

# Property Law of the People's Republic of China

Order of the President of the People's Republic of China

No. 62

The Property Law of the People's Republic of China, adopted at the Fifth Session of the Tenth National People's Congress of the People's Republic of China on March 16, 2007, is hereby promulgated and shall go into effect as of October 1, 2007.

Hu Jintao

President of the People's Republic of China

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Part One

General Provisions

Chapter I

Basic Principles

Article 1 This Law is enacted in accordance with the Constitution for the purpose of upholding the basic economic system of the State, maintaining the order of the socialist market economy, defining the attribution of things, giving play to the usefulness of things and protecting the property right of obligees.

Article 2 This Law shall be applicable to civil relationships stemming from attribution and use of things.

For the purposes of this Law, things include the immovables and the movables. Where laws stipulate that rights are taken as objects of the property right, the provisions of such laws shall prevail.

The property right mentioned in this Law means the exclusive right enjoyed by the obligee to directly dominate a given thing according to law, which consists of the right of ownership, the usufruct and the security interest on property.

Article 3 In the primary stage of socialism, the State upholds the basic economic system under which public ownership is dominant and the economic sectors of diverse forms of ownership develop side by side.

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

The State maintains a socialist market economy and guarantees the equal legal status and the right to development of all the mainstays of the market.

Article 4 The property right of the State, the collectives, the individual persons and other obligees are protected by law, and no units or individuals shall encroach on it.

Article 5 The categories and contents of the property right shall be stipulated by law.

Article 6 The creation, alteration, transfer or extinction of the property right of the immovables shall be registered in accordance with the provisions of law. The property right of the movables shall be created or transferred upon delivery in accordance with the provisions of law.

Article 7 The law shall be observed and social ethics shall be respected in acquiring or exercising the property right and public interests and the lawful rights and interests of another person shall not be jeopardized.

Article 8 Where other laws specially provide for the property right otherwise, the provisions there shall prevail.

## Chapter II

### Creation, Alteration, Transfer and Extinction of the Property Right

#### Section 1

##### Registration of the Immovables

Article 9 The creation, alteration, transfer or extinction of the property right shall become valid upon registration according to law; otherwise it shall not become valid, unless otherwise provided for by law.

Registration of ownership of all the natural resources which are owned by the State in accordance with law may be dispensed with.

Article 10 Registration of the immovables shall be handled by the registration authority at the place where they are located.

The State practices a unified system of registration with respect to the immovables. The scope of unified registration, the registration authority and the measures for registration shall be stipulated by law and administrative regulations.

Article 11 To apply for registration, the party concerned shall, on the basis of the different matters for registration, submit the certificate of the attribution of right and the necessary materials on boundary and the area of the immovables, etc.

Article 12 The registration authority shall perform the following duties:

- (1) to examine the certificate of the attribution of right and the other necessary materials submitted by the applicant;
- (2) to inquire of the applicant about the matters for registration;
- (3) to register the relevant matters truthfully and in a timely manner; and
- (4) to perform the other duties provided for by laws and administrative regulations.

Where further certification of the condition of the immovables, the registration of which is applied for, is needed, the registration authority may require the applicant to supplement the materials and may, when necessary, check them on the spot.

Article 13 The registration authority shall not do any of the following:

- (1) demanding evaluation of the immovables;
- (2) making repeated registration in the name of annual inspection, etc.; or
- (3) doing other things beyond the limits of its duty for registration.

Article 14 Where the creation, alteration, transfer and extinction of the property right of the immovables are required to be registered according to the provisions of law, they shall become valid as of the time when they are entered in the register of the immovables.

Article 15 The contract made between the parties concerned on the creation, alteration, transfer or extinction of the property right of the immovables shall become valid as of the time when the contract is concluded, unless otherwise provided for by law or agreed upon in the contract; and where the property right is not registered, it shall not affect the validity of the contract.

Article 16 The register of the immovables provides the basis for the attribution and contents of the property right.

The register of the immovables shall be kept by the registration authority.

Article 17 The right attribution certificate of the immovables is the proof that the obligee is entitled to the property right of the said immovables. The items recorded in the right attribution certificate of the immovables shall be consistent with what is recorded in the register of the immovables; and in case of inconsistencies, what is recorded in the register of the immovables shall be taken as the standard unless there is evidence to prove that there are errors in what is recorded in the register of the immovables.

Article 18 The obligee or the interested party may apply for consulting and duplicating the registered information, and the registration authority shall provide such materials accordingly.

Article 19 Where the obligee or the interested party believes that there are errors in what is recorded in the register of the immovables, he may apply for correction. Where the obligee recorded in the register of the immovables agrees in written form to make corrections or there is evidence to prove that there are definitely errors in the registration, the registration authority shall make corrections accordingly.

Where the obligee recorded in the register of the immovables disagrees on making corrections, the interested party may apply for the registration of disagreement. Where the registration authority registers the disagreement, the applicant in question fails to file a lawsuit within 15 days from the date the disagreement is registered, such a registration shall become invalid. If damages are caused to the obligee due to inappropriate registration of disagreement, the obligee may request the applicant to make compensation.

Article 20 When the party concerned intends to sign an agreement on the purchase or sale of a house or other property right of immovables, he may, in accordance with what is agreed upon, apply to the registration authority in advance for registration, in order to ensure the realization of his property right in future. Where after the registration is made in advance, such immovables are disposed of without the consent of the obligee who is recorded in the registration in advance, the property right of such immovables shall be invalid.

Where after the registration is made in advance, the creditor's rights extinguish or no application for registration of the immovables is made within three months from the date when such registration can be made, the registration made in advance shall become invalid.

Article 21 Where the party concerned submits false materials when applying for registration, thus causing damages to another person, he shall be liable for compensation.

Where damages are caused to another person due to the errors made in registration, the registration authority shall be liable for compensation. After making the compensation, the said authority may have recourse to the person who makes the errors in registration.

Article 22 Charges for registration of the immovables shall be collected piece by piece and shall not be collected on the basis of the areas or sizes of the immovables or in proportion to the purchase prices. The specific rates for the charges shall be prescribed by relevant department under the State Council together with the department of pricing.

## Section 2

### Delivery of the Movable

Article 23 The creation or transfer of the property right of the movables shall become valid as of the time of their delivery, unless otherwise provided for by law.

Article 24 Before registration, the creation, alteration, transfer or extinction of the property right of the vessels, aircraft, motor vehicles, etc. shall not be used against a bona fide third party.

Article 25 Where an obligee has already possessed the movables according to law prior to the creation or transfer of the property right of such movables, the property right shall become valid as of the time when such legal act becomes effective.

Article 26 Where a third party has taken possession of the movables according to law prior to the creation or transfer of the property right of the said movables, the person who is obligated to deliver the movables may do so, instead, through transferring the right of requesting the third party to return the original movables.

Article 27 Where both parties agree that the transferor continues to possess the movables while the property right of such movables is being transferred, the said property right shall be valid as of the time when the said agreement becomes effective.

### Section 3

#### Other Provisions

Article 28 Where the property right is created, altered or transferred or extinguishes in accordance with the legal document of a people's court or an arbitration committee or a decision made by a people's government on expropriation, etc., such creation, alteration, transfer and extinction shall become valid as of the time when the said document or decision comes into effect.

Article 29 Where the property right is obtained through inheritance or acceptance of legacy, such property right shall become valid as of the time of inheritance or acceptance of legacy.

Article 30 Where the property right is created or extinguishes due to such factual acts as lawful construction and demolition of houses, such property right shall become valid as of the time when the factual acts are achieved.

Article 31 Where a person enjoys the property right over the immovables in accordance with the provisions of Articles 28 through 30 of this Law, and registration is required according to the provisions of laws, when such property right is disposed of, the property right shall be invalid if no registration is made.

### Chapter III

#### Protection of the Property Right

Article 32 Where the property right is encroached on, the obligee may have the matter settled by means of conciliation, mediation, arbitration or litigation.

Article 33 Where a dispute arises over the attribution or contents of the property right, the interested parties may request confirmation of their right.

Article 34 Where a person takes possession of the immovables or movables without the right to do so, the obligee may request return of the original immovables or movables.

Article 35 Where the property right is impaired or is likely to be impaired, the obligee may request removal of such impairment or elimination of the potential danger.

