

## DRAFT OF THE CIVIL CODE OF CAMBODIA

### Table of Contents

<b>BOOK ONE “GENERAL RULES” .....</b>	<b>9</b>
<b>BOOK TWO “PERSONS” .....</b>	<b>9</b>
<b>CHAPTER ONE NATURAL PERSONS .....</b>	<b>9</b>
<i>Section I. Legal Capacity .....</i>	<i>9</i>
<i>Section II. Personal Rights .....</i>	<i>10</i>
<i>Section III. Capacity .....</i>	<i>10</i>
<i>Section IV. Capacity to Act .....</i>	<i>11</i>
Sub-section I. Minors .....	11
Sub-section II. Person under General Guardianship .....	12
Sub-section III. Person under curatorship .....	13
Sub-section IV. Protection of Party to Transaction with Incompetent Person .....	14
<i>Section V. Permanent Residence .....</i>	<i>14</i>
<i>Section VI. Management of Property of Absentee; Declaration of Disappearance .....</i>	<i>15</i>
Sub-section I. Management of Property of Absentee .....	15
Sub-section II. Declaration of Disappearance .....	16
<i>Section VII. Presumption of Simultaneous Death .....</i>	<i>17</i>
<b>CHAPTER TWO JURISTIC PERSONS .....</b>	<b>17</b>
<i>Section I. General Provisions .....</i>	<i>17</i>
Sub-section I. Definitions, Types and Principles of Incorporation .....	17
Sub-section II. Name of Non-profit Juristic Person .....	18
Sub-section III. Registration of Incorporation .....	18
Sub-section IV. Domicile of Juristic Person .....	19
Sub-section V. Registration of Foreign Juristic Persons .....	20
Sub-section VI. Management and Administration of Juristic Persons .....	20
Sub-section VII. Dissolution and Liquidation .....	22
<i>Section II. Incorporated Associations .....</i>	<i>27</i>
Sub-section I. Limited Liability Incorporated Associations .....	27
Sub-section II. Unlimited liability Incorporated Associations .....	33
<i>Section III. Incorporated Foundations .....</i>	<i>36</i>

<b>BOOK THREE “REAL RIGHTS” .....</b>	<b>39</b>
<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>39</b>
<i>Section I. Things.....</i>	<i>39</i>
<i>Section II. Real Rights .....</i>	<i>41</i>
<i>Section III. Creation, Transfer and Alternation of Real Rights .....</i>	<i>41</i>
<b>CHAPTER TWO OWNERSHIP.....</b>	<b>42</b>
<i>Section I. Nature and Scope of Ownership.....</i>	<i>42</i>
<i>Section II. Relationship Between Neighboring Properties.....</i>	<i>43</i>
<i>Section III. Right to Demand Based on Ownership.....</i>	<i>45</i>
<i>Section IV. Acquisition of Ownership.....</i>	<i>47</i>
Sub-section I. Acquisition of Ownership over Immovable.....	47
Sub-section II. Acquisition of Ownership over Movable .....	52
<i>Section V. Co-ownership.....</i>	<i>55</i>
<i>Section VI. Indivisible Joint Ownership.....</i>	<i>57</i>
<b>CHAPTER THREE POSSESSORY RIGHTS .....</b>	<b>59</b>
<i>Section I. General Rules .....</i>	<i>59</i>
<i>Section II. Rights to Demand Protection of Possession .....</i>	<i>61</i>
<i>Section III. Protection of Special Occupants of Immovable.....</i>	<i>63</i>
<b>CHAPTER FOUR PERPETUAL LEASES .....</b>	<b>64</b>
<b>CHAPTER FIVE USUFRUCT.....</b>	<b>66</b>
<b>CHAPTER SIX RIGHT OF USE AND RIGHT OF RESIDENCE .....</b>	<b>69</b>
<b>CHAPTER SEVEN EASEMENTS .....</b>	<b>71</b>
<i>Section I. General Rules .....</i>	<i>71</i>
<i>Section II. Easements and Prescription.....</i>	<i>74</i>
<b>CHAPTER EIGHT OWNERSHIP AND OTHER REAL RIGHTS OF THE STATE, BUDDHIST TEMPLES, MINORITY ETHNIC GROUPS AND OTHER COMMUNITIES.....</b>	<b>76</b>
<b>CHAPTER NINE RIGHTS CREATED BY CONCESSION.....</b>	<b>76</b>
<b>BOOK FOUR “OBLIGATIONS” .....</b>	<b>76</b>
<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>76</b>
<i>Section I. Causes of Obligation and Definitions of Several Concepts.....</i>	<i>76</i>
<i>Section II. Types and States of Obligations.....</i>	<i>77</i>
<i>Section III. Conditions, Time and Period.....</i>	<i>80</i>
Sub-section I. Conditions .....	80
Sub-section II. Time.....	81
Sub-section II. Period.....	81

<b>CHAPTER TWO DECLARATION OF INTENTION AND CONTRACT .....</b>	<b>82</b>
<i>Section I. Formation of Contract.....</i>	<i>82</i>
<i>Section II. Defective Declaration of Intention and Validity of Contract.....</i>	<i>84</i>
<i>Section III. Invalidity and Rescission .....</i>	<i>87</i>
<i>Section IV. Agency .....</i>	<i>89</i>
<i>Section V. Contract for the Benefit of a Third Party.....</i>	<i>93</i>
<b>CHAPTER THREE PERFORMANCE OF CONTRACT.....</b>	<b>94</b>
<b>CHAPTER FOUR REMEDIES FOR BREACH OF CONTRACT .....</b>	<b>95</b>
<i>Section I. General Rules Concerning Non-Performance.....</i>	<i>95</i>
<i>Section II. Specific Performance.....</i>	<i>96</i>
<i>Section III. Damages.....</i>	<i>96</i>
<i>Section IV. Termination of Contract.....</i>	<i>98</i>
<b>CHAPTER FIVE BURDEN OF RISK .....</b>	<b>100</b>
<b>CHAPTER SIX EFFECT OF OBLIGATION AGAINST THIRD PARTIES .....</b>	<b>102</b>
<i>Section I. Subrogation by the Obligee .....</i>	<i>102</i>
<i>Section II. Avoidance of Fraudulent Act.....</i>	<i>103</i>
<b>CHAPTER SEVEN EXTINCTION OF OBLIGATION .....</b>	<b>104</b>
<i>Section I. Performance.....</i>	<i>104</i>
Sub-section I. General provisions regarding performance.....	104
Sub-section II. Assignment of Performance .....	107
Sub-section II. Tender and Deposit.....	108
Sub-section III. Subrogation by performance.....	110
<i>Section II. Set-off.....</i>	<i>111</i>
<i>Section III. Release .....</i>	<i>113</i>
<i>Section IV. Novation .....</i>	<i>113</i>
<i>Section V. Merger .....</i>	<i>114</i>
<b>CHAPTER EIGHT EXTINCTIVE PRESCRIPTION REGARDING CLAIMS .....</b>	<b>114</b>
<b>CHAPTER NINE ASSIGNMENT OF CLAIMS AND ASSUMPTION OF OBLIGATIONS .....</b>	<b>118</b>
<i>Section I. Assignment of Claims.....</i>	<i>118</i>
<i>Section II. Assumption of Obligations.....</i>	<i>119</i>
<i>Section III. Assignment of Contractual Position .....</i>	<i>120</i>
<b>BOOK FIVE “PARTICULAR TYPES OF CONTRACTS / TORTS” .....</b>	<b>121</b>
<b>CHAPTER ONE SALE .....</b>	<b>121</b>
<i>Section I. General Provisions .....</i>	<i>121</i>
<i>Section II. Parties to and Goods Covered by Sale Contract .....</i>	<i>123</i>
<i>Section III. Effect of Sale Contract.....</i>	<i>124</i>

Sub-section I. Obligations of Seller .....	124
Sub-section II. Obligations of Buyer .....	132
<i>Section IV. Termination of Contract By Exercise of Repurchase Right .....</i>	<i>133</i>
<b>CHAPTER TWO EXCHANGE .....</b>	<b>134</b>
<b>CHAPTER THREE GIFT.....</b>	<b>135</b>
<b>CHAPTER FOUR LOAN FOR CONSUMPTION.....</b>	<b>136</b>
<i>Section I. Definition and Formation of Loans for Consumption .....</i>	<i>136</i>
<i>Section II. Loans for Consumption With Interest.....</i>	<i>137</i>
<i>Section III. Lender's Obligation to Lend.....</i>	<i>139</i>
<i>Section IV. Borrower's obligation to return .....</i>	<i>140</i>
<b>CHAPTER FIVE LEASE .....</b>	<b>141</b>
<i>Section I. General Provisions .....</i>	<i>141</i>
<i>Section II. Effect of Lease .....</i>	<i>142</i>
<i>Section III. Termination of lease .....</i>	<i>145</i>
<i>Section IV. Profit-sharing Lease.....</i>	<i>146</i>
<b>CHAPTER SIX LOAN FOR USE .....</b>	<b>147</b>
<b>CHAPTER SEVEN MANDATE.....</b>	<b>149</b>
<b>CHAPTER EIGHT CONTRACT FOR WORK.....</b>	<b>151</b>
<b>CHAPTER NINE CONTRACT OF EMPLOYMENT .....</b>	<b>154</b>
<b>CHAPTER TEN BAILMENT .....</b>	<b>155</b>
<i>Section I. General Provisions Relating to Bailment .....</i>	<i>155</i>
<i>Section II. Mingling of objects of bailment .....</i>	<i>158</i>
<i>Section III. Bailment for consumption.....</i>	<i>159</i>
<i>Section IV. Bailment of object in dispute.....</i>	<i>159</i>
<b>CHAPTER ELEVEN PARTNERSHIP .....</b>	<b>160</b>
<b>CHAPTER TWELVE LIFE ANNUITY .....</b>	<b>164</b>
<b>CHAPTER THIRTEEN COMPROMISE .....</b>	<b>165</b>
<b>CHAPTER FOURTEEN MANAGEMENT OF AFFAIRS WITHOUT MANDATE .....</b>	<b>166</b>
<b>CHAPTER FIFTEEN UNJUST ENRICHMENT .....</b>	<b>167</b>
<b>CHAPTER SIXTEEN TORTS .....</b>	<b>168</b>
<b>BOOK SIX "SECURITY".....</b>	<b>174</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>174</b>
<b>CHAPTER TWO RIGHT OF RETENTION .....</b>	<b>175</b>
<b>CHAPTER THREE PREFERENTIAL RIGHTS .....</b>	<b>177</b>
<i>Section I. General Provisions .....</i>	<i>177</i>
<i>Section II. General Preferential Right.....</i>	<i>177</i>



<i>Section III. Preferential Right Over Specific Movables.....</i>	<i>178</i>
<i>Section IV. Preferential Right Over Specific Immovables .....</i>	<i>180</i>
<i>Section V. Ranking of Preferential Rights.....</i>	<i>181</i>
<i>Section VI. Effect of Preferential Right .....</i>	<i>182</i>
<b>CHAPTER FOUR PLEDGE.....</b>	<b>183</b>
<i>Section I. General Provisions .....</i>	<i>183</i>
<i>Section II. Pledge Over Movable .....</i>	<i>186</i>
<i>Section III. Pledge Over Immovable .....</i>	<i>186</i>
<i>Section IV. Pledge Over Right/Claim .....</i>	<i>187</i>
<b>CHAPTER FIVE HYPOTHEC.....</b>	<b>188</b>
<i>Section I. Nature of Hypothec .....</i>	<i>188</i>
<i>Section II. Creation of Hypothec .....</i>	<i>188</i>
<i>Section III. Effect of Hypothec.....</i>	<i>189</i>
<i>Section IV. Enforcement of Hypothec.....</i>	<i>190</i>
<i>Section V. Disposal of Hypothec .....</i>	<i>191</i>
<i>Section VI. Extinction of Hypothec .....</i>	<i>192</i>
Sub-section I. Extinction by demand.....	192
Sub-section II. Extinction by prescription.....	193
<i>Section VII. Revolving Hypothec.....</i>	<i>193</i>
<b>CHAPTER SIX TRANSFER AS SECURITY .....</b>	<b>199</b>
<i>Section I. Definition of Transfer as Security .....</i>	<i>199</i>
<i>Section II. Formation of Security Interest Under a Transfer as Security.....</i>	<i>199</i>
<i>Section III. Effect of Security Interest Under a Transfer as Security .....</i>	<i>200</i>
<i>Section IV. Enforcement of the Security Interest Under the Transfer as Security.....</i>	<i>202</i>
<b>CHAPTER SEVEN GUARANTY .....</b>	<b>202</b>
<i>Section I. Formation of Guaranty .....</i>	<i>202</i>
<i>Section II. Effect of Guaranty.....</i>	<i>204</i>
<i>Section III. Indemnification.....</i>	<i>206</i>
<i>Section IV. Subrogation.....</i>	<i>208</i>
<b>CHAPTER EIGHT JOINT OBLIGATION .....</b>	<b>209</b>
<i>Section I. Creation of Joint Obligation .....</i>	<i>209</i>
<i>Section II. Effect of Events Occurring Regarding Single Joint Obligor .....</i>	<i>209</i>
<i>Section III. Indemnification.....</i>	<i>211</i>
<i>Section IV. Subrogation by Performance .....</i>	<i>212</i>
<i>Section V. Other Situations Involving Multiple Obligors .....</i>	<i>212</i>
<b>BOOK SEVEN “RELATIVES” .....</b>	<b>213</b>

<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>213</b>
<b>CHAPTER TWO ENGAGEMENT.....</b>	<b>214</b>
<b>CHAPTER THREE MARRIAGE .....</b>	<b>214</b>
<i>Section I. Formation of Marriage.....</i>	<i>214</i>
Sub-section I. Requirements for marriage.....	214
Sub-section II. Nullity and Annulment of Marriage.....	216
<i>Section II. Validity of Marriage.....</i>	<i>218</i>
<i>Section III. The Matrimonial Property System.....</i>	<i>218</i>
Sub-section I. The Contractual Property System.....	218
Sub-section II. The Statutory Property System.....	219
Sub-section I. Grounds of Divorce.....	220
Sub-section II. Divorce Procedures.....	221
<b>CHAPTER FOUR PARENTS AND CHILDREN .....</b>	<b>222</b>
<i>Section I. Natural Parents-Children Relationship .....</i>	<i>222</i>
Sub-section I. General Provisions.....	222
Sub-section II. Determination of Natural Parents-Children Relationship.....	223
Sub-section II. Acknowledgement.....	224
Sub-section III. Suit Confirming Absence of Parenthood.....	225
Sub-section IV. Suit Seeking Confirmation of Maternity.....	226
<i>Section II. Adoption.....</i>	<i>227</i>
Sub-section I. Full Adoption.....	227
Sub-section V. Simple Adoption.....	229
<b>CHAPTER FIVE PARENTAL POWER .....</b>	<b>232</b>
<i>Section I. General Provisions .....</i>	<i>232</i>
<i>Section II. Determination of Parental Power Holder in Case of Divorce or</i> <i>Acknowledgement .....</i>	<i>233</i>
<i>Section III. Rights and Obligations of the Parental Power Holder.....</i>	<i>235</i>
<i>Section IV. Suspension and Divestment of Authority of Parental Power Holder .....</i>	<i>236</i>
<i>Section V. Authority of Management of Child's Property .....</i>	<i>237</i>
<i>Section VI. Suspension and Divestment of Authority to Manage Property .....</i>	<i>238</i>
<i>Section VII. Mutatis Mutandis Application of This Chapter .....</i>	<i>240</i>
<b>CHAPTER SIX GUARDIANSHIP.....</b>	<b>240</b>
<i>Section I. Guardianship of Minors .....</i>	<i>240</i>
Sub-section I. Commencement of Guardianship of Minor.....	240
Sub-section II. Guardian of Minor.....	240
Sub-section II. Supervisor of Guardian of Minor .....	241

