach.

Where the agreed liquidated damages are lower than the loss caused, the people's court or an arbitration institution may increase the amount upon request of a party. Where the agreed liquidated damages are excessively higher than the loss caused, the people's court or an arbitration institution may make appropriate reduction upon request of a party.

Where the parties agree on the liquidated damages for delayed performance, the breaching party shall continue to perform the obligation after paying the liquidated damages.

**Article 586**

The parties may agree that one party deposits earnest money to the other party to secure his claim. An earnest money deposit contract becomes effective upon actual

delivery of the earnest money.

The amount of the earnest money shall be agreed by the parties, except that it shall not exceed 20% of the value of the object of the principal contract, and any excessive part does not have the effect as earnest money. Where the amount of the earnest money actually delivered is more or less than the agreed amount, the agreed amount of the earnest money shall be deemed to have been changed.

#### **Article 587**

After a debtor has performed his obligation, the earnest money shall be calculated as part of the price or be refunded. Where a party paying the earnest money fails to perform his obligation or fails to perform it in conformity with the agreement, so that the purpose of the contract cannot be achieved, he is not entitled to request refund of the earnest money. Where a party receiving the earnest money fails to perform his obligation or fails to perform it in conformity with the agreement, so that the purpose of the contract cannot be achieved, he shall refund twice the amount of the earnest money to the other party.

#### **Article 588**

Where the parties agree on both liquidated damages and earnest money, when a party defaults, the other party may choose to apply either the clause on the liquidated damages or the clause on the earnest money.

Where the earnest money is not sufficient to compensate the losses caused by one party's default, the other party may request compensation for the losses in excess of the amount of the earnest money.

#### **Article 589**

Where a debtor performs his obligation in accordance with the agreement, and the creditor refuses to accept the performance without just cause, the debtor may request the creditor to compensate for any additional expenses.

The debtor does not need to pay interests for the period of delay in acceptance by the creditor.

#### **Article 590**

Where a party is unable to perform the contract due to *force majeure*, he shall be exempted from liability in whole or in part according to the impact of the *force majeure*, unless otherwise provided by law. The party unable to perform the contract due to *force majeure* shall promptly notify the other party to mitigate the losses that may be caused to the other party, and shall provide proof of the *force majeure* within a reasonable period of time.

Where the *force majeure* occurs after a party's delay in performance, such party's default liability shall not be exempted.

#### **Article 591**

After a party defaults, the other party shall take appropriate measures to prevent further loss. Where the loss is aggravated due to the failure of taking appropriate measures, no compensation shall be claimed for the aggravated part of the losses.

The reasonable expenses incurred by a party in preventing the aggravation of the loss shall be borne by the breaching party.

#### **Article 592**

Where both parties default, each shall bear corresponding liabilities.

Where one party's default causes loss to the other party, and the other party's fault contributes to the occurrence of such loss, the amount of compensation may be mitigated accordingly.

#### **Article 593**

A party who breaches a contract due to a third person's reason shall bear default liability to the other party in accordance with law. The dispute between the breaching party and the third person shall be handled in accordance with the provisions of law or their agreement.

#### **Article 594**

The limitation period for filing a lawsuit or applying for arbitration on a dispute arising from a contract for international sale of goods and a contract for the import and export of technology is four years.

## **Part Two**

### **Typical Contracts**

#### **Chapter IX**

#### **Sales Contracts**

#### **Article 595**

A sales contract is a contract under which a seller transfers his ownership over the subject matter to a buyer who pays the price in return.

#### **Article 596**

A sales contract generally contains clauses specifying the name, quantity, quality, and price of the subject matter, the time period, place, and method of performance, the packaging, the standard and methods for inspection, the mode of settlement, the language used in the contract, the validity thereof, and the like.

**Article 597**

If the ownership of a subject matter is unable to be transferred owing to the fact that the seller fails to obtain the right of disposal, the buyer may rescind the contract and request the seller to bear default liability.

Where there are laws, administrative regulations prohibiting or restricting the transfer of a subject matter, such provisions shall be followed.

**Article 598**

A seller shall perform its obligation of delivering the subject matter or the documents for taking delivery thereof, and transferring the ownership over the subject matter to the buyer.

**Article 599**

A seller shall deliver the relevant certificates and information other than the documents for taking delivery of the subject matter to the buyer in accordance with the contract or the course of dealing.

**Article 600**

Where a subject matter to be sold involves intellectual property rights, unless otherwise provided by law or agreed by the parties, the intellectual property rights thereof does not belong to the buyer.

**Article 601**

A seller shall deliver the subject matter at a time as agreed in the contract. Where a time period for delivery is stipulated in the contract, the seller may deliver the subject matter at any time within such period.

**Article 602**

Where there is no agreement between the parties on the time period for delivery or the agreement is unclear, the provisions of Article 510 and Subparagraph (4) of Article 511 of this Code shall be applied.

**Article 603**

A seller shall deliver the subject matter at the agreed place of delivery.

Where there is no agreement between the parties on the place of delivery or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the following provisions shall be applied:

(1) where the subject matter needs to be transported, the seller shall consign it to the first carrier for its delivery to the buyer; and

(2) where the subject matter does not need to be transported, if the seller and the buyer know the location of the subject matter when they conclude the contract, the seller shall deliver the subject matter at the said location; if the location of the subject matter is unknown, the seller shall deliver the subject matter at the seller's place of business at the time when the contract is concluded.

**Article 604**

The risks of destruction, damage, or loss of the subject matter shall be borne by the seller prior to the delivery and by the buyer after the delivery, unless otherwise provided by law or agreed by the parties.

**Article 605**

Where a subject matter fails to be delivered within the agreed time limit owing to the buyer's reason, the buyer shall bear the risks of destruction, damage, or loss of the subject matter from the time he breaches the agreement.

**Article 606**

Where a seller sells a subject matter en route that has been consigned to a carrier for transport, unless otherwise agreed by the parties, the risks of destruction, damage, or loss of the subject matter shall be borne by the buyer from the time when the contract is formed.

**Article 607**

A buyer shall bear the risks of destruction, damage, or loss of the subject matter when the seller has transported the subject matter to the place designated by the buyer and delivered to the carrier in accordance with the agreement.

Where there is no agreement between the parties on the place of delivery or the agreement is unclear, if the subject matter needs to be transported according to Subparagraph (1) of the second paragraph of Article 603 of this Code, the buyer shall bear the risks of destruction, damage, or loss of the subject matter when the seller consigns the subject matter to the first carrier for transport.

**Article 608**

Where a seller has placed the subject matter at the place of delivery in accordance with the agreement or the provisions of Subparagraph (2) of the second paragraph of Article 603 of this Code, if the buyer fails to take delivery thereof in default, the risks of destruction, damage, or loss of the subject matter shall be borne by the buyer from the time the buyer defaults.

**Article 609**

A seller's failure to deliver the documents and information of the subject matter in accordance with the agreement does not affect the shift of the risks of destruction, damage, or loss of the subject matter.

**Article 610**

Where a subject matter fails to meet the quality requirements so that the purpose of the contract cannot be achieved, the buyer may refuse to accept the subject matter or may rescind the contract. Where the buyer refuses to accept the subject matter or rescind the contract, the risks of destruction, damage, or loss of the subject matter shall be borne by the seller.

**Article 611**

Where a seller's performance is not in conformity with the agreement, the assumption of the risks of destruction, damage, or loss of the subject matter by the buyer does not affect the buyer's right to request the seller to bear default liability.

**Article 612**

A seller has an obligation to guarantee that no third person has any right over the subject matter delivered, unless otherwise provided by law.

**Article 613**

Where, at the time a contract is concluded, the buyer knows or should have known that a third person has a right over the subject matter of the contract, the seller shall not assume the obligation provided in the preceding Article.

**Article 614**

Where a buyer has a definite evidence to prove that a third person has a right over the subject matter, he may suspend payment therefor, unless the seller has provided an appropriate bond.

**Article 615**

A seller shall deliver the subject matter in conformity with the quality requirements as agreed by the parties. Where the seller provides quality specifications of the subject matter, the subject matter delivered shall conform to the specified quality requirements.

**Article 616**

Where there is no agreement between the parties on the quality requirements of the subject matter or the agreement is unclear, if the quality requirements cannot be determined according to the provisions of Article 510 of this Code, the provisions of Subparagraph (1) of Article 511 of this Code shall be applied.

**Article 617**

Where a subject matter delivered by the seller fails to meet the quality requirements, the buyer may request the seller to bear default liability in accordance with the provisions of Article 582 to 584 of this Code.

**Article 618**

Where the parties agree to alleviate or exempt the seller's liability for the defects of the subject matter, if the seller, intentionally or by gross negligence, fails to inform the buyer about the defect of the subject matter, he has no right to claim alleviation or exemption of the liability.

**Article 619**

A seller shall deliver the subject matter in compliance with the packaging method as agreed in the contract. Where there is no agreement between the parties on the packaging method or the agreement is unclear, if the packing method cannot be determined according to the provisions of Article 510 of this Code, the subject matter

shall be packed in a general way, or, in the absence of a general way, in a manner sufficient to protect the subject matter and conducive to saving resources and protecting the ecological environment.

#### **Article 620**

After a buyer receives the subject matter, he shall inspect it within the agreed period for inspection. If there is no agreed period for inspection, the buyer shall inspect it in a timely manner.

#### **Article 621**

Where the parties have agreed on a period for inspection, the buyer shall, within the period for inspection, notify the seller of any inconformity of the subject matter with the agreed quantity or quality. If notice is not given to the seller owing to the buyer's indolence, the subject matter is deemed to be in conformity with the agreed quantity or quality.

Where the parties have not agreed on a period for inspection, the buyer shall notify the seller of any inconformity of the subject matter with the agreed quantity or quality within a reasonable period of time after he discovers or should have discovered the inconformity. Where the buyer fails to notify the seller within a reasonable period of time or within two years after he takes delivery of the subject matter, the subject matter shall be deemed to be in conformity with the agreed quantity or quality, except that where there is a warranty period within which the quality of the subject matter is guaranteed, the warranty period shall be applied.

Where a seller knows or should have known that the subject matter delivered does not conform to the agreement, the buyer is not subject to the time limit for notification as provided in the preceding two paragraphs.

#### **Article 622**

Where a period for inspection agreed by the parties is excessively short, and it is difficult for the buyer to complete a comprehensive inspection within such a period by virtue of the nature of the subject matter and in accordance with the course of dealing, such period shall be deemed only as a period for the buyer to raise objections to the patent defects of the subject matter.

Where an agreed period for inspection or a warranty period for quality guarantee is shorter than the period provided by the relevant laws and administrative regulations, the latter shall prevail.

#### **Article 623**

Where the parties have not agreed on an inspection period, and the buyer has signed a delivery note, confirmation slip, or the like document on which the quantity, model, and specifications of the subject matter are stated, the buyer shall be presumed to have inspected the quantity and the patent defects of the subject matter, unless there is sufficient evidence to overturn such a presumption.

#### **Article 624**

Where a seller delivers a subject matter to a third person according to the

instructions given by the buyer, if the inspection standard agreed between the seller and the buyer are inconsistent with that agreed between the buyer and the third person, the inspection standard agreed between the seller and the buyer shall prevail.

#### **Article 625**

Where, in accordance with the provisions of laws and administrative regulations or as agreed by the parties, the subject matter shall be recycled after expiration of its valid service life, the seller has the obligation to recycle the subject matter by himself or by an authorized third person.

#### **Article 626**

A buyer shall make payment in accordance with the agreed amount and method of payment. Where there is no agreement between the parties on the amount of price or the method of payment, or the agreement is unclear, the provisions of Article 510 and Subparagraph (2) and (5) of Article 511 of this Code shall be applied.

#### **Article 627**

A buyer shall make payment at the place agreed in the contract. Where there is no agreement between the parties on the place of payment, or the agreement is unclear, if the place cannot be determined in accordance with the provisions of Article 510 of this Code, the buyer shall make the payment at the seller's place of business, except that payment shall be made at the place where the subject matter or the document for taking delivery thereof is delivered if the payment is conditioned upon the delivery of the subject matter.

#### **Article 628**

A buyer shall make payment at the time agreed in the contract. Where there is no agreement between the parties on the time for payment, or the agreement is unclear, if the time for payment cannot be determined according to the provisions of Article 510 of this Code, the buyer shall make payment at the same time as it receives the subject matter or the document for taking delivery thereof.

#### **Article 629**

Where the amount of the subject matter delivered by a seller exceeds the agreed amount, the buyer may accept or refuse to accept the excessive part. Where the buyer accepts the excessive part, it shall pay for it at the price agreed in the contract. If the buyer refuses to accept the excessive part, he shall notify the seller in a timely manner.

#### **Article 630**

Any proceeds accrued from the subject matter before delivery shall belong to the seller and any proceeds accrued from the subject matter after delivery shall belong to the buyer, unless otherwise agreed by the parties.

#### **Article 631**

Where a contract is rescinded due to the inconformity of the principal subject matter with the agreed requirements, the effect of the rescission shall be effective against the accessory subject matter. Where a contract is rescinded due to the

inconformity of the accessory subject matter with the agreed requirements, the effect of the rescission shall be effective against the principal subject matter.

#### **Article 632**

Where the object of a contract is composed of several subject matters, if one of them fails to conform to the requirements agreed in the contract, the buyer may rescind the part of the contract in connection with that subject matter. However, where separation of the said subject matter from the other subject matters is to markedly harm the value of the subject matters of the contract, the buyer may rescind the contract in connection with the multiple subject matters concerned.

#### **Article 633**

Where the subject matters are to be delivered by installment, if a seller fails to deliver one lot of the subject matters, or has delivered the lot in a manner not in conformity with the agreement, so that the purpose of the contract in connection with the said lot cannot be achieved, the buyer may rescind the part of the contract in connection with the said lot.

Where a seller fails to deliver one lot of the subject matters, or delivered the lot in a manner not in conformity with the agreement, so that the subsequent delivery of the remaining lots cannot achieve the purpose of the contract, the buyer may rescind the part of the contract in connection with the said lot and the remaining lots.

Where a buyer has rescinded a part of the contract in connection with one lot of the subject matters, if the said lot and any other lot are interdependent on each other, the buyer may rescind the contract in connection with all the lots disregarding whether they have been delivered or not.

#### **Article 634**

Where a buyer under an installment contract fails to make payment and the unpaid amount reaches one-fifth of the total price, if the buyer still fails to pay the due installment amount within a reasonable period of time after being demanded, the seller may request the buyer to pay the total sum or he may rescind the contract.

The seller who rescinds the contract may request the buyer to pay a fee for the use of the subject matter.

#### **Article 635**

The parties to a sale by sample shall seal up the sample and may make specifications of its quality. The subject matter delivered by the seller shall be identical in quality with the sample and its specifications.

#### **Article 636**

Where a buyer to a sale by sample is unaware of the sample's hidden defects, even if the subject matter delivered is identical with the sample, the quality of the subject matter delivered by the seller shall still conform to the general standard for the same category of goods.

**Article 637**

The parties to a sale on trial use may agree on a period for trial use of the subject matter. Where there is no agreement between the parties on the period for trial use or the agreement is unclear, if the period for trial use cannot be determined according to the provisions of Article 510 of this Code, it shall be determined by the seller.

**Article 638**

A buyer to a sale on trial use may purchase or refuse to purchase the subject matter within the period for trial use. Where, upon expiration of the period for trial use, the buyer makes no indication as to whether to purchase it or not, the buyer is deemed to have purchased the subject matter.

If a buyer to a sale on trial use has, within the period for the trial use, already made partial payment or has sold, leased, created a security interest in the subject matter, the buyer is deemed to have agreed to purchase it.

**Article 639**

Where there is no agreement between the parties to a sale on trial use on the fee for the use of the subject matter, or the agreement is unclear, the seller has no right to request the buyer to pay such fee.

**Article 640**

The risks of destruction, damage, or loss of the subject matter shall be borne by the seller within the period for the trial use.

**Article 641**

The parties may agree in a sales contract that the seller retains the ownership of the subject matter if the buyer fails to pay the price or perform other obligations.

The ownership of the subject matter retained by a seller, without being registered, shall not be asserted against a bona fide third.

**Article 642**

Where the parties agree that the seller shall retain the ownership of the subject matter of the contract, unless otherwise agreed by the parties, the seller has the right to take back the subject matter if the buyer falls under any of the following circumstances before such ownership is transferred and losses are thus caused to the seller:

(1) the buyer fails to make payment in accordance with the contract, and fails to pay it within a reasonable period of time after being demanded;

(2) the buyer fails to fulfill the specific conditions in accordance with the contract; or

(3) the buyer sells, pledges, or otherwise improperly disposes of the subject matter.

The seller may negotiate with the buyer to take back the subject matter. Where such negotiation fails, the procedures for enforcement of security interests may be

applied mutatis mutandis.

#### **Article 643**

After a seller has taken back the subject matter according to the first paragraph of the preceding Article, the buyer may request to redeem the subject matter if he eliminates the cause for the seller's retrieving of the subject matter within a reasonable period of redemption agreed by the parties or set by the seller.

Where a buyer does not redeem the subject matter within the redemption period, the seller may sell the subject matter to a third person at a reasonable price. After deducting from the sale proceeds the amount unpaid by the buyer and the necessary expenses, any balance shall be returned to the buyer; if the sale proceeds are insufficient to cover the unpaid amount and the other necessary expenses, the deficiency shall be paid by the buyer.

#### **Article 644**

The rights and obligations of the parties to a sale through bidding, as well as the procedures for the bidding, shall be governed by the provisions of the relevant laws and administrative regulations.

#### **Article 645**

The rights and obligations of the parties to an auction, as well as the procedures of the auction, shall be governed by the provisions of the relevant laws and administrative regulations.

#### **Article 646**

Where there are provisions of laws governing other non-gratuitous contracts, such provisions shall be followed. In an absence of such a provision, the relevant provisions on sales contracts shall be applied mutatis mutandis.

#### **Article 647**

Where the parties agree to transfer the ownership of the subject matter by barter trade, the relevant provisions on sales contracts shall be applied mutatis mutandis.

## **Chapter X**

### **Contracts for the Supply and Consumption of Electricity, Water, Gas, or Heat**

#### **Article 648**

A contract for the supply and consumption of electricity is a contract under which a supplier provides electricity to the consumer who pays the price in return.

A supplier providing electricity to the public shall not refuse a reasonable request of a consumer to conclude a contract.

**Article 649**

A contract for the supply and consumption of electricity generally contains clauses specifying the mode, quality and time of the supply, the volume, address, and nature of the consumption, the measuring method, the price, the settlement method of electricity fees, the responsibility for the maintenance of electricity supply and consumption facilities, and the like.

**Article 650**

The place of performance of a contract for the supply and consumption of electricity shall be agreed by the parties; if there is no agreement between the parties or the agreement is unclear, the place of demarcation of the property rights in the electricity supply facilities shall be the place of performance.

**Article 651**

A supplier of electricity shall safely supply electricity in accordance with the quality standard for power supply set by the State and in the agreement. Where a supplier fails to safely supply electricity in accordance with the quality standard for power supply set by the State or in the agreement, thus causing losses to the consumer, the supplier shall bear the liability for compensation.

**Article 652**

Where a supplier of electricity needs to cut off electricity supply due to scheduled or unscheduled overhauls of the electricity supply facilities, restriction on electricity consumption in accordance with law, or consumer's illegal consumption of the electricity, and the like, he shall notify the consumer in advance in accordance with the relevant regulations of the State. Where a supplier cuts off the electricity supply without notifying the consumer in advance, thus causing losses to the consumer, the supplier shall bear the liability for compensation.

**Article 653**

A supplier of electricity shall rush to repair without delay in accordance with the relevant regulations of the State whenever the electricity supply is cut off due to such reasons as natural disasters. Where the supplier fails to do so and thus causes losses to the consumer, the supplier shall bear the liability for compensation.

**Article 654**

A consumer of electricity shall pay the electricity fees in time in accordance with the relevant regulations of the State and the agreement between the parties. Where a consumer fails to pay the electricity fees due, he shall pay the agreed liquidated damages. Where a consumer, after being demanded, still fails to pay the electricity fees and the liquidated damages within a reasonable period of time, the supplier may stop the supply of electricity in accordance with the procedures provided by the State.

Where a supplier stops the supply of electricity in accordance with the provision of the preceding paragraph, it shall notify the consumer in advance.

### **Article 655**

A consumer shall use the electricity in a safe, economical and planned manner in accordance with the relevant regulations of the State and the agreement between the parties. Where a consumer fails to use the electricity in accordance with the relevant regulations of the State or the agreement between the parties, and thus causes losses to the supplier, the consumer shall bear the liability for compensation.

### **Article 656**

The provisions of the contract for the supply and consumption of electricity shall be applied mutatis mutandis to contracts for the supply and consumption of water, gas, or heat.

## **Chapter XI**

### **Gift Contracts**

### **Article 657**

A gift contract is a contract under which a donor gives his own property to a donee gratuitously, and the donee indicates his acceptance of the gift.

### **Article 658**

A donor may revoke the gift prior to the transfer of the rights in the gifted property.

The provisions of the preceding paragraph shall not apply to a notarized gift contract, or a gift contract of a public interest or moral obligation nature that shall, in accordance with law, not be revoked, such as a gift contract for disaster-relief, poverty-relief, disability-relief, or the like purposes.

### **Article 659**

The gifted property shall go through registration or another procedure if the law so requires.

### **Article 660**

For a notarized gift contract or a gift contract of a public interest or moral obligation nature that shall in accordance with law not be revoked, such as a contract for disaster-relief, poverty-relief, disability-relief, or the like purposes, where the donor does not deliver the gifted property, the donee may request such delivery.

Where the gifted property that shall be delivered in accordance with the preceding paragraph is destroyed, damaged, or lost due to the donor's intentional act or by his gross negligence, the donor shall bear the liability for compensation.

### **Article 661**

A gift may be subject to an obligation.

Where a gift is subject to an obligation, the donee shall perform the obligation in accordance with the agreement.

### **Article 662**

A donor is not liable for any defect of the gifted property. Where a gift is subject to an obligation, if the gifted property has defects, the donor shall, to the extent of the attached obligation, bear the same liabilities as a seller.

Where a donor intentionally fails to notify the donee about the defect of the gifted property or has made a warranty therefor, thus causing losses to the donee, the donor shall bear the liability for compensation.

### **Article 663**

A donor may revoke the gift if the donee has done any of the following acts:

(1) severely infringing upon the lawful rights and interests of the donor or any close relative of the donor;

(2) having an obligation to support the donor but failing to perform that obligation; or

(3) failing to perform the obligation as agreed in the gift contract.

The right to revocation of the donor shall be exercised within one year from the date the donor knows or should have known of the cause for revocation.

### **Article 664**

Where a donee's illegal act leads to the death or loss of capacity for performing civil juristic acts of the donor, the donor's heir or legal representative may revoke the gift.

The right to revocation of the donor's heir or his legal representative shall be exercised within six months from the date the heir or the legal representative knows or should have known of the cause for revocation.

### **Article 665**

Upon revocation of a gift, the person having the right to revocation may request the donee to return the gifted property.

### **Article 666**

Where a donor's financial situation markedly deteriorates and his production, business, or family life is thus severely affected, he may cease to perform the obligation of delivering the gift.

## **Chapter XII**

### **Loan Contracts**

#### **Article 667**

A loan contract is a contract under which a borrower borrows a loan from a lender and repays the loan with interests when the loan becomes due.

#### **Article 668**

A loan contract shall be made in writing, except for a loan between natural persons who agree otherwise.

A loan contract generally contains clauses specifying the category of the loan, kind of currency, purpose of use, amount, interest rate, term, and the method of repayment, and the like.

#### **Article 669**

Upon concluding a loan contract, a borrower shall, as required by the lender, provide true information about its business activities and financial conditions related to the borrowing to the lender.

#### **Article 670**

The interest on a loan may not be deducted from the principal in advance. Where the interest is deducted from the principal in advance, the loan shall be repaid and the interest shall be calculated according to the actual amount of the loan provided.

#### **Article 671**

A lender who fails to provide the loan at the agreed time and amount and thus causing losses to the borrower shall bear the liability for compensation.

A borrower who fails to take the loan at the agreed time and amount shall pay an interest based on the agreed time and amount.

#### **Article 672**

A lender may inspect and supervise the use of the loan in accordance with the agreement. A borrower shall regularly provide the relevant financial and accounting statements or other materials to the lender in accordance with the agreement.