Article 36 Where the immovables or movables are damaged or destroyed, the obligee may request repairs, reconstruction or remaking, replacement or restoration to their original state.

Article 37 Where the infringement of the property right causes damages to an obligee, the obligee may request compensation for the damages and may also request the infringing party to assume other civil liabilities.

Article 38 The forms for protection of the property right as provided for in this Chapter may be applied separately and may also be applied otherwise, depending on the circumstances of infringement.

Apart from bearing civil liability for infringement on the property right, a person who, in addition, violates the administrative provisions shall bear administrative liability according to law; and if a crime is constituted, he shall be investigated for criminal liability according to law.

## Part Two

### Ownership

#### Chapter IV

##### General Stipulations

Article 39 Owners of immovables or movables shall be entitled to possess, use, benefit from and dispose of the immovables or movables according to law.

Article 40 On their own immovables or movables, owners shall have the right to create usufruct and security interest. In exercising their rights, the usufructuaries or guarantors shall not impair the rights and interests of the owners.

Article 41 No units or individuals shall be allowed to acquire ownership of the immovables and movables which are exclusively owned by the State as are provided for by law.

Article 42 For public interests, land owned by the collectives, and the houses and other immovables of units and individuals may be expropriated within the limits of power and in compliance with the procedures provided for by law.

Where land owned by the collective is expropriated, such fees as compensations for the land expropriated, subsidies for resettlement and compensations for the attachments and the young crops on land shall be paid in full according to law, and the premiums for social insurance of the farmers whose land is expropriated shall be arranged in order to guarantee their daily lives and safeguard their lawful rights and interests.

Where houses and other immovables of units or individuals are expropriated, compensations for their resettlement shall be paid according to law, and their lawful rights and interests shall be protected; and where the housings of individuals are expropriated, their living conditions shall be guaranteed.

No units or individuals shall embezzle, misappropriate, privately divide, withhold or default on payment of such fees as the compensations for expropriation.

Article 43 The State provides cultivated land with special protection through strictly restricting the transformation of the farmland into land for construction and keeping under control the total amount of land used for construction. No land owned by the collectives shall be expropriated in violation of the limits of power and in compliance with the procedures as provided for by law.

Article 44 In order to meet such urgent needs as rushing to rescue or providing disaster relief, the immovables or movables of units or individuals may be requisitioned within the limits of power and in compliance with the procedures as provided for by law. After the use of the requisitioned immovables or movables, they shall be returned to the units or individuals whose immovables or movables are requisitioned. Where the immovables or movables of units or individuals are requisitioned or if they are damaged or lost thereafter, compensations shall be made therefor.

#### Chapter V

##### Ownership of the State, the Collective and the Individual Person

Article 45 The property owned by the State as is provided for by law belongs to the State, that is, the entire people.

The State Council shall exercise ownership of State-owned property on behalf of the State; and where laws provide for otherwise, the provisions there shall prevail.

Article 46 All mineral resources, waters and sea areas belong to the State.

Article 47 Land in the cities belongs to the State. Land in the rural and suburban areas which belongs to the State as is provided for by law is owned by the State.

Article 48 Such natural resources as forests, mountains, grasslands, wasteland and tidal flats belong to the State, except where they belong to the collectives as is provided for by law.

Article 49 All resources of the wildlife that belong to the State, as is provided for by law, are owned by the State.

Article 50 All resources of radio-frequency spectrum belong to the State.

Article 51 All cultural relics that belong to the State, as is provided for by law, are owned by the State.

Article 52 All assets for national defense belong to the State.

All infrastructures such as railways, highways, power facilities, telecommunications facilities and oil and gas pipelines that belong to the State in accordance with the provisions of law are owned by the State.

Article 53 Government departments are entitled to possess and use the immovables and movables directly under their control and to dispose of them in accordance with laws and the relevant regulations of the State Council.

Article 54 Institutions sponsored by the State shall have the right to possess and use the immovables and movables directly under their control and to benefit from and dispose of them in accordance with laws and the relevant regulations of the State Council.

Article 55 With respect to enterprises invested by the State, the State Council or the local people's governments shall, in accordance with the provisions of laws and administrative regulations, perform the duties of the investors on behalf of the State and enjoy the rights and interests of the investors.

Article 56 The property owned by the State shall be protected by law, and illegal possession, looting, privately dividing, withholding or destruction of such property by any units or individuals shall be prohibited.

Article 57 The authority performing the duties of administration and supervision over State-owned property and its staff members shall, according to law, exercise vigorous administration and supervision over State-owned property, promote the preservation and increase of the value of such property, and prevent its loss; and where losses are caused to State-owned property due to their abuse of power or dereliction of their duties, they shall bear legal liability according to law.

Where, in violation of the provisions governing the management of State-owned property, losses are caused to such property due to transferring it at a low price, privately dividing it in conspiracy with other persons, creating security on it without authorization or by other means in the course of enterprise restructuring, merger or division, affiliated transaction, etc., legal liability shall be borne according to law.

Article 58 The immovables and movables owned by the collective include the following:

- (1) the land, forests, mountains, grasslands, wasteland and tidal flats belong to the collective, as is provided for by law;
- (2) the buildings, production equipment, water conservancy facilities of farmland that are owned by the collective;
- (3) the educational, scientific, cultural, public health and sports facilities that are owned by the collective; and
- (4) other immovables and movables owned by the collective.

Article 59 The immovables and movables collectively owned by the farmers belong to the members of the collective.

The following matters shall be subject to decision by the members of a given collective in accordance with the statutory procedure:

- (1) plans for contracting of land, and subcontracting of land to other units or to individuals other than those belonging to the collective;
- (2) adjustment to be made to the contracted land by the individual persons among themselves who have the right to land contractual management;
- (3) methods for the use and distribution of such fees as compensations paid for land;

(4) such matters as change in ownership of the enterprises invested by the collective; and

(5) other matters as provided for by law.

Article 60 With respect to the land, forests, mountains, grasslands, wasteland, tidal flats, etc. owned by the collective, the right of their ownership shall be exercised in accordance with the following provisions:

(1) For those owned by the collective of farmers of a village, the collective economic organization of the village or the villagers' committee shall exercise the right of ownership on behalf of the collective;

(2) For those respectively owned by two or more collectives of farmers within a village, the collective economic organizations or villagers' teams concerned within the village shall exercise the right of ownership on behalf of the collectives; and

(3) For those owned by the collective of farmers of a town or township, the collective economic organization of the town or township shall exercise the right of ownership on behalf of the collective.

Article 61 With respect to the immovables and movables owned by a collective of a town or township, the said collective shall, in accordance with the provisions of laws and administrative regulations, have the right to possess, use, benefit from and dispose of such immovables and movables.

Article 62 The collective economic organization or the villagers' committee or team shall, in accordance with laws and administrative regulations as well as the articles of association, village rules and farmers' agreements, make the position of the collective property known to the members of the collective.

Article 63 The property owned by the collective shall be protected by law, and illegal possession, looting, privately sharing, and destruction of such property by any units or individuals shall be prohibited.

Where a decision made by a collective economic organization, or villagers' committee or by the leading person of the organization or committee encroaches on the lawful rights and interests of the members of the collective, the said members may apply to a people's court for reversing such decision.

Article 64 All individual persons shall be entitled to enjoy ownership of such immovables and movables as their lawful incomes, houses, articles for daily use, tools of production, and raw and semi-finished materials.

Article 65 The lawful savings and investments of individual persons and the gains derived there from are protected by law.

The State protects, in accordance with the provisions of law, the right of individual persons to inheritance and their other lawful rights and interests.

Article 66 The lawful property of individual persons is protected by law, and illegal possession, looting and destruction of such property by any units or individuals are prohibited.

Article 67 The State, the collective or the individual person may, in accordance with law, invest to establish companies with limited liability, companies limited by shares or other enterprises. Where the immovables or movables owned by the State, the collective or the individual person are invested in enterprises, the investor shall have such rights as receiving benefits derived from the assets, making major decisions and selecting managers, and shall perform it/his duties, in accordance with what is agreed upon or in proportion to the amount of investment.

Article 68 An enterprise legal person has the right to possess, use, benefit from and dispose of his immovables and movables in accordance with laws and administrative regulations as well as the articles of association.