Sub-section III. Duties of Guardian of Minor .....	242
Sub-section IV. Release of Minor from Guardianship .....	245
Sub-section V. <i>Mutatis Mutandis</i> Application to Child of Minor .....	247
<i>Section II. General Guardianship</i> .....	247
Sub-section I. Commencement of General Guardianship .....	247
Sub-section II. General Guardian .....	248
Sub-section II. Supervisor of General Guardian .....	249
Sub-section III. Duties of General Guardian .....	250
Sub-section IV. Termination of General Guardianship .....	254
<b>CHAPTER SEVEN CURATORSHIP</b> .....	<b>255</b>
<b>CHAPTER EIGHT SUPPORT</b> .....	<b>256</b>
<b>BOOK EIGHT "SUCCESSION"</b> .....	<b>258</b>
<b>CHAPTER ONE GENERAL PROVISIONS</b> .....	<b>258</b>
<i>Section I. Opening of Succession</i> .....	258
<i>Section II. Effect of Succession</i> .....	258
<i>Section III. Qualification for succession</i> .....	259
<b>CHAPTER TWO STATUTORY SUCCESSION</b> .....	<b>261</b>
<i>Section I. Successors</i> .....	261
<i>Section II. Succession by Spouse</i> .....	262
<i>Section III. Adjustment of Succession Shares</i> .....	262
<b>CHAPTER THREE TESTAMENTARY SUCCESSION</b> .....	<b>264</b>
<i>Section I. Capacity to Make a Will</i> .....	264
<i>Section II. Forms of wills</i> .....	264
<i>Section III. Matters To Be Included In Will</i> .....	268
<i>Section IV. Revocation of Will</i> .....	269
<i>Section V. Effect of Will</i> .....	270
<i>Section VI. Testamentary Gifts</i> .....	271
<i>Section VII. Execution of Wills</i> .....	274
<b>CHAPTER FOUR LEGALLY SECURED PORTIONS</b> .....	<b>277</b>
<i>Section I. General Provisions</i> .....	277
<i>Section II. Method of Abatement for Legally Secured Portion</i> .....	278
<i>Section III. Extinction of Claim of Abatement</i> .....	280
<b>CHAPTER FIVE ACCEPTANCE AND RENUNCIATION OF SUCCESSION</b> .....	<b>280</b>
<i>Section I. General Provisions</i> .....	280
<i>Section II. Acceptance</i> .....	282
<i>Section III. Renunciation</i> .....	283

<b>CHAPTER SIX MANAGEMENT AND PARTITION OF THE SUCCESSION PROPERTY .....</b>	<b>283</b>
<i>Section I. Management of the Succession Property .....</i>	<i>283</i>
<i>Section II. Partition of Succession Property .....</i>	<i>284</i>
<i>Section III. Adjustment Among Creditors .....</i>	<i>286</i>
<i>Section IV. Liquidation in cases where there has been a qualified acceptance, etc.....</i>	<i>286</i>
<b>CHAPTER SEVEN NON-EXISTENCE OF SUCCESSORS .....</b>	<b>288</b>
<b>CHAPTER EIGHT DEMAND FOR RECOVERY OF SUCCESSION .....</b>	<b>291</b>
<b>BOOK NINE “FINAL PROVIASION” .....</b>	<b>292</b>

### **NOTE**

This is a tentative English translation prepared by the JICA Project Office in the Ministry of Justice of Cambodia for reference purpose only. This translation was made from Japanese version, and is subject to further review to reflect the Khmer original draft more precisely. The official draft submitted by the Ministry of Justice to the Council of Ministers is in Khmer.

## **BOOK ONE “GENERAL RULES”**

1. (General principles of private law)

This Code sets forth the general principles governing legal relations in civil matters. Except where otherwise provided by special law, the provisions of this Code shall apply to property related matters and family relations.

2. (Fundamental concepts)

This Code gives concrete embodiment to the concepts of the dignity of the individual, the equality of the sexes and the guarantee of property rights provided in the Constitution.

3. (The principle of private autonomy)

Under this Code, legal relations among private persons, including corporations, shall be equal and equivalent, with respect for the free intention of the individual. Public corporations shall be deemed private persons in connection with their legal relations that arise from transactions.

4. (Prohibition of abuse of rights)

The abuse of rights shall not be permitted. If a right is used beyond the scope of the protection originally anticipated, the exercise of such right shall not be valid.

5. (The principle of good faith)

Rights shall be exercised and duties performed in good faith.

## **BOOK TWO “PERSONS”**

### **Chapter One NATURAL PERSONS**

#### **Section I. Legal Capacity**

6. (Principle of equality of legal capacity)

All natural persons are entitled to have rights and assume obligations in their name.

7. (Limitation on capacity of foreign nationals to acquire rights)

Foreign nationals are not entitled to acquire or maintain certain rights if so provided by law or treaty.

8. (Commencement/end of legal capacity)

Natural persons shall acquire legal capacity by birth, and shall lose it by death.

9. (Fetus)

(1) A fetus in existence at the time that a tortious act is conducted shall be entitled to seek damages for the harm arising from such act after it is born.

(2) A fetus in existence at the time of death of a decedent who dies intestate shall be entitled to inherit from the decedent after it is born.

(3) A fetus in existence at the time of death of a testator is entitled to receive the effect of the testament.

## Section II. Personal Rights

10. (Concept of personal rights)

Personal rights include the rights to life, personal safety, health, freedom, identity, dignity, privacy, and other personal benefits or interests.

11. (Right to injunction)

Where there is a danger of unlawful infringement of a personal right, or where there is a danger that such an infringement that has already occurred will unlawfully continue or be repeated, the personal right holder may demand to enjoin such infringement.

12. (Right to demand elimination of effect of infringing act)

A person who has suffered an unlawful infringement of a personal right may, where the infringing state is continuing due to the continued presence of the effect of the infringing act, demand the elimination of the effect of the infringing act unless such elimination is not practically feasible.

13. (Right to damages)

The provisions of Articles 11(Right to injunction) and 12(Right to demand elimination of effect of infringing act) shall not prevent a person who has suffered an infringement of a personal right from seeking damages for any harm suffered from such infringement in accordance with the provisions regarding tortious acts.

## Section III. Capacity

14. (Lack of capacity)

An act performed by a person who was unable to recognize and understand the legal consequences of his actions is voidable.

15. (Definition of act)

An 'act' as used in the provisions of Sections III, IV and VI of this Chapter shall include a contract, and a unilateral legal act.

**Section IV. Capacity to Act**

16. (Definition of incompetent persons)

Incompetent persons are minors, adults in guardianship and a person under curatorship.

**Sub-section I. Minors**

17. (Definition of minor)

Minors are persons under the age of eighteen.

18. (Right to rescind act)

An act conducted by a minor without the consent of his parental power holder or guardian may be rescinded. However, this shall not apply to an act performed in order to obtain a right or to discharge a duty or obligation, or to an act conducted in the course of daily life.

19. (Disposal of property with permission of parental power holder or guardian)

Where a minor has been permitted by his parental power holder or guardian to dispose of property for a specific purpose, the minor may dispose of the property within the scope of such purpose. A minor may also dispose of property where he has been permitted by his parental power holder or guardian to dispose of the property without a specified purpose.

20. (Minor permitted to conduct business)

(1) A minor who is permitted by his parental power holder or guardian to conduct one or more kinds of business shall be regarded to have reached adulthood.

(2) In the case of paragraph (1), if it is found that the minor is unable to manage the business, his parental power holder or guardian may revoke the permission to conduct business or impose restrictions thereon.

21. (Requirements for emancipation)

(1) Where a minor who has reached the age of sixteen completely supports himself, the court may, upon a petition from the minor, declare the emancipation of the minor if such emancipation is deemed in the minor's best interest. In such a case, the court shall hear the opinions of the parental power holder(s).

(2) A married minor shall be deemed to have reached his/her majority.

(3) In case of paragraph (2), the effect of the emancipation shall not cease to exist in the event of a subsequent divorce.

22. (Effect of emancipation)

An emancipated minor shall have the same capacity to act as an adult.

23. (Minor's labor contract)

(1) Notwithstanding the provisions of Articles 1053 (Property management and representation) and 1080 (Property management and representation), a parental power holder or guardian may not enter into a labor contract on behalf of a minor.

(2) A contract that contravenes the provisions of paragraph (1) shall not be binding on the minor. However, this shall not apply where the minor ratifies the contract.

(3) A parental power holder, a guardian or the administrative authorities may, if the labor contract is deemed to be disadvantageous to the minor, terminate the contract, and such termination is effective only for the future.

**Sub-section II. Person under General Guardianship**

24. (Declaration of commencement of general guardianship)

With respect to a person who remains in a habitual condition of lacking the ability to recognize and understand the legal consequences of his actions due to mental disability, the court may declare the commencement of a general guardianship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian of minor, the supervisor of guardian of minor, the chief of the *Khum* or *Sangkat* where the person's domicile is located, or a prosecutor. However, this provision shall not apply in case where the person is under 15 years old at the time of application.

In case where the court makes the declaration of Paragraph (1), and where the person is under the curatorship, the court must revoke the declaration of commencement of curatorship.

25. (Meaning of general guardianship; and appointment of general guardian)

A person who receives a declaration of commencement of general guardianship shall be called a 'person under general guardianship,' and shall be placed under the care of a general guardian.

26. (Right to rescind act)

An act conducted by a person under general guardianship may be rescinded.



However, this shall not apply to an act necessary in the course of daily life.

27. (Revocation of declaration of commencement of general guardianship)

When the grounds for the general guardianship described in Article 24 (Declaration of commencement of general guardianship) cease to exist, the court shall revoke the declaration of commencement of general guardianship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, the guardian's supervisor, the chief of the *Khum* or *Sangkat* where the person's domicile is located, or a prosecutor.

**Sub-section III. Person under curatorship**

28. (Declaration of commencement of curatorship)

(1) With respect to a person whose ability to recognize and understand the legal consequences of his actions is substantially impaired due to mental disability, the court may declare the commencement of curatorship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, a guardian's supervisor, the chief of the *Khum* or *Sangkat* where the person's domicile is located, or a prosecutor.

(2) In case where the court makes the declaration of Paragraph (1), and where the person is under the general guardianship, the court must revoke the declaration of commencement of the general guardianship.

29. (Meaning of a person under curatorship; appointment of curator)

A person who receives a declaration of commencement of curatorship shall be called a 'person under curatorship', and shall be placed under the care of a court-appointed curator.

30. (Right to rescind act)

Any of the following acts conducted by a person under curatorship without the consent of the curator may be rescinded, except where the act is conducted in the course of daily life:

- (a) receiving or using principal;
- (b) incurring or guaranteeing a debt;
- (c) acting with the intent of obtaining or losing rights pertaining to an immovable or other valuable asset;
- (d) conducting an act of litigation;
- (e) donating [money or property], or entering into a settlement or arbitration agreement;
- (f) accepting or waiving succession, or dividing a legacy;
- (g) refusing a donation or bequest, or accepting a donation or bequest subject to a burden;
- (h) building, remodeling, expanding or conducting major repairs to a building or structure;
- (i) executing a lease agreement that exceeds three years for land, two years for a building, or six months for a movable; or
- (j) any other act that a court specifically declares, based on

the application of a person listed in Article 28 (Declaration of commencement of curatorship) , a curator, or a curator's supervisor, requires the consent of the curator.

31. (Revocation of declaration of commencement of curatorship)

When the grounds for curatorship described in Article 28 (Declaration of commencement of curatorship) cease to exist, the court shall revoke the declaration of commencement of curatorship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, a guardian's supervisor, the chief of the [commune] where the person's domicile is located, or a prosecutor.

**Sub-section IV. Protection of Party to Transaction with Incompetent Person**

32. (Right to demand)

(1) The other party to an act conducted by an incompetent person may, after the incompetent person has become a person of full capacity, notify such person and demand a definite answer within a period [fixed by such other party], which shall not be less than one month, as to whether or not the person ratifies the voidable act. If the previously incompetent person fails to dispatch a definite answer within such period, the act shall be deemed to have been ratified.

(2) The same shall apply to cases where the notice set forth in paragraph (1) was given to a parental power holder, guardian or court-appointed curator with respect to an act within the scope of the guardian's authority before the incompetent person became a person of full capacity, but no definite answer was dispatched by the guardian within such period.

(3) The other party to an act conducted by a person under curatorship may notify the person under curatorship and demand that such person obtain the ratification of the curator within the period set forth in paragraph (1). If the person under curatorship fails to dispatch a notice to the effect that ratification has been duly obtained within such period, the contract shall be deemed rescinded.

33. (Fraud by incompetent)

If an incompetent person has used fraudulent means to induce the belief that he is a person of full capacity, the act of the person cannot be rescinded.

**Section V. Permanent Residence**

34. (Definition of permanent residence)

A person's base and center of living shall be the person's permanent residence.

35. (Place of abode)

If the permanent residence is unknown, the place of abode shall be deemed to be the permanent residence.

36. (Cases where no residence exists within Cambodia)

If a person has no permanent residence in Cambodia, the place of abode in Cambodia shall be deemed to be the person's permanent residence, regardless of whether the person is a Cambodian citizen or a foreign national. However, this shall not apply where the law of the person's domicile applies.

## **Section VI. Management of Property of Absentee; Declaration of Disappearance**

### **Sub-section I. Management of Property of Absentee**

37. (Appointment of administrator by the court)

Where a person has left his permanent residence or place of abode and there is no expectation of his return, if he did not appoint an administrator for his property, the court may, upon the petition of any interested person, the chief of the [commune] where the person's residence is located or a public prosecutor, order the appointment of an administrator or take any other measure necessary for the management of such property. The same shall apply where the authority of an appointed administrator has expired during the absence of the principal.

38. (Revocation of order to manage property)

In the case described in Article 37 (Appointment of administrator by the court), if the absentee subsequently appoints an administrator, the court may revoke the order described therein upon the request of the administrator, any interested person, the chief of the [commune] where the person's residence is located or a public prosecutor.

39. (Replacement of administrator)

Where an absentee has appointed an administrator, if it is unknown whether the absentee is alive or dead, the court may, upon the petition of any interested person, the chief of the [commune] where the person's residence is located or a public prosecutor, order the replacement of the administrator.