#### **Article 673**

Where a borrower fails to use the loan for a purpose in accordance with the contract, the lender may stop providing the loan, recall the loan prior to its due date, or rescind the contract.

**Article 674**

A borrower shall pay the interest within the agreed time limit. Where there is no agreement between the parties on the time limit for payment of interest or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the interest shall be paid at the time the principal is repaid if the term of the loan is less than one year; the interest shall be paid at the end of each full year if the term of the loan is more than one year, and the interest shall be paid when the principal is repaid if the remaining term is less than one year.

**Article 675**

A borrower shall repay the loan within the agreed time limit. Where there is no agreement between the parties on the time limit of repayment of the loan, or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the borrower may repay the loan at any time, and the lender may demand the borrower to repay the loan within a reasonable period of time.

**Article 676**

A borrower who fails to repay the loan within the agreed time limit shall pay an overdue interest in accordance with the agreement or the relevant regulations of the State.

**Article 677**

Where a borrower makes a prepayment of the loan, unless otherwise agreed by the parties, the interest shall be calculated according to the actual duration of the loan.

**Article 678**

A borrower may apply to the lender for an extension of the term of the loan before the loan becomes due. The term of the loan may be extended upon consent of the lender.

**Article 679**

A loan contract between natural persons is formed at the time when the lender provides the loan.

**Article 680**

Usurious loans are prohibited, and the interest rate for lending shall not violate the relevant regulations of the State.

Where there is no agreement on payment of interest in the loan contract, the loan shall be deemed as bearing no interest.

Where the agreement on the payment of interest in a loan contract is unclear, if the parties are unable to reach a supplementary agreement, the interest shall be determined by taking account of the practices of the local area or between the parties such as the method of transaction, course of dealing, the market interest rate, and the like. Where the loan is between nature persons, the loan shall be deemed as bearing no interest.

## **Chapter XIII**

### **Suretyship Contracts**

#### **Section 1**

#### **General Rules**

##### **Article 681**

A suretyship contract is a contract under which a surety and a creditor agree, for the purpose of ensuring the enforcement of an underlying claim, that the surety shall perform the obligation or bear the liability when the debtor fails to perform it when it is due or a circumstance as agreed by the parties occurs.

##### **Article 682**

A suretyship contract is an accessory contract subordinated to a principal claim-obligation contract. Where the principal contract is invalid, the suretyship contract is invalid, unless otherwise provided by law.

Where a suretyship contract is determined to be invalid, the debtor, surety, or creditor who are at fault shall each bear civil liability in proportion to their respective fault.

##### **Article 683**

No State-organ legal person may act as a surety, except that a state organ may, upon approval of the State Council, act as a surety in re-lending of the loans granted by a foreign government or an international economic organization.

No non-profit legal person established for public interest purposes or unincorporated organization may act as a surety.

##### **Article 684**

A suretyship contract generally contains clauses specifying the kind and amount of the principal claim that is secured, the time limit for the debtor to perform the obligation, the modes, scope, and term of the suretyship, and the like.

##### **Article 685**

A suretyship contract may be a contract concluded separately in writing or a guarantee clause in a principal claim-obligation contract.

A suretyship contract is formed when a third person unilaterally makes a guarantee in writing to a creditor who accepts it without making an objection.

### **Article 686**

Suretyship consists of general suretyship and suretyship with joint and several liability.

Where there is no agreement in the surety contract on the form of the suretyship or the agreement is unclear, the surety shall bear the liability as in the form of a general suretyship.

### **Article 687**

Where the parties agree in a suretyship contract that the surety shall undertake suretyship liability if the debtor is unable to perform his obligation, such a suretyship is a general suretyship.

A surety in a general suretyship may refuse to undertake suretyship liability to the creditor before a dispute arising from the principal contract is adjudicated or arbitrated and where the debtor is still unable to fully perform the obligation after his assets have been enforced in accordance with law, unless one of the following circumstances occurs:

(1) the whereabouts of the debtor have been unknown and there is no property available for enforcement;

(2) the people's court has accepted the debtor's bankruptcy petition`;

(3) the creditor has evidence to prove that the debtor's property is insufficient to perform all of the obligations or the debtor loses his capacity to perform the obligation;  
or

(4) the surety waives his right provided in this paragraph in writing.

### **Article 688**

Where the parties agree in a suretyship contract that the surety and the debtor shall be jointly and severally liable for the obligation, such a suretyship is a suretyship with joint and several liability.

Where a debtor under a suretyship with joint and several liability fails to perform his obligation due or when a circumstance agreed by the parties occurs, the creditor may request the debtor to perform his obligation, or request the surety to undertake the suretyship liability within the scope of his suretyship.

### **Article 689**

A surety may request the debtor to provide a counter-security.

### **Article 690**

A surety and a creditor may, through consultation, conclude a contract of maximum suretyship for floating claims to provide guarantee for the creditor's claims which will arise consecutively within a certain period of time and the total amount of which is up to the maximum amount of his claims. In addition to applying the provisions of this Chapter, the relevant provisions of Book Two of this Code on the maximum mortgage for floating claims shall be applied mutatis mutandis.

## **Section 2**

### **Suretyship Liability**

#### **Article 691**

The scope of the suretyship covers the principal claims and the interest thereof, the liquidated damages, compensatory damages, and the expenses for enforcing the claim, unless otherwise agreed by the parties.

#### **Article 692**

The term of suretyship is the period during which the surety shall undertake suretyship liability, and such period shall not be suspended, interrupted, or extended.

A creditor and a surety may agree on the term of suretyship. However, where the expiration date of the agreed term of suretyship is earlier than or the same as the expiration time for performance of the principal obligation, it is deemed as there is no agreement on the term of suretyship. Where there is no agreement between the parties on the term of suretyship or the agreement is unclear, the term of suretyship shall be six months from the date of expiration of the time limit for performance of the principal obligation.

Where a creditor and a debtor fails to agree on the time limit for performance of the principal obligation or the agreement is unclear, the term of suretyship shall be counted from the date when the grace period for the creditor to request the debtor to perform the obligation expires.

#### **Article 693**

Where a creditor of a general suretyship fails to file a lawsuit or apply for arbitration against the debtor within the term of suretyship, the surety no longer bears the suretyship liability.

Where a creditor of a suretyship with joint and several liability fails to request the surety to undertake his suretyship liability within the term of suretyship, the surety no longer bears the suretyship liability.

#### **Article 694**

Where a creditor of a general suretyship files a lawsuit or apply for arbitration against the debtor prior to the expiration of the term of suretyship, the limitation period of the suretyship obligation shall be counted from the date when the surety's right to refuse to undertake the suretyship liability is extinguished.

Where a creditor of a suretyship with joint and several liability requests the surety to undertake his suretyship liability prior to the expiration of the term of suretyship, the limitation period of the suretyship obligation shall be counted from the

date when the creditor requests the surety to undertake his suretyship liability.

#### **Article 695**

Where a creditor and a debtor, without the surety's consent in writing, agree to alter the content of the principal claim-obligation contract, if the obligation is reduced, the surety shall continue to bear the suretyship liability for the altered obligation; if the obligation is increased, the surety shall not bear the suretyship liability for the increased part.

Where a creditor and a debtor alter the time limit for performance of the principal claim-obligation contract, the term of suretyship shall not be affected unless upon the surety's written consent.

#### **Article 696**

Where a creditor transfers his claim in whole or part without notifying the surety, such a transfer is not effective against the surety.

Where transfer of a claim is prohibited as agreed between the surety and the creditor, if the creditor transfers its claim without the surety's written consent, the surety shall no longer bear the suretyship liability.

#### **Article 697**

Where a creditor, without the surety's written consent, allows the debtor to transfer the obligation in whole or part, the surety shall no longer bear the suretyship liability to the extent of the obligation transferred without his consent, unless otherwise agreed by the creditor and the surety.

Where a third person joins to be one of the debtors, the surety's liability shall not be affected.

#### **Article 698**

Upon expiration of the time limit for performance of the principal obligation, if the surety of a general suretyship provides to the creditor true information concerning the debtor's property available for enforcement, but the creditor waives or fails to exercise his right, and thus causing such property to be unenforceable, the surety shall no longer bear liability to the extent of the value of the said property available for enforcement the information of which is provided by the surety.

#### **Article 699**

Where there are two or more sureties guaranteeing one obligation, the sureties shall undertake the suretyship liability in proportion to their share of suretyship in accordance with the suretyship contract. In the absence of such an agreement, the creditor may request any of the sureties to undertake the suretyship liability within the scope of his liability.

#### **Article 700**

After a surety has assumed the suretyship liability, unless otherwise agreed by the parties, the surety has the right to indemnification against the debtor within the scope of his suretyship liability, and may enjoy the right of the creditor against the

debtor, provided that the creditor's interests shall not be harmed.

#### **Article 701**

A surety may claim a defense that the debtor has against the creditor. Where the debtor waives his right of defense, the surety shall still have the right to claim such defense against the creditor.

#### **Article 702**

Where a debtor has the right of offset or revocation against the creditor, the surety may refuse to undertake the suretyship liability within the corresponding scope.

## **Chapter XIV**

### **Lease Contracts**

#### **Article 703**

A lease contract is a contract under which a lessor delivers the leased object to a lessee for use or for obtaining proceeds, for which the lessee pays the rent.

#### **Article 704**

A lease contract generally contains clauses specifying the name, quantity, purpose of use of the leased object, the term of the lease, rent, and the time limit and method of its payment, and the maintenance of the leased object, and the like.

#### **Article 705**

The term of a lease may not exceed twenty years. If a lease exceeds twenty years, the part beyond twenty years is invalid.

Upon expiration of the lease term, the parties may renew the lease contract, provided that the agreed term of lease may not exceed twenty years from the date of renewal.

#### **Article 706**

The parties' failure to register the lease contract in accordance with the provisions of laws and administrative regulations does not affect the validity of the contract.

#### **Article 707**

A lease contract with a term exceeding six months shall be made in writing. Where the lease contract between the parties is not in writing, if the term can not be determined, the lease shall be deemed as a lease with an indefinite term.

**Article 708**

A lessor shall deliver the leased object to the lessee in accordance with the agreement and keep the leased object fit for the agreed use during the lease term.

**Article 709**

A lessee shall use the leased object in a manner as agreed by the parties. Where there is no agreement between the parties on the manner of use or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the leased object shall be used in line with its nature.

**Article 710**

Where a lessee uses the leased object in a manner as agreed by the parties or in line with its nature, he shall not bear the liability for the wear and tear on the leased object.

**Article 711**

Where a lessee fails to use the leased object in a manner as agreed by the parties or in line with its nature, thus causing damage to the leased object, the lessor may rescind the contract and request for compensation.

**Article 712**

A lessor shall perform the duty of maintaining the leased object, unless otherwise agreed by the parties.

**Article 713**

Where a leased object needs to be maintained or repaired, the lessee may request the lessor to have it maintained and repaired within a reasonable period of time. Where the lessor fails to perform the obligation of maintenance or repair, the lessee may maintain or repair the leased object by himself and the expenses thus incurred shall be borne by the lessor. If the maintenance or repair of the leased object affects the lessee's use of it, the rent shall be reduced or the term of the lease shall be extended accordingly.

Where a leased object needs to be maintained or repaired due to the lessee's negligence, the lessor shall not bear the obligation of maintenance or repair as provided in the preceding paragraph.

**Article 714**

A lessee shall properly keep the leased object and shall bear the liability for compensation if the leased object is destructed, damaged, or lost owing to his failing to properly keep it.

**Article 715**

A lessee may, upon the lessor's consent, improve the leased object or install additions thereto.

Where a lessee improves the leased object or install additions thereto without the consent of the lessor, the lessor may request the lessee to restore the leased object to

its original status or to compensate for the losses.

#### **Article 716**

A lessee may, upon the lessor's consent, sublease the leased object to a third person. The lease contract between the lessee and the lessor shall continue to be valid despite the sublease by the lessee, and if the third person causes loss to the leased object, the lessee shall bear the liability for compensation.

Where a lessee subleases the leased object without the consent of the lessor, the lessor may rescind the contract.

#### **Article 717**

Where a lessee, upon consent of the lessor, subleases the leased object to a third person, if the term of the sublease exceeds the remaining term of the lessee, the sublease in the period in excess of the original term shall not be legally binding on the lessor unless otherwise agreed by the lessor and the lessee.

#### **Article 718**

Where a lessor knows or should have known of the sublease made by a lessee but fails to raise any objection within six months, the lessor is deemed to have consented to the sublease.

#### **Article 719**

Where a lessee defaults on payment of the rent, the sublessee may pay the rent in arrears and the liquidated damages for the lessee, unless the sublease contract is not legally binding on the lessor.

The rent and liquidated damages paid by the sublessee for the lessee may be used to offset the rent payable by the sublessee to the lessee. If the amount of rent and liquidated damages thus paid by the sublessee exceeds the rent, the sublessee has the right to indemnification against the lessee.

#### **Article 720**

Any proceeds accrued from the possession or use of the leased object during the term of the lease shall belong to the lessee, unless otherwise provided by the parties.

#### **Article 721**

A lessee shall pay the rent within the time limit in accordance with the agreement. Where there is no agreement between the parties on the time limit for paying the rent or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the rent shall be paid at the time the term of the lease expires if the term is less than one year, or at the end of each full year where the term is more than one year, provided that the rent shall be paid at the time the term of the lease expires if the remaining term is less than one year.

#### **Article 722**

Where a lessee fails to pay the rent or delays a payment of the rent without just cause, the lessor may request the lessee to pay the rent within a reasonable period of

time, and may rescind the contract if the lessee fails to pay the rent within such period of time.

#### **Article 723**

Where a lessee is unable to use or to receive benefit from the leased object owing to a claim from a third person, the lessee may request for a reduction of or exemption from the rent.

Where a third person claims his right against the leased object, the lessee shall notify the lessor in a timely manner.

#### **Article 724**

A lessor may rescind the contract under any of the following circumstances if the leased object cannot be used due to a reason not attributable to the lessee:

- (1) the leased object is seized or detained by the judicial authority or administrative authority in accordance with law;
- (2) there are disputes over the attribution of rights of the leased object; or
- (3) the leased object violates mandatory provisions of laws and administrative regulations in respect of the conditions for use thereof.

#### **Article 725**

A change in the ownership of a leased object during the period that a lessee possesses the leased object in accordance with the lease contract shall not affect the validity of the lease contract.

#### **Article 726**

A lessor intending to sell a leased house shall notify the lessee within a reasonable period of time prior to the sale, and the lessee shall have the priority right to purchase the house under equivalent conditions, unless the person who is a co-owner by share exercises his priority right to purchase the house or if the lessor sells it to his close relatives.

Where a lessee fails to explicitly express his intention to purchase the house within fifteen days after the lessor has fulfilled his obligation of notification, the lessee shall be deemed to have waived such priority right.

#### **Article 727**

Where a lessor authorizes an auctioneer to sell the leased house through auction, he shall notify the lessee five days prior to the auction. The lessee shall be deemed to have waived his priority right to purchase it if he fails to participate in the auction.

#### **Article 728**

Where a lessor fails to notify the lessee or otherwise hinders the lessee from exercising his priority right to purchase the leased house, the lessee may request the lessor to bear the liability for compensation, except that the validity of the contract for sale of the leased house concluded between the lessor and a third person shall not be affected.

### **Article 729**

Where a leased object is partially or wholly destroyed, damaged, or lost for a cause not attributable to the lessee, the lessee may request a reduction or exemption of the rent; and the lessee may rescind the contract if the purpose of the contract is unable to be achieved owing to such destruction, damage, or loss.

### **Article 730**

Where there is no agreement between the parties on the term of the lease, or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the lease shall be deemed a lease with an indefinite term. Either party may rescind the contract at any time, provided that the other party shall be notified within a reasonable period of time in advance.

### **Article 731**

Where a leased object endangers a lessee's safety or health, the lessee may rescind the contract at any time, even if the lessee is clearly aware of the substandard quality of the leased object upon concluding the contract.

### **Article 732**

Where a lessee dies within the term of lease of a leased house, a person who lives with or the joint operator of the deceased may lease the house according to the original lease contract.

### **Article 733**

A lessee shall return the leased object upon expiration of the term of the lease. The leased object returned shall be maintained in its after-use state in accordance with the agreement or in line with its nature.

### **Article 734**

Where a lessee continues to use the leased object after the expiration of the term of the lease and the lessor has not raised any objection, the original lease contract shall continue to be valid, except that the lease term shall become unfixed.

Upon expiration of the lease, a lessee of the house has the priority right to lease it under equivalent conditions.

## **Chapter XV**

### **Contracts for Financing Lease**

### **Article 735**

A contract for financing lease is a contract under which a lessee selects a leased

object and its seller, and a lessor purchases the leased object from the selected seller and provides it to the lessee for use, who pays the rent in return.

#### **Article 736**

A contract for financing lease generally contains clauses specifying the name, quantity, specifications, technical performance, and inspection method of the leased object, the term of the lease, the composition of rent, the time limit, method, and currency for payment of the rent, the ownership over the leased object upon expiration of the term, and the like.

A contract for financing lease shall be made in writing.

#### **Article 737**

A contract for financing lease concluded by the parties on a fictitious leased object is void.

#### **Article 738**

Where the operation or use of a leased object requires administrative license in accordance with the provision of laws and administrative regulations, the failure of the lessor to obtain such administrative license does not affect the validity of the contract for financing lease.

#### **Article 739**

Where a lessor concludes a sales contract based on a lessee's selection of the seller and the leased object, the seller shall deliver the object to the lessee as agreed by the parties, and the lessee shall enjoy the rights of a buyer with regard to the object received.

#### **Article 740**

A lessee may refuse to accept the subject matter delivered by the seller where a seller breaches his obligation of delivery of the subject matter to the lessee, and one of the following circumstances occurs:

(1) the subject matter is materially inconsistent with the agreement; or

(2) the seller fails to deliver the subject matter as agreed by the parties, and still fails to deliver it within a reasonable period of time after being demanded by the lessee or the lessor.

Where a lessee refuses to take delivery of the subject matter, he shall promptly notify the lessor.

#### **Article 741**

The lessor, the seller, and the lessee may agree that, where the seller fails to perform the obligations under the sales contract, the lessee shall exercise the right to claim against the seller. Where the lessee exercises such a right, the lessor shall render assistance.

#### **Article 742**

A lessee's exercise of the right to claim against the seller shall not affect his performance of the obligation to pay the rent. However, where a lessee has relied upon the lessor's expertise in selecting the leased object or the lessor has intervened with the selection of the leased object, the lessee may request reduction or exemption of the rent accordingly.

#### **Article 743**

Where any of the following circumstances occurs, which causes the failure of the lessee to exercise the right to claim against the seller, the lessee has the right to request the lessor to bear corresponding liability:

(1) the lessor clearly knows that the leased object has quality defects but fails to notify the lessee; or

(2) when the lessee exercises the right to claim, the lessor fails to provide necessary assistance in a timely manner.

Where a right to claim against the seller may only be exercised by the lessor but the lessor fails to exercise such right owing to his indolence, thus causing loss to the lessee, the lessee has the right to request the lessor to bear the liability for compensation.

#### **Article 744**

Where a lessor concludes a sales contract based on the lessee's selection of the seller and the leased object, the lessor may not, without the consent of the lessee, modify the content of the contract related to the lessee.

#### **Article 745**

The lessor's ownership over the leased object shall, without being registered, not be asserted against a bona fide third person.

#### **Article 746**

The rent under a contract for financing lease shall, unless otherwise agreed by the parties, be determined according to the whole or major part of the cost for purchasing the leased object plus reasonable profits to be gained by the lessor.

#### **Article 747**

Where a leased object does not conform to the agreement or the purpose of its use, the lessor shall not bear any liability, unless the lessee has relied upon the lessor's expertise in selecting the leased object or the lessor has intervened with the selection of the leased object.

#### **Article 748**

A lessor shall guarantee the possession and use of the leased object by the lessee.

A lessee has the right to request the lessor to bear the liability for compensation where the lessor falls under any of the following circumstances:

- (1) taking back the leased object without just cause;
- (2) obstructing or interfering with the possession and use of the leased object by the lessee without just cause;
- (3) a third person claims a right over the leased object due to a reason attributable to the lessor; or
- (4) the lessor otherwise improperly affects the possession and use of the leased object by the lessee.

#### **Article 749**

Where a leased object causes any personal injury or property damage to a third person during the period it is under the lessee's possession, the lessor shall not bear any liability.

#### **Article 750**

A lessee shall properly maintain and use the leased object.

A lessee shall perform the obligation for the maintenance of the leased object during the period the leased object is under his possession.

#### **Article 751**

Where the leased object is destructed, damaged, or lost during the period it is under the possession of the lessee, the lessor has the right to request the lessee to continue to pay the rent, unless otherwise provided by law or agreed by the parties.

#### **Article 752**

A lessee shall pay the rent in accordance with the agreement. Where a lessee fails to pay the rent within a reasonable period of time after being demanded, the lessor may request full payment of the rent, or rescind the contract and take back the leased object.

#### **Article 753**

Where a lessee transfers, mortgages, pledges, invests and contributes as share, or otherwise disposes of the leased object without the lessor's consent, the lessor may rescind the contract for financing lease.

#### **Article 754**

A lessor or a lessee may rescind the contract for financing lease under any of the following circumstances:

- (1) the sales contract between the lessor and the seller is rescinded, determined as void or revoked, and the parties fail to conclude a sales contract anew;
- (2) the leased object is destructed, damaged, or lost due to a reason not attributable to the parties, and it is impossible to repair the leased object or determine a substitute therefor; or
- (3) the purpose of the contract for financing lease cannot be achieved owing to a reason attributable to the seller.

### **Article 755**

Where a contract for financing lease is rescinded because the sales contract is rescinded, invalidated, or revoked, if the seller and the leased object are selected by the lessee, the lessor has the right to request the lessee to compensate for the corresponding losses, unless the sales contract is rescinded, invalidated, or revoked owing to a reason attributable to the lessor.

Where the losses of the lessor have been recovered at the time the sales contract is rescinded, invalidated, or revoked, the lessee no longer bears liability for compensation.

### **Article 756**

Where a contract for financing lease is rescinded owing to a reason not attributable to the parties, such as an accidental destruction, damage, or loss of the leased object after it is delivered to the lessee, the lessor may request the lessee to make compensation based on the depreciation status of the leased object.

### **Article 757**

A lessor and a lessee may agree on the ownership over the leased object upon expiration of the term of the lease. Where there is no agreement between the parties on the ownership of the leased object or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the ownership of the leased object shall belong to the lessor.

### **Article 758**

Where the parties agree that the lessee shall have the ownership over the leased object upon expiration of the term of the lease, if the lessee has paid most of the rent but is unable to pay the remaining part, and the lessor has therefore rescinded the contract and taken back the leased object, the lessee may request the corresponding refund if the value of the leased object taken back exceeds the rent and other expenses in arrears.

Where the parties agree that the lessor shall have the ownership over the leased object upon expiration of the term of the lease, and the lessee is unable to return the leased object due to destruction, damage, or loss of the leased object, or because the leased object has attached to or been mixed with another thing, the lessor has the right to request the lessee to make reasonable compensation.

### **Article 759**

Where the parties agree that the lessee is only required to pay the lessor a symbolic price upon expiration of the term of the lease, the ownership of the leased object shall be deemed as belonging to the lessee after the lessee has fulfilled his obligation to pay the rent in accordance with the agreement.

### **Article 760**

Where a contract for financing lease is invalid and the parties have agreed on the ownership of the leased object under such a circumstance, such an agreement shall be followed. Where there is no agreement between the parties on the ownership of the

leased object or the agreement is unclear, the leased object shall be returned to the lessor. However, where the contract becomes invalid owing to a reason attributable to the lessee, if the lessor does not request the return of the leased object or the return of the leased object will significantly reduce the usefulness thereof, the ownership of the leased object shall belong to the lessee, and the lessee shall make reasonable compensation to the lessor.

## **Chapter XVI**

### **Factoring Contracts**

#### **Article 761**

A factoring contract is a contract under which a creditor of accounts receivable transfers the existing or after-acquired accounts receivable to a factor who provides services such as accommodation of funds, management or collection of the accounts receivable, guarantee for the payment of a debtor of the accounts receivable, and the like.