The rights enjoyed by legal persons other than enterprise legal persons with respect to their immovables and movables shall be governed by the provisions of relevant laws and administrative regulations as well as the articles of association.

Article 69 The immovables and movables owned by public organizations according to law are protected by law.

Chapter VI



## Condominium Right of Property Owners

Article 70 Property owners shall enjoy ownership of the special parts within a building, such as the residential units and the units for business purposes and shall enjoy the right to share and jointly manage the common parts other than the special parts.

Article 71 An owner shall enjoy the rights of possession, use, benefiting from and disposition of the part exclusively owned by him within a building. In exercising his rights, the owner shall not endanger the safety of the building or infringe on the lawful rights and interests of other owners therein.

Article 72 An owner shall enjoy rights and fulfill obligations with respect to the common parts of a building other than the special parts, and shall not refuse to fulfill the obligations by forfeiting his rights.

When an owner transfers a residential unit or a unit for business purposes owned by him within a building, his right to share and jointly manage the common parts shall be transferred along.

Article 73 The roads in the district of a building shall be jointly owned by all the owners, with the exception of the public roads belonging to a city or township. The greens within the district of a building shall be jointly owned by all the owners, with the exception of the public greens belonging to a city or township, and the greens belonging to individual persons, as is clearly indicated. Other public spaces, public facilities and houses or rooms used for property management within the district of a building shall be jointly owned by all the owners.

Article 74 In the district of a building, the designed parking places and garages shall first be used to meet the need of the owners.

In the district of a building, ownership of the designed parking places and garages shall be decided on through agreement among the parties concerned, by such means as selling, giving away as gifts, and leasing.

The roads and other places commonly owned by all the owners which are used for parking vehicles shall be jointly owned by all the owners.

Article 75 The owners may form an owners' assembly and elect an owners' committee.

The department concerned of the local people's government shall give guidance and assistance to the formation of an owners' assembly and the election of an owners' committee.

Article 76 The following matters shall be decided on by all the owners:

- (1) formation and revision of the rules of procedure of the owners' assembly;
- (2) formation and revision of the rules and agreement on managing the buildings and the attached facilities;
- (3) election of the owners' committee or replacement of its members;
- (4) employment or removal of the property management service or other managers;
- (5) raising and use of funds for the maintenance of a building and its attached facilities;
- (6) renovation and reconstruction of a building and its attached facilities; and
- (7) other major matters relating to joint ownership and joint management rights.

For decision on the matters specified in Subparagraphs (5) and (6) of the preceding paragraph, an agreement shall be reached by the owners whose ownership of the exclusive parts within the building in question accounts for two-thirds or more of the total construction area of the building and who account for two-thirds or more of the total number of the owners. For decision on the rest of the matters specified in the preceding paragraph, an agreement shall be reached by the owners whose ownership of the exclusive parts in the building accounts for more than half of the total construction area of the building and who account for more than half of the total number of the owners.

Article 77 No owners may, in violation of the relevant laws, regulations or the management rules and agreements, turn a residential unit into a unit for business purposes. If an owner intends to do so, he shall, in addition to observing the relevant laws, regulations and the management rules and agreements, obtain the consent of the interested owners.

Article 78 The decisions of the owners' assembly or the owners' committee shall be binding to all the owners.

If a decision made by the owners' assembly or the owners' committee infringes on the lawful rights and interests of an owner, the said owner may apply to a people's court for voiding of the decision.

Article 79 The funds for maintenance of a building and its attached facilities shall belong to all the owners, which, upon their common decision, may be used for maintaining and repairing the common parts such as the elevators and water tanks. The raising and use of such funds shall be made public.

Article 80 The apportioning of the expenses for a building and its attached facilities and the distribution of benefits therefrom shall follow the agreement reached; if there is no such agreement or the agreement is unclear, such apportioning and distribution shall be determined on the basis of the ratio of the area of the exclusive parts an owner owns to the total construction area of the building.

Article 81 Owners may manage the building and its affixtures by themselves, or entrust the matter to a property management service or other managers.

The owners shall, according to law, have the right to replace the property management service or other managers employed by the developer.

Article 82 The property management service or other managers shall manage the building and its affixtures within the district of the building, as entrusted by the owners, and shall be subject to supervision by the owners.

Article 83 Owners shall observe the relevant laws and regulations and the management rules and agreements.

With respect to a person who randomly discards garbage, discharges pollutants, makes noises, keeps animals in violation of regulations, erects structures against rules, occupies passages, refuses to pay property management fees, etc., thus infringing on the lawful rights and interests of another person, the owners' assembly and the owners' committee shall, according to the relevant laws and regulations and the management rules and agreements, have the right to require the person to discontinue such infringement, eliminate the hazards, clear away the obstructions and compensate the losses entailed. The owner whose lawful rights and interests are infringed on may bring a lawsuit to the people's court against such acts.

## Chapter VII

### Neighboring Relations

Article 84 Owners of neighboring immovables shall properly deal with their neighboring relations in adherence to the principles of conduciveness to production, convenience for daily lives, unity and mutual help, and fairness and rationality.

Article 85 Where there are laws or regulations governing neighboring relations, the provisions there shall prevail; otherwise, such relations shall be dealt with in accordance with local customs.

Article 86 An owner of immovables shall provide the necessary convenience to a neighboring obligee in the use or discharge of water.

The natural flowing waters shall be reasonably distributed among the neighboring obligees of immovables. The direction of natural flow shall be set store by where discharge of such water is concerned.

Article 87 Where a neighboring obligee has to use for passage, etc. the land of an obligee of immovables, the latter shall provide the necessary convenience to the former.

Article 88 Where an obligee of immovables, for constructing or maintaining a building, or laying wires, cables, or pipelines for water, heating or gas, has to use the neighboring land or building, the owner of the said land or building shall provide the necessary convenience accordingly.

Article 89 In construction of a building, ventilation, light and sunshine of the neighboring building shall not be blocked in violation of the relevant construction standards of the State.

Article 90 An obligee of immovables shall not, in violation of State regulations, discard solid waste or discharge hazardous substances, such as air and water pollutants, noises, and optical and electromagnetic radiation.

Article 91 When digging, constructing a building, laying pipelines or installing facilities, etc., an owner of immovables shall not endanger the neighboring immovables.

Article 92 When making use of the neighboring immovables for the drawing or draining off of water, for passage or for laying of pipelines, an owner of immovables shall do the best to avoid causing damage to the owner of the neighboring land; if damage is caused, he shall compensate for the damage.

## Chapter VIII

### Co-ownership

Article 93 Immovables or movables may be co-owned by two or more units or individuals. Co-ownership consists of shared ownership and joint ownership.

Article 94 Persons who share the ownership of immovables or movables shall enjoy the ownership in proportion to the amount of their shares.

Article 95 Persons who jointly own immovables or movables shall enjoy the ownership jointly.

Article 96 Co-owners shall manage the immovables or movables they own as agreed upon; if there is no agreement or the agreement is indefinite in this respect, all the co-owners shall have the right and duty of management.

Article 97 Disposing of or making major repairs to the co-owned immovables or movables shall be subject to agreement reached by the co-owners who possess two-thirds or more of the total shares or by all of the joint owners, except where the owners agree otherwise.

Article 98 The fees for managing what is co-owned and other expenses shall be paid according to agreement; if there is no such agreement or the agreement is indefinite in this respect, they shall be paid by the persons who share the ownership in proportion to the amounts of their respective shares, or jointly paid by the joint owners.

Article 99 Where the co-owners have agreed not to sever the immovables or movables owned by them in order to maintain the co-ownership, such agreement shall be complied with; however, if a co-owner has major reasons for severing them, he may make a request for severance; where there is no such agreement or the agreement is indefinite in this respect, a person who shares the ownership may make a request for severance at any time, while a joint owner may do so if the basis for joint ownership no longer exists or he has major reasons for severance. Where the severance causes losses to the other co-owners, they shall be compensated for the losses.

Article 100 The co-owners may decide on the method for severance through consultation. If they fail to reach an agreement, and the immovables or movables owned by them can be severed and its value will not be reduced because of such severance, the actual property shall be severed; if it is difficult to sever the property or its value will be reduced because of such severance, the severance shall be made after the property is converted into money, or auctioned, or sold.