40. (Authority of administrator, etc)

(1) A court-appointed administrator has the authority to conduct acts set forth in paragraph (2), Article 366 (Scope of agency authorization). Where the administrator is required to conduct an act beyond the scope of that authority, the administrator may conduct the act with the approval of the court.

(2) Where it is unknown whether the absentee is alive or dead, if the administrator needs to conduct an act beyond the scope of the authority

specified by the absentee, the administrator may conduct such act with the approval of the court.

(3) The court, where it finds that it is appropriate for remuneration to be paid taking into account of the relationship between the administrator and the absentee and other circumstances, may allow reasonable remuneration to the administrator out of the absentee's property,

## Sub-section II. Declaration of Disappearance

### 41. (Requirements for declaration of disappearance)

(1) If it is unknown for five years whether an absentee is alive or dead, the court may, upon the petition of his spouse, heir, legatee, a designated insurance beneficiary, a parental power holder, guardian, father, mother or any other person who has an important legal interest in the declaration of disappearance, make a judicial declaration of disappearance.

(2) The rule described in paragraph (1) shall also apply where the fate of a person located in a war zone or aboard a foundered vessel, or who encountered any other peril that might have been the cause of death, has been unknown for one year after the cessation of the war, the foundering of the vessel or the termination of the peril.

### 42. (Notification by publication)

The proceedings for notification by publication shall be carried out in order to declare the disappearance.

### 43. (Effect of declaration of disappearance)

The absentee shall be deemed dead from the time, in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (1) of Article 41 (Requirements for declaration of disappearance), when the period set forth therein expires, and in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (2) of the same Article, when the peril ceases to exist with respect to any legal relationship that exists at or around the permanent residence or the place of abode at such time.

### 44. (Handling of absentee's return)

(1) If it is proven that the absentee is alive, or died at a time different from that set forth in paragraph (1) of Article 43 (Effect of declaration of disappearance), the court shall, upon the petition of the absentee or any interested person, revoke the judicial declaration of disappearance.

(2) A person who has acquired property directly from the absentee based on the effect of a judicial declaration of disappearance shall lose his right to the property upon the revocation of the declaration

of disappearance. However, a person who was unaware when he acquired the property that the declaration of disappearance was in fact not in accordance with the truth is obligated to return such property only to the extent that the person continues to receive the benefits thereof.

(3) An act conducted after a declaration of disappearance has been made but before it has been revoked, in the belief that the declaration is in effect, shall not lose its effect or validity on account of the revocation.

(4) In the event that a declaration of disappearance is revoked after the remarriage of the spouse of a person as to whom the declaration was made, the previous marriage shall be annulled due to the establishment of the remarriage.

## Section VII. Presumption of Simultaneous Death

45. (Presumption of simultaneous death)

If, among two or more persons who have died, it is unknown whether one has survived after the death of the other(s), the persons shall be presumed to have died simultaneously.

## Chapter Two JURISTIC PERSONS

### Section I. General Provisions

#### Sub-section I. Definitions, Types and Principles of Incorporation

46. (Definition and types of juristic persons, principles of incorporation)

(1) In this law, an organization granted the status of being the subject of rights and obligations independent of those of the members that compose the organization shall be referred to as an "incorporated associations", and contributed assets granted the status of being the subject of rights and obligations independent [of the contributors of such assets] shall be referred to as an "incorporated foundation".

(2) In this law juristic persons that do not have profit among their objects are referred to as "non-profit juristic persons" and juristic persons that do have profit among their objects as "for-profit juristic persons".

(3) In this law incorporated associations of which the members are liable for the debts of the juristic person up to the amount of property contributed are referred to as "limited liability incorporated associations" and those of which the members are liable for the debts of the juristic person with all their property are referred to as "unlimited liability incorporated associations".

(4) No juristic person may become a member with unlimited liability of another incorporated association.

(5) A non-profit juristic person may be incorporated under this law or another law or regulation.

(6) A for-profit juristic person may be incorporated under [another] law to be stipulated separately.

## Sub-section II. Name of Non-profit Juristic Person

47. (Name of non-profit juristic person)

(1) No entity other than an incorporated association or incorporated foundation may use the words "incorporated association" or "incorporated foundation" in their name.

(2) Limited liability incorporated associations and unlimited liability incorporated associations shall include in their name a statement that they are limited liability incorporated associations or unlimited liability incorporated associations as the case may be.

48. (Foreign juristic persons)

(1) In this law, juristic persons incorporated under foreign law are referred to as "foreign juristic persons".

(2) Foreign juristic persons are not recognized as juristic persons except in the cases of states, administrative divisions of states and foreign trading companies; provided that juristic persons may be recognized as such by Cambodian laws or treaties.

(3) Foreign juristic persons recognized under paragraph (2) shall enjoy the same private law rights as juristic persons incorporated under the same type of Cambodian law; provided that this shall not apply to rights that may not be enjoyed by foreigners or in cases where there is specific [contrary] provision in a law or treaty.

## Sub-section III. Registration of Incorporation

49. (Registration of incorporation and time of formation)

(1) A juristic person shall come into existence upon registration at the registry having jurisdiction over its principal office.

50. (Particulars to be registered)

(1) The following particulars of a juristic person shall be registered:

- (a) the objects;
- (b) the name;
- (c) the principal office and secondary office(s);
- (d) if grounds for dissolution have been provided in the articles of incorporation, such grounds;
- (e) the names and addresses of the directors and supervisor(s); provided that in the case of an unlimited liability

incorporated association, the names and addresses of the members shall be stated;

- (f) if there are any directors who do not represent the juristic person, the name(s) of the director(s) who do represent the juristic person; and
- (g) if there is a provision for more than one director jointly to represent the juristic person, such provision.

(2) If there is a change in any particular listed in Paragraph (1), such change shall be registered within two weeks [following its occurrence] at the registry having jurisdiction over the principal office and within three weeks at the registry having jurisdiction over any other office. Pending registration, no change can be set up against other persons.

(3) If there is provisional disposition to suspend the performance of duties by, or to appoint a substitute for, a registered director, supervisor, liquidator or member, or a change or cancellation of such provisional disposition, registration thereof shall be effected at the registry having jurisdiction over the principal office and at the registry having jurisdiction over any other office. In such cases the second sentence of Paragraph (2) shall apply mutatis mutandis.

#### Sub-section IV. Domicile of Juristic Person

##### 51. (Domicile of juristic person)

The domicile of a juristic person shall be the place in which its principal office is located.

##### 52. (Registration of relocation of office)

(1) If a juristic person relocates its principal office, then not later than two weeks following the relocation, such fact shall be registered at the registry having jurisdiction over its old location and the particulars provided in Article 50 (Particulars to be registered) shall be registered at the registry having jurisdiction over the new location. If a juristic person relocates an office other than the principal office, then such fact shall be registered at the registry having jurisdiction over its old location within three weeks and the particulars provided in Article 50 (Particulars to be registered) shall be registered at the registry having jurisdiction over the new location within four weeks.

(2) Notwithstanding Paragraph (1), where an office has been relocated within the area of jurisdiction of a single registry, only such relocation need be registered.

##### 53. (Registration of establishment of new office)

(1) Upon establishment of a new office, the particulars provided in Article 50 (Particulars to be registered) shall be registered not later than two weeks following said establishment at the registry having jurisdiction over the new office.

(2) In cases under Paragraph (1), the fact of registration of the new office shall be registered at the registries having jurisdiction over the principle office and any other office not later than three weeks following the establishment of the new office.

#### Sub-section V. Registration of Foreign Juristic Persons

54. (Registration of foreign juristic persons)

(1) The provisions of Articles 50 (Particulars to be registered), 52 (Registration of relocation of office) and 53 (Registration of establishment of new office) shall apply to the case where a foreign juristic person establishes an office in Cambodia.

(2) Where a foreign company establishes an office in Cambodia for the first time, other persons may deny the corporate status of such juristic person until such time as registration thereof has been effected at the registry having jurisdiction over such office.

#### Sub-section VI. Management and Administration of Juristic Persons

55. (Inventory and list of members)

(1) Upon incorporation and not later than the third month of each financial year, a juristic person shall prepare an inventory of assets and keep same in its office at all times.

(2) An incorporated association shall prepare a list of members, keep same at its office and revise it whenever there is a change of membership.

56. (Number of directors and their selection, dismissal and duties)

(1) A juristic person shall have director(s) who shall be the executive organ of the juristic person; provided that an unlimited liability incorporated association shall not have directors.

(2) There may be one or more directors; provided that an incorporated foundation shall have not less than three directors.

(3) Unless otherwise provided in the articles of incorporation, the juristic person's business shall be determined by a majority of directors if there is more than one director.

(4) Directors shall be appointed by the articles of incorporation or the general meeting of members.

(5) Directors of an incorporated association may be dismissed by resolution of the general meeting of members.

57. (Duties of directors)

(1) Directors shall be subject to the duty to execute the company's business faithfully, in compliance with relevant laws, rules, and tenor of the articles of incorporation.



(2) In addition to Paragraph (1), the relationship of directors and the juristic person shall be subject to the provisions governing mandate.

58. (Directors' right to represent the juristic person)

(1) A director represents the juristic person; provided that a director cannot contravene the tenor of the articles of incorporation.

(2) If there is more than one director, they shall each represent the company, provided that it is permitted to stipulate otherwise in the articles of incorporation.

(3) In case of incorporated association, director(s) shall comply with resolution of the general meeting of members.

59. (Restrictions on the right to represent the juristic person)

No restriction imposed on the right of representation of any director or other representative of the juristic person may be set up against a bona fide third party.

60. (Provisional director)

If there is a vacancy among the directors and there is a concern that damage will ensue from delay, the court may appoint a provisional director upon application by any interested person or of a public prosecutor.

61. (Special representative)

A director shall have no right of representation in cases where the interests of the juristic person and the director's own interests conflict. In such a case, a special representative shall be appointed using the same procedures as those described in Article 60 (Provisional director).

62. (Supervisors)

(1) A juristic person shall have one or more supervisors; provided that an unlimited liability incorporated association shall not be required to have a supervisor.

(2) The supervisors shall be appointed in accordance with the provisions of the articles of incorporation or by resolution of the general meeting of members or of the meeting of directors.

(3) No director or employee of a juristic person may become a supervisor.

(4) An audit juristic person may become a supervisor.

63. (The duties of supervisors, etc.)

- (1) The supervisors shall examine the work of the juristic person.
- (2) The supervisors may demand progress reports from the directors and employees of the juristic person concerning the juristic person's business, and may examine the status of the juristic person's business and assets.
- (3) The supervisors shall examine proposals and documents that the directors intend to submit to the general meeting of members and meeting of directors. In such cases, if the supervisors find any matter to be in breach of any law or regulation, the articles of incorporation, or to be seriously improper, they shall report to the general meeting of members or the meeting of directors.
- (4) The supervisors may state their opinions concerning the appointment, dismissal and remuneration of supervisors at general meetings of members or meetings of directors.
- (5) If they find that directors have engaged in conduct outside the scope of the objects of the juristic person or otherwise in breach of law or regulation or the articles of incorporation, or that there is a concern of any of the foregoing, the supervisors shall report this to the general meeting of members or the meeting of directors. In such a case, if this is necessary in order to make such a report, the supervisors may convene a meeting of the general meeting of members or meeting of directors. Furthermore, the supervisors of an incorporated foundation shall make the aforementioned report to the supervising authority not later than the time of making it to the meeting of directors.
- (6) If directors engage in any conduct prescribed in Paragraph (5) or there is a concern that this will happen, and there is a concern that serious damage will ensue to the juristic person as a result of such conduct, the members may demand that such directors cease such conduct.
- (7) If suit is filed by the juristic person against the director(s) or by the director(s) against the juristic person, the supervisors shall represent the juristic person in relation to such suit.

#### Sub-section VII. Dissolution and Liquidation

##### 64. (Grounds for dissolution)

- (1) A juristic person shall be dissolved for the following grounds:
  - (a) the occurrence of a ground of dissolution prescribed in the articles of incorporation;
  - (b) the conclusion of the undertaking that is the object of the juristic person, or the impossibility thereof;
  - (c) bankruptcy; or
  - (d) a judgment ordering dissolution.
- (2) Apart from the grounds prescribed in Paragraph (1), an incorporated association shall be dissolved for the following grounds:
  - (a) a resolution of the general meeting of members of a limited liability incorporated association or agreement by all the

- members of an unlimited liability incorporated association;  
or
- (b) the number of members being reduced to one.

(3) The resolution for dissolution by a limited liability incorporated association under Paragraph (2) Item (a) shall require affirmation by a majority of all the members holding not less than three fourths of the voting rights held by all the members.

65. (Suit seeking dissolution)

(1) In the case of a limited liability incorporated association, members holding not less than 10% of the total voting rights, in the case of an unlimited liability incorporated association, the members, and in the case of an incorporated foundation, the directors or the supervising authority, respectively, may file suit seeking dissolution of the juristic person.

(2) In cases under Paragraph (1), the court may order the juristic person to be dissolved if and only if one of the following circumstances applies and the reasons are compelling:

- (a) The juristic person is faced with extreme hardship in accomplishing the object of its undertaking and has suffered or is likely to suffer irrecoverable damage; or
- (b) The management or disposition of the juristic person's property is extremely improper, to the extent of imperiling the continued existence of the juristic person.

(3) Notwithstanding Paragraphs (2) and (3), in cases where the court determines, upon application by the Minister of Justice or by any member, creditor or other interested person, that in order to preserve the public interest, the continued existence of the juristic person can not be permitted for any of the grounds listed below, the court may make an order that the juristic person be dissolved:

- (a) The juristic person was incorporated for an illegal object;
- (b) Without legitimate reason, the juristic person has not commenced business within one year after incorporation, or has ceased to do business for one year or more; or
- (c) Despite a person executing the juristic person's business having received a written warning from the Minister of Justice, there has been continuation or repetition of conduct that deviates from or abuses the powers of the juristic person as prescribed by law or regulation or the articles of incorporation or that infringes any penal law or regulation.

(4) Where an application has been made under Paragraph (3), even prior to making an order of dissolution, upon application by the Minister of Justice or by any member, creditor or other interested person, or ex officio, the court may appoint managers or take such other measures as it deems necessary to conserve the property of the juristic person.

66. (Cases where a juristic person should be liquidated and liquidators)

Where a juristic person is liquidated, except in cases under Article 64(Grounds for dissolution) Paragraph (1) Item (c), it shall be liquidated in accordance with this Subsection 7. In such cases, for the purposes of liquidation, the juristic person shall be deemed to continue to exist until the liquidation is concluded.

67. (Reversion of surplus assets)

(1) The reversion of any surplus assets after full payment of the debts of the juristic person shall be governed by the articles of incorporation.

(2) In the case of an incorporated association, if reversion is not determined in accordance with Paragraph (1), it shall be determined by resolution of the general meeting of members in the case of a limited liability incorporated association and by decision of all the members in the case of an unlimited liability incorporated association.