#### **Article 762**

A factoring contract generally contains clauses specifying the business type, scope of service, term of service, information on the underlying transaction contract and the accounts receivable, the financing funds through factoring, the service remuneration, the methods of payment thereof, and the like.

A factoring contract shall be in writing.

#### **Article 763**

Where a creditor and a debtor fabricate an account receivable as the object of transfer and then conclude a factoring contract on it with a factor, the debtor of the fabricated account receivable shall not assert a defense against the factor on the ground that the account receivable does not exist, unless the factor clearly knows such fabrication.

#### **Article 764**

Where a factor notifies a debtor of an account receivable of the assignment of the account receivable, he shall disclose his identity as a factor and present necessary certifying documents.

#### **Article 765**

Where, after a debtor of an account receivable receives the notice of assignment thereof, the creditor and the debtor of the account receivable agree to modify or terminate the underlying contract without just cause, which has an adverse impact on the factor, such modification or termination is not effective against the factor.

### **Article 766**

Where the parties agree that the factoring is one with the right of recourse, the factor may claim against the creditor of the account receivable for refunding the principal and interest of the financing funds or redemption of the claim on the account receivable, or claim against the debtor of the account receivable. Where a factor claims against the debtor of the account receivable after deducting the principal and interest of the financing funds and the other relevant expenses, any balance shall be returned to the debtor of the account receivable.

### **Article 767**

Where the parties agree that the factoring is one without the right of recourse, the factor shall claim against the debtor of the account receivable, and the factor is not required to return to the creditor of the account receivable the amount in excess of the principal and interest of the financing funds and the other relevant expenses he has obtained.

### **Article 768**

Where a creditor of an account receivable concludes multiple factoring contracts with different factors so that the factors claim their rights against the same account receivable, the account receivable shall be obtained by the factor of a registered factoring contract in priority over the factors of unregistered factoring contracts, or, where all factoring contracts are registered, by the factors in an order according to the time of registration, or, where none of the factoring contracts have been registered, by the factor stated in the transfer notice which has reached the debtor of the account receivable first in time. Where none of the factoring contracts have been registered and no transfer notice has been sent, the account receivable shall be obtained by the factors on a pro rata basis on the amount of financing funds each has provided, or the service remuneration each is entitled to.

### **Article 769**

For matters not provided in this Chapter, the relevant provisions of Chapter Six of this Book on the assignment of claims shall be applied.

## **Chapter XVII**

### **Work Contracts**

### **Article 770**

A work contract is a contract under which a contractor, in accordance with the requirements of a client, completes a work and delivers the work product to the client who pays remuneration in return.

A contracted work includes processing, manufacturing on order, repair, reproduction, testing, inspection, and the like.

**Article 771**

A work contract generally contains clauses specifying the object, quantity, and quality of the work, remuneration of the work, the mode of the work, supply of materials, the period of performance, the standard and method of inspection, and the like.

**Article 772**

The contractor shall complete the principal part of the work with his own equipment, technology, and labor force, unless otherwise agreed by the parties.

Where a contractor entrusts the major part of the contracted work with a third person, the contractor shall be accountable to his client concerning the work completed by the third person and the client may rescind the contract if he has not consented thereto.

**Article 773**

A contractor may entrust the accessory part of his contracted work with a third person. Where a contractor entrusts an accessory part of the contracted work to a third person, the contractor shall be accountable to the client concerning the work product completed by the third person.

**Article 774**

Where a contractor is to provide the materials, he shall select and use the materials in accordance with the agreement and accept the inspection of the client.

**Article 775**

Where a client is to provide the materials, he shall provide the materials in accordance with the agreement. The contractor shall promptly inspect the materials provided by the client, and, if any inconformity is found, the contractor shall promptly request the client to make replacement, make up the shortage or take other remedial measures.

Without the consent of the client, a contractor may not change the materials provided by the client nor change the accessories and parts which do not need repair.

**Article 776**

A contractor shall promptly notify the client if he finds that the drawings or technical requirements provided by the client are unreasonable. Where losses are caused to the contractor due to the client's failure to response or the like reasons, the client shall bear the liability for compensation.

**Article 777**

Where, in the course of a contracted work, the client changes his requirements, thus causing loss to the contractor, the client shall bear liability for compensation.

### **Article 778**

Where a contracted work requires assistance from the client, the client has the obligation to provide such assistance. Where the client fails to perform such obligation, thus making the completion of the contracted work impossible, the contractor may demand him to perform his obligation within a reasonable period of time, and may also extend the term of performance accordingly. If the client still fails to fulfill his obligation within the extend term, the contractor may rescind the contract.

### **Article 779**

A contractor shall accept necessary supervision and inspection of the client in the course of his work. The client may not disturb the normal work of the contractor by such supervision and inspection.

### **Article 780**

Upon completion of his work, a contractor shall deliver to the client the work product and provide the client with the necessary technical materials and related quality certificates. The client shall inspect the work product for acceptance.

### **Article 781**

Where the work product delivered by the contractor fails to meet the quality requirements, the client may, in a reasonable manner, request the contractor to bear default liability in forms of repair, reworking, remuneration reduction, or compensation for losses.

### **Article 782**

A client shall pay remuneration within the time limit agreed by the parties. Where there is no agreement between the parties on the time limit for paying remuneration or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the client shall make payment at the time of delivery of the work product; and where part of the work product is delivered, the client shall pay the corresponding remuneration.

### **Article 783**

Where a client fails to make such payments as remuneration or materials fees, the contractor has the right to retain the work product under lien or to refuse delivery, unless otherwise agreed by the parties.

### **Article 784**

A contractor shall properly keep the materials provided by the client and the completed work product, and shall bear the liability for compensation if such materials or the work product are destructed, damaged or lost owing to his inappropriate maintenance thereof.

### **Article 785**

A contractor shall keep confidential the relevant information in accordance with the requirements of the client and, without the latter's permission, may not retain

copies or technical data thereof.

#### **Article 786**

Co-contractors shall bear joint and several liabilities to the client, unless otherwise agreed by the parties.

#### **Article 787**

The client may rescind the work contract at any time before the contractor completes his work, provided that he shall bear the liability for compensating any loss thus caused to the contractor.

## **Chapter XVIII**

### **Contracts for Construction Project**

#### **Article 788**

A contract for construction project is a contract under which a contractor carries out the construction of a project and the contract-offering party pays the price in return.

Contracts for construction project consist of contracts for project prospecting, designing, and construction.

#### **Article 789**

A contract for construction project shall be made in writing.

#### **Article 790**

Bidding for a construction project shall be carried out in an open, fair, and impartial manner in accordance with the provisions of the relevant laws.

#### **Article 791**

A contract-offering party may conclude a contract for construction project with a general contractor, or conclude separate contracts for prospecting, designing, and construction with the prospecting, designing, and construction parties respectively. A contract-offering party may not break up one construction project that should be completed by one contractor into several parts and offer them to several contractors.

A general contractor or a prospecting, designing or construction contractor may, upon consent by the contract-offering party, entrust part of the contracted work with a third person. The third person shall assume joint and several liability with the general contractor or the prospecting, engineering, or construction contractor to the contract-offering party on the work product of the third person. A contractor may not delegate the whole of the contracted construction project to a third person or break up

the contracted construction project into several parts and delegate them separately to third persons in the name of subcontracting.

A contractor is prohibited from subcontracting the contracted project to any entity without the corresponding qualifications. A subcontractor is prohibited from re-subcontracting the contracted project. The main structure of the construction project must be completed by the contractor itself.

#### **Article 792**

Contracts for major construction projects of the State shall be concluded in accordance with the procedures set forth by the State and such documents as investment plans and feasibility study reports approved by the State.

#### **Article 793**

Where a contract for construction project is invalid but the construction project has passed the inspection for acceptance, the contractor may be compensated with reference to the project price agreed in the contract and based on the appraised price of the construction project.

Where a contract for construction project is invalid and the construction project fails to pass the inspection for acceptance, it shall be dealt with in accordance with the following provisions:

(1) where the construction project after being repaired has passed the inspection for acceptance, the contract-offering party may request the contractor to bear the repairing costs; or

(2) where the construction project after being repaired still fails to pass the inspection for acceptance, the contractor has no right to request for payment with reference to the project price agreed in the contract or based on the appraised price of the construction project.

Where a contract-offering party is at fault for the loss caused by the substandard of the construction project, he shall bear corresponding liabilities.

#### **Article 794**

A prospecting or designing contract generally contains clauses specifying the time limit for submission of documents relating to the basic materials and budget, quality requirements, expenses and other cooperative conditions, and the like.

#### **Article 795**

A construction contract generally contains clauses specifying the project scope, the period for construction, the time of commencement and completion of the project to be delivered in midcourse, project quality, costs, delivery time of technical materials, the responsibility for the supply of materials and equipment, fund allocation and settlement, project inspection and acceptance upon its completion, range and period of quality warranty, cooperation, and the like.

#### **Article 796**

For any construction project to which a superintendence system is applied, the

contract-offering party shall conclude an entrustment contract of superintendence in writing with the entrusted superintendent. The rights and obligations as well as the legal liabilities of the contract-offering party and the superintendent shall be defined in accordance with the provisions on entrustment contracts of this Book as well as the relevant provisions of other laws and administrative regulations.

#### **Article 797**

The contract-offering party may, without disturbing the normal operation of the contractor, inspect the progress and quality of the work at any time.

#### **Article 798**

Prior to the concealment of a concealed project, the contractor shall notify the contract-offering party to inspect it. If the contract-offering party fails to conduct an inspection in a timely manner, the contractor may extend the period for the completion of the project accordingly, and may request compensation for losses caused by the work stoppage, the workers' forced idleness, and the like.

#### **Article 799**

Upon completion of a construction project, the contract-offering party shall promptly undertake the inspection for acceptance in accordance with the construction drawings and descriptions, as well as the rules of inspection and acceptance of construction projects and the standards for quality inspection issued by the State. Where the project passes the inspection for acceptance, the contract-offering party shall pay the agreed price and take over the construction project.

A construction project may be delivered and put into use only after it has passed the inspection for acceptance upon completion. Without being inspected or failing to pass the inspection, the construction project may not be delivered or put into use.

#### **Article 800**

Where losses are caused to a contract-offering party due to the fact that the prospecting or designing does not conform to the quality requirements or that the prospecting or designing documents are not submitted as scheduled, so that the period for construction is delayed, the prospecting or designing party shall continue on perfecting the prospecting or designing, reduce or waive the prospecting or designing fees, and make compensation for the losses.

#### **Article 801**

Where the quality of a construction project fails to conform to the contract due to a reason attributable to the constructor, the contract-offering party has the right to request the constructor to repair, rework, or reconstruct the project without further charge within a reasonable period of time. If delivery is delayed because of the repair, reworking, reconstruction, the constructor shall bear default liability.

#### **Article 802**

Where a construction project causes personal injury and property damage due to a reason attributable to the contractor within a reasonable period of use of the project, the contractor shall bear the liability for compensation.

### **Article 803**

Where a contract-offering party fails to provide raw materials, equipments, premises, funds, or technical materials at the agreed time and pursuant to the agreed requirements, the contractor may extend the period of construction accordingly and has the right to request compensation for the losses caused by work stoppage, and workers' forced idleness, and the like.

### **Article 804**

If a construction project is stopped or suspended in midcourse due to a reason attributable to the contract-offering party, the contract-offering party shall take measures to make up for the loss or mitigate the loss, and compensate the contractor for any losses caused and actual expenses incurred by work stoppage, workers' forced idleness, back transportation, transfer of machinery equipment, the backlog of materials and structural components, and the like.

### **Article 805**

Where a contract-offering party alters his plan, provides inaccurate materials, or fails to provide necessary working conditions for prospecting or designing as scheduled, thus causing the redoing or stoppage of the prospecting or designing work, or the revision of the design, the contract-offering party shall pay additional fees according to the amount of work actually undertaken by the prospecting or designing party.

### **Article 806**

Where a contractor delegates or illegally subcontracts the construction project to others, the contract-offering party may rescind the contract.

Where the main construction materials, construction components and accessories, and equipment provided by the contract-offering party fail to conform to the mandatory standard, or the contract-offering party fails to perform his obligations to provide assistance, so that the contractor cannot undertake the construction work, if the contract-offering party still fails to perform the corresponding obligations within a reasonable period of time after being demanded, the contractor may rescind the contract.

Where, after the contract is rescinded, the quality of the completed construction project is found to be up to standard, the contract-offering party shall make corresponding payment for the construction project in accordance with the agreement. If the quality of the completed construction project is found to be substandard, the provisions of Article 793 of this Code shall be applied *mutatis mutandis*.

### **Article 807**

Where a contract-offering party fails to pay the price in accordance with the agreement, the contractor may demand the contract-offering party to make the payment within a reasonable period of time. Where the contract-offering party still fails to pay the price upon expiration of the said period, the contractor may negotiate with the contract-offering party to appraise the construction project to satisfy the obligation, or request the people's court to sell the project through auction in

accordance with law, unless the construction project is by its nature unsuitable for appraisal or auction. The payment for the construction of the project shall be satisfied, in priority, from the proceeds obtained from the appraisal or auction of the said project.

#### **Article 808**

For matters not provided in this Chapter, the relevant provisions on work contracts shall be applied.

## **Chapter XIX**

### **Transport Contracts**

#### **Section 1**

#### **General Rules**

#### **Article 809**

A transport contract is a contract under which a carrier transports a passenger or goods from the place of dispatch to a destination agreed by the parties, and the passenger, consignor, or consignee pays the fare or the freight.

#### **Article 810**

A carrier engaging in public transport may not reject an ordinary and reasonable transport request made by a passenger or consignor.

#### **Article 811**

A carrier shall safely transport a passenger or goods to a destination as agreed within the agreed or a reasonable period of time.

#### **Article 812**

A carrier shall transport a passenger or goods to a destination as agreed via an agreed or a usual transport route.

#### **Article 813**

A passenger, consignor, or consignee shall pay the fare or the freight. If a carrier does not transport via an agreed route or the usual route, thus increasing the fare or the freight, the passenger, consignor, or consignee may refuse to pay the extra fare or

freight.

## **Section 2**

### **Passenger Transport Contract**

#### **Article 814**

A passenger transport contract is formed at the time when the carrier issues a ticket to the passenger, unless otherwise provided by the parties or in accordance with the course of dealing.

#### **Article 815**

A passenger shall get on board pursuant to the time, the number of runs or flights, and the seat number indicated in the valid ticket. Any passenger who boards without a ticket, beyond the paid distance, in a higher class, or with a discounted ticket while he is unqualified therefor shall pay or make up for the difference in the ticket price, and the carrier may charge an extra fare according to the regulations. Where a passenger refuses to pay the fare accordingly, the carrier may refuse to transport him.

Where a passenger under a real-name passenger transport contract loses his ticket, he may request the carrier to report the loss and reissue a ticket, and the carrier shall not re-collect ticket fees or other unreasonable expenses.

#### **Article 816**

A passenger who is unable to get on board at the time indicated in the ticket due to his own reason shall, within the period of time agreed by the parties, undergo the procedures for refund or change of the ticket. If the passenger fails to undergo the refund or change procedures within the agreed period of time, the carrier may refuse to refund the ticket, and no longer has the transport obligation.

#### **Article 817**

The carry-on baggages of a passenger shall conform to the quantity limit and category requirement in accordance with the agreement. A passenger who carries baggages in excess of the quantity limit or in violation of the requirements for the category shall have the baggage checked in.

#### **Article 818**

A passenger may not carry with him or secretly carry in his baggage any inflammable, explosive, toxic, corrosive, or radioactive articles, any other dangerous articles that might endanger the safety of persons and property aboard, nor any contraband articles.

Where a passenger violates the provisions of the preceding paragraph, the carrier

may unload or destroy the dangerous or contraband articles or deliver them to the relevant departments. Where a passenger insists on carrying with him the dangerous articles or the contraband articles or carrying them in his baggage, the carrier shall refuse to transport him.

#### **Article 819**

A carrier shall strictly fulfill his obligation of safe transport and timely notify passengers about matters of attention for a safe transport. A passenger shall actively assist in and be cooperative with the carrier with regard to the reasonable arrangements made for safe transport.

#### **Article 820**

A carrier shall transport passengers at the time and in the number of runs or flights and seat number indicated in the valid ticket. Under circumstances where the transport is delayed or rendered out of a normal state, the carrier shall inform and remind the passenger in a timely manner, take necessary measures for arrangement, and, upon passengers' requests, arrange them to take other numbers of runs or flights or refund their tickets. The carrier shall bear the liability for compensation for any loss thus caused to the passenger, unless such loss is not attributable to the carrier.

#### **Article 821**

A carrier who unilaterally downgrades the service standard shall, upon passengers' requests, refund their tickets or reduce the fare. A carrier who upgrades the service standard shall not charge extra fare.

#### **Article 822**

A carrier shall, in the course of transportation, spare no effort to rescue and help a passenger who suffers an emergent disease, commence childbirth, or otherwise in danger.

#### **Article 823**

A carrier shall bear the liability for compensation arising from the injury or death of a passenger occurring in the course of transportation, unless the injury or death is a result of the passenger's own health condition, or the carrier can prove that the injury or death is caused by the passenger's intentional or grossly negligent act.

The provisions of the preceding paragraph shall apply to any passenger exempted from ticket in accordance with the regulations, holding a complimentary ticket, or permitted by the carrier to travel without a ticket.

#### **Article 824**

Where an article that the passenger carries with him is destructed, damaged, or lost in the course of transportation, the carrier shall bear the liability for compensation, if the carrier is at fault.

Where the passengers' checked-in baggages are destructed, damaged, or lost, the relevant provisions on the freight transport shall be applied.

## **Section 3**

### **Freight Transport Contracts**

#### **Article 825**

A consignor, when consigning goods for transport, shall clearly declare to the carrier the information necessary for freight transport such as the name or entity name of the consignee or the consignee by order, as well as the name, nature, weight and quantity of the goods, and the place of delivery.

If a loss is caused to the carrier due to the consignor's untrue declaration or omission of substantial information, the consignor shall bear the liability for compensation.

#### **Article 826**

Where a freight transport is subject to approval or inspection, the consignor shall submit to the carrier the documents showing the completion of the relevant formalities.

#### **Article 827**

A consignor shall package the goods in a manner as agreed by the parties. Where there is no agreement by the parties on the packaging manner or the agreement is unclear, the provisions of Article 619 of this Code shall be applied.

Where a consignor violates the provisions of the preceding paragraph, the carrier may refuse to conduct the transportation.

#### **Article 828**

Where a consignor consigns for transportation such dangerous goods as inflammable, explosive, toxic, corrosive or radioactive articles, the consignor shall, in accordance with the regulations of the State on the transport of dangerous goods, properly package the dangerous goods, affix warning signs and labels thereto, and submit to the carrier written documents concerning the name, nature, and precautionary measures relevant to the dangerous goods.

Where a consignor violates the provisions of the preceding paragraph, the carrier may refuse to conduct the transport, or take appropriate measures to prevent losses, and the expenses thus incurred shall be borne by the consignor.

#### **Article 829**

Before a carrier delivers the goods to the consignee, the consignor may ask the carrier to stop transportation, return the goods, change the place of destination, or deliver the goods to another consignee, provided that the consignor shall compensate for the losses thus caused to the carrier.

### **Article 830**

After the goods are transported to the place of destination, the carrier shall promptly notify the consignee where the carrier knows who is the consignee, and the consignee shall promptly take delivery of the goods. Where the consignee delays in taking delivery of the goods, the consignee shall pay storage and other fees to the carrier.

### **Article 831**

Upon taking delivery of the goods, a consignee shall inspect the goods within the time limit as agreed by the parties. Where there is no agreement between the parties on the time limit for inspection of the goods or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the consignee shall inspect the goods within a reasonable period of time. Where the consignee does not raise any objection on the quantity, destruction, damage, or loss of the goods within the agreed time limit or a reasonable period of time, the silence shall be deemed as a preliminary evidence that the carrier has delivered the goods in accordance with the transport documents.

### **Article 832**

A carrier shall bear the liability for compensation for any destruction, damage, or loss of the goods occurring in the course of transport, except that the carrier shall not bear the liability for compensation if the carrier proves that the destruction, damage, or loss of the goods is caused by force majeure, the inherent nature of the goods, or reasonable wear and tear, or is caused by the negligence of the consignor or the consignee.

### **Article 833**

The amount of compensation for the destruction, damage, or loss of the goods shall be in accordance with the agreement between the parties if there is such an agreement. Where the agreement on the amount of compensation is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the amount of compensation shall be calculated based on the market price of the goods at the place of delivery at the time when the goods are delivered or should have been delivered. If there are laws or administrative regulations providing otherwise concerning the calculation method and the limit of the compensation amount, such provisions shall be followed.

### **Article 834**

Where two or more carriers engage in a connected transport of the same mode, the carrier who concludes the contract with the consignor shall be responsible for the entire transport. If a loss occurs at one section of the transportation, the carrier who concludes the contract with the consignor and the carrier in the said section shall assume joint and several liability.

### **Article 835**

Where the goods are lost in the course of transport due to force majeure, unless otherwise provided by law, the carrier may not request the payment of the freight if

the freight has not yet been collected, and the consignor may request for a refund if the freight has already been collected.

**Article 836**

If a consignor or consignee fails to pay freight, storage fees, or other expenses, the carrier has the right to retain the goods under a lien, unless otherwise agreed by the parties.

**Article 837**

Where a consignee is unknown or the consignee refuses to take delivery of the goods without just cause, the carrier may have the goods placed in escrow in accordance with law.

## **Section 4**

### **Multi-modal Transport Contracts**

**Article 838**

An operator of multi-modal transport is responsible for performing or organizing the performance of a multi-modal transport contract, enjoys the rights and assumes the obligations of a carrier throughout the entire transport.

**Article 839**

An operator of multi-modal transport may agree with the carriers of the different sections of the multi-modal transport on their respective responsibilities for transport in each section under the multi-modal transport contract, provided that such an agreement shall not affect the obligations of the operator for the entire transport.

**Article 840**

An operator of multi-modal transport shall, upon receipt of the goods consigned for transport by the consignor, issue multi-modal transport documents. The multi-modal transport documents may be negotiable or non-negotiable, as requested by the consignor.

**Article 841**

Where losses are caused to an operator of multi-modal transport due to the fault of a consignor at the time of consigning the goods for transport, the consignor shall bear the liability for compensation even if the consignor has transferred the multi-modal transport documents.

**Article 842**

Where destruction, damage, or loss of goods occurs in one section of the

multi-modal transport, the provisions of the relevant laws regulating the transport modes of the section shall apply to the liability for compensation to be assumed by the operator of multi-modal transport and the limits of the liability. Where the section of transport in which such destruction, damage, or loss has occurred cannot be determined, liability for compensation shall be borne in accordance with the provisions of this Chapter.

## **Chapter XX**

### **Technology Contracts**

#### **Section 1**

#### **General Rules**

##### **Article 843**

A technology contract is a contract concluded by the parties to clarify their rights and obligations for technology development, transfer, licensing, consultation or service.

##### **Article 844**

The conclusion of a technology contract shall be conducive to the protection of intellectual property rights and the advance of science and technology, and shall promote the research and development, transformation, application, and dissemination of the achievements in science and technology.

##### **Article 845**

A technology contract generally contains clauses specifying the name of the project, the content, scope, and requirements of the object, the plan, place, and manner of performance, the confidentiality of technological information and materials, the ownership over the technological achievements and the method of proceeds distribution, the criteria and method of the inspection for acceptance, interpretation of terminologies, and the like.

Materials such as technological background information, the feasibility studies and technological evaluation reports, the project task paper and plans, technology standards, technology norms, original design and technical documents, as well as other technical documents which are relevant to the performance of the contract may, as agreed by the parties, be component parts of the contract.

Where a technology contract involves a patent, it shall indicate the designation of

the invention, the applicant and the patentee thereof, the date of application, the application number, the patent number, and duration of the patent rights.

#### **Article 846**

The method of payment for the price, remuneration, or royalty shall be agreed by the parties in a technology contract, and the payment may be made in a lump-sum or by installment based on one-time calculation, or based on the method of commission payment or such payment plus an upfront fee.

Where the parties agree to adopt a method of commission payment, the commission may be drawn at a specific percentage from the price of the product, the newly-increased output value and profits attained from the exploitation of patents and the utilization of technological know-how, or the sales revenue of the product, or be calculated by other methods as agreed by the parties. The said percentage may be a fixed percentage, or one that increases or decreases year by year.