If the immovables or movables of a co-owner obtained from the severance is flawed, the other co-owners shall share the losses.

Article 101 A co-owner who shares ownership of the immovables or movables shall have the right to transfer his own share. The other co-owners shall have the priority to purchase under equal conditions.

Article 102 In external relations, the co-owners shall have joint and several claims arising from the immovables or movables owned by them and bear joint and several liability for the debts arising likewise, except where laws provide otherwise or where a third party is aware that the co-owners are not associated in the aforesaid manner; in internal relations, unless otherwise agreed upon by the co-owners, the co-owners who share the ownership shall enjoy the claims and bear liability for the debts in proportion to the amounts of their respective shares, while the joint owners

shall jointly enjoy the claims and bear liability for the debts. Where a person who shares ownership pays debts in excess of his share, he shall have the right to recourse from the other co-owners.

Article 103 Where the co-owners fail to reach an agreement either on shared or on joint ownership of the immovables or movables, or the agreement reached is indefinite in this respect, the ownership shall be deemed to be shared ownership, unless the co-owners are of a family or have other relations.

Article 104 Where the shares of immovables or movables are not agreed upon among the persons who share the ownership, or the agreement reached is indefinite in this respect, their shares shall be determined on the basis of the amounts of their respective capital contributions; if it is difficult to determine the amounts of capital contributions, the immovables or movables shall be deemed to be shared equally among them.

Article 105 Where two or more entities or individuals jointly enjoy usufructs or security interest, the provisions in this Chapter shall be applied *mutatis mutandis*.

## Chapter XV

### Special Provisions on Acquisition of Ownership

Article 106 Where a person transfers to a transferee immovables or movables which he has no right to dispose of, the owner shall have the right to recover them; except where otherwise provided for by law, the transferee shall acquire ownership of the said immovables or movables under one of the following circumstances:

- (1) The transferee is in good faith when the said immovables or movables are transferred to him;
- (2) The transfer is made at a reasonable price; or
- (3) The said immovables or movables have duly been registered as is required by law, or have been delivered to the transferee where no registration is required.

Where a transferee acquires the ownership of the immovables or movables in accordance with the provisions in the preceding paragraph, the original owner shall have the right to request the person who has no right of disposition to compensate for the losses.

Where a party acquires other property rights in good faith, the preceding two paragraphs shall be applied *mutatis mutandis*.

Article 107 An owner or any other obligee shall have the right to recover a lost-and-found thing. Where the thing comes to be possessed by another person through transfer, the obligee shall have the right to request the person who has no right of disposition to compensate for the losses or, within two years from the date he becomes, or ought to become, aware of the transferee, request the transferee to return the lost thing, however, if the lost thing is purchased by the transferee at auction or from a qualified seller, the obligee shall, when requesting the transferee to return the original thing, compensate the transferee for the expenses the latter has paid for the thing. After the obligee compensates the transferee for the expenses, he shall have the right to recover the payment he has made from the person who has no right of disposition.

Article 108 After a bona fide transferee acquires a piece of movables, the rights previously attached to the said piece shall extinguish, unless where the bona fide transferee is or ought to be aware of the attached rights at the time of transfer of the piece.

Article 109 A person who finds a lost thing shall return it to the obligee. The finder shall, in a timely manner, give a notice to the obligee asking him to take it back, or deliver it to the public security organ or relevant departments.

Article 110 Where the relevant department that receives a found thing knows who the obligee is, it shall, without delay, give a notice to the obligee to notify the obligee asking him to take the thing back; otherwise, it shall publish a notice of the finding of the lost thing without delay.

Article 111 Before a finder delivers a found thing to the relevant department and before the lost thing is taken back from the department, both the finder and the department shall safekeep the thing. If, the thing in his or its safekeeping is damaged, destroyed or lost intentionally or through gross negligence, he or it shall bear civil liability therefor.

Article 112 When an obligee goes to take back the thing he lost, he shall pay to the finder or the relevant department the necessary expenses entailed by safekeeping, etc.

Where an obligee offers a reward for the finding of the thing he lost, he shall fulfill his obligation as promised when taking the thing back.

Where a finder illegally takes into his own possession a lost thing, he shall have no right to request the expenses paid for the safekeeping of the thing, nor shall he have the right to request the obligee to fulfill the obligation as promised.

Article 113 A lost thing shall belong to the State if no one goes to claim it within six months from the date the notice of the finding of the thing is published.

Article 114 The provisions governing the finding of lost things shall be applied mutatis mutandis to the finding of drift-stuff or buried or hidden things. Where the laws such as the Law on Protection of Cultural Relics provide for otherwise, the provisions there shall prevail.

Article 115 Where the principal part of a thing is transferred, the ancillaries shall be transferred along with it, except where the parties concerned agree otherwise.

Article 116 The natural fruits of a thing shall go to the owner; if there are both owner and usufructuary, the fruits shall go to the usufructuary. Where the parties concerned agree otherwise, their agreement shall prevail.

The statutory fruits of a thing shall go to the party as agreed upon if there is an agreement between the parties concerned; if there is no such agreement or the agreement in this respect is indefinite, the fruits shall be acquired according to the customs of transaction.

### Part Three

#### Usufructs

#### Chapter X

##### General Stipulations

Article 117 A usufructuary shall, according to law, have the right to possess, use and benefit from the immovables or movables owned by another.

Article 118 Units or individuals may, according to law, possess, use and benefit from the natural resources which are owned by the State, or owned by the State but used by the collective, or owned by the collective as stipulated by law.

Article 119 The State shall apply a system of compensated use of natural resources, unless otherwise stipulated by law.

Article 120 In exercising his rights, the usufructuary shall observe the provisions of law governing the protection and reasonable exploitation and utilization of resources. The owner shall not interfere with the exercise of rights by the usufructuary.

Article 121 The usufructuary shall, in accordance with the provisions of Articles 42 and 44 of this Law, get appropriate compensation when his usufruct extinguishes or the exercise of his usufruct is limited due to expropriation or requisition of the immovables or movables.

Article 122 The right to the use of sea areas that is obtained in accordance with law shall be protected by law.

Article 123 The rights to prospecting for mineral deposits, mining, water taking, and the rights to the use of waters or tidal flats for aquaculture or fishing, which are obtained in accordance with law, shall be protected by law.

#### Chapter XI

##### The Right to Land Contractual Management

Article 124 Rural collective economic organizations apply the dual management system characterized by the combination of centralized management with decentralized management on the basis of management by households under a contract.

The contractual management system shall, in accordance with law, be applied to the cultivated land, forestlands, grasslands and other land used for agriculture, which are owned collectively by the farmers or by the State but used collectively by the farmers.

Article 125 Contractors for the right to land management shall, in accordance with law, have the right to possess, use, and benefit from the cultivated land, forestlands, grasslands, etc. which are under their contractual management, and shall have the right to engage in agricultural production, including crop cultivation, forestry and animal husbandry.

Article 126 The term of contract for cultivated land is 30 years. The term of contract for grasslands ranges from 30 to 50 years. The term of contract for forestlands ranges from 30 to 70 years; and that for forestlands where special trees grow may be extended upon approval by the competent administrative department for forestry under the State Council.

At the expiration of the term of contract stipulated in the preceding paragraph, the contract may be renewed by the contractor for the right to land management in accordance with the relevant regulations of the State.

Article 127 The right to land contractual management shall be established as of the date the contract for the right to land management becomes valid.

Local people's governments at or above the county level shall issue to the contractors for the right to land management certificates of the right to land contractual management, certificates of the right to use forestlands, or certificates of the right to use grasslands, and shall have them registered to confirm their right to land contractual management.

Article 128 Contractors for the right to land management shall, in accordance with the provisions of the Law on Land Contract in Rural Areas, have the right to circulate the right to land contractual management by subcontracting, exchanging or transferring the right or by other means. The term of circulation may not exceed the remaining period of the term of a contract. Without approval as granted according to law, no contracted land may be used for non-agricultural development.

Article 129 When contractors for the right to land management exchange or transfer the said right and the parties concerned request registration, they shall apply to the local people's governments at or above the county level for alteration of the registration of the right to land contractual management. Where such registration is lacking, it shall not be used against a bona fide third party.