(3) Surplus assets of which the reversion is not determined by Paragraphs (1) or (2) shall revert to the National Treasury.

68. (Assumption of office by liquidators)

(1) If a juristic person is dissolved under Article 64(Grounds for dissolution), Paragraph (1) Items (a) or (b) or Paragraph (2) Item (a), the persons listed below shall be the liquidators in the order indicated:

- (a) the persons prescribed in the articles of incorporation;
- (b) the persons appointed by the general meeting of members in the case of a limited liability incorporated association and by the opinion of a majority of the members in the case of an unlimited liability incorporated association;
- (c) in the case of a limited liability incorporated association or an incorporated foundation, the directors, and in the case of an unlimited liability incorporated association, the members.

(2) If in cases described in Paragraph (1) there is no-one to be a liquidator, the court may appoint liquidators upon application by an interested person.

(3) If a juristic person is dissolved under Article 64(Grounds for dissolution) Paragraph (1) Item (d) or Paragraph (2) Item (b), upon application by any interested person or by the Minister of Justice, or ex officio, the court may appoint liquidators.

69. (Dismissal of liquidators)

(1) The court may dismiss a liquidator for grave reason upon application of an interested person.

(2) In the case of incorporated associations, except for liquidators appointed by the court, liquidators of a limited liability incorporated association may be dismissed by a resolution of the general meeting of

members and those of an unlimited liability incorporated association by the opinion of a majority of the members.

70. (Registration of liquidators and dissolution)

Except in cases of dissolution under Article 64 (Grounds for dissolution) Paragraph (1) Item (c), the liquidators shall register their names and addresses and the cause and date of dissolution at the registry having jurisdiction over the principal office not later than two weeks following dissolution and at other offices not later than three weeks following dissolution.

71. (Duties and powers of liquidators)

- (1) the duties of the liquidators shall be as follows:
- (a) to conclude the current business of the juristic person;
  - (b) to collect the claims of the juristic person and pay its debts; and
  - (c) to deliver surplus assets.

(2) If there is more than one liquidator, the business of the juristic person shall be determined by the opinions of a majority of liquidators.

(3) Article 58 (Directors' right to represent the juristic person) shall apply mutatis mutandis to liquidators; provided that where the court appoints multiple liquidators, it may appoint a sole or joint representative liquidators from among them.

72. (Duty to examine and report the juristic person's assets/assets)

(1) Without delay after assuming office, the liquidators shall examine the status of the juristic person's assets, prepare an inventory and balance sheet and submit the same to the court.

(2) In the case of a limited liability incorporated association, the documents described in Paragraph (1) shall be approved by the general meeting of members prior to being submitted to the court.

(3) In the case of an unlimited liability incorporated association, the documents described in Paragraph (1) shall be approved by all the members prior to being submitted to the court.

(4) In the case of an incorporated foundation, the documents described in Paragraph (1) shall be approved by the supervising authority prior to being submitted to the court.

73. (Notices to creditors)

(1) Not later than two months following the day on which they assume office, the liquidators shall give notice in the official gazette on not less than three occasions, calling upon creditors to present their claims within a specified period which shall not be less than two months.

(2) The notices described in Paragraph (1) shall include a statement that if creditors do not present their claims within the stipulated

period, they shall be excluded from the liquidation.

(3) Liquidators shall give separate notice to creditors known to them to present their claims.

(4) Liquidators may not exclude creditors known to them from the liquidation.

74. (Settlement of claims within presentation period)

(1) The liquidators must not make payment to creditors within the period for presentation of claims prescribed in Article 73 (Notices to creditors); provided that the liquidators shall not hereby incur any liability for lateness in performance.

(2) Notwithstanding Paragraph (1), with the permission of the court, the liquidators may settle petty claims, secured claims and other claims that are unlikely to harm the other creditors even if they are settled.

75. (Payment to excluded creditors)

Creditors who have been excluded from a liquidation may demand payment only of surplus assets that has not yet been distributed.

76. (Payment of claims)

(1) Juristic persons may pay even claims that have not yet become payable.

(2) In cases under Paragraph (1), claims that are subject to a condition, that have an uncertain remaining period or otherwise are of uncertain value shall be paid by the liquidators in accordance with the value determined by a valuer appointed by the court.

77. (Disposition of surplus assets)

The liquidators may not dispose of surplus assets in accordance with Article 67 (Reversion of surplus assets) until the juristic person's debts have been discharged; provided that the liquidators may dispose of surplus assets after retaining an amount deemed to be sufficient to discharge any claim in dispute.

78. (Bankruptcy during liquidation)

(1) If during a liquidation it becomes apparent that the assets of the juristic person are insufficient to pay all its debts, the liquidators shall immediately apply for a declaration of bankruptcy and give notice thereof in the official gazette of Ministry of Justice.

(2) The duties of the liquidators shall terminate when they hand over the work to the administrator in bankruptcy.

(3) If in a case falling under this Article the liquidators have already made payment to a debtor or delivered assets to a person entitled to reversion, the administrator in bankruptcy may recover same.

79. (Termination of liquidation)

(1) Without delay after concluding the work of liquidation, the liquidators shall prepare an accounting report.

(2) In the case of a limited liability incorporated association, the liquidators shall submit the accounting report described in Paragraph (1) without delay to the general meeting of members and shall obtain its approval.

(3) In the case of an unlimited liability incorporated association, the liquidator shall submit the accounting report described in Paragraph (1) without delay to the members and shall obtain their approval; provided that except where the liquidators have acted illegally, the members shall be deemed to have approved such report if they state no objection thereto within one month after receiving it.

(4) In the case of an incorporated foundation, the liquidator shall submit the accounting report described in Paragraph (1) without delay to the supervising authority and shall obtain its approval.

(5) Liquidators appointed by the court shall submit the accounting report described in Paragraph (1) without delay to the court.

80. (Registration of conclusion of liquidation)

When the procedures prescribed by Article 79 (Termination of liquidation) have been concluded, the liquidators shall register the conclusion of the liquidation not later than two weeks thereafter at the registry having jurisdiction over the principal office, and not later than three weeks thereafter at the registry of each other office.

81. (Preservation of documents)

The juristic person's books of account and other important documents relating to its business and liquidation shall be preserved for ten years following the registration of the conclusion of the liquidation at the registry having jurisdiction over the principal office. The custodian shall be appointed by the court, upon application by the liquidators or other interested person.

## Section II. Incorporated Associations

### Sub-section I. Limited Liability Incorporated Associations

82. (Incorporation and articles of incorporation)

(1) In order to incorporate a limited liability incorporated association, the persons wishing to become members shall jointly prepare and sign articles of incorporation.

(2) The articles of incorporation stipulated in Paragraph (1) shall include the following particulars:

- (a) the objects;
- (b) the name;
- (c) the location of the principal office;
- (d) stipulation of the total amount of the base assets to be secured by the entity in its capacity as a juristic person and its funding. If there is contribution of assets other than money, the assets so contributed and their value shall be included. If a promise has been made for assignment of assets after incorporation, the value thereof and the name or designation of the assignor shall be included. The amount of incorporation expenses to be borne by the juristic person shall also be included;
- (e) the accounting year;
- (f) particulars relating to directors, supervisors and other officers;
- (g) stipulation relating to acquisition and loss of qualification as a member;
- (h) particulars relating to accounting;
- (i) particulars relating to dissolution;
- (j) particulars relating to amendment of articles of incorporation; and
- (k) method of giving public notices.

(3) The articles of incorporation shall not take effect unless certified by a notary.

(4) The articles of incorporation shall be kept at the principal office and each subordinate office.

83. (Minimum amount of asset base)

A limited liability juristic person shall have an asset base of not less than 20 000 000 (Twenty Millions) riels.

84. (Appointment of directors and supervisors)

(1) If a limited liability incorporated association in the process of incorporation does not stipulate directors or supervisors in its articles of incorporation, a general meeting of members prior to incorporation may appoint directors or supervisors.

(2) Members may convene a general meeting of members described in Paragraph (1).

85. (Inspection of asset base, etc.)

(1) In order to have an adequate asset base, the directors shall solicit contributors to the asset base, allocate and seek contributions.

(2) If the articles of incorporation include an entry under the second sentence of Article 82 (Incorporation and articles of incorporation), Paragraph (2) Item (d), the directors shall request the court to appoint an inspector in order to inspect the particular items of entry without delay.



(3) The inspector appointed under Paragraph (2) shall report the results of the inspection to the court.

(4) If on the basis of the inspection the court finds the entry in the articles of association improper, it shall make a ruling ordering amendment thereof. In such a case, the ruling shall be notified to the members, the directors and, in case of amendment relating to contributed assets other than money, to the contributor thereof.

(5) A contributor of assets other than money who has received a notice under Paragraph (4) may cancel his acts to contribute such assets not later than one week following the ruling's becoming final and conclusive. In such a case the procedures for incorporation of the limited liability incorporated association may be continued after amendment of the articles of incorporation.

86. (Inspection of incorporation procedures)

(1) The directors and supervisors shall inspect the confirmation of the contributors of the total amount of the asset base, and the completion of the contribution of the contribution in kind.

(2) The directors or supervisors shall report to the members if they find any breach of law or regulation or of the articles of incorporation, or any impropriety, as a result of their inspection under Paragraph (1).

87. (Particulars to be registered and period of registration)

(1) In the case of a limited liability incorporated association, in addition to the particulars stipulated in Article 50 (Particulars to be registered), the particulars set forth below shall be registered:

- (a) the total amount of the asset base;
- (b) a provision dealing with the rights of the contributors of the asset base;
- (c) the procedures for return of the asset base; and
- (d) the method of giving public notices.

(2) Registration of incorporation of a limited liability incorporated association shall be effected not later than two weeks following the completion of the procedures prescribed in Articles 85 (Inspection of asset base, etc.) and 86 (Inspection of incorporation procedures) at the registry having jurisdiction over the principal office.

(3) Registration at the registry having jurisdiction over each subordinate office shall be effected not later than two weeks following the completion of registration under Paragraph (2).

88. (Liability for warranty of contributions of asset base)

(1) If no contributor has been confirmed for any portion of the asset base at the time of formation of a limited liability incorporated association, the directors and members at that time shall be deemed jointly to have become the contributors of such portion. The same shall apply if after the formation of such juristic person, the acts of any

contributor of asset base is cancelled.

(2) If asset base is not paid, or contribution in kind is not delivered, at the time of formation of a limited liability incorporated association, the directors and members of such juristic person at that time shall be liable, jointly and severally, to pay such amount that was not paid, or the value of such contribution in kind that was not delivered, as the case may be.

(3) If the value of assets prescribed in the second sentence of Article 82 (Incorporation and articles of incorporation), Paragraph (2), Item (d) is extremely short of the value noted in the articles of incorporation at the time of formation of a limited liability incorporated association, the directors and members of such juristic person at that time shall be liable vis-à-vis the juristic person, jointly and severally, to pay the amount of said shortfall; provided that where there has been inspection by an inspector under Article 85 (Inspection of asset base, etc.), they shall be exempted from such liability unless they are a contributor in kind or an assignor of the assets in question.

89. (Rights and obligations of members)

(1) The members shall be obliged to pay the expenses of the juristic person.

(2) The members may exercise the right to vote at general meetings of members; provided that they may not exercise this right in respect of votes concerning the relations between themselves and the juristic person.

(3) Each member shall have one vote; provided that the articles of incorporation may stipulate otherwise, taking account of the amount contributed.

(4) Members who do not attend a general meeting of members shall vote in writing or by proxy; provided that if the articles of incorporation stipulate otherwise, such other stipulation shall be followed.

90. (Disqualification of members)

(1) Members may resign at any time; provided that except in unavoidable circumstances, members wishing to resign shall give prior notice in accordance with the provision requiring prior notice in the articles of incorporation, if any.

(2) The notice period described in Paragraph (1) may not exceed one year.

(3) Apart from Paragraph (1), members shall be disqualified for the following grounds:

- (a) the occurrence of any ground provided in the articles of incorporation;
- (b) the agreement of all the members;
- (c) death of the member or dissolution; or

(d) expulsion.

91. (Expulsion)

(1) A member may be expelled by resolution of the general meeting of members, but only for legitimate reason. In such a case, the juristic person shall give the member in question not less than one week's prior notice of the general meeting, and shall afford the member the opportunity to defend himself at the meeting.

(2) A resolution under Paragraph (1) shall require the affirmative vote of not less than one half of all the members moreover holding not less than three quarters of all the voting rights.

(3) Expulsion shall only come into effect when notice thereof is given to the expelled member.

92. (Ordinary general meeting)

The directors shall hold an ordinary general meeting of members not less than once a year.

93. (Extraordinary general meeting)

(1) The directors may convene an extraordinary general meeting of members whenever they deem it necessary to do so.

(2) The directors shall convene an extraordinary general meeting of members if members holding not less than ten percent of the total voting rights demand the holding of a general meeting, stating the agenda thereof; provided that if the articles of incorporation provide otherwise concerning the aforementioned percentage, such provision shall be followed.

(3) If, notwithstanding the making of a demand under Paragraph (2), the directors fail to convene a general meeting without delay, the members who have made such demand may, with the permission of the court, convene such meeting.

94. (Convening of general meetings)

(1) In order to convene a general meeting of members, notice shall be issued to each member not later than one week prior to the date of such meeting; provided that this period may be shortened by provision of the articles of incorporation.

(2) If there is agreement of all the members, a general meeting of members may be opened without going through the convening procedure.

95. (Powers of general meeting)

(1) The general meeting of members may pass resolutions only in accordance with provisions of this law or the articles of incorporation.

(2) At general meetings of members, the directors and supervisors shall provide an explanation of matters in respect of which this is

requested by members; provided that if such matter is not related to a matter on the agenda, the directors and/or supervisors need not give such explanation if giving it would cause serious damage to the common interests of members, such explanation would necessitate investigation, or for other legitimate reasons.

(3) In cases under Paragraph (2), if members give notice in writing of the matters to be explained at the general meeting at a time reasonably in advance of the meeting, the directors and supervisors may not refuse to give the explanation by citing the ground that investigation would be required for such explanation.

96. (Matters that can be resolved by the general meeting)

Except where otherwise provided in the articles of incorporation, the general meeting may only pass resolutions in respect of matter of which prior notice has been given in accordance with Article 94 (Convening of general meetings).

97. (Amendment of articles of incorporation)

(1) The articles of incorporation of a limited liability incorporated association may only be amended by the affirmative vote of members holding not less than three fourths of the total voting rights; provided that if the articles of incorporation provide otherwise, such other provision shall be followed.

(2) Amendments of the articles of incorporation shall only be valid if certified by a notary.

98. (Preparation and approval of accounting documents)

(1) Each financial year, the directors shall prepare the documents described below, together with schedules noting important facts supplementing the contents thereof:

- (a) balance sheet;
- (b) profit and loss statement;
- (c) business report; and
- (d) proposal relating to disposition of surplus or treatment of loss.