Where the parties agree to adopt commission payment, they may specify the method for examining the relevant accounting books.

#### **Article 847**

Where a right to use or transfer a work for hire belongs to a legal person or an unincorporated organization, the legal person or unincorporated organization may conclude a technology contract on the work for hire. Where the legal person or unincorporated organization concludes a technology contract to transfer the work for hire, the creator of the work for hire has right in priority to acquire it on equivalent conditions.

A work for hire is a technological achievement that is accomplished as a result of performing the tasks assigned by a legal person or unincorporated organization or that is accomplished mainly by using the material and technological resources of the said legal person or unincorporated organization.

#### **Article 848**

The right to use or transfer of a technological work product other than a work for hire belongs to its creator who may conclude a technology contract on such work product.

#### **Article 849**

An individual person who has accomplished a technological work product has the right to indicate on the relevant documents of the technological work product that he is the creator thereof, and to receive certificate of honor and rewards.

#### **Article 850**

A technology contract that illegally monopolies technologies or infringes upon others technological work product is invalid.

## **Section 2**

### **Technology Development Contracts**

#### **Article 851**

A technology development contract is a contract concluded by the parties concerning the research and development of a new technology, product, technique, variety, or material, as well as the system thereof.

Technology development contracts consist of commissioned development contracts and cooperative development contracts.

A technology development contract shall be in writing.

The relevant provisions on the technology development contracts shall be applied *mutatis mutandis* to a contract concluded by the parties on the application and transformation of a technological product with a value for practical use.

#### **Article 852**

A client of a commissioned development contract shall pay for the research and development fees and the remunerations in accordance with the agreement, provide technological materials, make proposals for research and development, complete his tasks in the cooperative work, and accept the work product of the research and development.

#### **Article 853**

A researcher-developer of a commissioned development contract shall work out and implement a research and development plan in accordance with the contract, make reasonable use of the research and development funds, complete the research and development work as scheduled, deliver the work product of research and development, provide relevant technological materials and necessary technological guidance so as to help the client comprehend the work product of the research and development.

#### **Article 854**

Where a party to a commissioned development contract defaults, thus causing the stoppage, delay, or failure of the research and development work, the party shall bear default liability.

#### **Article 855**

The parties to a cooperative development contract shall make investments in a form agreed by the parties, including contribution of the technology in investment, participation in the research and development work by performing their respective duties, and cooperation in the research and development.

**Article 856**

Where a party to a cooperative development contract defaults, thus causing the stoppage, delay, or failure of the research and development work, the party shall bear default liability.

**Article 857**

Where a technology which is the object of a technology development contract is revealed to the public by others, thus rendering the performance of the contract meaningless, the parties may rescind the contract.

**Article 858**

The parties to a technology development contract shall agree on the allocation of risks of insurmountable technological difficulties arising in the performance of the contract which causes total or partial failure of the research and development. Where there is no such an agreement between the parties or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the parties shall share the risks in a reasonable way.

Where a party finds that a situation specified in the preceding paragraph exists which may cause total or partial failure of the research and development, he shall promptly notify the other party and take appropriate measures to mitigate the loss. Where he fails to promptly inform the other party and take appropriate measures so that the loss is aggravated, he shall be liable for the aggravated part of the loss.

**Article 859**

Where an invention is accomplished through commissioned development, the right to apply for patent thereof belongs to the researcher-developer, unless otherwise provided by law or agreed by the parties. Where the researcher-developer has obtained the patent right, the client may exploit the patent in accordance with law.

Where a researcher-developer is to transfer his right to apply for a patent, the client has a priority right to acquire the right on equivalent conditions.

**Article 860**

Where an invention is accomplished through cooperative development, the right to apply for patent jointly belongs to all parties to the cooperative development. Where one party is to transfer the part of the joint patent application right he owns, the other parties have a priority right to acquire the right on equivalent conditions, unless otherwise agreed by the parties.

Where a party to a cooperative development waives the part of patent application right he owns, unless otherwise agreed by the parties, the other party may make the application, or the other parties may jointly make the application, as the case may be. Where the applicant(s) acquires the patent right, the party who has waived his right may exploit the patent free of charge.

Where one party to a cooperative development does not agree to apply for patent, the other party or parties may not apply therefor.

## **Article 861**

The right to use and the right to transfer a work product containing technological know-how accomplished through commissioned development or cooperative development, as well as the method for distributing the proceeds thereof, shall be agreed by the parties. Where there is no such an agreement between the parties or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, all the parties have the right to use and transfer the said work product, as long as no patent right has been granted on a same technological solution, except that a researcher-developer of a commissioned development may not transfer the work product to a third person before he delivers it to the client.

## **Section 3**

### **Technology Transfer Contracts and Technology Licensing Contracts**

## **Article 862**

A technology transfer contract is a contract under which a lawful right holder of a technology assigns to another person the relevant rights in respect of a specific patent, application for a patent, or technological know-how.

A technology licensing contract is a contract under which a lawful right holder of a technology authorizes another person to exercise the relevant rights to apply and exploit a specific patent or technological know-how.

The agreement in a technology transfer contract or a technology licensing contract on the provision of special equipment and raw materials for application of technology or on the provision of the relevant technology consultation and technology service is a component part of the contract.

## **Article 863**

Technology transfer contracts include the contracts for the transfer of patent right, the contracts for transfer of the right to apply for a patent, the contracts for transfer of technological know-how, and the like.

Technology licensing contracts include the patent exploitation licensing contracts, technological know-how licensing contracts, and the like.

Technology transfer contracts and technology licensing contracts shall be in writing.

## **Article 864**

A technology transfer contract or a technology licensing contract may specify the scope to exploit the patent or to use the technological know-how, but may not restrict competition or development of the technologies.

#### **Article 865**

A patent exploitation licensing contract is valid only within the period during which the patent is valid. Where the term of the patent right expires or the patent right is declared invalid, the patentee may not conclude a patent exploitation licensing contract relating to the said patent with another person.

#### **Article 866**

A licensor in a patent exploitation licensing contract shall permit the licensee to exploit the patent, deliver the technological materials related to the patent exploitation, and provide necessary technological guidance in accordance with the agreement.

#### **Article 867**

A licensee in a patent exploitation licensing contract shall exploit the patent in accordance with the agreement, may not allow a third person outside the contract to exploit the patent, and shall pay the agreed royalties.

#### **Article 868**

A transferor in a technological know-how transfer contract or a licensor in a technological know-how licensing contract shall, in accordance with the agreement, provide technological materials, give technological guidance, guarantee the practical applicability and reliability of the technology, and perform confidentiality obligations.

The confidentiality obligations provided in the preceding paragraph shall not restrict the licensor from applying for a patent, unless otherwise agreed by the parties.

#### **Article 869**

A transferee in a technological know-how transfer contract or a licensee in a technological know-how licensing contract shall, in accordance with the agreement, exploit the technology, pay the transfer fee and royalties, and perform confidentiality obligations.

#### **Article 870**

A transferor in a technological transfer contract or a licensor in a technological know-how licensing contract shall guarantee that he is the lawful owner of the technology provided therein, and guarantee that the technology provided is complete, errorless, effective, and capable of achieving the goal as agreed by the parties.

#### **Article 871**

A transferee in a technology transfer contract or a licensee in a technological know-how licensing contract shall, in accordance with the scope and time limit agreed by the parties, perform his confidentiality obligation regarding the part of the technology provided by the transferor or licensor that have not been disclosed to the public.

#### **Article 872**

A licensor who fails to license the technology in accordance with the agreement shall refund the royalties in part or in full and bear default liability. A licensor who

exploits a patent or technological know-how beyond the agreed scope, or, without authorization, allows a third person to exploit the patent or utilize the technological know-how in breach of the agreement shall stop his breaching act and bear default liability. He shall bear default liability if he breaches the confidentiality obligation as agreed.

Where a transferor is liable for breach of contract, the provisions of the preceding paragraph shall be applied *mutatis mutandis*.

### **Article 873**

A licensee who fails to pay royalties in accordance with the agreement shall make up for the payment of royalties and pay the liquidated damages. Where the licensee fails to do so, he shall stop exploitation of the patent or utilization of the technological know-how, return the technological materials, and bear default liability. Where a licensee who exploits the patent or utilizes the technological know-how beyond the agreed scope, or allows a third person, without authorization, to exploit the patent or to utilize the technological know-how, he shall stop his breaching acts and bear default liability. The licensee who breaches the confidentiality obligation as agreed shall bear default liability.

The provisions of the preceding paragraph shall be applied *mutatis mutandis* to a transferee who shall bear default liability.

### **Article 874**

Where the exploitation of a patent or utilization of a technological know-how by the transferee or the licensee in accordance with the agreement infringes upon the lawful rights and interests of another person, the liability therefor shall be borne by the transferor or the licensor, unless otherwise agreed by the parties.

### **Article 875**

The parties may, in compliance with the principle of mutual benefit, agree in the contract the method for sharing any subsequently improved technological product obtained in exploitation of the patent or utilization of the technological know-how. Where there is no agreement on such method or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the subsequently improved technological product made by one party may not be shared by any other party.

### **Article 876**

The relevant provisions of this Section shall be applied *mutatis mutandis* to the transfer and licensing of the exclusive rights to layout-designs of integrated circuits, rights to new plant varieties, computer software copyrights, and other intellectual property rights, and the like.

### **Article 877**

Where there are laws or administrative regulations providing otherwise on contracts for technology import and export, or on contracts for patents and application of patents, the relevant provisions shall be followed.

## **Section 4**

### **Technology Consultation Contracts and Technology Service Contracts**

#### **Article 878**

A technology consultation contract is a contract under which one party uses his technological knowledge to provide to the other party the feasibility study, technological forecast, special technological investigation, and analysis and evaluation report on a specific technological project.

A technology service contract is a contract under which one party uses his technological knowledge to solve specific technological problems for the other party. Technology service contracts does not include work contracts or construction project contracts.

#### **Article 879**

A client in a technology consultation contract shall, in accordance with the agreement, clarify the issues for consultation, provide technological background information and the related materials, accept the work product of the entrusted person, and pay remuneration.

#### **Article 880**

The entrusted person in a technology consultation contract shall complete the consultation report or resolve the issues within the agreed time limit, and the consultation report submitted shall meet the requirements as agreed by the parties.

#### **Article 881**

Where a client in a technology consultation contract fails to provide the necessary materials in accordance with the agreement thus affecting the progress and quality of the work, or if the client fails to accept the work product or delays the acceptance, he may not request refund for the paid remuneration and shall pay any unpaid remuneration.

An entrusted person in a technology consultation contract who fails to submit the consultation report as scheduled or submits a report failing to meet the requirements as agreed by the parties shall bear default liability in form of reduction or waiver of its remuneration, and the like.

Where a client in a technology consultation contract makes a decision in reliance upon the entrusted person's consultation report and advice that meet the requirements as agreed by the parties, any losses thus caused shall be borne by the client, unless otherwise agreed by the parties.

### **Article 882**

A client in a technology service contract shall, in accordance with the agreement, provide working conditions, perform the cooperative work, accept the work product, and pay remuneration.

### **Article 883**

An entrusted person in a technology service contract shall, in accordance with the agreement, complete the services, solve the technological issues, guarantee the quality of the work, and impart the knowledge for solving the technological problems.

### **Article 884**

Where a client to a technology service contract fails to perform his contractual obligations or performs his obligations in a manner inconsistent with the contract, thus affecting the progress and quality of the work, or fails to accept the work product or delays the acceptance, he may not request for refund of the paid remuneration, and shall pay any unpaid remuneration.

An entrusted person in a technology service contract who fails to complete the service work in accordance with the agreement shall bear default liability in such form as waiver of his remuneration, and the like.

### **Article 885**

Unless otherwise agreed by the parties, in the course of performance of a technology consultation contract or a technology service contract, the new technological product made by the entrusted person with technological materials and working conditions provided by the client belongs to the entrusted person. The new technological products made by the client based on the work product of the entrusted person belongs to the client.

### **Article 886**

Where there is no agreement in a technology consultation contract or a technology service contract on the bearing of the necessary expenses for the entrusted person to carry out the normal work, or the agreement is unclear, the said expenses shall be borne by the entrusted person.

### **Article 887**

Where there are laws or administrative regulations providing otherwise on technology intermediary contracts and technology training contracts, the relevant provisions shall be followed.

## **Chapter XXI**

### **Contracts for Custody of Property**

**Article 888**

A contract for custody of property is a contract under which a custodian keeps the article delivered by a depositor and returns the said article.

Where a depositor conducts shopping, dining, lodging, or other activities in the custodian's place and deposits an article at a designated area, the article is deemed to be placed in the custodian's custody unless otherwise agreed by the parties or required by the course of dealing.

**Article 889**

A depositor shall pay the safekeeping fee to the custodian in accordance with the agreement.

Where there is no agreement between the parties on the safekeeping fee or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the article is deemed to be placed in a gratuitous custody.

**Article 890**

A contract for custody of property is formed upon delivery of the article to be kept under custody, unless otherwise agreed by the parties.

**Article 891**

Where a depositor delivers to a custodian an article to be kept under his custody, the custodian shall issue a safekeeping certificate, unless otherwise required by the course of dealing.

**Article 892**

A custodian shall properly keep the deposited article.

The parties may agree on the place and method of safekeeping. Except in case of emergency or in the interests of the depositor, the place and method of safekeeping may not be changed without the other party's consent.

**Article 893**

Where a depositor delivers to a custodian an article to be kept under custody that has defects or needs special safekeeping measures based on its nature, he shall inform the custodian of the relevant information. Where the depositor fails to do so thus causing damage to the deposited article, the custodian shall not bear the liability for compensation. Where the custodian suffers a loss therefrom, the depositor shall be liable for compensation unless the custodian knows or should have known the situation but fails to take remedial measures.

**Article 894**

A custodian may not re-deposit an article under his custody to a third person for safekeeping, unless otherwise agreed by the parties.

A custodian who re-deposits the article under his custody to a third person for

safekeeping in violation of the preceding paragraph thus causing damage to the article shall bear the liability for compensation.

#### **Article 895**

A custodian may not use or permit a third person to use the article under his custody, unless otherwise agreed by the parties.

#### **Article 896**

Where a third person claims against an article under a custodian's custody, the custodian shall perform the obligation of returning the article to the depositor, unless the said article is put under preservation or enforcement in accordance with law.

Where a third person initiates an action against the custodian or applies for detention of the article under the latter's custody, the custodian shall promptly notify the depositor.

#### **Article 897**

Where an article under custody is destructed, damaged, or lost due to improper keeping by the custodian during the period the article is under his custody, the custodian shall bear the liability for compensation, except that a custodian who keeps the deposited article free of charge shall not bear the liability for compensation if he can prove that the destruction, damage, or loss is not caused by his intentional or grossly negligent act.

#### **Article 898**

A depositor shall declare to the custodian if he deposits money, negotiable securities, or other valuable articles, and the custodian shall examine them for acceptance, or seal them; where the depositor fails to make such a declaration, if the said article is destructed, damaged, or lost, the custodian may make compensation based on a rate for ordinary articles.

#### **Article 899**

A depositor may collect the article he deposited in custody at any time.

Where there is no agreement between the parties on the period for the custody or the agreement is unclear, the custodian may, at any time, request the depositor to collect the article under his custody. Where there is an agreement on the period for the custody, without special cause, the custodian may not request the depositor to collect the article before such period expires.

#### **Article 900**

Upon expiration of the period for custody or where the depositor collects the article he deposits in custody before expiration of such period, the custodian shall return the article and the proceeds accrued thereof to the depositor.

#### **Article 901**

Where money is deposited in custody, the custodian may return the money in the same currency and amount. Where other fungible goods are deposited in custody, the

custodian may return the goods of the same kind, quality, and quantity in accordance with the agreement .

#### **Article 902**

Under a contract for non-gratuitous custody, the depositor shall pay the safekeeping fee to the custodian at a time agreed by the parties.

Where there is no agreement between the parties on the time limit for payment of the safekeeping fee or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the payment shall be made at the time the article under custody is collected.

#### **Article 903**

Where a depositor fails to pay the safekeeping fee or the other expenses, the custodian has the right to retain the article under custody under a lien, unless otherwise agreed by the parties.

## **Chapter XXII**

### **Warehousing Contracts**

#### **Article 904**

A warehousing contract is a contract under which a warehouse stores the goods delivered by the depositor for which the depositor pays the warehousing fee.

#### **Article 905**

A warehousing contract is formed when there is a consensus of expression of intent between the warehouse and the depositor.

#### **Article 906**

Where dangerous goods such as inflammable, explosive, toxic, corrosive, radioactive, or perishable articles are to be stored, the depositor shall state the nature of the said goods and provide relevant information thereof.

Where a depositor violates the provisions of the preceding paragraph, the warehouse may refuse to accept the goods for storage, or take appropriate measures to avoid losses, and the expenses thus incurred shall be borne by the depositor.

A warehouse that stores dangerous goods such as inflammable, explosive, toxic, corrosive, and radioactive articles shall have the corresponding warehousing conditions.

**Article 907**

A warehouseman shall examine the goods before accepting them in accordance with the agreement. Where a warehouseman, upon examining the goods, finds that the goods to be stored are inconsistent with the agreement, he shall promptly notify the depositor. A warehouseman shall bear the liability for compensation if, after he has examined and accepted the stored goods, the goods are not in conformity with the agreement in terms of the types, quantity, or quality.

**Article 908**

Upon delivering of the goods for storage by a depositor, the warehouseman shall issue a document such as a warehouse receipt or entry.

**Article 909**

A warehouseman shall sign or stamp on a warehouse receipt. A warehouse receipt shall contain the following particulars:

- (1) the name or designation and domicile of the depositor;
- (2) the type, quantity, quality, package, the number of pieces, and marks of the stored goods;
- (3) the standard for damage and spoilage of the stored goods;
- (4) the warehousing site;
- (5) the warehousing period;
- (6) the warehousing fee;
- (7) the insured amount, term of insurance, and the designation of the insurer if the goods to be stored have been insured; and
- (8) the name of the issuer and the place and date of issuance.

**Article 910**

A warehouse receipt is a proof for collecting the stored goods. Where a warehouse receipt is endorsed by the depositor or a holder of the receipt, and is signed or stamped by the warehouseman, the right to collect the stored goods may be assigned to another person.

**Article 911**

A warehouseman shall, upon request of the depositor or the holder of the warehouse receipt, allow the depositor or the holder to examine the stored goods or to take samples thereof.

**Article 912**

Where a warehouseman finds that the stored goods deteriorate or suffer from other damages, the warehouseman shall promptly notify the depositor or the holder of the warehouse receipt.

### **Article 913**

Where a warehouseer finds that the stored goods deteriorate or suffer from other damages, which endangers the safety and the normal warehousing of the other stored goods, he shall demand the depositor or the holder of the warehouse receipt to dispose of the goods when necessary. In case of emergency, a warehouseer may make necessary disposal, but afterwards shall promptly notify the depositor or the holder of the warehouse receipt about the situation.

### **Article 914**

Where there is no agreement between the parties on the warehousing period or the agreement is unclear, the depositor or the holder of the warehouse receipt may collect the stored goods at any time, and the warehouseer may, at any time, request the depositor to collect the stored goods, provided that a reasonable period of time necessary for preparations shall be given.

### **Article 915**

Upon expiration of the warehousing period, the depositor or the holder of the warehouse receipt shall collect the stored goods by presenting the warehouse receipt, warehouse entry, or the like. Where the depositor or the holder of the warehouse receipt delays in collecting the stored goods, additional warehousing fees shall be charged; where the goods are collected before expiration of the warehousing period, the warehousing fees shall not be reduced.

### **Article 916**

Where a depositor or a holder of the warehouse receipt fails to collect the stored goods upon expiration of the warehousing period, the warehouseer may demand the depositor or the holder of the warehouse receipt to collect the goods within a reasonable period of time; if the depositor or the holder still fails to collect the goods beyond the reasonable period, the warehouseer may have the warehoused goods placed in escrow.

### **Article 917**

If within the warehousing period, the stored goods are destructed, damaged, or lost due to improper warehousing by the warehouseer, the depository shall bear the liability for compensation.

Where the deterioration or damage of the stored goods is due to the inherent nature of the goods, or because the goods are not packaged in accordance with the agreement, or because they are stored beyond a valid storage period, the warehouseer shall not be liable for compensation.

### **Article 918**

For matters not provided in this Chapter, the relevant provisions on the contracts for custody of property shall be applied.

## **Chapter XXIII**

### **Entrustment Contracts**

#### **Article 919**

An entrustment contract is a contract under which a principal and an agent agree that the agent shall handle the matters for the principal.

#### **Article 920**

A principal may specifically entrust an agent to handle one or several matters, and may also generally entrust an agent to handle all matter of his.

#### **Article 921**

A principal shall pay in advance the expenses for handling the entrusted matter. Where an agent pays for the principal necessary expenses in handling an entrusted matter, the principal shall reimburse the expenses with interest.

#### **Article 922**

An agent shall handle the entrusted matter in accordance with the instructions given by the principal. Where it is necessary to modify such instructions, the modification shall be consented to by the principal; where the situation is emergent and it is difficult to obtain the principal's consent, the agent shall properly handle the entrusted matter, and shall, afterwards, promptly inform the principal of the situation.

#### **Article 923**

An agent shall handle the entrusted matter in person. With the consent of the principal, an agent may sub-entrust it to a third person. Where the sub-entrustment is consented to or ratified by the principal, the principal may directly instruct the sub-entrusted third person on an entrusted matter, and the agent shall only be liable for the selection of the third person and for the instructions given by himself to the third person. If the sub-entrustment is not consented to or ratified by the principal, the agent shall be liable for an act done by the sub-entrusted third person, unless the sub-entrustment is for protecting the interests of the principal in case of emergency.

#### **Article 924**

An agent shall, upon request of the principal, report on the situation of the entrusted matter. Upon termination of the entrustment contract, an agent shall report on the result of the entrusted matter.

#### **Article 925**

Where an agent, acting within the scope of authority granted by the principal, concludes a contract with a third person in his own name, if the third person is aware of the agency relationship between the agent and the principal, the said contract shall directly bind the principal and the third person, unless there is definite evidence

establishing that the said contract binds only the agent and the third person.

#### **Article 926**

Where a contract is concluded by an agent in his own name with a third person who is not aware of the agency relationship between the agent and the principal, if the agent fails to perform his obligations owed to the principal because of the third person, the agent shall disclose the third person to the principal, and the principal may then exercise the right of the agent against the third person, unless the third person would not have concluded the contract if he has been aware of the existence of the principal at the time of concluding the contract.

Where an agent fails to perform his obligations owed to a third person because of the principal, the agent shall disclose the principal to the third person, and the third person may then claim his rights against either the agent or the principal as a counterparty, except that he may not change the counterparty once he has made the selection.

Where a principal exercises the right of the agent against the third person, the third person may claim the defense he has against the agent against the principal. Where the third person elects the principal as the counterparty, the principal may claim against the third person the defense he has against the agent, as well as the agent's defense against the third person.

#### **Article 927**

An agent shall hand over to the principal any property acquired in handling the entrusted matter.

#### **Article 928**

When an agent has accomplished the entrusted matter, the principal shall pay remuneration to the agent in accordance with the agreement.

Where an entrustment contract is rescinded or the entrusted matter cannot be accomplished due to a cause not attributable to the agent, the principal shall pay corresponding remuneration to the agent, unless otherwise agreed by the parties.

#### **Article 929**

Under a non-gratuitous entrustment contract, where losses are caused to the principal due to the agent's fault, the principal may request compensation. Under a gratuitous entrustment contract, where losses are caused to the principal by the agent's intentional act or by his gross negligence, the principal may request for compensation.

Where an agent acts beyond authorization thus causing losses to the principal, the agent shall make compensation.

#### **Article 930**

Where an agent suffers a loss in handling the entrusted matter due to a cause not attributable to himself, he may request compensation from the principal.

**Article 931**

A principal may, with consent of the agent, authorize a third person other than the agent to handle the entrusted matter. If a loss is thus caused to the agent, the agent may request compensation from the principal.

**Article 932**

Where two or more agents jointly handle an entrusted matter, they shall bear joint and several liabilities to the principal.