Article 130 During the term of contract, the party giving out the contract may not readjust the contracted land.

When the contracted cultivated land or grasslands need to be readjusted appropriately under the special circumstances in which the contracted land or grasslands are seriously damaged due to natural disasters, the matter shall be handled in accordance with the provisions of the Law on Land Contract in Rural Areas, etc.

Article 131 During the term of contract, the party giving out the contract may not take back the contracted land. Where the Law on Land Contract in Rural Areas and other laws provide otherwise, the provisions there shall apply.

Article 132 Where the contracted land is expropriated, the contractors for the right to land management shall be entitled to corresponding compensation in accordance with the provisions of the second paragraph of Article 42 of this Law.

Article 133 Where a person enters into a contract for the right to rural land such as barren land through bidding, auction, open consultation or other means, his right to land contractual management may, in accordance with such laws as the Law on Land Contract in Rural Areas and the relevant regulations of the State Council, be circulated through transfer, pooling of rights as shares, mortgage or other means.

Article 134 Where contractual management is applied to the land owned by the State which is used for agricultural purposes, the relevant provisions of this Law shall be followed *mutatis mutandis*.

## Chapter XII

### The Right to the Use of Land for Construction

Article 135 A person who enjoys the right to the use of land for construction shall, according to law, possess, use and benefit from the land owned by the State, and shall have the right to use the land for erecting buildings and structures and the facilities attached to them.

Article 136 The right to the use of land for construction may be separately created on the surface, above or under the ground. The newly created right to the use of land for construction shall not infringe on the usufruct which has already been created thereon.

Article 137 The right to the use of land for construction may be created by assignment, allocation or other means.

Where land is used for industrial, commercial, tourist or entertaining purposes, as commodity residences, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding.

Creation of the right to the use of land for construction through allocation shall strictly be controlled. Creation of the right by such means shall be done in compliance with the provisions of laws and administrative regulations governing the purposes of use of land.

Article 138 Where the right to the use of land for construction is created through bid invitation, auction, agreement or by other means of assignment, the parties shall enter into a contract for assigning the right to the use of land for construction in written form.

A contract for assigning the right to the use of land for construction generally contains the following particulars:

- (1) names and addresses of the parties;
- (2) the boundary and the area of the land;
- (3) the space occupied by the buildings and structures and the facilities attached to them;
- (4) purposes of use of land;
- (5) the period of time for use;
- (6) payment for the assigning and other fees, and the manners of payment; and
- (7) means for settlement of disputes.

Article 139 For creating the right to the use of land for construction, an application for registration of such right shall be made to the registration authority. The right to the use of land for construction shall be deemed to be created as of the time of registration. The registration authority shall issue to the person who is granted the right to the use of land for construction the certificate of the right to the use of land for construction.

Article 140 Persons who enjoy the right to the use of land for construction shall make rational use of the land and shall not change the purposes of use of the land; if the purposes of use need to be changed, the matter shall be subject to approval by relevant administrative departments according to law.

Article 141 The persons who enjoy the right to the use of land for construction shall, in accordance with the provisions of law and the stipulations in the contract, pay the expenses for assignment and other fees.

Article 142 Ownership of the buildings and structures and the facilities attached to them that the person who enjoys the right to the use of land for construction has constructed belongs to the said person, unless there is evidence to prove the contrary.

Article 143 A person who enjoys the right to the use of land for construction shall have the right to transfer, exchange, offer as capital contributions, give as a gift or mortgage such right, except where otherwise provided for by law.

Article 144 Where the right to the use of land for construction is transferred, exchanged, offered as capital contributions, given as a gift or mortgaged, the parties shall enter into a contract in written form accordingly. The period of time for use shall be agreed upon by the parties, provided that the remaining period of time for the right to the use of land for construction is not exceeded.

Article 145 Where the right to the use of land for construction is to be transferred, exchanged, offered as capital contributions, or given as a gift, an application for alteration of registration shall be made to the registration authority.

Article 146 Where the right to the use of land for construction is transferred, exchanged, offered as capital contributions, or given as a gift, the buildings and structures and the facilities attached to them which are attached to the said land shall be disposed of along with it.

Article 147 Where buildings and structures and the facilities attached to them are transferred, exchanged, offered as capital contributions, or given as a gift, the right to the use of the land for construction to which the said buildings and structures and facilities are attached shall be disposed of along with them.

Article 148 Where, before the expiration of the period of time for the right to the use of land for construction, the land needs to be taken back for public interests, compensations for the houses and other immovables on the land shall be paid in accordance with the provisions of Article 42 of this Law, and the fees paid for assignment shall appropriately be returned.

Article 149 When the period of time for the right to the use of land for construction of residences expires, it shall automatically be renewed.

Renewal of the period of time for the right to the use of land for nonresidential construction shall be handled in accordance with the provisions of law. Ownership of the houses and other immovables on the said land shall be decided on according to the agreement reached; if there is no agreement or the agreement on the matter is indefinite, it shall be decided in accordance with the provisions of laws and administrative regulations.

Article 150 When the right to the use of land for construction lapses, the assignor shall have his registration cancelled in time. The registration authority shall take back the certificate of the right to the use of land for construction.

Article 151 Where land owned by the collective is to be used for construction purposes, the matter shall be handled according to the provisions of the Land Administration Law and of other laws

## Chapter XIII

### The Right to the Use of House Sites

Article 152 Persons with the right to the use of house sites who, according to law, enjoy the right to possess and use the land owned by the collective, shall have the right to use the land for constructing residences and the facilities to be attached to them according to law.

Article 153 Such laws as the Land Administration Law and the relevant State regulations shall be applicable to the obtaining, exercising and transferring of the right to the use of house sites.

Article 154 When house sites disappear due to natural disasters or other reasons, the right to the use of the house sites extinguishes. New house sites shall be allocated to the villagers who lose their house sites.

Article 155 When the registered right to the use of house sites is transferred or extinguishes, registration of the change or cancellation of registration shall be handled in a timely manner.

## Chapter XIV

### Easement



Article 156 Easement holders shall, according to the stipulations in the contract, have the right to use another person's immovable property to get better results from his own immovables.

Another person's immovable property mentioned in the preceding paragraph is the servient estate, and one's own immovables are the dominant estate.

Article 157 For creating an easement, the parties shall enter into a contract for easement in written form.

The contract for easement generally includes the following particulars:

- (1) names or titles, and domiciles of the parties;
- (2) locations of the servient estate and the dominant estate;
- (3) purposes and means of use;
- (4) the period of time for use;
- (5) fees and the manner of payment; and
- (6) means to be used for settling disputes.

Article 158 An easement is created as of the time when the easement contract becomes valid. If the parties request registration, they may apply to the registration authority for registration of easement. Where the registration is lacking, such right may not be used against a bona fide third party.

Article 159 The obligee of the servient estate shall, according to what is stipulated in the contract, allow the easement holder to use his land and shall not obstruct the latter from exercising his right.

Article 160 The easement holder shall use the servient estate in conformity with the purposes and means of use as agreed upon in the contract and to lighten as much as possible the restrictions on the property right of the obligee of the servient estate.

Article 161 The period of time for an easement shall be agreed upon by the parties, provided that it does not exceed the remaining period for usufructs, such as the right to land contractual management and the right to the use of the land for construction.

Article 162 When the owner of a piece of land who enjoys, or is encumbered with an easement creates a right on the right to land contractual management or the right to the use of house sites, the contractor for the right to land contractual management or the user of the house sites shall continue to enjoy or be encumbered with the created easement.

Article 163 If on a piece of land is already created the right to land contractual management, the right to the use of the land for construction or the right to the use of house sites, etc., the owner of the piece of land shall not create any easement without the consent of the usufructuary.

Article 164 An easement shall not be transferred separately. When the right to land contractual management or the right to the use of land for construction is transferred, the easement shall be transferred along with it, unless the contract stipulates otherwise.

Article 165 An easement shall not be mortgaged separately. If the right to land contractual management or the right to the use of land for construction is mortgaged, the easement shall be transferred along with it at the time when the mortgage interest is enforced.

Article 166 When the dominant estate and part of the right to land contractual management or of the right to the use of land for construction thereon are transferred, if the part to be transferred involves easement, the transferee shall concurrently enjoy the easement.