(2) The directors shall submit each of the documents described in Paragraph (1) to the ordinary general meeting of members, shall give a report concerning the document described in item (c), and shall obtain approval of the documents described in items (a), (b) and (d).

99. (Auditing of accounting documents)

(1) The directors shall submit the documents described in Paragraph 1 of Article 98 (Preparation and approval of accounting documents) for audit by the supervisors.

(2) The audit described in Paragraph (1) shall be carried out prior to the ordinary general meeting of members.

(3) The directors shall submit the documents described in Paragraph (1) of Article 98 (Preparation and approval of accounting documents) to the supervisors at latest five weeks prior to the commencement of audit by the supervisors, and the schedules to said documents at latest three weeks prior to said commencement.

(4) The supervisors shall submit their audit report to the directors not later than four weeks following the date of their receipt of the documents described in Paragraph (3) (excluding the schedules thereto).

100. (Disclosure of accounting documents, etc.)

(1) A limited liability incorporated association shall maintain the documents described in Paragraph 1 of Article 98 (Preparation and approval of accounting documents) together with the audit report for a period of five years calculated from the submission of the audit report to the directors at the principal office and a copy thereof for a period of three years at other office(s).

(2) The members and the creditors of the juristic person shall be entitled to peruse the documents described in Paragraph (1) or to receive an certified copy or extract thereof during the business hours of the juristic person, subject to paying the charges stipulated by the juristic person in the case of certified copies or extracts.

#### Sub-section II. Unlimited liability Incorporated Associations

101. (Incorporation and articles of incorporation)

(1) In order to incorporate an unlimited liability incorporated association, the persons wishing to become members shall jointly prepare and sign articles of incorporation.

(2) The articles of incorporation shall include the following particulars:

- (a) the objects;
- (b) the name;
- (c) the names and addresses of the members; and
- (d) the location of the principal office and other subordinate offices.

(3) The articles of incorporation shall not take effect unless certified by a notary.

(4) The articles of incorporation shall be maintained at the principal office and each other subordinate office.

102. (Particulars to be registered and period of registration)

(1) In addition to the particulars prescribed in Article 50 (Particulars to be registered), in the case of an unlimited liability incorporated association the particulars described below shall be registered at the registry having jurisdiction over the principal office:

- (a) if there are members who do not represent the juristic person, the names of the members who do represent the juristic person; and
- (b) if there is a provision for more than one director jointly to represent the juristic person, such provision.

(2) The particulars prescribed in Paragraph (1) shall be registered at the registry having jurisdiction over each other subordinate office not later than two weeks following the registration under Paragraph (1).

103. (Liability of members, etc.)

(1) If an unlimited liability incorporated association is unable to pay its debts in full with its assets, the members shall be jointly and severally liable to pay such debts.

(2) Paragraph (1) shall apply equally if compulsory execution against the assets of an unlimited liability incorporated association is not effective.

(3) Paragraphs (1) and (2) shall not be applied if a member proves that the unlimited liability incorporated association does have capacity to pay and that furthermore compulsory execution is easy.

(4) Members of an unlimited liability incorporated association may invoke defenses available to the juristic person against its creditors.

(5) If an unlimited liability incorporated association has rights of set-off, cancellation or rescission against its creditors, the members shall be entitled to decline performance vis-à-vis such creditors.

(6) Members who join an unlimited liability incorporated association after its formation shall be liable for debts of the juristic person that arose prior to their joining.

(7) Members who resign shall be liable for debts of such juristic person arising prior to the registration of their resignation at the registry having jurisdiction over the principal office of the juristic person.

(8) Liability under Paragraph (7) shall be extinguished after two years have passed from the said registration vis-à-vis creditors of the juristic person who have not made a demand or given notice of demand.

(9) The members shall bear the expenses of the juristic person in accordance with the provisions of the articles of incorporation.

104. (Disqualification of members)

(1) Except where otherwise provided in the articles of incorporation, members may resign at any time.

(2) Notwithstanding Paragraph (1), members may resign at any time on account of unavoidable circumstances.

(3) Apart from Paragraphs (1) and (2), members shall be disqualified for the following grounds:

- (a) the occurrence of any ground provided in the articles of incorporation;
- (b) the agreement of all the members;
- (c) expulsion;
- (d) death;
- (e) bankruptcy; or
- (f) being subject to a judgment ordering commencement of guardianship.

105. (Expulsion)

A member may be expelled by the other members unanimously, but only for legitimate reason. Expulsion shall only come into effect when notice thereof is given to the expelled member.

106. (Execution of business)

(1) The members shall execute the business of an unlimited liability incorporated association.

(2) Unless otherwise provided in the articles of incorporation, the business of an unlimited liability incorporated association shall be carried out in accordance with the decisions of a majority of the members.

(3) If the articles of incorporation stipulate members who are to carry out the business of an unlimited liability incorporated association, such members shall execute the said business.

(4) If more than one member is stipulated under Paragraph (3), then unless otherwise provided in the articles of incorporation, the business of the unlimited liability incorporated association shall be carried out in accordance with the decisions of a majority of such members.

(5) Notwithstanding Paragraphs (2) and (4), any member can carry out routine business of an unlimited liability incorporated association. If there is a stipulation as described in Paragraph (3), only the members so stipulated may carry out routine business, except where another member states an objection prior to the completion of such routine business.

107. (Representation of the juristic person)

(1) The members shall represent an unlimited liability incorporated association; provided that if a stipulation is made under Paragraph (3) of Article 106(Execution of business), only the members so stipulated shall represent the juristic person.

(2) If more than one member represents the juristic person under Paragraph (1), each of such members shall represent the juristic person; provided that provision may be made in the articles of incorporation or by agreement of all the members for certain members in particular

to represent the juristic person.

(3) Members who represent the juristic person shall be subject to the provisions governing directors.

108. (Reports and examinations)

(1) Members may demand that other members report on the progress of execution of the business, or may themselves examine the condition of the business and assets of an unlimited liability incorporated association; provided that if a stipulation has been made under Paragraph (3) of Article 106(Execution of business), such a demand for report or examination may only be made vis-à-vis the members so stipulated.

(2) If any members engage in conduct outside the scope of the objects of the juristic person or otherwise in breach of law or regulation or the articles of incorporation, or there is a concern of any of the foregoing occurring, and there is also a concern that serious damage will ensue to the juristic person as a result of such conduct, the other members may demand that such members cease such conduct.

(3) If supervisors have been appointed, the functions prescribed in Paragraphs (1) and (2) shall be carried out by such supervisors.

109. (Amendment of articles of incorporation)

(1) Amendment of the articles of incorporation shall require the agreement of all the members.

(2) Notwithstanding Paragraph (1), if there is a provision in the articles of incorporation that the articles of incorporation may be changed by agreement of not less than a certain percentage of the persons comprising the members, such provision shall be followed.

(3) Amendments of the articles of incorporation shall only be valid if certified by a notary.

### Section III. Incorporated Foundations

110. (Incorporation and articles of incorporation)

(1) An incorporated foundation may be established, limited to objects for the public benefit, by preparing articles of incorporation and obtaining the permission of the supervising authority.

(2) The articles of incorporation stipulated in Paragraph (1) shall include the following particulars:

- (a) the objects;
- (b) the name;
- (c) the location of the principal office;
- (d) stipulation of the total amount of the asset base and funding. If there is contribution of assets other than money, the assets so contributed and their value shall be included. If a promise has been made for assignment



of assets after incorporation, the value thereof and the name or designation of the assignor shall be included. The amount of incorporation expenses to be borne by the juristic person shall be also included;

- (e) the financial year;
- (f) directors, supervisors and other officers;
- (g) particulars relating to accounting;
- (h) particulars relating to dissolution;
- (i) particulars relating to amendment of articles of incorporation; and
- (j) method of giving public notices.

(3) The articles of incorporation shall not take effect unless certified by a notary.

(4) The articles of incorporation shall be kept at the principal office and each subordinate office.

111. (Minimum amount of asset base)

An incorporated foundation shall maintain an asset base of not less than 200 000 000 (Two Hundred Millions) riels.

112. (Supplementation of articles of incorporation)

If the [would-be] founder of an incorporated foundation dies without stipulating the name, office or method of appointing and revoking directors, the court may determine such matters upon application by an interested person or a public prosecutor.

113. (Mutatis mutandis application of provisions governing gifts and testamentary gifts)

(1) If a contribution of assets for the purpose of establishment of an incorporated foundation is made through a disposition inter vivos, the provisions of Book Five, Chapter Three (Gift) shall apply mutatis mutandis.

(2) If a contribution of assets is made by will for the purpose of establishment of an incorporated foundation, the provisions of Book Eight, Chapter Three, Section VI (Testamentary Gifts) shall apply mutatis mutandis.

114. (Time of vesting of contributed assets)

(1) If a contribution of assets for the purpose of establishment of an incorporated foundation is made through a disposition inter vivos, the contributed assets shall vest in the juristic person at the time of registration prescribed in Article 49 (Registration of incorporation and time of formation).

(2) If a contribution of assets is made by will for the purpose of establishment of an incorporated foundation, the assets contributed shall be deemed to have vested in the juristic person at the time that the will came into effect.

115. (Particulars to be registered and time of registration)

(1) In addition to the particulars prescribed by Article 50 (Particulars to be registered), the following particulars shall be registered in respect of an incorporated foundation:

- (a) the total amount of the asset base;
- (b) the method of giving public notices; and
- (c) the date on which permission was obtained from the supervising authority.

(2) Registration of incorporation of a foundation shall be effected at the registry having jurisdiction over the principal office not later than two weeks following the granting of permission by the supervising authority.

(3) Registration shall be effected at each subordinate office not later than two weeks following registration under Paragraph (2).

116. (Preparation and approval of accounting documents, etc.)

(1) Each financial year, the directors shall prepare the documents described below, together with schedules noting important supplemental facts to the contents thereof:

- (a) balance sheet;
- (b) profit and loss statement;
- (c) business report; and
- (d) proposal relating to disposition of surplus or treatment of loss.

(2) The directors shall submit the documents described in Paragraph (1) to the supervising authority and obtain its approval thereof.

117. (Auditing of accounting documents, etc.)

(1) The directors shall submit the documents described in Paragraph (1) of Article 116 (Preparation and approval of accounting documents, etc.) for audit by the supervisors.

(2) The audit described in Paragraph (1) shall be carried out prior to the submission of the said documents to the supervising authority.

(3) The directors shall submit the documents described in Paragraph (1) of Article 116 (Preparation and approval of accounting documents, etc.) to the supervisors at latest five weeks prior to the commencement of audit by the supervisors, and the schedules to said documents at latest three weeks prior to said commencement.

(4) The supervisors shall submit their audit report to the directors not later than four weeks following the date of their receipt of the documents described in Paragraph (3) excluding the schedules thereto.

118. (Disclosure of accounting documents, etc.)

(1) An incorporated foundation shall maintain the documents described

in Paragraph 1 of Article 116 (Preparation and approval of accounting documents, etc.) together with the audit report for a period of five years calculated from the submission of the audit report to the directors at their principal office and a copy thereof for a period of three years at other office(s).

(2) The creditors of the incorporated foundation shall be entitled to peruse the documents described in Paragraph (1) or to receive a certified copy or extract thereof during the business hours of the juristic person, subject to paying the charges stipulated by the juristic person in the case of certified copies or extracts.

## **BOOK THREE “REAL RIGHTS”**

### **Chapter One GENERAL PROVISIONS**

#### **Section I. Things**

119. (Definition of thing)

Under this Code, a thing is a corporeal object or substance comprising a gas, liquid or solid.<sup>1</sup>

120. (Movables and immovables)

(1) Things are divided into movables and immovables.

(2) An immovable comprises land or anything immovably fixed to land, such as a building or structure, crops, timber, etc.

(3) A movable is any thing that is not an immovable.

(4) Except as otherwise provided by special laws, the provisions pertaining to movables shall apply *mutatis mutandis* to intangible property that can be controlled.

121. (Component of a thing)

A component of a thing that cannot be severed from the associated thing without destroying the thing or changing its essential nature may not be the subject of rights separate from those applicable to the thing.

122. (Component of a land; principle rule)

Things attached to land or comprising a part thereof, particularly buildings or structures immovably constructed on land, or seeds planted in the ground, crops in the fields or timber growing on the land, are components of the land unless they are severed from the land, and may

---

<sup>1</sup> In this translation, while the different terms such as 'good' and 'property' are used in different contexts to maintain consistency with standard English-language legal usage, they have the same meaning, and are substantively identical.

not, except as otherwise provided by law, be the subject of rights separate from those applicable to the land.

123. (Component of a land; exceptional rule)

Where the holder of a right [to occupy or use] a land of another has constructed buildings or structures, or grown timbers, plants, etc. on the land in the course of exercising such right, those constructed or grown shall not become components of the land. The same shall apply to those things that are attached on the land for a purpose of temporary nature.

124. (Building built based on exercise of right [to occupy or use] land owned by another)

For the purposes of Article 123(Component of a land; exceptional rule), buildings and other structures built on land by a right-holder, as well as grown timber, plants, etc. shall be deemed components of the right [to occupy or use] the land of another.

125. (Components of building)

Materials used to construct a building, as well as fixtures, furniture, signs and ornaments that cannot be separated from the building without destroying it or changing its essential nature, are components of the building, and may not be the subject of rights separate from those applicable to the building.

126. (Principal thing and accessory thing)

(1) A thing that is associated with a principal thing by the owner of the principal thing so that it can continuously serve the economic purpose of the principal thing but does not comprise a component of the principal thing is termed an accessory thing.

(2) The creation and assignment of rights pertaining to a principal thing extend to the accessory thing unless otherwise agreed.

127. (Definitions of source thing and fruits)

(1) Income derived from a thing is termed fruits. A thing that generates fruits is termed a source thing.

(2) Products of or harvests obtained from a thing in accordance with the normal use of the thing are termed natural fruits.

(3) Money and other things received as the price of using a thing, such as rent, are termed legal fruits.

128. (Right to obtain fruits)

(1) Natural fruits belong to the ownership of the person or persons who are entitled to receive them when they are severed from the source thing.

(2) Legal fruits may be acquired in proportion to the number of days during which the right to acquire them continues to exist.

129. (Right to demand reimbursement of costs)

A person having an obligation to return fruits may demand reimbursement of the normal costs of acquiring the fruits. However, the amount of such reimbursement shall not exceed the price of the fruits to be returned.

## Section II. Real Rights

130. (Definition of real right)

A real right is the right to directly control a thing, and may be asserted against all persons.

131. (Statutory nature of real right)

No real right may be created except as permitted by this Code or under special law. A real right permitted under customary law shall be valid under this Code to the extent that it does not conflict with the provisions of this Code and special law.

132. (Types of real rights)

The following real rights are established by this Code:

1. Ownership
2. Possession
3. Usufructuary real rights
  - (a) Perpetual lease
  - (b) Usufruct
  - (c) Right of use/right of residence
  - (d) Servitude
4. Security rights
  - (a) Right of retention
  - (b) Preferential right
  - (c) Pledge
  - (d) Hypothec
  - (e) Transfer of title for security purpose.