**Article 933**

A principal or an agent may rescind the entrustment contract at any time. Where rescission of the contract by a party causes losses to the other party, the party rescinding a gratuitous entrustment contract shall compensate for the direct loss caused by the rescission at an improper time, and the party rescinding a non-gratuitous entrustment contract shall compensate for the direct loss and the expected profit obtainable if the contract has been performed, unless the loss is caused by a reason not attributable to the rescinding party.

**Article 934**

An entrustment contract shall terminate where the principal dies or is terminated, or if the agent dies, loses capacity for performing civil juristic acts, or is terminated, unless otherwise agreed by the parties or it is inappropriate to terminate the contract based on the nature of the entrusted matter.

**Article 935**

Where the termination of an entrustment contract which is resulted from the death, declared bankruptcy, or declared dissolution of the principal will harm the interests of the principal, the agent shall continue to handle the entrusted matter until the heir, administrator of estate, or the liquidator of the principal takes it over.

**Article 936**

Where an entrustment contract is terminated owing to the death, loss of capacity for performing civil juristic acts, declared bankruptcy or dissolution of the agent, the heir, administrator of estate, legal representative, or liquidator of the agent shall promptly notify the principal. Where the termination of the entrustment contract will harm the interests of the principal, the heir, administrator of estate, legal representative, or liquidator of the agent shall take necessary measures before the principal takes remedial measures.

**Chapter XXIV****Contracts for Property Management Service**

### **Article 937**

A contract for property management service is a contract under which a property management service provider provides to the property owners with property management services within the service area, such as repair and maintenance of buildings and the auxiliary facilities thereof, the management and maintenance of the environmental hygiene, keeping the order, and like, and the property owners pay property management fees in return.

Property management service providers include property management service enterprises and other managers.

### **Article 938**

A property management service contract generally contains clauses specifying the contents of the services, the service quality, the rates and the collection methods of the service fee, the use of the maintenance funds, the management and use of the service premises, the term of service, the service handover, and the like.

A commitment of service made publicly by a property management service provider in favor of the property owners shall be a component part of the property management service contract.

A property management service contract shall be in writing.

### **Article 939**

A preliminary property management service contract concluded between a developer and a property management service provider in accordance with law, or a property management service contract concluded by an owners' committee and a property management service provider selected and hired in the owners' assembly in accordance with law are legally binding on the owners.

### **Article 940**

Where, prior to expiration of the service term as agreed in a preliminary contract for property management service concluded between a developer and a property management service provider in accordance with law, a contract for property management service concluded by the owners' committee or the owners and a new property management service provider becomes effective, and the preliminary contract for property management service shall be terminated.

### **Article 941**

Where a property management service provider authorizes a specialized service entity or any other third person to handle some specialized services in the property management service area, the property management service provider shall be responsible to the owners in terms of the specialized services.

A property management service provider shall not delegate to a third person all the property management services it is obligated to provide, or divide the property management services and delegate each to a third person.

#### **Article 942**

A property management service provider shall, in accordance with the contract and the nature of the use of the property, properly repair, maintain, clean, grow plant, and manage the common space of the property management service area co-owned by the owners, maintain the basic order in the property management service area, and take reasonable measures to protect the owners' personal and property safety.

For any violation of the relevant laws and regulations on public security, environmental protection, fire protection, and the like, in the property management service area, the property management service provider shall, in a timely manner, take reasonable measures to stop the violation, make a report to the competent departments, and render assistance in its handling.

#### **Article 943**

A property management service provider shall, in a reasonable manner, regularly disclose to the owners and report to the owners' assembly and the owners' committee on its services, the responsible personnel, the quality requirements, the items that a fee is charged, the rate of the fee, the performance of obligations, use of the maintenance funds, and the management and income generated from using the common space co-owned by the owners, and the like.

#### **Article 944**

An owner shall pay property management fees to the property management service provider in accordance with the agreement. Where a property management service provider has provided services in accordance with the agreement and the relevant regulations, an owner shall not refuse to pay the property management fees on the ground that he has not accepted or need not accept the relevant property management service.

Where an owner fails to pay the property management fees within the agreed period in breach of the agreement, the property management service provider may demand his payment within a reasonable period of time; if the owner still fails to make payment within the said period, the property management service provider may initiate a legal action or apply for arbitration.

The property management service provider may not collect the property management fees by such means as shutting off power, water, heat, or gas.

#### **Article 945**

Where an owner decorates or remodels the unit he owns in a building, he shall notify the property management service provider in advance, follow the reasonable rules provided by the property management service provider, and cooperate with the property management service provider in necessary onsite inspection.

If an owner transfers or leases the unit exclusively owned by him within a building, creates a right of habitation therein, or changes the use of the common space in accordance with law, he shall timely inform the property management service provider of the relevant situation.

#### **Article 946**

Where the owners jointly decide to dismiss the property management service provider in accordance with the statutory procedure, the contract for property management service may be rescinded. In such a case, the property management service provider shall be notified in writing 60 days in advance, unless otherwise agreed by the parties.

If reissuance of the contract in accordance with the preceding paragraph causes loss to the property management service provider, the owners shall compensate for the loss, unless the loss is incurred by a cause not attributable to the owners.

#### **Article 947**

Where the owners jointly decide to continue employing a property management service provider before expiration of the service term, they shall renew the contract with the original property management service provider before expiration of the term of the contract.

Before expiration of the service term, where a property management service provider does not consent to continued employment, it shall notify the owners or the owners' committee in writing 90 days before expiration of the term of the contract, unless otherwise agreed by the parties.

#### **Article 948**

Where, upon expiration of the property management service term, the owners fail to make a decision in accordance with law to continue employing the original service provider or to employ another service provider, if the property management service provider continues to provide property management services, the original contract for property management service shall continue to be valid, except that it becomes one with an indefinite term.

Either party may rescind such a contract for property management service at any time, provided that the other party shall be notified in writing 60 days in advance.

#### **Article 949**

Upon termination of a contract for property management service, the original property management service provider shall vacate the property management service area within the agreed time or a reasonable period of time, surrender the property service premises, the related facilities, and the relevant materials necessary for property management service, and the like, to the owners' committee, the owners who decide to exercise management themselves, or the person designated by them, cooperate with the new property management service provider in effectively conducting handover work, and truthfully disclose the information regarding the use and management of the property.

The original property management service provider who violates the provisions of the preceding paragraph shall not request the owners to pay the property management fee after the termination of the contract for property management service, and shall bear the liability for compensation if loss is caused to the owners.

### **Article 950**

After a contract for property management service is terminated and before the handover to the new property management service provider selected by the owners or the owners' assembly or to the owners who decide to exercise management by themselves, the original property management service provider shall continue to provide property management services, and may request the owners to pay the property management fee during this period.

## **Chapter XXV**

### **Brokerage Contracts**

#### **Article 951**

A brokerage contract is a contract under which a broker in his own name engages in trade activities for a client who pays remuneration in return.

#### **Article 952**

The expenses incurred by a broker in handling the entrusted matters shall be borne by the broker, unless otherwise agreed by the parties.

#### **Article 953**

Where a broker possesses the commissioned article, the broker shall properly keep it.

#### **Article 954**

If the commissioned article has a defect at the time when they are delivered to a broker, or if it is perishable, the broker may dispose of the article upon his client's consent; if the broker is unable to make prompt contact with the client, the broker may dispose of the article in a proper manner.

#### **Article 955**

Where a broker sells an article at a price lower than the price set by the client, or buys an article at a price higher than the price set by the client, the broker shall obtain the consent of the client; where such a deal is made without the consent of the client and the broker makes up for the price difference, the said deal is binding on the client.

Where a broker sells an article at a price higher than the price set by the client or buys an article at a price lower than the price set by the client, remuneration may be increased in accordance with the agreement. Where there is no such an agreement or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the benefit shall belong to the client.

Where a client has given a special instruction on the price of an article, the broker may not sell or buy it contrary to the said instruction.

#### **Article 956**

Where a broker buys or sells a commodity with a market price, unless otherwise indicated by the client, the broker himself may serve as a buyer or a seller.

Despite the situation provided in the preceding paragraph, the broker may still request the client to pay remuneration.

#### **Article 957**

Where a broker buys a commissioned article in accordance with the contract, the client shall accept the article in a timely manner. Where, after being demanded by the broker, the client refuses to accept the article without just cause, the broker may have the commissioned article placed in escrow in accordance with law.

Where a commissioned article cannot be sold or the client withdraws from the commissioned sale, if the client, after being demanded by the broker, fails to take back or dispose of the said article, the broker may have the commissioned article placed in escrow in accordance with law.

#### **Article 958**

A broker who concludes a contract with a third person shall directly enjoy the rights and assume the obligations under the said contract.

Where a third person fails to fulfill the contractual obligation thus causing losses to the client, the broker shall bear the liability for compensation, unless otherwise agreed by the broker and the client.

#### **Article 959**

Where a broker has accomplished the entrusted matter in full or in part, the client shall pay remuneration accordingly. Where a client fails to pay remuneration as scheduled, the broker has the right to retain the commissioned article under a lien unless otherwise agreed by the parties.

#### **Article 960**

For matters not provided in this Chapter, the relevant provisions on entrustment contracts shall be applied *mutatis mutandis*.

## **Chapter XXVI**

### **Intermediary Contracts**

### **Article 961**

An intermediary contract is a contract under which a middleman reports to the client the opportunity for concluding a contract or provides intermediary services for the conclusion of a contract, for which the client pays remuneration.

### **Article 962**

The middleman shall truthfully report to the client matters related to the conclusion of the contract.

Where a middleman intentionally conceals important facts in relation to the conclusion of the contract or provides untrue information thereof, thus harming the interests of the client, he may not request for remuneration and shall bear the liability for compensation.

### **Article 963**

Where a middleman contributes to the conclusion of a contract, the client shall pay remuneration in accordance with the agreement. Where there is no agreement between the parties on the remuneration for the middleman or the agreement is unclear, if it cannot be determined according to the provisions of Article 510 of this Code, the remuneration shall be reasonably determined in accordance with the middleman's services. Where the intermediary services provided by the middleman facilitates the conclusion of a contract, the parties to the said contract shall equally share the disbursement of the remuneration to the middleman.

In facilitating the conclusion of a contract, the expenses incurred in the intermediary activities shall be borne by the middleman.

### **Article 964**

Where a middleman fails to facilitate the conclusion of a contract, he may not request the payment of remuneration, but may request the client to pay for the necessary expenses incurred in the intermediary activities in accordance with the agreement.

### **Article 965**

Where a client, after accepting the services of the middleman, uses the trading opportunity or intermediary services provided by the middleman to bypass the middleman and directly concludes a contract with another person, the client shall pay remuneration to the middleman.

### **Article 966**

For matters not provided in this Chapter, the relevant provisions on entrustment contracts shall be applied *mutatis mutandis*.

## **Chapter XXVII**

### **Partnership Contracts**

#### **Article 967**

A partnership contract is an agreement between two or more partners to share benefits and assume risks for a joint enterprise.

#### **Article 968**

A partner shall fulfill his obligation to contribute capital in accordance with the method, amount, and time limit for payment in accordance with the agreement.

#### **Article 969**

The capital contributions made by the partners and the proceeds thereof and other property acquired in accordance with law in the course of the partnership business are partnership property.

A partner may not request partition of the partnership property prior to the termination of the partnership contract.

#### **Article 970**

A partner who makes a decision on the partnership businesses shall obtain unanimous consent of all the partners, unless otherwise agreed in the partnership contract.

The partnership businesses shall be jointly managed by all partners. One or more partners may be authorized to manage the partnership business in accordance with the partnership contract or the decision made by all partners; and the other partners shall cease to manage the partnership business, except that they have the right to supervise the management.

Where the partners manage the partnership business separately, the managing partner may raise objections on the matters managed by the other partners, in which case, the other partners shall suspend the management of such matter.

#### **Article 971**

A partner may not request remuneration for management of the partnership business, unless otherwise agreed in the partnership contract.

#### **Article 972**

The sharing of the profits and allocation of losses of a partnership shall be in accordance with the partnership contract; where there is no such an agreement in the partnership contract or the agreement is unclear, the partners shall make a decision through consultation. Where such consultation fails, the partners shall share the profits and assume the losses in proportion to their paid-in capital, or share the profits and assume the losses in equal share if the proportions of their paid-in capital cannot

be determined.

#### **Article 973**

The partners shall bear joint and several liabilities for the partnership obligations. A partner who has performed the partnership obligations in excess of his share has the right to indemnification against the other partners.

#### **Article 974**

Unless otherwise agreed in the partnership contract, a partner who transfers all or part of his share of property to a person other than a partner shall obtain unanimous consent of the other partners.

#### **Article 975**

A creditor of a partner shall not subrogate and exercise any right of the partner provided in this Chapter and the partnership contract, except that a creditor may subrogate and exercise the partner's claim against the partnership for distribution of the benefits.

#### **Article 976**

Where there is no agreement between or among the partners on the term of the partnership, or the agreement is unclear, if the term cannot be determined according to the provisions of Article 510 of this Code, the partnership shall be deemed as a partnership with an indefinite term.

If a partner continues to manage the partnership business upon expiration of the term of the partnership, and the other partners fail to raise any objection, the original partnership contract shall continue to be valid, but with an indefinite term.

A partner may dissolve a partnership contract with an indefinite term at any time, but the other partners shall be notified within a reasonable period of time in advance.

#### **Article 977**

Where a partner dies, loses capacity for performing civil juristic acts, or is terminated, the partnership contract is terminated, unless otherwise provided in the partnership contract, or it is inappropriate to terminate the contract due to the nature of the partnership affairs.

#### **Article 978**

Upon termination of a partnership contract, after paying the expenses for termination and discharging the partnership debts, the residual assets of the partnership property, if any, shall be distributed in accordance with the provisions of Article 972 of this Code.

**Part Three**  
**Quasi-contracts**

**Chapter XXVIII**  
***Negotiorum Gestio***

**Article 979**

Where a person who has neither a statutory nor a contractual obligation acts as a custodian to manage another person's affair in order to prevent the latter from suffering a loss of interests, the said person may request the beneficiary to reimburse the necessary expenses incurred therefrom. Where such a custodian suffers losses when managing another person's affairs, the custodian may request the beneficiary to make appropriate compensation.

Where the management of another person's affairs is contrary to the true will of the beneficiary, the custodian does not have the right provided in the preceding paragraph, unless the true will of the beneficiary is in violation of law or against the public order or good morals.

**Article 980**

Where the management by a custodian of another person's affairs does not fall within the circumstances provided in the preceding Article, but the beneficiary has enjoyed the benefit of the management, the beneficiary shall be subject to the obligations provided in the first paragraph of the preceding Article to the custodian to the extent of the benefit he gains therefrom.

**Article 981**

A custodian shall manage another person's affairs in the best interest of the beneficiary. Where suspension of management is to put the beneficiary at a disadvantage position, the management may not be suspended without just cause.

**Article 982**

Where a custodian manages another person's affairs, he shall promptly notify the beneficiary if he is able to do so. Where the matter does not need urgent management, the custodian shall wait for the beneficiary's instruction.

**Article 983**

Upon termination of the management, a custodian shall report the management of the affairs to the beneficiary. The property obtained by the custodian in the management of the affairs shall be surrendered to the beneficiary in a timely manner.

#### **Article 984**

Where the management of another person's affairs by a custodian is subsequently ratified by the beneficiary, the provisions on entrustment contracts shall be applied to the management from the commencement of the management, unless the custodian expresses his intention otherwise.

## **Chapter XXIX**

### **Unjust Enrichment**

#### **Article 985**

Where a person is unjustly enriched without a legal basis, the person who thus suffers a loss is entitled to request the enriched person to return the benefit, unless under any of the following circumstances:

- (1) the payment is made for performing a moral obligation;
- (2) the payment is made to satisfy an obligation not yet due; or
- (3) the payment is made to an obligation knowing that there is no obligation to pay.

#### **Article 986**

Where a person enriched does not know or should not have known that the enrichment is without a legal basis, and if the enrichment no longer exists, the person has no obligation to return the benefit thus received.

#### **Article 987**

Where a person enriched knows or should have known that the enrichment is without a legal basis, the aggrieved person may request the enriched person to return the benefit thus received and make compensation for the losses in accordance with law.

#### **Article 988**

Where a person enriched has gratuitously transferred the benefit received to a third person, the aggrieved person may request the third person to assume the obligation to return the benefit to the corresponding extent.

# **Book Four**

## **Personality Rights**

### **Chapter I**

#### **General Rules**

##### **Article 989**

This Book regulates the civil-law relations arising from the enjoyment and protection of personality rights.

##### **Article 990**

Personality rights are the rights enjoyed by persons of the civil law, such as the right to life, the right to corporeal integrity, the right to health, the right to name, the right to trade name, the right to likeness, the right to reputation, the right to honor, the right to privacy, and the like.

In addition to the personality rights provided in the preceding paragraph, a natural person enjoys other personality rights and interests arising from personal liberty and human dignity.

##### **Article 991**

The personality rights of persons of the civil law are protected by law and free from infringement by any organization or individual.

##### **Article 992**

Personality rights may not be waived, transferred, or inherited.

##### **Article 993**

The name, entity name, likeness, or the like, of a person of the civil law may be used by others upon authorization, unless the authorization thereof is not allowed by law or based on the nature of the right.

##### **Article 994**

Where the name, likeness, reputation, honor, privacy, remains, or the like, of the deceased is harmed, the spouse, children, and parents of the deceased have the right to request the actor to bear civil liability in accordance with law. Where the deceased has no spouse or children, and the parents of the deceased have already died, other close relatives of the deceased have the right to request the actor to bear civil liability in accordance with law.

### **Article 995**

A person whose personality rights are infringed upon has the right to request the actor to bear civil liability in accordance with the provisions of this Code and the other laws. Where the said person exercises his right to request the actor to stop the infringement, remove the nuisance, eliminate the danger, eliminate the adverse effects, rehabilitate his reputation, or extend apologies, the provisions on limitation periods shall not apply.

### **Article 996**

Where the personality rights of a party is harmed by the other party's breach of contract and the injured party is thus suffered severe emotional distress, if the injured party elects to request the other party to bear liability based on breach of contract, his right to claim for compensation for pains and suffering is not be affected.

### **Article 997**

Where a person of the civil law has evidence to prove that an actor is committing or is about to commit an illegal act that infringes upon his personality rights, and that failure to timely stop the act will cause irreparable harm to his lawful rights and interests, the person has the right, in accordance with law, to request the people's court to order the actor to stop the act.

### **Article 998**

In determining the civil liability an actor is to bear for infringing upon other's personality rights, other than the right to life, the right to corporeal integrity, or the right to health, consideration shall be given to the occupations of the actor and the injured person, the scope of impact of the act, the degree of fault, as well as the factors such as the purposes, methods, and consequences of the act.

### **Article 999**

The name, entity name, likeness, personal information, and the like, of a person of the civil law may be reasonably used by those engaged in news reporting, supervision of public opinions, or the like, for public interests, except that civil liability shall be borne in accordance with law where the use unreasonably harms the personality rights of the person.

### **Article 1000**

Where an actor shall bear civil liability such as elimination of adverse effects, rehabilitation of reputation, or extension of apologies for infringing upon other's personality rights, the civil liability to be born shall be commensurate with the specific way the act is done and the scope of its impact.

Where an actor refuses to bear civil liability as provided in the preceding paragraph, the people's court may take such measures as making an announcement, publishing the final judgment, or the like, through media, such as newspapers, periodicals, or online websites, and any expenses thus incurred shall be borne by the actor.

### **Article 1001**

The relevant provisions of Book I and Book V of this Code and the other laws shall apply to the protection of a natural person's relation-based rights such as a right arising from a marital and familial relationship; in the absence of such provisions, the relevant provisions of this Book on the protection of personality rights shall, based on the nature of the right, be applied *mutatis mutandis*.

## **Chapter II**

### **Rights to Life, Rights to Corporeal Integrity, and Rights to Health**

#### **Article 1002**

A natural person enjoys the right to life. A natural persons' life safety and dignity are protected by law and free from infringement by any organization or individual.

#### **Article 1003**

A natural person enjoys the right to corporeal integrity. A natural persons' corporeal integrity and freedom of movement are protected by law and free from infringement by any organization or individual.

#### **Article 1004**

A natural person enjoys the right to health. A natural persons' physical and mental health are protected by law and free from infringement by any organization or individual.

#### **Article 1005**

Where a natural person's right to life, right to corporeal integrity, or right to health is infringed upon or otherwise in peril, the organization or individual who is legally obligated to aid shall promptly extend rescue.

#### **Article 1006**

A person with full capacity for performing civil juristic acts has the right to make a voluntary decision in accordance with law to donate his cells, tissues, organs, and remains. No organization or individual may force, deceive, or induce the person to donate such.

The consent of a person with full capacity for performing civil juristic acts to be a donor thereof in accordance with the provisions of the preceding paragraph shall be made in writing or through a will.

Where a natural person, during his life, has not disagreed to be a donor thereof after he dies, his spouse, adult children, and parents may, upon his death, jointly decide to make the donation, and such a decision shall be made in writing.

#### **Article 1007**

Any form of purchase or sale of human cells, tissues, organs, or remains is prohibited.

Any purchase or sale in violation of the preceding paragraph is void.

#### **Article 1008**

Where a clinical trial is needed for developing new drugs and medical devices or developing new prevention and treatment methods, upon approval of the relevant competent authorities and the examination and approval of the ethics committee, the participants or the guardians thereof shall be informed of the details including the purposes, methods, and the possible risks of the trial, and their written consent must be obtained.

When conducting a clinical trial, no fees may be collected from the participants of the trial.

#### **Article 1009**

A medical and scientific research activity related to human genes, embryos, or the like, shall be done in accordance with the relevant provisions of laws, administrative regulations, and the regulations of the State, and shall not endanger human health, offend ethics and morals, or harm public interests.

#### **Article 1010**

A person who has been sexually harassed against his will by another person through oral words, written language, images, physical acts, or the like, has the right to request the actor to bear civil liability in accordance with law.

The State organs, enterprises, schools, and other organizations shall take reasonable precautions, accept and hear complaints, investigate and handle cases, and take other like measures to prevent and stop sexual harassment conducted by a person through taking advantage of his position and power or a superior-subordinate relationship, and the like.

#### **Article 1011**

A person, whose freedom of movement has been deprived of or restricted by illegal detention or the like measures, or whose body has been illegally searched, has the right to request the actor to bear civil liability in accordance with law.

### **Chapter III**

#### **Rights to Name and Rights to Entity Name**

### **Article 1012**

A natural person enjoys the right to name, and is entitled to determine, use, change, or allow others to use his name in accordance with law, provided that public order and good morals are not offended.

### **Article 1013**

A legal person or an unincorporated organization enjoys the right to entity name, and is entitled to decide, use, change, transfer, or allow others to use its entity name in accordance with the law.

### **Article 1014**

No organization or individual may infringe upon other's rights to name or rights to entity name by means such as interference, misappropriation, impersonation, or the like.

### **Article 1015**

A natural person shall take the surname of either his father or mother, and may take a surname other than his father's or mother's in any of the following situations:

- (1) taking the surname of a senior lineal relative by blood;
- (2) taking the surname of a foster parent, other than the legal care provider, who provides care thereto; and
- (3) taking a surname with other legitimate reasons that do not offend public order and good morals.

Natural persons of ethnic minorities may take surnames in compliance with their cultural traditions and local customs.

### **Article 1016**

A natural person who decides to take or change his name, or a legal person or an unincorporated organization who decides to take, change, or transfer its entity name, shall file registration with the relevant authorities in accordance with law, unless otherwise provided by law.

Upon changing the name or entity name by a person of the civil law, the civil juristic acts performed before the name change is legally binding on the person.

### **Article 1017**

With regard to a pseudonym, stage name, screen name, translated name, trade name, abbreviation of a name or entity name of a social popularity, where the use of which by others will suffice to cause public confusion, the relevant provisions on protection of the rights to name and the rights to entity name shall be applied *mutatis mutandis*.

## **Chapter IV**

### **Rights to Likeness**

#### **Article 1018**

A natural person enjoys the right to likeness, and is entitled to make, use, publicize, or authorize others to use his image in accordance with law.

The likeness is an external image of a specific natural person reflected in video recordings, sculptures, drawings, or on other media by which the person can be identified.

#### **Article 1019**

No organization or individual may infringe upon other's rights to likeness by vilifying or defacing the image thereof, or through other ways such as falsifying other's image by utilizing information technology. Unless otherwise provided by law, no one may make, use, or publicize the image of the right holder without the latter's consent.