Article 167 When the servient estate and part of the right to land contractual management or of the right to the use of land for construction thereon are transferred, if the part to be transferred involves easements, the easements shall be binding to the transferee.

Article 168 If an easement holder is under any of the following circumstances, the obligee of the servient estate shall have the right to terminate the easement contract, and the easement extinguishes:

(1) abusing the easement in violation of the provisions of law or the contract; or

(2) in the case of compensated use of the servient estate, at the expiration of the duration for payment as is agreed upon, failing to pay the fees after two exigents are given within a reasonable time limit.

Article 169 If a registered easement is altered, transferred or extinguishes, the alteration shall be registered or cancelled in a timely manner.

## Part Four

### Security Interest in Property

#### Chapter XV

##### General Stipulations

Article 170 Unless otherwise stipulated by law, the holder of security interests shall have the priority in having his claim paid if a debtor defaults or if the conditions for enforcement of the said interests, as agreed upon by the parties concerned, arise.

Article 171 Where, in the making of loans, in business transactions or other civil activities, a creditor needs a guarantee to have his claim honored, a security interest may be created in accordance with the provisions of this Law and other laws.

Where a third party provides a guarantee to a creditor for a debtor, the third party may require the debtor to provide him with a counter-guarantee. The relevant provisions of this Law and other laws shall be applicable to counter-guarantee.

Article 172 For creation of a security interest, a guarantee contract shall be concluded in accordance with the provisions of this Law and other laws. A guarantee contract is an ancillary contract of the principal claim-debt contract. When the principal claim-debt contract is null and void, the guarantee contract shall be null and void accordingly, unless otherwise provided for by law.

After it is confirmed that a guarantee contract is nullified, the debtor, the guarantor and the creditor who are in fault shall, on the merits of each case, bear civil liability respectively.

Article 173 The scope of security interest embraces the principal creditor's right and the interest therefrom, penalty, damages and expenses for safekeeping of the property used as security and for enforcing security interest. Where the parties concerned agree otherwise, their agreement shall prevail.

Article 174 In case of damage or destruction, loss or requisition of the mortgaged property during the period of guarantee, the holder of the security interest shall have priority in having his claim paid with the insurance monies, compensations or indemnities. The holder of security interest may also have the insurance monies, compensation payment or indemnities deposited with a third party before the time limit for payment of the guaranteed claim expires.

Article 175 Where a guarantee is provided by a third party, if the creditor permits the debtor to transfer part or all of his debts without the consent of the third party in written form, the guarantor shall not undertake the corresponding suretyship liability.

Article 176 Where both security and suretyship are provided to guarantee for the same claim, the creditor shall have his claim paid as agreed upon, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise; where there is no such agreement or the agreement is indefinite in this respect, if the debtor himself provides property as security, the creditor shall have his claim paid with such property first; where a third party provides property as security, the creditor may either have his claim paid with such property or request the

guarantor to undertake the suretyship. After the third party has borne the suretyship, he shall have the right of recourse against the debtor.

Article 177 The security interest shall extinguish under one of following circumstances:

- (1) The principal claim extinguishes;
- (2) The security interest is enforced;
- (3) The creditor waives the security interest; or
- (4) Other circumstances provided for by law under which the security interest extinguishes.

Article 178 In case of any inconsistencies between the provisions of the Guarantee Law and of this Law, those of this Law shall prevail.

## Chapter XVI

### Interests Obtained from Mortgage

#### Section 1

##### General Interest Obtained from Mortgage

Article 179 Where a debtor or a third party, for guaranteeing the payment of debts, mortgages property to a creditor instead of transferring of the possession of such property, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall have priority in having his claim paid with the property.

The debtor or the third party specified in the preceding paragraph is the mortgagor, the creditor specified there is the mortgagee, and the property used as security is mortgaged property.

Article 180 The following property which the debtor or the third party is entitled to dispose of may be mortgaged:

- (1) buildings and other attachments on the ground;
- (2) the right to the use of land for construction;
- (3) the contractual management right to barren land, etc. obtained through bidding, auction, open consultation or other means;
- (4) production equipment, raw and semi-finished materials, semi-finished products and finished products;
- (5) buildings, vessels and aircraft under construction;
- (6) means of transportation; and
- (7) other property that is not prohibited from being mortgaged by laws or administrative regulations.

A mortgagor may mortgage all the property specified in the preceding paragraph at the same time.

Article 181 Subject to written agreement between the parties, enterprises, self-employed industrial and commercial households and agricultural producers and distributors may mortgage their existing and anticipated production equipment, raw and semi-finished materials, semi-finished products and finished products, and if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall have priority in having his claim paid with the movables.

Article 182 Where a building is mortgaged, the right to the use of the land for construction within the area occupied by the building shall be mortgaged along with the building. Where the right to the use of the land for construction is mortgaged, the buildings on the land shall be mortgaged along with that right.

If the mortgagor fails to comply with what is provided for in the preceding paragraph, the property not mortgaged shall be deemed to be mortgaged along with what is mortgaged.

Article 183 The right to the use of the land for construction enjoyed by a town (township) or village enterprise may not be mortgaged separately. Where workshops and other buildings of a town (township) or village enterprise are mortgaged, the right to the use of the land for construction within the area occupied by the workshops or other buildings shall be mortgaged along with the workshops and other buildings.

Article 184 The following property may not be mortgaged:

- (1) land ownership;
- (2) the right to the use of the land owned by the collective, such as cultivated land, house sites, private plots and private hills, except where otherwise provided for by law;
- (3) educational facilities, medical and health facilities and other public welfare facilities of undertakings for public welfare, such as schools, kindergartens and hospitals and public organizations;
- (4) property the ownership or right to the use of which is indefinite or controversial;
- (5) property sealed up, distrained or placed under custody in accordance with law; and
- (6) other property which may not be mortgaged as prescribed by laws and administrative regulations.

Article 185 To create a mortgage interest, the parties concerned shall conclude a mortgage contract in written form.

A mortgage contract generally includes the following particulars:

- (1) the kind and amount of claims secured;
- (2) the time limit for the debtor to repay the debt;
- (3) the name, quantity, quality, conditions, location or attribution of the ownership or the right to the use, of the mortgaged property; and
- (4) the scope of security interest.

Article 186 Before maturity of the debts, the mortgagee may not enter into an agreement with the mortgagor that the mortgaged property shall come under the ownership of the creditor when the debtor defaults.

Article 187 Where the property specified in Subparagraphs (1), (2) and (3), or the buildings under construction specified in Subparagraph (5), under the first paragraph of Article 180 of this Law are mortgaged, such mortgage shall be registered. The mortgage interest is created as of the date of registration.

Article 188 Where the property specified in Subparagraphs (4), (5) and (6), or the vessels and aircraft under construction specified in Subparagraph (5), under the first paragraph of Article 180 of this Law are mortgaged, the mortgage interest is created at the time when the mortgage contract becomes valid; if the mortgage interest is not registered, it shall not be used against a bona fide third party.

Article 189 Where an enterprise, a self-employed industrial or commercial household, or an agricultural producer or distributor mortgages movable property specified in Article 181 of this Law, it shall register with the administration department for industry and commerce at the place where the domicile of the mortgagor is located. The mortgage interest shall be created at the time when the mortgage contract becomes valid; if such interest is not registered, it shall not be used against a bona fide third party.

Where a mortgage is made in accordance with the provisions of Article 181 of this Law, it shall not be used against the buyer who has paid reasonable price and obtained the mortgaged property in the ordinary course of business operations.

Article 190 If a mortgagor leases the mortgaged property before the mortgage contract is concluded, the previously established leasing relation shall not be affected. If a mortgagor leases the mortgaged property after the creation of the mortgage interest, the leasing relation may not be used against the registered mortgage interest.

Article 191 If a mortgagor transfers the mortgaged property with the consent of the mortgagee during the period of mortgage, the proceeds which the mortgagor obtains from the transfer of the mortgaged property shall in advance be used to settle the claim secured by the mortgagee or be deposited with a third party. If the proceeds obtained from the transfer exceed the secured claim, the balance shall go to the mortgagor; if the proceeds is insufficient to cover the claim, the uncovered part shall be paid by the debtor.