## Section III. Creation, Transfer and Alternation of Real Rights

133. (Creation, transfer and alternation of real rights by agreement)

The creation, transfer and alternation of a real right shall take effect in accordance with those agreed upon between the parties.

134. (Perfection)

(1) Except for a right of possession, a right of retention, a right of use, and a right of residence, the creation, assignment and alteration of a real right pertaining to an immovable cannot be asserted against a third party unless the right is registered in accordance with the provisions of the laws and ordinances regarding registration.

(2) The transfer of a real right regarding a movable cannot be asserted against a third party unless the movable has been delivered.

135. (requisite of transfer of title by agreement pertaining to an immovable)

Notwithstanding Article 133 and 134, transfer of title by agreement pertaining to an immovable, shall come into effect only when the transfer of right is registered in accordance with the provisions of the laws and ordinances regarding registration.

136. (Merger of rights)

(1) Where the ownership and other real rights created over one and the same thing have become vested in a single person, such other real rights shall be extinguished. However, this shall not apply if the thing or the other real right constitute the object of a right of a third party.

(2) If a real right other than ownership and other rights created over that real right have become vested in a single person, such other rights shall be extinguished. The second sentence of paragraph (1) shall apply *mutatis mutandis* to this case.

(3) The provisions of paragraphs (1) and (2) shall not apply to a right of possession.

137. (Presumptions regarding registration)

(1) Where a right is registered in the immovables register, it is presumed that such right belongs to the person to whom it is registered.

(2) Where a previously registered right is deleted from the immovables register, it is presumed that such right has been extinguished.

## **Chapter Two OWNERSHIP**

### **Section I. Nature and Scope of Ownership**

138. (Definition of ownership)

Ownership refers to the right of an owner to freely use, receive income and benefits from and dispose of the thing owned, subject to applicable laws and regulations.

139. (Scope of ownership of land)

(1) Ownership of land extends to the areas above and below the surface of the land to the extent that the owner derives benefit therefrom, subject to applicable laws and regulations.

(2) A landowner may not use the land for the sole purpose of hindering the activities of another or in order to create a nuisance.

140. (Injunction against nuisance)

(1) Where a nuisance occurring on the land of another due to activities involving gas, steam, odor, smoke, soot, heat, sound, vibration, etc., is within the normal scope of use of the other person's land, and is not otherwise prohibited by law and regulations, the owner of the affected land cannot demand that such activities be ceased.

(2) In case of paragraph (1), an owner of land that is in fact severely harmed by the nuisance may demand appropriate compensation from the person causing such nuisance. This does not preclude the owner of land from demanding for damages based on tort.

141. (Discovery of cultural artifact or minerals in the ground)

(1) A landowner cannot assert the ownership over any type of statue, bas-relief, antiquity or other cultural artifact discovered in the ground. Such items comprise assets of the state, and the owner of the land is obligated to return them to the Ministry of Culture and Fine Arts.

(2) A landowner cannot assert ownership over minerals in the ground, which are governed by a separate law. Such minerals comprise assets of the state, and the right to mine and acquire them shall be owned by the person to whom mining rights have been granted by the state.

142. (Right to cut trees growing across boundary)

Where a branch of a tree grows across the boundary from adjacent land, or when the roots of a bamboo or tree grow across the boundary from adjacent land, the landowner may receive the fruits therefrom or eliminate such branch or roots.

## Section II. Relationship Between Neighboring Properties

143. (Right to use adjoining land)

A landowner may demand to use adjoining land to the extent necessary to construct or repair fences or buildings on or near the boundary. If the neighbor suffers damage or loss as a result, the landowner must pay compensation.

144. (Right of way for enclosed land)

(1) A parcel of land which is enclosed and lacks access to a public highway, or where the agricultural or industrial use thereof is significantly hampered due to an insufficient access to a public highway is termed 'enclosed land.'

(2) The owner of an enclosed land shall be given a right to demand the creation of a right of way over neighboring property in exchange for the payment of compensation equivalent to the resulting burden on the neighboring property.

(3) The right of way shall be created in principle along the direction

or path that minimizes the distance from the enclosed land to the public highway. Notwithstanding the provisions of the first sentence, the right of way shall be located so as to minimize the burden on the owner of the neighboring property.

(4) Where the enclosed land is the result of a division of land effected pursuant to a sale, exchange, division of devised property or other contract, the right of way may be demanded only for the land remaining after such division, and in such cases, payment of compensation is not required. However, where a sufficient right of way cannot be created in such a situation, the provisions of paragraphs (2) and (3) shall apply.

145. (Obligation to accept naturally flowing water)

(1) The owner of a lower parcel of land must accept water flowing naturally from higher land. The owner of the lower land may not construct any bank, dam [or sluice], wall or other type of structure that blocks the flow of water onto the land. The owner of the higher land may not take any action that increases the burden on the owner of the lower land.

(2) Where the flow of water through the lower land is obstructed due to force majeure without the fault of the parties, the owner of the higher land may carry out a construction at his own expense so as to make the flow to continue.

146. (Right to use rainwater, etc.)

An owner of higher lying land is entitled to use and dispose of a water source existing on his property as well as rainwater falling on the property in accordance with the third sentence of paragraph (1) of Article 145 (Obligation to accept naturally flowing water).

147. (Obligation to preserve flow of water)

Where necessary for agricultural purposes, the owner of land situated on a body of flowing water has a duty to permit the water to flow to adjacent property. The owner of the adjacent property has the same duty with respect to other property that is farther away.

148. (Right to establish an irrigation channel)

A landowner who wishes to receive for irrigation purposes water from a water source which the landowner has the right to use is entitled to establish and maintain a channel running through land located in between his own land and the water source in return for the payment of compensation for damages suffered by the owner of such land.

149. (Right to drain water after irrigation)

A landowner is entitled to drain off the water that remains after irrigation through lower-lying land in return for the payment of compensation to the owner of the lower-lying land.

150. (Right to drain water of flooded land)



The owner of a land, the whole or part of which is flooded, is entitled to drain detrimental water off his land so far as it is allowed under sanitary laws and regulations.

151. (Right to install sluice, etc.)

(1) A riverside landowner who wishes to use the river to irrigate his land is entitled to install on the land of the opposite bank equipment necessary for the taking of water in return for the payment of compensation to the landowner of the opposite bank.

(2) A landowner who accepts the installation of the equipment on his property is entitled to demand the person who installed the equipment to allow equal use of the sluice [or dam] provided he pays for half of the cost of construction and maintenance thereof. In this case, the person who installed the equipment does not owe an obligation to pay the compensation mentioned in paragraph (1), and may demand the return of any compensation paid.

152. (Nuisance)

A landowner who wishes to carry out activities on his land that may create a nuisance with regard to neighboring parcels, such as drilling, boring or digging, or who wishes to install or store on his land equipment or materials that are dangerous, inconvenient or unsanitary, shall comply with specially established rules that regulate the distance at which such activities, equipment or materials may be located or the measures that must be taken.

153. (Duty to put blind on window, etc.)

A landowner who erects, within two meters of the boundary of an adjacent parcel of land, a window, balcony or any other similar fixture or structure that offers a direct view of the residential land of another shall put a blind thereon.

154. (Trees planted near the boundary)

A landowner may not have trees, bushes or shrubs exceeding two meters in height within two meters from the boundary of an adjacent parcel of land. A landowner violating this restriction shall be required to transplant the offending tree, bush or shrub upon the demand of a neighboring landowner.

### Section III. Right to Demand Based on Ownership

155. (Right to demand return based on ownership)

An owner may demand that a possessor return a thing. However, this shall not apply where the possessor is entitled to possess the thing as against the owner.

156. (Possessor and fruits)

(1) A good faith possessor is entitled to acquire fruits generated from the possessed thing.

(2) Where a good faith possessor loses a lawsuit in which his title to possess a thing is disputed, he shall be deemed a bad faith possessor retroactively as from the time of the filing of the lawsuit.

(3) Where a possessor returns a thing to an owner, if any fruits have been produced after the possessor became bad faith, he must return the fruits obtained and provide compensation for the value of any fruits lost or not collected due to the fault of the possessor.

157. (Responsibility for loss of or damage to a possessed thing)

Where a possessor is at fault for the loss of or damage to a thing, or for any other cause preventing the return of the thing, if the possessor was a possessor in bad faith when such cause occurred, the possessor must provide compensation for all of such damage, while a good faith possessor must provide compensation only to the extent that he continues to receive the benefits therefrom. However, a possessor without intention of ownership must make compensation for all damage regardless of whether the possession was in good faith.

158. (Possessor's right to demand reimbursement of expenditures)

(1) A possessor who returns a thing to an owner may demand that the owner reimburse the amount of necessary costs that the possessor has expended on the thing for the maintenance or preservation thereof. Where the possessor has collected and consumed fruits, he is responsible for ordinary costs of maintenance or preservation of the thing.

(2) Where a possessor has made expenditures for the improvement of a thing or any other beneficial expenditures for a thing, the owner shall provide compensation, at the owner's election, for either the expenditures made by the possessor or the increase in value in the thing attributable to such expenditures, to the extent that the increase in value continues to exist. However, as against a bad faith possessor, the court may grant the owner a grace period of a reasonable length to make such compensation.

(3) Where a possessor is to return land to the owner, if there exist buildings, unharvested crops or unharvested timbers that a good faith possessor constructed or planted thereon, the owner shall provide compensation, at the owner's election, for the expenditures made by the possessor for these buildings, crops or timbers, or the increase in value in these buildings, crops or timbers attributable to such expenditures, to the extent that the increase in value continues to exist. Notwithstanding the provisions set forth in paragraphs (1) and (2) above, where the possessor is a possessor in bad faith, the owner may elect to either remove the constructed buildings, planted but unharvested crops or unharvested timber, or assume the ownership thereof. Where the landowner chooses removal, the possessor must remove the buildings, crops or timber without receiving compensation. Where the owner elects to assume the ownership of the buildings, crops or timber, the owner must compensate the possessor for expenditures made

by the possessor or for the increase in the value of the buildings, crops or timbers that include the original value of these things and shall be calculated without considering the added value to the land. In this case, the court may grant the owner a grace period of a reasonable length to make such compensation.

159. (Right to demand abatement or prevention of hindrance to exercise of ownership)

(1) Where the exercise of ownership has been hindered, the owner may demand that the person causing such hindrance abate the hindrance.

(2) Where the exercise of ownership is actually in danger of being hindered, the owner may demand that the person creating the danger of such hindrance prevent such hindrance.

## Section IV. Acquisition of Ownership

### Sub-section I. Acquisition of Ownership over Immovable

160. (Acquisition of ownership over immovable)

Ownership over an immovable may be acquired not only via contract, inheritance or other causes set forth in this Section IV but also based on the provisions set forth in this Code and other laws.

161. (Immovable without owner)

An immovable without an owner shall belong to the state.

162. (Prescriptive acquisition of ownership over immovable)

(1) A person who peacefully and openly possesses an immovable for a period of 20 years with the intention of ownership shall acquire ownership thereof.

(2) A person who peacefully and openly possesses an immovable for a period of 10 years with the intention of ownership shall acquire ownership thereof if the possession commenced in good faith and without negligence.

(3) Neither Paragraph (1) or (2) shall apply to any immovable property belonging to the state, regardless of its kind.

163. (Retroactive effect of prescriptive acquisition)

The effect of acquisition of ownership as set forth in Article 162(Prescriptive acquisition of ownership over immovable) shall be retroactive to the date on which the period of prescription commenced. Fruits that come into existence after that date shall belong to the person acquiring ownership via prescription.

164. (Invocation of prescriptive acquisition)

(1) A court may not issue a decision based on prescriptive acquisition unless a party invokes prescriptive acquisition.

(2) Prescriptive acquisition may be invoked only by a prospective prescriptive acquirer, a person who has received a perpetual lease, usufruct, right of use/right of residence, servitude, leasehold, hypothec or pledge from a prospective prescriptive acquirer, or other person having a legal interest in the invocation of prescriptive acquisition.

(3) Where a prospective prescriptive acquirer invokes prescriptive acquisition, third parties shall also receive the benefit thereof. Where a person other than a prospective prescriptive acquirer properly invokes prescriptive acquisition, such invocation is effective only as between the invoking person and the original owner.

165. (Renunciation of benefit of prescriptive acquisition)

The benefit of prescriptive acquisition cannot be renounced in advance. A prescriptive acquisition that has already been completed can be renounced.

166. (Persons affected by renunciation of benefit of prescriptive acquisition)

A renunciation of the benefit of prescriptive acquisition is effective only as between the original owner and the renouncing party having the right to invoke prescriptive acquisition.

167. (Grounds for interruption of prescriptive acquisition)

Prescriptive acquisition shall be interrupted by any of the following:

- (a) loss of possession with the intention of ownership;
- (b) the filing of a lawsuit or equivalent exercise of legal rights;
- (c) an act of execution or preliminary injunction; or
- (d) acknowledgment.

168. (Persons affected by interruption of prescriptive acquisition)

Where an interruption of prescriptive acquisition is in effect against a prospective prescriptive acquirer, other persons may not deny the effect of the interruption. Where an interruption of prescriptive acquisition is in effect against a person who is not a prospective prescriptive acquirer but has the right to invoke prescriptive acquisition, the interruption is effective only as between the original owner and the person having the right to invoke prescriptive acquisition.

169. (Loss of possession with intention of ownership)

Where a person having possession with the intention of ownership involuntarily loses such possession and possession is thereafter recovered within one year or is recovered through a lawsuit filed within one year of the loss, the prescriptive acquisition shall be deemed to have continued uninterrupted.

170. (Lawsuit)

A lawsuit that is dismissed without prejudice or discontinued shall not operate to interrupt prescriptive acquisition.

171. (Rescission of act of execution or act of preliminary injunction)

Where an act of execution or preliminary injunction is rescinded upon the motion of a right-holder or for failure to comply with conditions imposed by law, an interruption of prescriptive acquisition effected by such act shall be deemed to have not occurred.

172. (Running of prescriptive acquisition period following interruption)

(1) Upon the termination of an interruption of prescriptive acquisition, the prescription period shall be calculated anew as of the date of such termination.

(2) The prescription period for prescriptive acquisition that is interrupted by the filing of a lawsuit shall be calculated anew as of the date the decision of the court becomes final and binding.

173. (Suspension upon demand)

(1) Where the original owner makes a demand during the six months prior to the completion of the prescription period for prescriptive acquisition, the prescription period shall not be deemed to have been completed with respect to the person on whom the demand is made for a period of six months from the date of the demand. However, a subsequent demand by the original owner shall not delay the completion of the prescription period.

(2) Where a lawsuit is ineffective to interrupt the prescription period due to the dismissal without prejudice or discontinuance of the lawsuit, a demand shall be deemed to have run continuously from the date of service of the complaint on the other party to the date of dismissal or discontinuance of the action. In this case, the period of prescription shall not be deemed to have been completed until six months after the dismissal or discontinuance of the lawsuit.