Without the consent of the person holding the right to likeness, a person holding a right in the works of the image of the former person shall not use or publicize the said image by ways such as publishing, duplicating, distributing, leasing, or exhibiting thereof.

#### **Article 1020**

The following acts, if done in a reasonable way, may be performed without the consent of the person holding the right to likeness:

(1) using publicly available images of the person holding the right to likeness to the extent necessary for personal study, art appreciation, classroom teaching, or scientific research;

(2) making, using, or publicizing the image of the person holding the right to likeness, which is inevitable for conducting news reporting;

(3) making, using, or publicizing the image of the person holding the right to likeness to the extent necessary for a State organ to perform its responsibilities in accordance with law;

(4) making, using, or publicizing the image of the person holding the right to likeness, which is inevitable for demonstrating a specific public environment;

(5) performing other acts of making, using, or publicizing the image of the person holding the right to likeness for protecting the public interests and the lawful rights and interests of the said person.

#### **Article 1021**

Where the parties have a dispute on a clause relating to the use of an image in a

contract authorizing the use of the image, interpretations shall be made in favor of the person holding the right to likeness over his image.

#### **Article 1022**

Where the parties have not agreed on the term of authorized use of an image, or the agreement is unclear, either party may rescind the contract authorizing the use of the image at any time, provided that the other party shall be notified within a reasonable period of time.

Where the parties have expressly agreed on the term of authorized use of the image, the person holding the right to likeness over the image may rescind the contract authorizing such use if with just cause, provided that the other party shall be notified within a reasonable period of time. Where rescission of the contract causes loss to the other party, unless the loss is caused by a reason not attributable to the person holding the right to likeness over the image, compensation shall be paid.

#### **Article 1023**

For an authorized use of another person's name or the like, the relevant provisions on the authorized use of other's images shall be applied *mutatis mutandis*.

For the protection of a natural person's voice, the relevant provisions on the protection of the right to likeness shall be applied *mutatis mutandis*.

## **Chapter V**

### **Rights to Reputation and Rights to Honor**

#### **Article 1024**

A person of the civil law enjoys the right to reputation. No organization or individual may infringe upon other's right to reputation by insultation, defamation, or the like.

Reputation is a social evaluation of the moral character, prestige, talent, and credit of a person of the civil law.

#### **Article 1025**

A person whose act, such as reporting news or supervising public opinions or the like for public interest purposes, adversely affects the other's reputation shall not bear civil liability except where one of the following situations exists:

- (1) he has fabricated or distorted the facts;
- (2) he has failed to fulfill the obligation to reasonably verify the seriously misrepresentative information provided by others; or

(3) he has used insulting words and the like to degrade the other's reputation.

#### **Article 1026**

To determine whether an actor has fulfilled the obligation to reasonably verify the information as provided in Subparagraph 2 of the preceding Article, the following factors shall be considered:

- (1) the credibility of the source of the information;
- (2) whether the information that is clearly controversial has been fully investigated;
- (3) the timeliness of the information;
- (4) the relevance of the information with public order and good morals;
- (5) the likelihood that the victim's reputation would be degraded; and
- (6) his ability to verify and the cost for the verification of the information.

#### **Article 1027**

Where a literary or artistic work published by an actor depicts real people and real events or a specific person, with insulting or defamatory content and thus infringes upon another persons's right to reputation, the person whose right is infringed upon has the right to request the actor to bear civil liability in accordance with law.

Where a literary or artistic work published by an actor does not depict a specific person, but only some patterns of the story are similar to the situation of such person, the actor shall not bear civil liability.

#### **Article 1028**

Where a person of the civil law has evidence to prove that the content reported by a media, such as a newspaper, a periodical, or an online website, is inaccurate and thus infringes upon his reputation, he has the right to request the media to take necessary measures including making correction of or deleting the content in a timely manner.

#### **Article 1029**

A person of the civil law may check his own credit report in accordance with law, and has the right to raise an objection and request correction, deletion, or other necessary measures to be taken where he discovers that the credit report is incorrect. The evaluators of his credit standing shall examine the report and take necessary measures in a timely manner if it is verified to be false.

#### **Article 1030**

The provisions of this Book on the protection of personal information and the relevant provisions of other laws and administrative regulations shall be applied to the relationship between persons of the civil law and the credit information processors such as a credit reporting agency.

### **Article 1031**

A person of the civil law enjoys the right to honor. No organization or individual may unlawfully deprive others of their honorary titles or defame or degrade the honors thereof.

Where an awarded honorary title of a person of the civil law should have been recorded, the person may request that it be so recorded. Where such an awarded honorary title is incorrectly recorded, the person may request that it be corrected.

## **Chapter VI**

### **Rights to Privacy and Protection of Personal Information**

#### **Article 1032**

A natural person enjoys the right to privacy. No organization or individual may infringe upon the other's right to privacy by prying into, intruding upon, disclosing, or publicizing other's private matters.

Privacy is the undisturbed private life of a natural person and his private space, private activities, and private information that he does not want to be known to others .

#### **Article 1033**

Unless otherwise provided by law or expressly consented to by the right holder, no organization or individual shall do the following acts:

(1) intruding upon another person's private life through making phone calls, sending text messages, using instant messaging tools, sending emails and flyers, and the like means;

(2) entering into, taking photographs of, or peeping into other's private spaces such as the residence or hotel room of another person;

(3) taking photographs of, peeping into, eavesdropping, or disclosing the private activities of another person;

(4) taking photographs of or peeping at the private parts of another person's body;

(5) processing another person's private information; and

(6) infringing upon another person's privacy through other means.

#### **Article 1034**

A natural person's personal information is protected by law.

Personal information is the information recorded electronically or in other ways that can be used, by itself or in combination with other information, to identify a natural person, including the name, date of birth, identification number, biometric information, residential address, telephone number, email address, health information, whereabouts, and the like, of the person.

The provisions on the right to privacy, or, in the absence of which, the provisions on the protection of personal information, shall be applied to the private personal information.

#### **Article 1035**

The processing of personal information shall be in compliance with the principles of lawfulness, justification, and within a necessary limit, and shall not be excessively processed; meanwhile, the following conditions shall be satisfied;

(1) consent has been obtained from the natural person or his guardian, unless otherwise provided by laws or administrative regulations;

(2) the rules for processing information are publicized;

(3) the purpose, method, and scope of the information processing are clearly indicated; and

(4) it is not in violation of laws or administrative regulations or against the agreement of both parties.

The processing of personal information includes the collection, storage, use, refinement, transmission, provision, disclosure, and the like, of the personal information.

#### **Article 1036**

When processing personal information, an actor shall not bear civil liability in any of the following situations:

(1) the actor reasonably performs the act to the extent that the natural person or his guardian consents to;

(2) the actor reasonably processes the information disclosed by the natural person himself or the other information that has already been legally disclosed, unless the said person explicitly refuses or the processing of the information infringes upon a significant interest of the person; and

(3) the actor reasonably performs the other acts to protect the public interest or the lawful rights and interests of the person.

#### **Article 1037**

A natural person may retrieve or make copies of his personal information from the information processors in accordance with law. Where the person discovers that the information is incorrect, he has the right to raise an objection and request corrections or other necessary measures to be taken in a timely manner.

Where a natural person discovers that an information processor has violated the provisions of laws or administrative regulations, or breached the agreement between

both parties while processing his personal information, he has the right to request the information processor to delete it in a timely manner.

#### **Article 1038**

An information processor shall not disclose or tamper with the personal information he collects and stores, and shall not illegally provide to others the personal information of a natural person without the latter's consent, unless the information, after being processed, cannot be used to identify any specific individual and cannot be restored to its original status.

An information processor shall take technical measures and other necessary measures to ensure the security of the personal information he collects and stores, and prevent the information from being leaked, tampered with, or lost. Where a person's personal information has been or is likely to be leaked, tampered with, or lost, he shall take remedial measures in a timely manner, notify the natural persons concerned in accordance with the regulations, and report to the relevant competent authorities.

#### **Article 1039**

State organs and the chartered institutions assuming administrative functions as well as their staff shall keep confidential the privacy and the personal information of natural persons known to them during the performance of their responsibilities, and shall not disclose or illegally provide it to others.

## **Book Five**

### **Marriage and Family**

#### **Chapter I**

#### **General Rules**

#### **Article 1040**

This Book regulates the civil-law relations arising from marriage or family.

#### **Article 1041**

Marriage and family are protected by the State.

A marriage system based on freedom of marriage, monogamy, and equality between men and women is implemented.

The lawful rights and interests of women, minors, the elderly, and persons with disabilities are protected.

#### **Article 1042**

Arranged marriages, mercenary marriages, and other acts interfering with the freedom of marriage are prohibited. The exaction of money or other property by way of marriage is prohibited.

Bigamy is prohibited. No one who has a spouse may cohabit with another person.

Domestic violence is prohibited. Maltreatment or desertion of family members is prohibited.

#### **Article 1043**

Families shall establish good family values, promote family virtues, and enhance family civility.

Husband and wife shall be loyal to each other, respect each other, and care for each other. Family members shall respect the elderly, take care of the young, help each other, and maintain a marital and familial relationship of equality, harmony, and civility.

#### **Article 1044**

Adoption shall be in compliance with the principle of acting in the best interest of the adoptee, and the lawful rights and interests of both the adoptee and the adopter shall be protected.

Trafficking minors in the name of adoption is prohibited.

#### **Article 1045**

Relatives include spouses, relatives by blood, and relatives by marriage.

Spouses, parents, children, siblings, paternal and maternal grandparents, and paternal and maternal grandchildren are close relatives.

Spouses, parents, children, and other close relatives living together are family members.

## **Chapter II**

### **Entering into Marriage**

#### **Article 1046**

A man and a woman shall enter into marriage freely and voluntarily. Neither

party may compel the other party to enter into marriage against his will, and no organization or individual may interfere with the freedom of marriage.

#### **Article 1047**

To enter into a marriage, a man shall reach the age of twenty-two, and a woman shall reach the age of twenty.

#### **Article 1048**

Persons who are lineal relatives by blood, or collateral relatives by blood up to the third degree of kinship are prohibited from being married.

#### **Article 1049**

Both the man and the woman intending to enter into a marriage shall file registration of the marriage in person with a marriage registration authority. If the proposed marriage is found to conform to the provisions of this Code, the marriage shall be registered and a marriage certificate shall be issued. A marital relationship shall be established upon completion of the marriage registration. The couple who has failed to file a marriage registration shall complete the registration.

#### **Article 1050**

After a marriage has been registered, by mutual consent, the woman may become a member of the man's family or vice versa.

#### **Article 1051**

A marriage is void in any of the following situations:

- (1) either party to the marriage commits bigamy;
- (2) the parties to the marriage fall within the relative relations prohibited by law from marrying each other; or
- (3) either party to the marriage is under the statutory marriageable age.

#### **Article 1052**

If a marriage is entered into as a result of coercion, the coerced party may apply to the people's court to annul the marriage.

Such an application to annul the marriage shall be made within one year from the date of the coercive act ceases.

Where the coerced party whose personal freedom is illegally constrained wishes to annul the marriage, the application to annul the marriage shall be made within one year from the date when the party's personal freedom is restored.

#### **Article 1053**

If one of the parties suffers from a serious disease, he shall truthfully inform the other party of such disease prior to marriage registration; where such information is not truthfully provided, the other party may apply to the people's court to annul the marriage.

The application to annul a marriage shall be made within one year from the date when the party knows or should have known of the cause for the annulment.

#### **Article 1054**

A void or annulled marriage has no legal effect *ab initio*, and neither party to such a marriage shall have any rights or duties arising from the marital relationship. Properties acquired during the cohabitation period shall be disposed of by mutual agreement. Where the parties fail to reach such an agreement, the people's court shall adjudicate the case in compliance with the principle of favoring the no-fault party. When disposing of the property acquired during a marriage which has been voided due to bigamy, the proprietary rights and interests of the parties to the lawful marriage shall not be infringed upon. The provisions of this Code on parents and children shall apply to the children born by the parties to a void or annulled marriage.

Where a marriage is void or annulled, the no-fault party has the right to request for damages.

### **Chapter III**

#### **Domestic Relations**

##### **Section 1**

#### **Spousal relationship**

#### **Article 1055**

Husband and wife are equal in marriage and family.

#### **Article 1056**

Both spouses have the right to use their own surname and given name.

#### **Article 1057**

Both spouses are free to engage in production and other work, and to study and to participate in social activities. Neither party may restrain or interfere with such freedom of the other party.

#### **Article 1058**

Both spouses have equal rights and joint duties to raise, educate, and protect their minor children.

#### **Article 1059**

Both spouses have the duty to support each other.

The party in need of spousal support is entitled to claim such payments against the other party who has failed to fulfill the spousal support duty.

#### **Article 1060**

A civil juristic act performed by one of the spouses to meet the daily needs of the family is binding on both spouses unless otherwise agreed between the third person and the spouse performing the act.

Restrictions imposed by the spouses on the scope of civil juristic acts that may be performed by one of the spouses may not be asserted against a *bona fide* third person.

#### **Article 1061**

Husband and wife have the right to inherit the estates of each other.

#### **Article 1062**

The following property acquired by the spouses during their marriage constitutes community property and are jointly owned by the spouses:

(1) salaries and wages as well as bonuses and other remuneration received from services rendered;

(2) proceeds obtained from production, business operation, and investment;

(3) proceeds arising from intellectual property rights;

(4) except as otherwise provided in Subparagraph (3) of Article 1063 of this Code, property acquired from inheritance or given as a gift; and

(5) other property that shall be jointly owned by the spouses.

Husband and wife have equal rights when disposing of the community property.

#### **Article 1063**

The following property constitutes separate property of one of the spouses:

(1) premarital property of one spouse;

(2) compensation or indemnification received by one spouse for injury inflicted upon him;

(3) property that belongs to only one spouse as provided in a will or gift contract;

(4) articles exclusively used by one spouse for daily life; and

(5) other property that shall be owned by one spouse.

#### **Article 1064**

Debts incurred according to the common expression of intent of both spouses, such as a debt jointly signed by both spouses and a debt signed by one spouse and subsequently ratified by the other spouse, and debts incurred by one of the spouses in his own name during the marriage to meet the daily needs of the family, constitute community debts.

A debt incurred by one of the spouses in his own name during the marriage in excess of the daily needs of the family is not a community debt, unless the creditor may prove that such debt is used for both spouses' daily life or for joint production and operation of the spouses, or such debt incurs according to the common expression of intent of both spouses.

#### **Article 1065**

A man and a woman may agree that their premarital property and the property to be acquired by them during their marriage may be owned by them separately or jointly, or partially owned separately and partially owned jointly. The agreement shall be in writing. Where there is no agreement or the agreement is unclear, Articles 1062 and 1063 of this Code shall apply.

The agreement on their premarital property and the property acquired during the marriage is legally binding on both parties to the marriage.

Where the spouses agree that the property acquired during the marriage is to be owned separately, a debt incurred by one of the spouses shall be paid off with his separate property to the extent that the third person concerned is aware of such an agreement.

#### **Article 1066**

During the marriage, one of the spouses may apply to the people's court for partition of their community property in one of the following situations:

(1) the other spouse has concealed, transferred, sold, destructed or damaged, or squandered the community property, created a false community debt, or committed other acts that seriously infringe upon the interests of the community property; or

(2) a person, whom one of the spouses has a statutory obligation to support, is suffering from a serious disease and needs medical treatment, but the other spouse does not agree to pay the relevant medical expenses.

## **Section 2**

### **Relationship between Parents and Children, and Relationship among Other Close Relatives**

#### **Article 1067**

Where parents fail to fulfill their duty to raise their children, a minor child or an adult child who is incapable of supporting himself has the right to claim child support payments against his parents.

Where an adult child fails to fulfill the duty to support his parents, his parents who lack the capacity to work or are in financial hardship have the right to claim

support payments against the adult child.

#### **Article 1068**

Parents have the right and duty to educate and protect their minor children. Where a minor causes damage to others, his parents shall bear civil liability in accordance with law.

#### **Article 1069**

Children shall respect their parents' right to marriage and shall not interfere with their parents' divorce, remarriage, or their marital life thereafter. Children's duty to support their parents shall not end with the change of their parents' marital relationship.

#### **Article 1070**

Parents have the right to inherit their children's estates, and vice versa.

#### **Article 1071**

Children born out of wedlock have equal rights as children born in wedlock, and no organization or individual may harm or discriminate against them.

A natural parent who does not have physical custody of his out-of-wedlock child shall pay child support for such child who is a minor or who is an adult but incapable of supporting himself.

#### **Article 1072**

Stepparents shall not maltreat or discriminate against a stepchild, and vice-versa.

Provisions of this Code governing the parents-children relationship shall apply to the rights and duties between a stepmother or a stepfather and a stepchild who has been raised and educated by such stepfather or stepmother.

#### **Article 1073**

Where a parent challenges maternity or paternity with just cause, the parent may file a lawsuit with the people's court for affirmation or denial of such maternity or paternity.

Where an adult child challenges maternity or paternity with just cause, he may file a lawsuit with the people's court for affirmation of such maternity or paternity.

#### **Article 1074**

Paternal or maternal grandparents, if financially capable, have the duty to raise their minor grandchildren whose parents are deceased or are incapable of such raising.

Paternal or maternal grandchildren, if financially capable, have the duty to support their grandparents whose children are deceased or are incapable of providing such support.

#### **Article 1075**

Elder brothers or sisters, if financially capable, have the duty to raise their minor

siblings whose parents are deceased or are incapable of such raising.

Younger brothers or sisters who have been brought up by their elder siblings and who are financially capable have the duty to support such elder siblings who lack both the capacity to work and the means to support themselves.

## **Chapter IV**

### **Divorce**

#### **Article 1076**

Where the husband and the wife both agree to divorce, they shall enter into a divorce agreement in writing and file divorce registration in person with the marriage registration authority.

The divorce agreement shall include expression of intent of both parties to voluntarily divorce and their mutual agreement on such matters as child support, property division, and allocation of debts.

#### **Article 1077**

Where either party is unwilling to divorce, he may withdraw the divorce registration application within thirty days after such an application is received by the marriage registration authority.

Within thirty days after expiration of the period provided in the preceding paragraph, both parties shall personally visit the marriage registration authority to apply for issuance of a divorce certificate, and failing to do so will cause the divorce registration application to be deemed as withdrawn.

#### **Article 1078**

Upon ascertaining that the divorce is voluntarily intended and that the two parties have reached agreement on such matters as child support, property division, and allocation of debts, the marriage registration authority shall register the divorce and issue a divorce certificate.

#### **Article 1079**

Where the husband or the wife unilaterally petitions for divorce, a relevant organization may offer mediation, or such person may file for divorce directly with the people's court.

The people's court shall, during the divorce trial, offer mediation, and grant divorce if mutual affection no longer exists between the two parties and mediation fails.

A divorce shall be granted when mediation fails under any of the following

circumstances:

- (1) one spouse commits bigamy or cohabitates with another person; or
- (2) one spouse commits domestic violence or maltreats or deserts a family member;
- (3) one spouse habitually commits acts such as gambling, drug abuse, or likewise, and refuses to correct such behavior despite of repeated warnings;
- (4) the spouses have been separated for no less than two full years due to marital discord; or
- (5) other circumstances exist under which mutual affection no longer exists between the spouses.

Where one spouse is declared to be missing and the other party files for divorce, such divorce shall be granted.

Where, after a judgment has been made against divorce and the spouses have been separated for one more year, such divorce shall be granted where one of the spouses files again for divorce with the people's court.

#### **Article 1080**

A marital relationship is dissolved upon completion of registration of divorce or when a judgment of divorce or mediation paper of divorce comes into effect.

#### **Article 1081**

Where the spouse of a military personnel on active service requests for divorce, the consent of the spouse who is a military personnel on active service shall be obtained unless he is at serious fault.

#### **Article 1082**

A husband may not file for divorce during his wife's pregnancy, within one year after his wife delivers, or within six months after termination of her pregnancy, unless the wife applies for divorce, or the people's court deems it necessary to hear the divorce request made by the husband.

#### **Article 1083**

Where, after divorce, both the man and the woman intend to resume their marital relationship, they shall file for re-registration of marriage at a marriage registration authority.

#### **Article 1084**

The parents-children relationship shall not be dissolved upon divorce of the parents. Whether a child is under the physical custody of the father or the mother, he remains to be the child of both parents.

After divorce, parents continue to have the rights and duties to raise, educate, and protect their children.

As a matter of principle, a mother shall, upon divorce, have physical custody of

her child under the age of two. Where parents fail to reach an agreement on the physical custody of their child over the age of two, the people's court shall adjudicate it in compliance with the principle of acting in the best interests of the minor child and in light of the actual situations of both parents.

#### **Article 1085**

Upon divorce, where a parent has the physical custody of his child, the other parent shall pay for the child support in part or in whole. The amount and duration of such payment shall be determined by both parents through agreement, or, where no such an agreement is reached, adjudicated by the people's court through making a judgment.

The agreement or judgment provided in the preceding paragraph shall not preclude the child, when necessary, from making reasonable demand of payment on either parent in excess of the amount specified in the agreement or judgment.

#### **Article 1086**

After divorce, a parent who does not have the physical custody of his child has the right to visit the child, and the other parent is obligated to facilitate the visit.

The manner and schedule for exercising the right to visitation shall be determined by both parents through agreement, or, where no such an agreement is reached, adjudicated by the people's court.

If a parent's visit to a child is detrimental to the child's physical or mental health, the visit shall be suspended by the people's court in accordance with law, and the visit shall be resumed when the cause for such suspension no longer exists.

#### **Article 1087**

Upon divorce, the community property of the spouses shall be partitioned by them through agreement, or, where no such an agreement is reached, adjudicated by the people's court in light of the actual state of the property and in compliance with the principle of favoring the rights and interests of their children, the wife, and the no-fault party.

The rights and interests of the husband or wife arising from the contractual management of land based on the household shall be protected in accordance with law.

#### **Article 1088**

Where one spouse is burdened with additional duties for raising children, looking after the elderly, or assisting the other spouse in his work, the said spouse has the right to request for compensation upon divorce against the other party, and the other party shall make due compensation. The specific arrangements for making such compensation shall be determined by the spouses through agreement, or adjudicated by the people's court where no such an agreement is reached.

#### **Article 1089**

Upon divorce, the husband and wife shall jointly pay off their community debts. Where the community property is insufficient to pay off the debts, or the property is

owned by each spouse separately, such debts shall be paid off by the spouses through agreement, or adjudicated by the people's court where no such an agreement is reached.

#### **Article 1090**

Where one party is in financial hardship upon divorce, the other party, if financially capable, shall render appropriate assistance. The specific arrangements shall be determined by the spouses through agreement, or adjudicated by the people's court where no such an agreement is reached.

#### **Article 1091**

A no-fault spouse has the right to claim compensation where divorce is caused by one of the following acts done by the other spouse:

- (1) has committed bigamy;
- (2) has cohabitated with another person;
- (3) has committed domestic violence;
- (4) has maltreated or deserted a family member; or
- (5) has acted with other serious faults.

#### **Article 1092**

Where one spouse conceals, transfers, sells off, destructed or damages, or squanders the community property, or creates a false community debt in an attempt to unlawfully seize the property of the other spouse, the said spouse may receive less or no property upon partition of the community property in the case of divorce. Where one of the aforementioned acts committed by one spouse is found after divorce, the other party may file a lawsuit with the people's court for re-partition of the community property.

## **Chapter V**

### **Adoption**

#### **Section 1**

#### **Establishment of an Adoptive Relationship**

**Article 1093**

The following minors may be adopted:

- (1) an orphan bereaved of parents;
- (2) a minor whose natural parents cannot be traced; or
- (3) a minor whose natural parents are incapable of raising him due to unusual difficulties.

**Article 1094**

The following individuals and organizations may place a minor for adoption:

- (1) the guardian of an orphan;
- (2) a children's welfare institution;
- (3) a minor's natural parents who are incapable of raising him due to unusual difficulties.

**Article 1095**

Where neither of the parents of a minor has full capacity for performing civil juristic acts, and where they may seriously harm the minor, the guardian of the minor may place such minor for adoption.

**Article 1096**

Where a guardian intends to place an orphan under his guardianship for adoption, he shall obtain the consent of the person who has the duty to raise the orphan. Where the person with the duty to raise the orphan does not consent to the adoption and the guardian is unwilling to continue exercising guardianship, a successive guardian shall be appointed in accordance with the provisions of Book One of this Code.