The mortgagor may not transfer the mortgaged property without the consent of the mortgagee during the period of mortgage, unless the transferee pays off the debts for the mortgagor and thus the mortgage interest extinguishes.

Article 192 The mortgage interest may not be separated from the claim to be transferred independently, or to be used to secure another claim. If the claim is transferred, the interest of mortgage shall be transferred along with it, unless otherwise provided for by law or agreed upon by the parties.

Article 193 Where a mortgagor acts in such a way as to cause depreciation of the mortgaged property, the mortgagee shall have the right to demand that the mortgagor cease and desist from such act. Where the value of the mortgaged property depreciates, the mortgagee shall have the right to demand that the mortgagor restore the original value of the mortgaged property or provide security corresponding to the amount of the value reduced. Where a mortgagor fails to restore the original value of the mortgaged property or provide corresponding security, the mortgagee shall have the right to demand the debtor to settle the claim in advance.

Article 194 A mortgagee may waive his mortgage interest or his place in the order of mortgage interest. A mortgagee and a mortgagor may, upon agreement, change the place in the order of the mortgage interest, the amount of secured claims, etc., provided that such a change, without the written consent of other mortgagees, shall not have an adverse effect on other mortgagees.

Where a debtor uses his own property for mortgage, if a mortgagee waives his mortgage interest or his place in the order of the mortgage interest or makes changes in respect of his mortgage interest, other guarantors shall be exempted from the suretyship to the extent that the mortgagee forfeits his rights and interests in terms of the priority in being paid off, unless the said guarantors are still committed to the suretyship.

Article 195 Where the debtor defaults or the conditions for enforcement of the mortgage interest thereof, as agreed upon by the parties concerned, arise, the mortgagee may enter into an agreement with the mortgagor that he be given the priority in being paid with the money into which the mortgaged property is converted or the proceeds obtained from auction or sale of the property. If such agreement undermines the interests of other creditors, they may apply to the people's court for cancellation of the agreement within one year from the date they come to know or should have known the cause for cancellation.

If the mortgagee and mortgagor fail to reach an agreement on the means of enforcing the mortgage interest, the mortgagee may apply to the people's court for auction or sale of the mortgaged property.

The mortgaged property shall be converted into money or be sold off by referring to its market price.

Article 196 Where a mortgage interest is created in accordance with the provisions of Article 181 of this Law, the mortgaged property shall be established when one of the following circumstances arises:

- (1) The debts are not paid when they fall due;
- (2) The mortgagor is declared bankrupt or is dissolved;
- (3) The conditions for enforcement of the mortgage interest, as agreed upon by the parties concerned, arise; or
- (4) Other circumstances arise which may seriously affect the enforcement of the claim.

Article 197 If the mortgaged property is seized by a people's court according to law because the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the mortgagee shall, from the date of the seizure, have the right to collect the natural or statutory fruits accrued from the mortgaged property, except where the mortgagee fails to notify the person who is obliged to pay the statutory fruits.

The fruits mentioned in the preceding paragraph shall first be used to pay off the expenses for collecting such fruits.

Article 198 If the proceeds obtained from conversion into money or from auction or sale of mortgaged property exceed the amount of a claim, the balance shall go to the mortgagor; and if the proceeds are insufficient to cover the claim, the uncovered part shall be paid by the debtor.

Article 199 Where a piece of property is mortgaged to two or more creditors, the proceeds from auction or sale of the mortgaged property shall be used for liquidation according to the following provisions:

- (1) Where the mortgage interest is registered, the liquidation shall be made in the order of the registration of the mortgage interest; if the order of registration is the same, liquidation of the claims shall be made on a pro rata basis;
- (2) The claim secured by a registered mortgage interest shall be satisfied prior to the unregistered ones; and
- (3) Liquidation of unregistered mortgage interests shall be made on a pro rata basis in respect of the claims.

Article 200 After the right to the use of land for construction is mortgaged, the buildings erected thereafter are not mortgaged property. Where the said land use right is used to satisfy the mortgage interest, the newly-erected buildings on the land shall be disposed of together with the land use right; however, the mortgagee shall have no priority in having his claim paid with the proceeds from the said buildings.

Article 201 Where the right to land contractual management is mortgaged, as specified in Subparagraph (3) under the first paragraph of Article 180 of this Law, or the right to the use of land for construction within the area occupied by the workshops and other buildings of a town (township) or village enterprise is mortgaged along with the workshops or other buildings, as specified in Article 183 of this Law, the nature of ownership and the purpose of use of the land may not be altered without going through the statutory procedure after the enforcement of the mortgage interests thereon.

Article 202 The mortgagee shall exercise his mortgage interest within the limitation provided for action of the principal claim; if he fails to do so, the people's court shall not provide protection in this respect .

## Section 2

### Maximum Mortgage Interest

Article 203 Where a debtor or a third party provides security for the debts to be incurred consecutively within a given period of time, if the debtor defaults or the conditions for enforcement of the mortgage interest, as agreed upon by the parties concerned, arise, the mortgagee shall have the priority in having his claims paid with the security to the extent of the maximum amount of the claims.

A claim that exists before the creation of the maximum mortgage interest may, with consent of the parties, be included in the claims secured by the maximum amount of mortgage.

Article 204 Where, before the claims secured by the maximum amount of mortgage are established, part of the claims is transferred, the maximum amount of the mortgage interest may not be transferred along, unless otherwise agreed upon by the parties.

Article 205 Before the claims secured by the maximum amount of mortgage are established, the mortgagee and the mortgagor may alter the term, scope and maximum amount of the claims through agreement, provided that such alteration shall not have any adverse effect on the other mortgagees.

Article 206 The claim of the mortgagee is established under one of the following circumstances:

- (1) The agreed term for establishment of the claim expires;
- (2) In the absence of a definitely agreed term for establishing the claim or the term agreed upon is indefinite, the mortgagee or the mortgagor requests establishment of the claim after the lapse of two years calculated from the date of creation of the maximum mortgage interest;
- (3) No new claim is likely to be created;

- (4) The mortgaged property is sealed up or distrained;
- (5) The debtor or the mortgagor is declared bankrupt or is dissolved; or
- (6) Other circumstances provided by law under which a claim is established.

Article 207 The maximum mortgage interest shall be governed by the provisions of Section 1 of this Chapter on general interests acquired through mortgage, apart from the provisions of this Section.

## Chapter XVII

### Interest Acquired Through Pledge

#### Section 1

##### Interest Acquired Through Pledge of Movables

Article 208 Where to guarantee the repayment of debts, the debtor or a third party pledges his movables to the creditor, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall be entitled to the priority in having his claim paid with the pledged movables.

As mentioned in the preceding paragraph, the debtor or the third party is the pledgor, the creditor is the pledgee, and the movables delivered are the pledged property.

Article 209 Movables the transfer of which is prohibited by laws or administrative regulations shall not be pledged.

Article 210 To create the interest of a pledge, the parties concerned shall conclude a pledge contract in written form.

A pledge contract generally includes the following particulars:

- (1) the kind and amount of the claim secured;
- (2) the time limit for the debtor to repay his debts;
- (3) the name, quantity, quality and conditions of the pledged property;
- (4) the scope of the secured interest; and
- (5) the time for delivery of the pledged property.

Article 211 Before the maturity of the debts, the pledgee shall not conclude an agreement with the pledgor that ownership of the pledged property go to the pledgee if the debtor defaults.

Article 212 The interest of a pledge is established upon delivery of the pledged property by the pledgor.

Article 213 The pledgee shall have the right to collect the fruits accrued from the pledged property, unless otherwise stipulated in the contract.

The fruits specified in the preceding paragraph shall first be used to pay off the expenses for collecting the fruits.

Article 214 If, without the consent of the pledgor, the pledgee uses or disposes of the pledged property during the existence of the pledge interest, thus causing losses to the pledgor, he shall be liable for compensation.

Article 215 The pledgee has the duty to safekeep the pledged property. If the pledged property is damaged, destroyed or lost due to improper keeping, the pledgee shall be liable for compensation.

Where the action of the pledgee will likely cause damage, destruction or loss of the pledged property, the pledgor may request the pledgee to deposit the pledged property with a third party, or to offer to clear his debts in advance and return the pledged property.