(3) Where the original owner asserts his right as a defendant in a lawsuit, a demand shall be deemed to run continuously during the pendency of the lawsuit from the time the assertion is made. In this case, the period for prescriptive extinction of the claim against the defendant shall not complete until six months passes after the judgment in the lawsuit becomes final and binding.

174. (Suspension of period for prescriptive acquisition against minor or adult in guardianship)

Where the original owner is a minor or adult in guardianship, and has no legal representative within six months prior to the completion of the prescription period for prescriptive acquisition, such period shall

not be deemed to have been completed until six months after the minor or adult in guardianship attains capacity or obtains a legal representative.

175. (Suspension of period for prescriptive acquisition between minor or adult in guardianship and legal representative)

Where a legal representative is to obtain via prescriptive acquisition ownership of an immovable owned by a minor or adult in guardianship, the prescription period for such prescriptive acquisition shall not be deemed to have been completed until six months after the minor or adult in guardianship attains capacity or obtains a new legal representative.

176. (Suspension of period for prescriptive acquisition between spouses)

Where one spouse is to obtain via prescriptive acquisition ownership of an immovable owned by the other spouse, the prescription period for such prescriptive acquisition shall not be deemed to have been completed until six months after the dissolution of the marriage.

177. (Suspension of period for prescriptive acquisition in case of natural disaster)

Where an original owner cannot invoke interruption of the prescription period for prescriptive acquisition due to natural disaster or other *force majeure*, such period shall not be deemed to have been completed until six months after the disaster or *force majeure* has ceased to exist.

178. (Prescriptive acquisition of rights regarding immovable)

(1) A person who peacefully and openly exercises a right regarding an immovable such as a perpetual lease, usufruct, right of use/right of residence, servitude, leasehold or pledge for his own benefit shall obtain such right after either 10 years or 20 years, in accordance with the classifications set forth in Article 162 (Prescriptive acquisition of ownership over immovable).

(2) The provisions of Articles 163 (Retroactive effect of prescriptive acquisition) through 177 (Suspension of period for prescriptive acquisition in case of natural disaster) shall apply *mutatis mutandis* to prescriptive acquisition of the rights specified in paragraph (1).

(3) Paragraph (1) shall not apply to any immovable property belonging to the state, regardless of its kind.

179. (Ownership of alluvial deposit)

An alluvial deposit that forms gradually and naturally along a riverbank belongs to the owner of the riverbank along which it forms, regardless of whether the river is navigable by boats or rafts. The owner of the riverbank of a river navigable by boats or rafts is responsible for maintaining a way to pull such boats in compliance with the laws and regulations.

180. (Ownership of alluvial deposit)

With regard to an enlargement of land on a riverbank due to gradual and natural conveyance of an alluvial deposit from the opposite riverbank caused by natural water flow, the owner of a parcel of land on the enlarged riverbank shall receive benefits from the conveyed alluvial deposit. The owner of a land on the opposite riverbank may not demand the restoration of the land lost.

181. (Right to demand return of land removed by water flow)

Regardless of whether a river is navigable by boats or rafts, where a river removes by sudden force a significant and clearly recognizable portion of a riverbank and transfers it to the opposite bank or to a lower lying part of the river, the owner of the lost land may claim to return the said land. The owner must exercise his right to demand return of the land within one year. However, this shall not apply where the owner of the land that was joined with the removed portion has not yet taken possession of such land.

182. (Ownership of island or alluvial bed in the middle of river)

An islands or alluvial bed that forms in the middle of a river navigable by boats or rafts shall belong to the state.

183. (Ownership of island or alluvial bed in the middle of river)

An island or alluvial bed that forms in the middle of a non-navigable river shall belong to the owner of the riverbank on the side on which it forms. Where an island is formed more or less in the center of the river, it shall belong to the owners of both riverbanks using the center line of the river as a dividing line.

184. (Ownership of island)

Where a river forms a new branch and cuts off land belonging to a riverbank owner, thereby creating an island, the owner of the riverbank does not lose ownership of such land, even where the island is formed in the middle of a river navigable by boats or rafts.

185. (Ownership of old riverbed after creation of new channel)

If a river navigable by boats or rafts abandons its existing riverbed and follows a new channel, the riverbank owners may acquire ownership of the old riverbed up to a line running along the center thereof. The riverbank owners shall pay the price determined by an expert appraiser. On the application of the provincial or municipal authority or of an interested party, the price of the old riverbed shall be determined by an expert appraiser appointed by the court located in that jurisdiction. However, if the riverbank owners do not indicate an intention to acquire the old riverbed, the old riverbed shall be sold at public auction by the provincial or municipal authority. The money paid by the riverbank owners or received from the sale of the old riverbed shall be distributed to the owners of the land lost due to the new channel in proportion to the value of the land they lost.

186. (Affixture of movable to immovable)

Where a movable is affixed to an immovable and becomes a component thereof, ownership of the immovable extends to the movable unless otherwise provided for under law or by agreement. In this case, the person losing rights to the movable may demand compensation from the owner of the immovable in accordance with the rules pertaining to unjust enrichment. However, no claim for restoration of the *status quo ante* shall be permitted.

**Sub-section II. Acquisition of Ownership over Movable**

187. (Acquisition of ownership over movable)

Ownership over a movable may be acquired not only via contract, inheritance or other causes set forth in this Section IV but also based on the provisions set forth in this Code and other laws.

188. (Ownership of movable without owner)

Ownership of a movable without an owner shall revert to a person who first commences the possession thereof with the intention of ownership. However, this shall not apply if otherwise provided for in law or regulations regarding the protection of wild life.

189. (Ownership of escaped animals, etc.)

A person who possesses in good faith animals other than livestock raised by another or birds other than poultry raised by another shall acquire ownership thereof unless the person who raised such animals or birds demands their return within one month of the time of their escape.

190. (Ownership of fish living in pond, etc.)

Fish living in a pond, swamp or other body of water owned by another shall belong to such owner.

191. (Ownership of lost article)

(1) A person who finds an article lost by another shall return it to the owner if the identity of the owner is clear, while if the identity of the owner is not clear, the finder shall turn over the article to the chief of the police within seven days of finding it.

(2) The chief of the police shall keep custody of the found article and give public notice of its discovery, and if the identity of the owner is not determined within six months, the finder shall acquire ownership of the found article. However, if the finder fails to turn over the found article within seven days of finding it, the finder cannot acquire ownership, and instead its ownership shall revert to the state. The same shall apply to a case where the finder does not claim the found article from the chief of the police within two months after acquiring ownership.



(3) If the found article is of a type that cannot be kept in custody, the chief of the police may sell it and keep custody of the proceeds of the sale. The sale proceeds shall be handled in the same manner as the found article itself.

(4) Where the found article is returned to the owner, the owner shall pay between five and twenty percent of the value of the article as finder's compensation. If the finder does not exercise his right of demand for compensation within one month of the article's return, the finder shall lose his right of demand for the finder's compensation.

192. (Ownership of buried treasure)

The provisions of Article 191 (Ownership of lost article) shall apply *mutatis mutandis* to buried treasure, except as set forth in Article 141 (Discovery of cultural artifact or minerals in the ground). However, where buried treasure that is not identified by its owner is discovered among things belonging to another, ownership of such treasure shall be split evenly between the discoverer and the owner of the other things.

193. (Bona fide acquisition of ownership of movable)

A transferee who commences in good faith and without negligence the possession of a movable upon receiving the delivery of the movable under a valid contract transferring the ownership of the movable, the person shall acquire ownership of such movable even where the transferor does not have the ownership thereof. However, this shall not apply where the transferor still maintains the direct possession over the movable.

194. (Transfer of stolen or lost property)

(1) In the case described in Article 193 (Bona fide acquisition of ownership of movable), if the transferred thing comprises stolen or lost property, the injured party or owner of the lost property may demand the return of the property from the transferee within two years of its theft or loss.

(2) If a transferee purchases and receives in good faith stolen or lost property via public auction, sale on the open market, or from a merchant who sells items of the same type, the injured party or the owner of the lost property cannot demand return of the property without paying the transferee compensation for the price paid by him.

195. (Prescriptive acquisition of ownership over movable)

(1) A person who possesses a movable peacefully and openly for 10 years with the intention of ownership shall acquire ownership thereof.

(2) A person who possesses a movable peacefully and openly for 5 years with the intention of ownership shall acquire ownership thereof if the possession commenced in good faith and without negligence.

196. (Prescriptive acquisition of rights regarding movable and other property rights)

A person who peacefully and openly exercises for his own benefit a pledge, leasehold or other right regarding movable or other property right<sup>2</sup> shall obtain such right after either 10 years or 20 years, in accordance with the classifications set forth in Article 195 (Prescriptive acquisition of ownership over movable).

197. (*Mutatis mutandis* application of provisions regarding prescriptive acquisition of immovables)

The provisions of Articles 163 (Retroactive effect of prescriptive acquisition) through 177 (Suspension of period for prescriptive acquisition in case of natural disaster) shall apply *mutatis mutandis* to the cases described in Articles 195 (Prescriptive acquisition of ownership over movable) and 196 (Prescriptive acquisition of rights regarding movable and other property rights).

198. (Attachment, mixture, consolidation of movables)

(1) If two or more movables are attached to each other such that they cannot be separated without causing damage thereto, ownership of the composite thing shall belong to the owner of the principal movable. This shall also apply where such separation would be unreasonably expensive.

(2) If a principal movable among attached movables cannot be distinguished from the other movables, ownership of the composite movable shall be shared among the owners of the component movables in proportion to the respective values thereof at the time they became attached.

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* where two or more movables become mixed or consolidated with each other such that they cannot be separated.

199. (Processing of movable)

(1) A person who creates a new movable through the processing or reworking of materials belonging to another shall acquire ownership of the processed thing. However, if the added value attributable to the processing or reworking is substantially less than the value of the materials, ownership of the processed thing shall belong to the owner of the materials.

(2) If the processing party provides part of the materials, such party shall acquire ownership of the processed thing so long as the increase in the value of the thing attributable to the processing or reworking plus the price of the materials provided by the processing party exceeds the price of the materials provided by the other person.

200. (Effect of attachment of movable)

---

<sup>2</sup> As used in this translation, the term 'property right' shall include rights over property (*rights in rem*), rights arising from an obligational relationship (*rights in personam*), intellectual property rights, shares in a company, etc., and can be contrasted with 'non-property rights' such as personal rights or other rights purely inherent to one's identity or status.

(1) Where ownership of a thing is extinguished due to attachment, mixing, consolidation or processing, all rights that exist over such thing are also extinguished.

(2) The rights of another already established over a thing held by a person who acquired the ownership of a composite, mixed, consolidated or processed thing shall continue to exist over the newly created thing. In the case where the newly created thing is held by co-owners, such rights shall continue to exist over the person's share of ownership.

201. (Attachment and compensation therefor)

A person who loses rights as a result of attachment, mixing, consolidation or processing of movables may demand compensation from the person acquiring such rights and benefiting therefrom, in accordance with the provisions relating to unjust enrichment. However, no demand for restoration of the *status quo ante* shall be permitted.

## Section V. Co-ownership

202. (Definition of co-ownership)

Ownership of a single thing by multiple persons wherein the size of each owner's ownership interest is limited to such owner's share of the thing is termed co-ownership.

203. (Equality of shares of co-owners)

The shares of co-owners are presumed to be equal.

204. (Disposal of co-ownership)

Each co-owner can transfer or provide his share as security. A creditor of a co-owner can attach the co-owner's share.

205. (Use of co-owned thing)

A co-owner can use the entire co-owned thing in accordance with his share.

206. (Preservation of co-owned thing)

Each co-owner can individually perform acts of preservation on the co-owned thing.

207. (Change in use of co-owned thing)

No co-owner can dispose of or significantly alter the co-owned thing without the consent of the other co-owners.

208. (Administration of co-owned thing)

Except as provided in Articles 206(Preservation of co-owned thing) and 207(Change in use of co-owned thing), all matters relating to the

administration of a co-owned thing shall be determined by a majority in value of the co-owners.

209. (Burdens of co-owned thing)

(1) Each co-owner shall bear expenses of administration, taxes and other charges in relation to the co-owned thing in proportion to his share thereto.

(2) Where a co-owner makes an expenditure for an act of preservation or administration or for taxes or other charges in excess of his share to the co-owned thing, he may seek compensation from the other co-owners for such excess expenditure in accordance with their respective share.

(3) The claim for compensation for expenditures described in the paragraph (2) can be made against a successor in interest to the share of another co-owner.

210. (Renunciation, etc. of co-ownership)

Where a co-owner renounces his share or dies without an heir, the share shall devolve to the other co-owners.

211. (Demand for partition of co-owned thing)

(1) Each co-owner may demand at any time a partition of the co-owned thing, but the co-owners may agree to prohibit partition for a period of time not to exceed five years.

(2) The non-partition agreement described in paragraph (1) can be renewed, but the duration of the renewed agreement cannot exceed five years.

212. (Method of partition of co-owned thing)

Where co-owners cannot reach agreement regarding the partition of a co-owned thing, a co-owner may file an action for partition. In this case, the court may order the partition of the physical thing or where there is a danger that partition of the physical thing will cause a significant loss in the value thereof, or where proper grounds exist, the court may order that the thing be sold by compulsory sale and the proceeds be allocated to the co-owners in accordance with their respective share, or may order that one or more co-owners transfer their shares to the other co-owners in exchange for payment of compensation.

213. (Claim regarding co-ownership)

(1) If a co-owner has a claim against another co-owner in regard to preservation or administration or for taxes or other charges in relation to the co-owned thing, he may upon partition demand satisfaction out of the portion that is to accrue to the obligor.

(2) If for the purpose of obtaining the satisfaction described in paragraph (1) it is necessary to sell that portion of the co-owned thing that is to accrue to the obligor, the obligee may demand such sale.

214. (Quasi-co-ownership)

Except as otherwise provided by law, the provisions regarding co-ownership shall apply *mutatis mutandis* to cases in which multiple persons share property rights other than ownership.

## Section VI. Indivisible Joint Ownership

215. (Definition of indivisible joint ownership)

Co-ownership by persons who own adjacent parcels of land of a partition that distinguishes such parcels of land or buildings on the land from each other, such as a partition wall, moat, bank or [hedge], in an indivisible manner is termed indivisible joint ownership.

216. (Indivisible joint ownership of partition wall)

Where a partition wall separates adjoining buildings having different heights, such partition wall is presumed to be indivisibly and jointly owned up to the height of the shorter building, and where a partition wall separates adjacent parcels of land that are separated by a yard, garden or courtyard, all of such partition wall is also presumed to be indivisibly and jointly owned.

217. Repair and improvement of indivisibly and jointly owned partition wall)

Persons who share indivisible joint ownership of a partition wall shall be responsible for the repair and improvement thereof in accordance with their respective interests. An indivisible joint owner may be exempted from bearing the expenses for repair or improvement of the partition wall by renouncing his indivisible joint ownership interest, except where such partition wall constitutes a part of a building.

218. (Use of indivisibly and jointly owned partition wall)

Each indivisible joint owner may place a beam or girder into the partition wall to a extent of half of the entire depth of the wall in order to build a structure using the partition wall.