**Article 1097**

Where the natural parents intend to place their child for adoption, they shall act in concert. Where one of the natural parents is unknown or cannot be traced, the other parent may place the child for adoption by himself.

**Article 1098**

A prospective adopter shall meet all the following conditions:

- (1) having no child or only one child;
  - (2) being capable of raising, educating, and protecting the adoptee;
  - (3) not suffering from any disease that is deemed medically unfit to be an adopter;
  - (4) having no criminal record unfavorable to the healthy growth of the adoptee;
- and
- (5) reaching the age of thirty.

### **Article 1099**

Adoption of a child from one's collateral relatives by blood of the same generation and up to the third degree of kinship may be exempted from the restrictions provided in Subparagraph (3) of Article 1093, Subparagraph (3) of Article 1094, and Article 1102 of this Code.

Adoption of a child by an overseas Chinese from his collateral relatives by blood of the same generation and up to the third degree of kinship may also be exempted from the restrictions prescribed in Subparagraph (1) of Article 1098 of this Code.

### **Article 1100**

A childless adopter may adopt two children, and an adopter with one child may adopt only one more child.

Adoption of an orphan, a minor with disabilities, or a minor in a children's welfare institution whose natural parents cannot be traced may be exempted from the restrictions provided in the preceding paragraph and Subparagraph (1) of Article 1098 of this Code.

### **Article 1101**

Where a person with a spouse intends to adopt a child, the person and his spouse shall jointly adopt the child.

### **Article 1102**

Where a person without a spouse intends to adopt a child of a different gender, the prospective adopter shall be at least forty years older than the adoptee.

### **Article 1103**

A stepparent may, with the consent of the natural parents of the stepchild, adopt the stepchild, and such adoption may be exempted from the restrictions provided in Subparagraph (3) of Article 1093, Subparagraph (3) of Article 1094, Article 1098, and Subparagraph (1) of Article 1100 of this Code.

### **Article 1104**

Both adoption and placing for adoption shall be based on mutual consent. Where a minor adoptee is aged eight or above, his consent shall be obtained.

### **Article 1105**

Adoption shall be registered with the civil affairs department of the people's government at or above the county level. The adoptive relationship is established upon registration.

In the case of adopting a minor whose parents cannot be traced, the civil affairs department for adoption registration shall make public notice prior to the registration.

The parties to an adoptive relationship may enter into an adoption agreement on a voluntary basis.

Upon request of both parties or one of the parties to an adoptive relationship, an

adoption shall be notarized.

#### **Article 1106**

Upon establishment of an adoptive relationship, the public security department shall facilitate household registration for the adoptee in accordance with the relevant regulations of the State.

#### **Article 1107**

An orphan or a child whose natural parents are incapable of raising him may be raised by the relatives or friends of his natural parents. The provisions of this Chapter shall not apply to the relationship between two persons one of whom is raised by the other.

#### **Article 1108**

Where one spouse is deceased and the surviving spouse intends to place their minor child for adoption, the parents of the deceased spouse shall have priority in raising the child.

#### **Article 1109**

Foreign nationals may adopt children in the People's Republic of China in accordance with law.

The adoption of a child by a foreign national in the People's Republic of China shall be subject to the review and approval of the competent authorities of the foreign national's country of residence in accordance with the law of that country. The foreign adopter shall submit documents issued by the competent authorities of his country of residence certifying such personal information as his age, marital status, occupation, financial situation, physical condition, and whether he has criminal record. The foreign adopter shall conclude a written agreement with the person who places the child for adoption and register the adoption in person with the civil affairs department of the people's government at the level of provinces, autonomous regions, or municipalities directly under the State Council.

The certifying documents provided in the preceding paragraph shall be authenticated by the diplomatic authorities of the country in which the foreign national resides or by an agency authorized by the said diplomatic authorities, and then authenticated by the embassy or consulate of the People's Republic of China in the said country unless otherwise provided by the State.

#### **Article 1110**

Where an adopter or a party placing a child for adoption requires that the adoption be kept confidential, the other persons shall respect their will and shall not disclose it.

## **Section 2**

### **Effect of Adoption**

#### **Article 1111**

Upon establishment of an adoptive relationship, the provisions of this Code governing the parents-children relationship shall apply to the rights and duties between the adoptive parents and the adopted children. The provisions of this Code governing the relationship between children and the close relatives of their parents shall apply to the rights and duties between the adopted children and the close relatives of their adoptive parents. Upon establishment of an adoptive relationship, the rights and duties arising between the adoptee and his natural parents as well as the latter's other close relatives shall be terminated.

#### **Article 1112**

An adopted child may take the surname of his adoptive father or mother, or may retain his original surname upon consent of all the parties to the adoption.

#### **Article 1113**

An adoption shall be void when it constitutes a void civil juristic act as provided in Book One of this Code or violates the provisions provided in this Book. A void adoption has no legal effect *ab initio*.

## **Section 3**

### **Dissolution of an Adoptive Relationship**

#### **Article 1114**

No adopter may dissolve an adoptive relationship before the adoptee has reached the majority age unless there is an agreement between the adopter and the party who places the child for adoption to dissolve such relationship. Where an adoptee is aged eight or above, his own consent thereto shall be obtained. Where an adopter fails to perform the duty to raise the adoptee or commits maltreatment, desertion, or other acts infringing upon the lawful rights and interests of the minor adoptee, the person who has placed the child for adoption has the right to request that the adoptive relationship be dissolved. Where an adopter and a party who has placed a child for adoption fail to reach an agreement for dissolution of the adoptive relationship, either party may file a lawsuit with the people's court.

#### **Article 1115**

Where the relationship between the adoptive parents and the adopted child who has become an adult so deteriorates that they are unable to live together, the adoption may be dissolved by agreement. Where the parties fail to reach such an agreement, either party may file a lawsuit with the people's court.

#### **Article 1116**

Where the parties agree to dissolve an adoptive relationship, they shall register the dissolution with the civil affairs department.

#### **Article 1117**

Upon dissolution of an adoptive relationship, the rights and duties between an adoptee and his adoptive parents as well as the latter's other close relatives shall be terminated, and the rights and duties between the adoptee and his natural parents as well as the latter's other close relatives shall be automatically restored. However, while an adopted child has become an adult, whether the rights and duties between such an adoptee and his natural parents as well as the latter's other close relatives are to be restored may be decided through consultation.

#### **Article 1118**

After dissolution of an adoptive relationship, an adoptee who has been raised up by the adoptive parents and now become an adult shall provide living expenses to his adoptive parents who lack both the capacity to work and the means to support themselves. Where an adoptive relationship is dissolved because the adopted child maltreats or deserts his adoptive parents after the adopted child has become an adult, the adoptive parents may request the adoptee to compensate for the expenses incurred to raise the adoptee during the adoption period.

Where dissolution of an adoptive relationship is required by the natural parents of the adoptee, the adoptive parents may request the natural parents of the adoptee to appropriately compensate for the expenses incurred to raise the adoptee during the adoption period, unless the adoptive relationship is dissolved because the adoptive parents maltreat or desert the adoptee.

## **Book Six**

### **Succession**

# **Chapter I**

## **General Rules**

### **Article 1119**

This Book regulates the civil-law relations arising from succession.

### **Article 1120**

The State protects a natural person's right to inheritance.

### **Article 1121**

Succession begins upon the death of a decedent.

Where two or more persons with the right to inherit each other's estate die in the same incident and it is difficult to determine the time of each person's death, the person without any other successor is presumed to have predeceased those with other successor(s). Where the aforementioned deceased persons are from different generations and all of them have other successor(s), the person of the elder generation is presumed to have predeceased those of the younger generation; or, where the deceased are in the same generation, they are presumed to have died simultaneously and no succession occurs between or among them.

### **Article 1122**

An estate refers to the property lawfully owned by a natural person upon death.

An estate not inheritable according to the provisions of law or based on the nature of the estate may not be inherited.

### **Article 1123**

After succession opens, it shall be processed as an intestate succession, or where there is a will, as a testate succession by the successor(s) or donee(s)-by-will; or be processed in accordance with the agreement on testamentary gift for inter vivos support, where there is such an agreement.

### **Article 1124**

A successor who, after the opening of succession, disclaims an inheritance shall manifest his decision in writing before the estate is disposed of. In the absence of such a manifestation, he is deemed to have accepted the inheritance.

A donee-by-will shall, within 60 days after he learns of the testamentary gift, manifest his decision to accept or disclaim it. In the absence of such a manifestation within the specified period, he is deemed to have disclaimed the gift.

### **Article 1125**

A successor is disinherited if he has committed any one of the following acts:

- (1) intentionally killing the now decedent;
- (2) killing any other successor in fighting over the estate;
- (3) abandoning the now decedent, or maltreating him and the circumstances are serious;
- (4) forging, tampering with, concealing, or destroying the will, and the circumstances are serious; or
- (5) through fraud or duress, compelling or interfering with the testator to write, alter, or revoke a will, and the circumstances are serious.

A successor who had committed one of the acts listed in Subparagraphs (3) through (5) of the preceding paragraph shall not be disinherited if he truly repented and amended his ways, and was forgiven by the now decedent or was thereafter appointed as one of the successors in the decedent's will.

A donee-by-will who has committed the act listed in the first paragraph of this Article loses his right to receive the testamentary gift.

## **Chapter II**

### **Intestate Succession**

#### **Article 1126**

Men and women are equal in their right to inheritance.

#### **Article 1127**

The estate of a decedent shall be succeeded in the following order:

- (1) first in order: spouse, children, and parents;
- (2) second in order: siblings, paternal grandparents, and maternal grandparents.

When succession opens, the successor(s) first in order shall inherit to the exclusion of the successor(s) second in order. The successor(s) second in order shall inherit the estate in default of any successor first in order.

“Children” referred to in this Book include children born in or out of wedlock, and adopted children, as well as stepchildren who were raised up by the decedent.

“Parents” referred to in this Book include blood parents and adoptive parents, as well as stepparents who raised the decedent.

“Siblings” referred to in this Book include siblings of whole blood and half blood, and adopted siblings, as well as stepsiblings who supported or were supported by the decedent.

**Article 1128**

Where a decedent is predeceased by a child of his, the lineal descendants of the predeceased child shall inherit in subrogation.

Where a decedent is predeceased by a sibling of his, the children of the predeceased sibling shall inherit in subrogation.

Successors who inherit in subrogation generally may only take the share of the estate per stirpes.

**Article 1129**

Widowed daughters-in-law or sons-in-law who have made predominant contributions in supporting their parents-in-law shall, in relationship to their parents-in-law, be regarded as successors first in order.

**Article 1130**

Successors same in order shall, in general, inherit share and share alike.

When distributing an estate, due consideration shall be given to a successor who has special financial difficulties and is unable to work.

When distributing an estate, a successor who has made predominant contributions in supporting the now decedent, or who has been living with the now decedent may be given a larger share.

When distributing an estate, a successor who had the ability and was in a position to support the now decedent but failed to fulfill the duty of support shall be given no or a smaller share.

Successors may take unequal shares upon agreement among them.

**Article 1131**

An appropriate share of the estate may be given to a person, other than a successor, who has been a dependent of the now decedent, or to a person, other than a successor, who has made considerable contributions in supporting the now decedent.

**Article 1132**

Any issue arising from succession shall be dealt with through consultation by and among the successors in the spirit of amity, unity, mutual understanding, and accommodation. The time and mode for partitioning the estate and the shares to be distributed shall be determined by the successors through consultation. Where no agreement is reached through consultation, they may apply to a people's mediation committee for mediation or institute legal proceedings in the people's court.

## **Chapter III**

### **Testate Succession and Testamentary Gift**

#### **Article 1133**

A natural person may, by making a will in accordance with the provisions of this Code, dispose of his estate and may appoint an executor in the will.

A natural person may, by making a will, designate one or more of his statutory successors to inherit his estate.

A natural person may, by making a will, donate his estate to the State or a collective, or an organization or individual other than his statutory successor.

A natural person may, in accordance with law, create a testamentary trust.

#### **Article 1134**

A holographic will is one written by the testator's hand and signed by him, specifying the year, month, and day of its making.

#### **Article 1135**

A will written on behalf of the testator shall be attested by two or more witnesses, of whom one writes the will, specifying the year, month, and day of its making, and signs it along with the other witness(es) and with the testator.

#### **Article 1136**

A will in printed form shall be attested by two or more witnesses. The testator and the witnesses shall sign and specify the year, month, and day on each page.

#### **Article 1137**

A will made in the form of an audio or video recording shall be attested by two or more witnesses. The testator and the witnesses shall record their names or likeness in the recording and specify the year, month, and day of its making.

#### **Article 1138**

A testator may, when facing imminent danger, make a nuncupative will. A nuncupative will shall be attested by two or more witnesses. When the imminent danger is removed and where the testator is able to make a will in writing or in the form of an audio or video recording, the nuncupative will thus made becomes invalid.

#### **Article 1139**

A notarized will is one made by a testator through a notary agency.

#### **Article 1140**

None of the following persons is eligible to act as a witness to a will:

- (1) a person with no or limited capacity for performing civil juristic acts, or a person otherwise incompetent to attest a will;
- (2) a successor or a donee-by-will; or
- (3) a person having an interest with a successor or a donee-by-will.

#### **Article 1141**

Reservation of a necessary portion of an estate shall be made in a will for a successor who has neither the ability to work nor the source of income.

#### **Article 1142**

A testator may revoke or alter a will he has made.

Where a testator who, after making a will, acts inconsistently with the content of his will, the pertinent part of the will is deemed to be revoked.

Where several wills have been made and their contents are inconsistent, the will made last in time shall prevail.

#### **Article 1143**

A will made by a person with no or limited capacity for performing for civil juristic acts is void.

A will must manifest the genuine intention of the testator, and a will made under fraud or duress is void.

A forged will is void.

Where a will has been tampered with, the affected part of the will is void.

#### **Article 1144**

Where a testate succession or a testamentary gift is conditioned upon performance of an obligation, the successor or donee-by-will shall perform the obligation. Where a successor or donee-by-will fails to perform such an obligation without just cause, the people's court may, upon request by an interested person or a relevant organization, deprive him of the right to inherit the portion of the estate to which performance of the obligation is attached.

## **Chapter IV**

### **Disposition of Estates**

#### **Article 1145**

Upon opening of a succession, the executor of the will is the administrator of the

estate; where no executor is designated in the will, the successors shall elect an administrator in a timely manner. Where the successors fail to do so, all of the successors are co-administrators. Where there is no successor or where all of the successors disclaim inheritance, the civil affairs department or the villagers' committee in the place where the decedent was domiciled at the time of his death shall serve as the administrator.

#### **Article 1146**

Where a dispute arises over the determination of an administrator, any interested person may request the people's court to appoint an administrator.

#### **Article 1147**

An estate administrator shall perform the following duties:

- (1) verifying and making an inventory of the estate;
  - (2) reporting to the successors about the inventory of the estate;
  - (3) taking necessary measures to prevent the estate from being destructed, damaged, or lost;
  - (4) clearing the decedent's claims and debts;
  - (5) partitioning the estate in accordance with the will, or in accordance with law;
- and
- (6) performing any other act necessary for managing the estate.

#### **Article 1148**

An estate administrator shall perform his duties in accordance with law, and shall bear civil liability if any successor, donee-by-will, or creditor of the decedent suffers damage caused by his intentional act or gross negligence.

#### **Article 1149**

An estate administrator may receive remuneration in accordance with law or based upon agreement.

#### **Article 1150**

Upon opening of the succession, a successor who has knowledge of the death of the decedent shall notify the other successors and the executor of the will in a timely manner. Where none of the successors knows about the death of the decedent or is able to make the notification upon learning of the death of the decedent, the organization to which the decedent was employed at the time of his death, or the urban residents' committee or the villagers' committee in the place where the decedent was domiciled at the time of his death shall make the notification.

#### **Article 1151**

Anyone who has in his possession the property of a decedent shall properly keep such property, and no organization or individual may misappropriate or contend for it.

### **Article 1152**

Where, after a succession opens, a successor who has not disclaimed inheritance dies before the estate is partitioned, the share that he should have inherited shall be inherited by his successors, unless otherwise provided in the will.

### **Article 1153**

When partitioning an estate, where community property of husband and wife is involved, unless otherwise agreed upon, half of the community property shall be allocated first to the surviving spouse as separate property, while the remaining property shall be part of the decedent's estate.

When partitioning an estate, where the decedent's estate is a portion of common property of the family, the portion of the property belonging to the other family members shall first be separated from the decedent's estate.

### **Article 1154**

Under any of the following circumstances, the affected portion of an estate shall be disposed of as in an intestate succession:

(1) where a successor designated in a will or a donee-by-will disclaims the inheritance or gift;

(2) where a testamentary successor is disinherited or a donee-by-will is disqualified as such;

(3) where a testamentary successor predeceases the testator, or a donee-by-will predeceases the testator or is terminated prior to the decedent's death;

(4) where a part of a will affecting a portion of the estate is invalidated; or

(5) where a portion of the estate is not disposed of by the will.

### **Article 1155**

When partitioning an estate, a share shall be reserved for a fetus. If the fetus is stillborn, the reserved share shall be disposed of as in an intestate succession.

### **Article 1156**

The partitioning of a decedent's estate shall be conducted in a way beneficial to production and people's livelihood, and without diminishing its efficacy.

If an estate is unsuitable for partitioning, it may be disposed of by such means as appraisal, appropriate compensation, or coownership.

### **Article 1157**

A surviving spouse who remarries is entitled to disposing of the property he or she has inherited, free from interference by any organization or individual.

### **Article 1158**

A natural person may enter into an agreement on testamentary gift for inter vivos support with an organization or individual other than a successor. Such organization

or individual assumes, in accordance with the agreement, a duty to support the said person during his lifetime, and attends to his interment after death, in return for the right to receive the testamentary gift under the agreement.

#### **Article 1159**

Upon partitioning an estate, the taxes and debts payable or owed by the decedent in accordance with law shall be paid out of the estate, provided that a necessary portion of the estate is preserved for any successor who has neither the ability to work nor the source of income.

#### **Article 1160**

An estate with neither a successor nor a donee-by-will shall be escheated to the State for public interest purposes. Where the decedent was a member of a collective organization at the time of his death, the estate shall be escheated to the collective organization.

#### **Article 1161**

A successor shall pay the taxes and debts legally payable or owed by the decedent to the extent of the actual value of the portion of the estate he inherits, unless the successor pays voluntarily in excess of such limit.

A successor who disclaims inheritance assumes no responsibility for the payment of taxes and debts legally payable or owed by the decedent.

#### **Article 1162**

The execution of a testamentary gift shall not affect the payment of taxes and debts legally payable or owed by the donor-by-will.

#### **Article 1163**

Where intestate succession, testate succession, and testamentary gift concurrently exist, the taxes and debts legally payable or owed by the decedent shall be paid by the intestate successor(s); such taxes and debts in excess of the actual value of the portion of the estate inherited by the intestate successor(s) shall be paid by the testamentary successor(s) and donee(s)-by-will in proportion to the shares of the estate each of them has received.

## **Book Seven**

### **Tort Liability**

## **Chapter I**

### **General Rules**

#### **Article 1164**

This Book regulates the civil-law relations arising from the infringement of the civil-law rights and interests.

#### **Article 1165**

An actor who through his fault infringes upon another person's civil-law rights and interests shall bear tort liability.

Where an actor is presumed to be at fault according to the provisions of law and is unable to prove that he is not at fault, the actor shall bear tort liability.

#### **Article 1166**

Where an actor harms the civil-law rights and interests of another person, if the law provides that tort liability shall be borne by such an actor disregarding whether or not the actor is at fault, such provisions shall be followed.

#### **Article 1167**

Where a tortious act endangers another person's personal or property safety, the infringed person has the right to request the tortfeasor to bear tort liability such as cessation of the infringement, removal of the nuisance, or elimination of the danger.

#### **Article 1168**

Where two or more persons jointly commit a tortious act causing damage to another person, they shall bear joint and several liability.

#### **Article 1169**

A person who aids or abets an actor in the commission of a tortious act shall assume joint and several liability with the actor.

A person who aids or abets an actor with no or limited capacity for performing performing civil juristic acts in the commission of a tortious act shall assume tort liability. The guardian of the actor with no or limited capacity for performing civil juristic acts shall assume corresponding liability where he fails to fulfill the duties of a guardian.

#### **Article 1170**

Where two or more persons commit an act that endangers another person's personal or property safety and the damage is caused only by one or several of them, if the specific tortfeasor(s) can be identified, the tortfeasor(s) shall bear liability, and if the specific tortfeasor(s) cannot be identified, all of the actors shall assume joint and several liability.

**Article 1171**

Where the tortious acts committed by two or more persons respectively cause the same damage to another person, and each act is sufficient to cause the entire damage independently, the actors shall assume joint and several liability.

**Article 1172**

Where the tortious acts committed by two or more persons respectively cause the same damage to another person, each of them shall bear the liability in proportion to their respective share of fault if it can be determined, or in equal share if it cannot be determined.

**Article 1173**

Where an infringed person is also at fault for the occurrence or aggravation of the same damage to himself, the liability of the tortfeasor may be mitigated.

**Article 1174**

An actor shall not assume liability for any damage intentionally caused by the victim.

**Article 1175**

Where a damage is caused by a third person, the third person shall bear tort liability.

**Article 1176**

Where a person voluntarily participates in a recreational or sports activity with certain inherent risks and thus suffers damage due to another participant's act, he may not request the other participant to bear tort liability unless the damage is caused by the latter's intentional act or by his gross negligence.

The liability of an organizer of the activity shall be governed by the provisions of Articles 1198 through 1201 of this Code.

**Article 1177**

Where a person's lawful rights and interests are infringed upon and he may suffer irreparable harm if actions are not immediately taken because the situation is urgent and no protection from the State organ is immediately available, he may take reasonable measures such as seizing the property of the tortfeasor to the extent necessary for protecting his lawful rights and interests, provided that he shall immediately thereafter request the relevant State organ to handle it.

A victim who has taken an improper measure so that damage is caused to another person shall bear tort liability.

**Article 1178**

Where this Code or other laws provide otherwise on the circumstances under which an actor bears no or mitigated liability, such provisions shall be followed.

## **Chapter II**

### **Damages**

#### **Article 1179**

Where a person suffers personal injury as a result of an infringement by another person, compensation shall be made for medical expenses, nursing expenses, transportation expenses, nutrition expenses, food allowances for hospitalization, and other reasonable expenses for treatment and rehabilitation, as well as lost earnings due to missed work. Where a person is disabled as a result of an infringement by another person, compensation shall also include the costs of auxiliary equipment and disability compensation. Where a person dies as a result of an infringement by another person, compensation shall also include his funeral expenses and death compensation.

#### **Article 1180**

Where the same tortious act causes multiple deaths, the same amount of death compensation may be applied to all of them.

#### **Article 1181**

Where an infringed person dies, his close relatives have the right to request the tortfeasor to bear tort liability. Where the infringed is an organization and the organization is thereafter split into or merged with other organization(s), the organization succeeding to the right thereof is entitled to request the tortfeasor to bear tort liability.

Where an infringed person dies, the person who has paid for his medical expenses, funeral expenses, and other reasonable expenses has the right to request the tortfeasor to compensate the expenses, except for those expenses already paid by the tortfeasor.

#### **Article 1182**

Where an infringement upon the personal rights and interests of a person causes property damage thereto, compensation shall be made according to the damage suffered by the infringed person or the interests gained by the tortfeasor. Where it is difficult to determine the damage suffered by the infringed person and the interests gained by the tortfeasor, and where the infringed person and the tortfeasor cannot agree on the amount of compensation and thus bring a lawsuit with the people's court, the people's court shall determine the amount of compensation according to the actual situation.

#### **Article 1183**

Where an infringement upon the personal rights and interests of a natural person causes serious mental distress thereto, the infringed person has the right to request compensation for pains and suffering.

Where, owing to an actor's intentional or grossly negligent act, an object of personal significance of a natural person is infringed upon, which causes serious mental distress to the person, the infringed person has the right to request compensation for pains and suffering.

#### **Article 1184**

In case of an infringement upon another person's property, property damage shall be calculated according to the market price at the time the damage occurs or by other reasonable methods.

#### **Article 1185**

In case of an intentional infringement of another person's intellectual property rights, where the circumstances are serious, the infringed person has the right to request for corresponding punitive damages.