Article 216 Where due to no fault of the pledgee, the pledged property is likely to be so damaged or destroyed or its value to be depreciated so markedly as to undermine the rights of the pledgee, the pledgee shall have the right to demand that the pledgor provide an appropriate security. If the pledgor refuses to do so, the pledgee may have the pledged property auctioned or sold and may, through agreement with the pledgor, use the proceeds therefrom to repay the debts in advance or deposit the proceeds with a third party.

Article 217 If, during the existence of the interest of a pledge, the pledgee repledges the pledged property to a third party without the consent of the pledgor, thus causing damage, destruction or loss of the property, the pledgee shall be liable for compensation.

Article 218 The pledgee may waive his interest to the pledge. Where the debtor pledges his own property and the pledgee waives his interest to the pledge, the other guarantors may be exempted from suretyship to the extent that the pledgee forfeits his rights and interests in terms of the priority in being paid off, unless the guarantors are still committed to the suretyship.

Article 219 Where the debtor repays the debts or the pledgor pays off in advance the debts he guaranteed, the pledgee shall return the pledged property.

If the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the pledgee may conclude an agreement with the pledgor that the pledged property be converted into money, or he may enjoy the priority in having his claim paid with the proceeds obtained from auction or sale of the pledged property.

The pledged property shall be converted into money or be sold off by referring to its market price.

Article 220 The pledgor may request the pledgee to enforce his interest to the pledge in a timely manner at the maturity of the debts. Where the pledgee fails to do so, the pledgor may request the people's court to have the pledged property auctioned or sold.

Where the pledgor requests the pledgee to enforce his interest to the pledge in a timely manner, the pledgee slacks in doing so, thus causing losses, he shall be liable for compensation.

Article 221 If, after the pledged property is converted into money or auctioned or sold, the proceeds therefrom exceed the amount of the claim, the balance shall go to the pledgor, and if they are insufficient to cover the debts, the difference shall be paid by the debtor.

Article 222 The pledgor and the pledgee may create the maximum pledge interest by agreement.

Apart from the relevant provisions of this Section, the provisions in Section 2 of Chapter 16 of this Law on maximum mortgage interest shall be applicable *mutatis mutandis*.

## Section 2

### Interests Acquired Through Pledge of Rights

Article 223 The following rights that a debtor or a third party is entitled to dispose of may be pledged:

- (1) bills of exchange, cheques, promissory notes;
- (2) bonds, certificates of deposit;
- (3) warehouse receipts, bills of lading;
- (4) portions of funds or certificates of stocks which are transferable;
- (5) proprietary rights consisted in the intellectual property rights, such as the right to exclusive use of registered trademarks, the patents and copyrights, which are transferable;
- (6) accounts receivable; and



(7) other property rights which may be pledged as provided for by laws and administrative regulations.

Article 224 Where a bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is created at the time when the certificate of right is delivered to the pledgee; if there is no such certificate, the interest is created at the time when the pledge is registered with the relevant authority.

Article 225 Where the date of payment or of delivery of goods in respect of a pledged bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is matured prior to the date of maturity of the principal claim, the pledgee may accept the payment or the goods delivered and may conclude an agreement with the pledgor that the payment or the goods accepted be used to pay the debts in advance or be deposited with a third party.

Article 226 Where portions of funds or shares are pledged, the parties concerned shall conclude a contract in written form. Where portions of funds or the shares that are registered with the securities registration and settlement authority are pledged, the interest to the pledge is established at the time when the pledge is registered with the securities registration and settlement authority. Where other kinds of shares are pledged, the interest to the pledge is established at the time when the pledge is registered with the administration department for industry and commerce.

The portions of funds or the shares that are pledged may not be transferred, unless otherwise agreed upon by the pledgor and the pledgee. The proceeds the pledgor obtained from the transfer of the portions of funds or shares shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 227 Where the proprietary rights consisted in the intellectual property rights, such as the right to exclusive use of registered trademarks, the patents and copyrights, are pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is perfected at the time when the pledge is registered with the relevant authority.

If the proprietary rights consisted in the intellectual property rights are pledged, the pledgor may not transfer or permit another person to use such rights, unless otherwise agreed upon by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor through transfer of such rights or through permitting another person to use such rights shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 228 Where the accounts receivable are pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is created at the time when the pledge is registered with the credit information service.

The pledged accounts receivable may not be transferred, unless otherwise agreed upon by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor from the transfer of the accounts receivable shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 229 The interests acquired through pledge of rights are governed, apart from by the provisions of this Section, by those under Section 1 of this Chapter on interests acquired through pledge.

## Chapter XVIII

### Lien

Article 230 If a debtor defaults, the creditor may retain the debtor's movables which have been legally possessed by the creditor and shall have the priority in being paid with the said property.

The creditor mentioned in the preceding paragraph is the lien holder, and the movables in his possession are the retained property.

Article 231 The movables retained by the creditor fall in the same nexus of legal relationships with the creditor's claims, except in the case of a lien between enterprises.

Article 232 The movables may not be retained as are so stipulated by law or by agreement between the parties concerned.

Article 233 Where the retained property is dividable, the value of the retained property shall be equivalent to the amount of the debts owed.

Article 234 The lien holder shall have the duty to safekeep the retained property. If the retained property is damaged, destroyed or lost due to improper keeping, the lien holder shall be liable for compensation.

Article 235 The lien holder shall have the right to collect the fruits accrued from the retained property.

The fruits mentioned in the preceding paragraph shall first be used to pay the expenses for collecting the fruits.

Article 236 The lien holder and the debtor shall reach an agreement on the time limit for the debtor to pay the debts after the property is retained. If there is no such agreement or if the agreement is indefinite, the lien holder shall allow a time limit of two months or longer for the debtor to pay the debts, except where the movables are fresh, living or perishable things. If the debtor defaults at the expiration of the specified time limit, the lien holder may upon agreement with the debtor have the retained property converted into money, or may enjoy the priority in having the debts paid with the proceeds from auction or sale of the property.

The retained property shall be converted into money or be sold off by referring to its market price.

Article 237 The debtor may request the lien holder to enforce the right of lien after the expiration of the time limit for payment of the debts. Where the lien holder fails to enforce the right, the debtor may request the people's court to have the retained property auctioned or sold.

Article 238 If after the retained property is converted into money, auctioned or sold, the proceeds therefrom exceed the amount of the claim, the balance shall go to the debtor, and if they are insufficient to cover the debts, the difference shall be paid by the debtor.

Article 239 Where a lien is created on the same piece of the movables that has been mortgaged or pledged, the lien holder shall enjoy the priority in having his debts paid.

Article 240 Where the lien holder forfeits his possession of the retained property or accepts other security provided by the debtor, the right of lien shall extinguish. Part Five

Possession

Chapter XIX

Possession

Article 241 In the event of possession arising from contractual relationship, the use of the immovables or movables in question, the benefits therefrom and breach of duty shall be subject to the terms of the contract. If there are no such terms in the contract or such terms are indefinite, they shall be governed by the provisions of relevant laws.

Article 242 Where a possessor causes damage to the immovables or movables in the use of it, the possessor, if he is a mala fidei one, shall be liable for compensation.

Article 243 Where the immovables or movables come to be possessed by another person, the obligee may request the person to return them and the fruits therefrom; however, the obligee shall compensate the possessor, if he is a bona fide one, for his expenses necessitated for maintaining the property.

Article 244 Where the immovables or movables in the possession of another person is damaged, or destroyed or lost and the obligee requests compensation, the possessor shall return the insurance monies, compensation payment, indemnities, etc. to the obligee. If the losses of the obligee are not fully covered thereby, the possessor, if he is a mala fidei one, shall, in addition, compensate for the uncovered part.

Article 245 Where the immovables or movables in a person's possession are encroached upon, the person shall have the right to request the return of the original property. In the event of trespass to the possession of another, the possessor shall have the right to request elimination of such trespass or hazard. If damage is caused by encroachment or the trespass, the possessor shall have the right to request compensation.

The right of claim to the return of the original property shall extinguish, if the possessor fails to exercise it within one year from the date of the encroachment.

#### Supplementary Provisions

Article 246 Before the scope, authority and measures for unified registration of immovable property are stipulated by laws or administrative regulations, they may be stipulated by local regulations according to the relevant provisions of this Law.

Article 247 This Law shall go into effect as of October 1, 2007