#### **Article 1186**

Where neither the victim nor the actor is at fault for the occurrence of the damage, losses shall be shared by both parties in accordance with the provisions of law.

#### **Article 1187**

After damage has been caused, the parties may negotiate the method of payment of the compensation. Where they fail to reach an agreement, compensation shall be paid in a lump sum, or may be paid in installments where it is truly difficult for the tortfeasor to make a lump-sum payment, provided that the infringed person has the right to request the tortfeasor to provide a corresponding bond.

## **Chapter III**

### **Special Provisions on Assumption of Liability**

#### **Article 1188**

Where a person with no or limited capacity for performing civil juristic acts causes damage to another person, the guardian of the said person shall assume tort liability. The guardian's tort liability may be mitigated if the guardian has fulfilled his duty of guardianship.

Where a person, who has assets but has no or limited capacity for performing civil juristic acts, causes damage to another person, compensation shall be paid out of his own assets and any deficiency shall be satisfied by the guardian.

### **Article 1189**

Where a person with no or limited capacity for performing civil juristic acts causes damage to another person and his guardian has delegated the duty of guardianship to someone else, the guardian shall assume tort liability, and the delegated person who is at fault shall assume corresponding liability.

### **Article 1190**

Where a person with full capacity for performing civil juristic acts is at fault for causing damage to another person due to temporary loss of consciousness or loss of control, he shall bear tort liability. Where he is not at fault, he shall make appropriate compensation to the victim according to his financial situation.

Where a person with full capacity for performing civil juristic acts causes damage to another person due to temporary loss of consciousness or loss of control as a result of intoxication or abuse of narcotic or psychotropic drugs, he shall bear tort liability.

### **Article 1191**

Where an employee causes damage to another person in connection with the performance of his work, his employer shall assume tort liability. The employer may, after assuming the tort liability, claim indemnification against the employee who acts intentionally or with gross negligence.

Where, during the period of labor dispatch, a dispatched employee causes damage to another person in connection with the performance of his work, the employer receiving the dispatched employee shall assume tort liability. The employer dispatching the employee who is at fault shall assume corresponding liability.

### **Article 1192**

Where, in a labor relationship formed between individuals, the party providing labor services causes damage to another person in connection with the labor services, the party receiving labor services shall assume tort liability. The service-receiving party may, after assuming the tort liability, claim indemnification against the service-providing party who acts intentionally or with gross negligence. Where the service-providing party suffers damage in connection with the labor services, both parties shall assume corresponding liabilities according to their respective faults.

Where an act of a third person causes damage to the service-providing party when such services are provided, the service-providing party has the right to request the third person to bear tort liability, or to request the service-receiving party to make compensation. The service-receiving party may, after making the compensation, claim indemnification against the third person.

### **Article 1193**

Where a contractor causes damage to a third person or to himself while completing the contracted work, the ordering party shall not assume tort liability, provided that the ordering party shall assume corresponding liability where he is at fault in placing the order, making the instructions, or selecting the contractor.

#### **Article 1194**

Network users and network service providers who, through the network, infringes upon the civil-law rights and interests of another person shall bear tort liability, unless otherwise provided by law.

#### **Article 1195**

Where a network user commits a tortious act through using the network service, the right holder is entitled to notify the network service provider to take such necessary measures as deletion, block, or disconnection. The notice shall include the preliminary evidence establishing the tort and the real identity information of the right holder.

After receiving the notice, the network service provider shall timely forward the notice to the relevant network user and take necessary measures based on the preliminary evidence establishing the tort and the type of service complained about. Where it fails to take necessary measures in time, it shall assume joint and several liability for the aggravated part of the damage with the network user.

The right holder who causes damage to the network user or network service provider due to erroneous notification shall bear tort liability, unless otherwise provided by law.

#### **Article 1196**

After receiving the forwarded notice, the network user may submit a declaration of non-infringement to the network service provider, which shall include the preliminary evidence of non-infringement and the real identity information of the network user.

After receiving the declaration, the network service provider shall forward it to the right holder who issued the notice, and inform him that he may file a complaint to the relevant department or a lawsuit with the people's court. The network service provider shall timely terminate the measures taken where, within a reasonable period of time after the forwarded declaration reaches the right holder, it fails to receive notice that the right holder has filed a complaint or a lawsuit.

#### **Article 1197**

A network service provider who knows or should have known that a network user has infringed upon the civil-law rights and interests of another person by using its network services but fails to take necessary measures, shall assume joint and several liability with the network user.

#### **Article 1198**

The operators or managers of business or public premises such as hotels, shopping malls, banks, bus or train stations, airports, stadiums, and places of entertainment, or the organizers of mass activities shall bear tort liability where they fail to fulfill the duty of maintaining safety and thus cause damage to another person.

Where the damage to another person is caused by a third person, the third person shall bear tort liability, and the operator, manager, or organizer who fails to fulfill the

duty of maintaining safety shall assume the corresponding supplementary liability. After assuming the supplementary liability, the operator, manager, or organizer may claim indemnification against the third person.

#### **Article 1199**

Where a person with no capacity for performing civil juristic acts suffers personal injury while studying or living in a kindergarten, school, or any other educational institution, the said kindergarten, school, or educational institution shall assume tort liability; provided that the kindergarten, school, or educational institution shall not assume tort liability if it can prove that it has fulfilled its responsibilities in education and management.

#### **Article 1200**

Where a person with limited capacity for performing civil juristic acts suffers personal injury while studying or living in a school or any other educational institution, the school or educational institution shall assume tort liability if it fails to fulfill its responsibilities in education and management.

#### **Article 1201**

Where a person with no or limited capacity for performing civil juristic acts, while studying or living in a kindergarten, school, or any other educational institution, suffers personal injury caused by a third person other than the kindergarten, school, or the educational institution, the third person shall bear tort liability, and the kindergarten, school, or the educational institution shall assume the corresponding supplementary liability if it fails to fulfill its responsibilities in management. After assuming the supplementary liability, the kindergarten, school, or the educational institution may claim indemnification against the third person.

## **Chapter IV**

### **Product Liability**

#### **Article 1202**

Where a defect of a product causes damage to another person, the manufacturer shall bear tort liability.

#### **Article 1203**

Where a defect of a product causes damage to another person, the infringed person may claim compensation against the manufacturer or the seller of the product.

Where a defect is caused by the manufacturer, the seller who has paid compensation has the right to indemnification against the manufacturer. Where a defect is caused by the fault of the seller, the manufacturer who has paid

compensation has the right to indemnification against the seller.

#### **Article 1204**

Where the damage is caused by a defect of a product due to the fault of a third person, such as a transporter or a warehouse, the manufacturer or seller of the product shall, after paying compensation, have the right to indemnification against the third person.

#### **Article 1205**

Where a defect of a product endangers the personal or property safety of another person, the infringed person has the right to request the manufacturer or seller to bear tort liability, such as in forms of cessation of the infringement, removal of the nuisance, or elimination of the danger.

#### **Article 1206**

Where a defect of a product is discovered after the product is put into circulation, the manufacturer or seller shall take remedial measures such as stopping sales, providing warnings, or recalling the product in a timely manner. The manufacturer or seller, who fails to take remedial measures in a timely manner or take ineffective measures so that the damage is aggravated, shall be liable also for the aggravated part of the damage.

Where a product is recalled in accordance with the preceding paragraph, the manufacturer or seller shall bear the necessary expenses incurred by the infringed person.

#### **Article 1207**

Where a manufacturer or seller manufactures or sells a product knowing that the product is defective, or failing to take remedial measures in accordance with the provisions of the preceding Article, so that death or serious physical harm is caused to another person, the infringed person has the right to request for the corresponding punitive damages.

## **Chapter V**

### **Liability for Motor Vehicle Accidents**

#### **Article 1208**

Where a motor vehicle is involved in a traffic accident which causes damage, the liability for compensation shall be assumed in accordance with the relevant provisions of the laws on road traffic safety and this Code.

### **Article 1209**

Where the owner, manager, or user of a motor vehicle are not the same person in leasing, borrowing, or the other like situations, and a traffic accident occurs and causes damage to another person, the user of the motor vehicle shall bear the liability for compensation where the liability is attributed to the motor vehicle driver, and the owner or manager of the vehicle who is at fault shall assume the corresponding liability for compensation.

### **Article 1210**

Where a party has transferred and delivered a motor vehicle by way of sale or other means but fails to file for registration, the transferee of the motor vehicle shall bear the liability for compensation if damage is caused as a result of a traffic accident and the liability is attributed to the motor vehicle driver.

### **Article 1211**

Where a person uses his motor vehicle in association with an entity to engage in the business of road transportation, if damage is caused as a result of a traffic accident and the liability is attributed to the motor vehicle driver, the person and the entity shall assume joint and several liability for compensation.

### **Article 1212**

Where a person drives another person's motor vehicle without authorization, the user of the motor vehicle shall bear the liability for compensation if damage is caused as a result of a traffic accident and the liability is attributed to the motor vehicle driver; the owner or manager of the motor vehicle shall bear the liability for compensation if he has fault which contributes to the damage, unless otherwise provided in this Chapter.

### **Article 1213**

Where damage is caused to another person as a result of a traffic accident and the liability is attributed to the motor vehicle driver, the insurer that underwrites the compulsory motor vehicle insurance shall make compensation within the limit of the insured liability. The deficiencies shall be paid by the insurer that underwrites the commercial motor vehicle insurance in accordance with the stipulations of the insurance contract. Any remaining balance or the part not covered by any commercial motor vehicle insurance shall be paid by the tortfeasor.

### **Article 1214**

Where damage is caused as a result of a traffic accident involving a motor vehicle that has been illegally assembled or has reached the end-of-life standard which is transferred by way of sale or by other means, the transferor and the transferee shall assume joint and several liability.

### **Article 1215**

Where damage is caused as a result of a traffic accident involving a motor vehicle that has been stolen, robbed, or snatched, the thief, robber, or snatcher shall bear the liability for compensation. Where the aforementioned motor vehicle is used

by a person other than the thief, robber, or snatcher and causes damage in a traffic accident, if the liability is attributed to the motor vehicle driver, the thief, robber, or snatcher shall assume joint and several liability with the user.

Where an insurer pays the expenses for rescue within the limits of the compulsory insurance liability for motor vehicles, it has the right to indemnification against the person who is liable for the traffic accident.

#### **Article 1216**

Where a driver of a motor vehicle hits and runs after a traffic accident, if the motor vehicle is insured by a compulsory insurance, compensation shall be paid by the insurer within the limit of the insured liability. Where the motor vehicle cannot be located, is not covered by the compulsory insurance, or the rescue expenses exceed the limit of liability of the compulsory motor vehicle insurance, and payment needs to be made against the rescue, funeral, and other expenses incurred as a result of the death or bodily injury of the infringed person, such payment shall be paid from the Social Assistance Fund for Road Traffic Accidents. After the Social Assistance Fund for Road Traffic Accidents makes the payment, its administrative agency has the right to indemnification against the person who is liable for the traffic accident.

#### **Article 1217**

Where a motor vehicle not engaged in operation of business causes damage in a traffic accident to a guest passenger who is on the ride for free, if the liability is attributed to the motor vehicle driver, the liability of the user of the motor vehicle for compensation shall be mitigated unless he acts intentionally or with gross negligence.

## **Chapter VI**

### **Liability for Medical Malpractice**

#### **Article 1218**

Where a patient suffers damage during diagnosis and treatment, and the medical institution or its medical staff is at fault, the medical institution shall assume the liability for compensation.

#### **Article 1219**

The medical staff shall explain the medical conditions and treatment measures to the patient in diagnosis and treatment thereof. Where a surgery, a special examination, or a special treatment is needed, the medical staff shall explain to the patient the medical risks, alternative treatment plans, and other information in a timely manner and obtain his express consent. Where it is impossible or inappropriate to do so, the medical staff shall explain it to the patient's close relatives and get their express consent.

Where the medical staff fail to fulfill the obligations as provided in the preceding paragraph and thus cause damage to the patient, the medical institution shall assume the liability for compensation.

#### **Article 1220**

Where consent of a patient or his close relatives cannot be obtained in the case of rescuing a terminally ill patient or in another emergency situation, upon the approval of the person in charge of the medical institution or an authorized person in charge, the corresponding medical measures may be taken immediately.

#### **Article 1221**

Where the medical staff fail to fulfill the duty of diagnosing and treating the patient up to the then current appropriate medical level, and thus causes damage to the patient, the medical institution shall assume the liability for compensation.

#### **Article 1222**

A medical institution shall be presumed to be at fault where damage is inflicted on a patient during diagnosis and treatment under any of the following circumstances:

- (1) there is a violation of the provisions of laws, administrative regulations, rules, or other relevant guidelines for diagnosis and treatment;
- (2) the medical records are concealed or the request for provision thereof is refused; or
- (3) the medical records are lost, forged, tempered with, or illegally destroyed.

#### **Article 1223**

Where damage is caused to a patient due to a defect in a drug, disinfection product, or medical instrument, or due to the transfusion of substandard blood, the patient may claim compensation against the drug marketing license holder, or the manufacturer of the drug, or the blood supply institution, or against the medical institution. Where the patient claims compensation against a medical institution, the medical institution shall, after paying compensation, have the right to indemnification against the responsible drug marketing license holder, or manufacturer of the drug, or the blood supplier.

#### **Article 1224**

Under any of the following circumstances, a medical institution shall not assume liability for compensation for any damage caused to a patient during diagnosis and treatment:

- (1) the patient or his close relative does not cooperate with the medical institution to go through diagnosis and treatment which is in compliance with the guidelines therefor;
- (2) the medical staff have fulfilled their duty of providing reasonable diagnosis and treatment in an emergent situation, such as rescuing a terminal patient; or
- (3) it is difficult to diagnose and treat a patient due to the restriction of the then current medical level.

Under the circumstance specified in Subparagraph (1) of the preceding paragraph, the medical institution or its medical staff shall assume corresponding liability for compensation where they are also at fault.

#### **Article 1225**

Medical institutions and their medical staff shall properly enter and maintain medical records such as hospitalization logs, medical orders, test reports, surgical and anesthesia records, pathological data, and nursing records in accordance with the regulations.

Where a patient requests to examine or make copies of their medical records as provided in the preceding paragraph, the medical institution shall provide the records in a timely manner.

#### **Article 1226**

Medical institutions and their medical staff shall keep their patients' private information and personal information confidential. Anyone who divulges the private information or personal information of a patient or discloses his medical records without the patient's consent shall bear tort liability.

#### **Article 1227**

Medical institutions and their medical staff shall not conduct unnecessary examinations for their patients in violation of the guidelines for diagnosis and treatment.

#### **Article 1228**

The lawful rights and interests of a medical institution and its medical staff are protected by law.

Anyone, who interferes with the order of a medical institution, obstructs the work or life of the medical staff, or infringes upon their lawful rights and interests, shall bear liability in accordance with law.

## **Chapter VII**

### **Liability for Environmental Pollution and Ecological Damage**

#### **Article 1229**

A tortfeasor who has polluted the environment or harmed the ecological system and thus causes damage to others shall bear tort liability.

#### **Article 1230**

Where any dispute arises from environmental pollution or ecological damage,

the actor shall bear the burden to prove that he should not be liable or that his liability could be mitigated as provided by law, and that there is no causation between his act and the damage.

#### **Article 1231**

Where environmental pollution or ecological damage is caused by two or more tortfeasors, the extent of liability of each tortfeasor shall be determined according to the factors such as the type, concentration, and quantity of discharge of the pollutants, the way, scope, and degree of damage to the ecological system, and the impact of the act on the consequences of damage.

#### **Article 1232**

Where a tortfeasor intentionally pollutes the environment or harms the ecological system in violation of the provisions of law, resulting in serious consequences, the infringed person has the right to request for the corresponding punitive damages.

#### **Article 1233**

Where environmental pollution or ecological damage is caused owing to the fault of a third person, the infringed person may claim compensation against either the tortfeasor or the third person. After making compensation, the tortfeasor has the right to indemnification against the third person.

#### **Article 1234**

Where a tortfeasor causes damage to the ecological environment in violation of the State regulations and restoration is possible, the State authorized agencies or the organizations authorized by law have the right to request the tortfeasor to bear the responsibility for restoration within a reasonable period of time. Where the tortfeasor fails to restore it within the time limit, the State authorized agencies or the organizations authorized by law may initiate the restoration on its own or entrust it with others, provided that any expenses thus incurred shall be borne by the tortfeasor.

#### **Article 1235**

Where ecological damage is caused in violation of the State regulations, the State authorized agencies or the organizations authorized by law have the right to request the tortfeasor to compensate the following losses and expenses:

(1) losses caused by loss of service function from the time the ecological environment is damaged to the time the restoration is completed;

(2) losses caused by permanent damage to the function of the ecological environment ;

(3) expenses for investigation, appraisal, and assessment of the damage to the ecological environment;

(4) expenses for cleaning-up the pollution and restoring the ecological environment; and

(5) other reasonable expenses incurred to prevent the occurrence or aggravation of the damage.

## **Chapter VIII**

### **Liability for Ultra-hazardous Activities**

#### **Article 1236**

A person who engages in ultra-hazardous operations and thus causes damage to another person shall bear tort liability.

#### **Article 1237**

Where a nuclear accident occurs at a civil nuclear facility or when nuclear materials are transported into or out of a civil nuclear facility and damage is thus caused to another person, the operator of the facility shall bear tort liability. However, the operator shall not assume such liability if it can be proven that the damage is caused by a war, an armed conflict, a riot, or under other like circumstances, or the damage is intentionally caused by the victim.

#### **Article 1238**

Where a civil aircraft causes damage to another person, the operator of the aircraft shall bear tort liability, provided that the operator shall not assume any liability if it can be proven that the damage is intentionally caused by the victim.

#### **Article 1239**

Where the possession or use of flammable, explosive, highly toxic, highly radioactive, strongly corrosive, highly pathogenic, or other ultrahazardous things causes damage to another person, the possessor or user thereof shall bear tort liability, provided that such a possessor or user shall not assume any liability if it can be proven that the damage was intentionally caused by the victim or caused by force majeure. Where the infringed person is grossly negligent for the occurrence of the damage, the liability of the possessor or user may be mitigated.

#### **Article 1240**

Where damage is caused to another person by a person engaging in work at a height, high voltage, or underground excavation activities, or by using high-speed rail transport vehicles, the operator shall bear tort liability, provided that the operator shall not assume any liability if it can be proven that the damage was intentionally caused by the victim or caused by force majeure. Where the infringed person is grossly negligent for the occurrence of the damage, the liability of the operator may be mitigated.

#### **Article 1241**

Where damage is caused to another person by an ultra-hazardous thing that is lost or abandoned, the owner shall bear tort liability. Where the owner has delivered

the ultra-hazardous thing to another person for management, the manager shall bear tort liability, provided that the owner shall assume joint and several liability with the manager where he is at fault.

#### **Article 1242**

Where damage is caused to another person by an ultra-hazardous thing that is illegally possessed, the illegal possessor shall bear tort liability. The owner or manager of the thing shall assume joint and several liability with the illegal possessor if he cannot prove that he has fulfilled a high duty of care to prevent the illegal possession.

#### **Article 1243**

Where a person, without authorization, enters into an area where ultra-hazardous activities are conducted or ultra-hazardous things are stored therein and is thus injured, the liability of the manager of the area may be mitigated or eliminated if it can be proven that he has taken sufficient security measures and fulfilled the duty of sufficient warning.

#### **Article 1244**

Where there is a provision of law providing for a limit of compensation for liability incurred as a result of an ultra-hazardous activity, such provision shall be followed unless the damage is caused by the actor intentionally or with gross negligence.

## **Chapter IX**

### **Liability for Damage Caused by Domesticated Animals**

#### **Article 1245**

Where a domesticated animal causes damage to another person, the keeper or custodian of the animal shall bear tort liability, provided that his liability may be mitigated or eliminated if it can be proven that the damage is caused by the infringed person intentionally or by gross negligence.

#### **Article 1246**

A keeper or custodian of an animal who, in violation of the rules of management, fails to take safety measures on the animal and thus causes damage to another person shall bear tort liability, provided that his liability may be mitigated if it can be proven that the damage is intentionally caused by the infringed person.

#### **Article 1247**

Where damage is caused to another person by a dangerous animal that is

prohibited from being kept, such as a fierce dog, the keeper or custodian of the animal shall bear tort liability.

#### **Article 1248**

Where an animal of a zoo causes damage to another person, the zoo shall bear tort liability unless it can be proven that it has fulfilled its duties of management.

#### **Article 1249**

Where an abandoned or escaped animal causes damage to another person during the period of abandonment or escape, the original keeper or custodian of the animal shall bear tort liability.

#### **Article 1250**

Where an animal causes damage to another person due to a third person's fault, the infringed person may claim compensation against the keeper or custodian of the animal, or against the third person. The keeper or custodian of the animal who has paid compensation has the right to indemnification against the third person.

#### **Article 1251**

Anyone who keeps an animal shall abide by laws and regulations, respect social morality, and shall not disturb the life of others.

## **Chapter X**

### **Liability for Damage Caused by Buildings and Objects**

#### **Article 1252**

Where a building, structure, or another type of a facility collapses or subsides and causes damage to another person, the project owner and the constructor shall assume joint and several liability, unless they can prove that there is no quality defect. Where the damage is due to the fault of another responsible person, the project owner or constructor who has made compensation has the right to indemnification against the responsible person.

Where a building, structure, or another type of facility collapses or subsides, and damage is thus caused to another person due to the fault of the owner, manager, user, or a third person, the owner, manager, user, or the third person shall bear tort liability.

#### **Article 1253**

Where a building, structure, or another type of facility, or any object laid or hanged thereon, comes loose or falls down and thus causes damage to another person, the owner, manager, or user shall bear tort liability if it cannot be proven that he is not

at fault. Where the damage is due to the fault of another responsible person, the owner, manager, or user who has paid compensation has the right to indemnification against the responsible person.

#### **Article 1254**

Throwing objects from within a building is prohibited. Where an object thrown from within a building or falling off a building causes damage to another person, the tortfeasor shall bear tort liability in accordance with law. Where it is difficult to identify the specific tortfeasor upon investigation, any user of the building who may have caused the damage shall make compensation, unless he can prove that he is not the tortfeasor. A user of the building who has paid compensation has the right to indemnification against the tortfeasor.

The manager of a building such as the property management service enterprise shall take necessary security measures to prevent the occurrence of the incident specified in the preceding paragraph. Where no necessary security measures are taken, it shall bear tort liability for failure to perform the obligation of providing security measures in accordance with law.

Where an incident as specified in the first paragraph of this Article occurs, the relevant authorities, such as the public security department, shall timely conduct investigation in accordance with law and identify the responsible person(s).

#### **Article 1255**

Where a stack of objects collapses, rolls down, or slips down, and causes damage to another person, the person who piles up the stack shall bear tort liability if he cannot prove that he is not at fault.

#### **Article 1256**

Where damage is caused to another person due to an object stacked, dumped, or left on public road so that the road is obstructed, the actor shall bear tort liability. The public road manager shall assume the corresponding liability if he cannot prove that he has fulfilled his duties such as the duty of clean-up, protection, and warning.

#### **Article 1257**

Where a breaking or falling tree or a falling fruit causes damage to another person, the owner or manager of the tree shall bear tort liability where he cannot prove that he is not at fault.

#### **Article 1258**

Where excavation of the ground or repair or installation of underground facilities is conducted in a public place or on a public road, which causes damage to another person, the constructor shall bear tort liability if he cannot prove that he has posted an obvious warning sign and taken safety measures.

Where an underground facility, such as a utility access pit, causes damage to another person, the manager shall bear tort liability if he cannot prove that he has fulfilled his management responsibilities.

## **Supplementary Provisions**

### **Article 1259**

In the civil law, the terms “not less than”, “not more than”, “within” and “expiration/expire on” include the given figure; the terms “less than”, “more than” and “beyond” do not include the given figure.

### **Article 1260**

This Code shall come into force on January 1, 2021. The Marriage Law of the People’s Republic of China, the Succession Law of the People’s Republic of China, the General Principles of Civil Law of the People’s Republic of China, the Adoption Law of the People’s Republic of China, the Security Law of the People’s Republic of China, the Contract Law of the People’s Republic of China, the Real Right Law of the People’s Republic of China, the Tort Liability Law of the People’s Republic of China, and the General Provisions of Civil Law of the People’s Republic of China shall be repealed at the same time.