219. (Structure against indivisibly and jointly owned partition wall)

(1) An indivisible joint owner may not without the consent of the other indivisible and joint owner make a hole in the partition wall or attach a structure that could otherwise damage the partition wall.

(2) In the case described in paragraph (1), where the other indivisible joint owner refuses to agree without justifiable reason, the indivisible joint owner may seek a judgment from the court that will be substituted in place of such agreement.

(3) In the case described in paragraph (2), the court may grant a judgment that will be substituted for the other invisible joint owner's

agreement in exchange for reasonable security.

220. (Placing partition wall previously not indivisibly and jointly owned into indivisible joint ownership)

The owner of land that is in contact with a partition wall may place the partition wall into indivisible joint ownership by paying the owner of the partition wall the sum of half of the value of the partition wall and half of the value of the land on which the partition wall is built.

221. (Increasing height of indivisibly and jointly owned partition wall)

An indivisible joint owner may increase the height of an indivisibly and jointly owned partition wall. However, the costs of increasing such height and of maintaining the higher part of the wall not subject to indivisible and joint ownership shall be borne by the indivisible and joint owner who increased the wall's height.

222. (Improvement, etc. of indivisibly and jointly owned partition wall)

(1) Where the partition wall to be increased in height cannot withstand such increase, the person desiring the increase in height may rebuild the entire partition wall at his own expense. However, where the thickness of the partition wall is to be increased, such increase shall occur on the side of the rebuilding owner.

(2) A neighbor who does not cooperate in the height increase may obtain an indivisible joint ownership interest in the part of the partition wall formed by the increase in height by (i) paying half of the cost thereof, and (ii) where the partition wall was made thicker, by additionally paying half of the value of the land required for such increase in thickness.

223. (Indivisible and joint ownership of enclosure)

Any enclosure that separates parcels of land shall be presumed to be indivisibly and jointly owned by the owners of the respective parcels.

224. (Expenses for preservation of enclosure)

(1) An enclosure other than a partition wall that is indivisibly and jointly owned shall be preserved at the expense of all the persons who indivisibly and jointly own such enclosure.

(2) An indivisible joint owner of an enclosure may escape responsibility for the costs associated therewith by renouncing his indivisible and joint ownership.

(3) An indivisible joint owner of a moat in which water flows may not renounce his indivisible and joint ownership pursuant to the provisions of paragraph (2).

225. (Enclosure not indivisibly and jointly owned)

An owner of an immovable that is in contact with an enclosure, other than a partition wall, that is not indivisibly and jointly owned may not demand that the owner of the enclosure place the enclosure into indivisible and joint ownership.

226. (Indivisibly and jointly owned hedge, etc.)

(1) An indivisible joint owner of a [hedge] may destroy the [hedge] to the extent of such ownership interest. However, such owner is obligated to build a partition wall at the border demarcating his ownership.

(2) The same applies to indivisibly and jointly owned moats and banks that exist only for the benefit of the enclosure.

## Chapter Three POSSESSORY RIGHTS

### Section I. General Rules

227. (Definition of possession)

(1) "Possession" refers to the holding of a thing.

(2) "Holding" means the state of controlling a thing as a matter of fact, whether directly or indirectly.

228. (Direct possession and indirect possession)

(1) A thing may be possessed indirectly through another person.

(2) In cases described in paragraph (1), a person directly holding a thing is referred to as a direct possessor, and a person holding a thing indirectly through another person is referred to as an indirect possessor.

229. (Assignment of possession)

(1) Possession is assigned by delivery of the thing in possession. This form of assignment of possession is referred to as "actual delivery".

(2) Possession may be assigned without actual transfer, by agreement of the parties alone. In this case, the assignee of possession acquires the indirect possession through [the direct possession of] the assignor. This form of assignment of possession is referred to as "assignment of possession by agreement" [**in Khmer "agreement on possession"**].

(3) If the assignee of possession currently actually holds the thing directly, possession may be assigned by agreement of the parties alone. In this way, the assignor of possession loses the indirect possession that he had through the holder of the thing. This form of assignment of possession is referred to as "summary delivery".

(4) A person who possesses a thing indirectly through another person may assign possession to a third party by agreement with such third party and notice to this effect to the person in direct possession. This form of assignment of possession is referred to as "assignment of possession by direction".

230. (Extinguishment of possession)

Possession shall be extinguished when the possessor ceases to hold the thing; provided that this shall not apply, where the possessor has been dispossessed of the thing, if the possessor repossesses the thing or the possessor brings an action for recovery of possession of the thing within one year of such dispossession<sup>3</sup>.

231. (Extinguishment of possession of an indirect possessor)

(1) The possession of an indirect possessor will be extinguished in the following cases:

- a) If the authority of the direct possessor to possess on behalf of the indirect possessor and duty of direct possessor to possess on behalf of the indirect possessor extinguish.
- b) If a state is recognized that the direct possessor has not agree with the possession of the indirect possessor; or
- c) If the direct possessor ceases to hold the thing.

(2) In cases falling under subparagraph (c) of paragraph (1) and where the possessor has been dispossessed of the thing, the possession shall not be extinguished if the direct possessor or indirect possessor repossesses the thing or brings an action for recovery of possession of the thing within one year of such dispossession.

232. (Possession with or without intention of ownership)

(1) In some cases of possession the possessor has the intention to become the owner of the thing possessed and in other cases the possessor does not have such intention. Whether such intention exists or not will be determined on the basis of the objective nature of the ground of acquisition of the possession.

(2) If on the basis of the objective nature of the acquisition of possession, the possessor does not have the intention to become the owner of the thing, the nature of possession shall not be altered into that involving an intention to become the owner unless the possessor declares to the person who put him into possession that he intends to become the owner, or unless he commences possession [anew] on the basis of a new ground of acquisition of possession with the intention of becoming the owner.

233. (Flawed possession)

---

<sup>3</sup> This sounds like the English action in "detinue", but the translator has not used this term because "return" as used later in this law extends to immovable as well as goods, unlike detinue which is limited to goods.



(1) Possession that is acquired with knowledge that one has no right of possession to it is referred to as "possession in bad faith" and possession acquired without knowledge that one has no right of possession to it as "possession in good faith". If the lack of knowledge results from negligence, the possession is referred to as "negligent possession".

(2) "Peaceful possession" refers to possession acquired and maintained without violence; provided that it will still be peaceful possession if a person who has initially acquired possession peacefully uses violence to protect such possession against unlawful infringement by a third party.

(3) "Open ("kozen") possession" refers to possession without concealment, so that persons having rights over the possessed thing can know or see the fact of such possession.

(4) "Flawed possession" refers to possession in bad faith, to possession that despite being in good faith is negligent, to possession that is not peaceful and to possession that is not open.

234. (Presumptions)

(1) Possessors are presumed to be in possession with the intention of becoming the owners of the thing.

(2) Possessors are presumed to be in possession in good faith, peacefully and openly.

(3) If there is proof of possession at two different times, possession is presumed to have been continuous throughout the intermediate time.

(4) The possessor is presumed to hold lawfully a right to possess the relevant thing.

235. (Succession to possession)

(1) A successor to possession may at his option assert his own possession only or his own possession together with that of his predecessor in possession.

(2) If he asserts the possession of his predecessor together with his own, he also succeeds to any flaws in the possession of the predecessor. Consequently if there are flaws in the possession of the predecessor, even if the successor's possession is unflawed, the two possessions together will be flawed.

## Section II. Rights to Demand Protection of Possession

236. (Rights to demand protection of possession)

A possessor, whether direct or indirect, may demand return of the dispossessed thing or removal of disturbance or prevention of disturbance to possession in accordance with those set forth in Articles 237(Right to demand return of thing in possession) through 241(Relation

with actions on title).

237. (Right to demand return of thing in possession)

(1) A possessor who has been dispossessed of a thing may demand return of said thing.

(2) A right to demand return of a thing may not be exercised against a person who has acquired the thing from the dispossessor, a pledgee or other successor in interest; provided that, where such successor knew or should have known of the fact of dispossession, a right to demand return of the thing may be exercised against such successor.

(3) An action for return of a thing in possession must be brought not later than one year from the dispossession.

238. (Right to demand removal of disturbance)

(1) Where a possessor's possession has been disturbed, he may demand removal of such disturbance.

(2) An action for removal of disturbance must be brought during the continuance of the disturbance or within one year after it has ceased; provided that in cases where the thing possessed has been damaged by structural work, the action may not be brought after the lapse of one year from the commencement of such work, or after the completion thereof.

239. (Damages)

(1) Neither Article 237 (Right to demand return of thing in possession) nor Article 238 (Right to demand removal of disturbance) precludes a demand for damages in tort.

(2) An action for damages incurring from dispossession of a thing must be brought not later than one year from the dispossession.

(3) An action for damages incurring from disturbance to possession must be brought during the continuance of the disturbance or within one year after it has ceased; provided that in cases where the thing possessed has been damaged by structural work, the action may not be brought after the lapse of one year from the commencement of such work, or after the completion thereof.

240. (Right to demand prevention of disturbance to possession)

(1) Where there is a danger of disturbance to possession, the possessor may demand prevention of such disturbance; provided that the court, in lieu of preventing the disturbance, may require the posting of appropriate security.

(2) An action for prevention of disturbance may be brought so long as the danger of disturbance exists; provided that in cases where there is a danger that the thing possessed will be damaged by structural work, the action may not be brought after the lapse of one year from the

commencement of such work, or after the completion thereof.

241. (Relation with actions on title)

(1) Ownership, perpetual lease, usufruct, pledge, lease, and other rights that legally justify the holding of a thing are referred to as "title".

(2) The defendant to an action for protection of possession is not permitted to assert a defense based on title against the exercise of a right to demand protection of possession.

(3) Actions for possession and actions based on title shall not be mutually exclusive. The defendant to an action for possession may bring a counter-action based on title.

(4) Actions for possession shall not be adjudicated upon grounds relating to title.

### Section III. Protection of Special Occupants of Immovable

242. (Protection of occupant of immovable holding a certificate of occupancy)

(1) A person who has been continuously using and profiting a piece of immovable for which a certificate of occupancy has been issued, but over which the registration required for the acquisition of complete ownership has not been effected because the cadastral survey and register have not yet been prepared shall be deemed to be the owner in respect of claims based on real rights.

(2) Even if the person described in paragraph (1) allows a third party to use and profit from the immovable in question, the first-mentioned person shall still be deemed to be the owner in respect of claims based on real rights.

(3) A person who has acquired the certificate of occupancy from the occupant described in paragraph (1) and taken over occupation of the immovable shall be deemed to be the owner in respect of claims based on real rights.

243. (Protection of occupant of immovable prior to the enforcement of the Land Law)

(1) A person who despite being in continuous, peaceful and undisputed occupancy of an immovable that is legally capable of being occupied by a private person for a period of five years prior to the coming into force of the Land Law, has neglected to register such occupancy based on the Land Law, is permitted to exercise a right to demand protection of possession against a third party who infringes such occupancy.

(2) A person who begun continuous occupation of an immovable prior to the coming into force of the Land Law, and obtained a permit from a governmental authority to extend his occupation for a period required for the acquisition of complete ownership is also permitted to exercise

a right to demand protection of possession against a third party who infringes such occupancy.

(3) So far as the exercise of a right to demand protection of possession is concerned, a one-year period as set forth in Articles 237(Right to demand return of thing in possession) through 240(Right to demand prevention of disturbance to possession) shall be replaced with a period of three years.

## **Chapter Four PERPETUAL LEASES**

244. (Definition of perpetual leases)

"Perpetual lease" refers to a long-term lease of immovable for a term of not less than 15 years.

245. (Formation of perpetual lease)

(1) A perpetual lease shall not be valid unless it is established by writing.

(2) A perpetual lease that is not in writing shall be deemed to be a lease without a prescribed period, and may be terminated at any time by either party unilaterally in accordance with Article 615(Notice of cancellation of lease without fixed term).

246. (Requirements for perfection of perpetual lease)

(1) Unless the perpetual lessee registers the perpetual lease, it cannot be held up against third parties.

(2) If the ownership of the immovable that is the subject of a perpetual lease is assigned, a registered perpetual lease may be held up against the transferee.

(3) The provisions of Article 598 shall apply to the perpetual lease without register up to 15 years.

247. (Term of perpetual lease)

(1) The term of a perpetual lease may not exceed 50 years. If a perpetual lease is established with a term exceeding 50 years, it shall be shortened to 50 years.

(2) A perpetual lease may be renewed; provided that the renewed term may not exceed 50 years counting from the date of renewal.

248. (Rental)

(1) The perpetual lessee shall pay the rental to the perpetual lessor at the stipulated time.

(2) If there is no stipulation of time for payment of rental, the

lessee shall pay the rental at the end of each year; provided that if there is a harvest season, the payment shall be made without delay after such season.

249. (Right to demand increase or decrease of rental)

If the rental is no longer appropriate on account of change in circumstances, either party may request the court to increase or decrease the rental to an appropriate amount.

250. (Perpetual lessor's right of cancellation)

If the perpetual lessee fails to pay the stipulated rental for three years, the perpetual lessor may cancel the perpetual lease.

251. (Perpetual lessee's right of cancellation)

If no profit can be derived from the immovable for 3 years on account of unforeseeable circumstances or force majeure, or there is no prospect of future profit exceeding the annual rental on account of damage to part of the immovable, the perpetual lessee may cancel the perpetual lease.

252. (Assignment, etc. of perpetual leases)

(1) Perpetual leases may be assigned with or without consideration, or otherwise disposed.

(2) The perpetual lessee may sublease the subject of the perpetual lease.

(3) A perpetual lease may be inherited.

253. (Perpetual lessee's real right of claim)

A perpetual lessee may exercise the same rights to demand return, to remove disturbance and to prevent disturbance vis-à-vis an infringement of the perpetual lease as the owner.

254. (Termination of perpetual lease)

(1) Upon termination of a perpetual lease, the perpetual lessor cannot demand that the perpetual lessee restore the immovable to its original condition unless the perpetual lessee has destroyed the immovable or fundamentally changed its nature.

(2) Upon termination of a perpetual lease, the lessor shall acquire the ownership over any improvements and any structures installed on the immovable by the perpetual lessee without having to pay compensation to the perpetual lessee.

(3) A special agreement may be made at variance with paragraphs (1) and (2); provided that such special agreement cannot be held up against third parties unless it is registered.

255. (Mutatis mutandis application of provisions relating to leases)

The provisions relating to "leases" shall apply *mutatis mutandis* to any matters relating to perpetual leases that are not covered in this Chapter 4 (Perpetual Leases).

## **Chapter Five USUFRUCT**

256. (Definition of usufruct)

(1) "Usufruct" refers to the rights to use and enjoy the profits of the immovable of another person, for a period that may not exceed the life of the usufructuary.

(2) The usufructuary has the right to use the immovable that is the subject of the usufruct for its intended purposes, and to enjoy the natural fruits and the legal fruits arising from the immovable.

257. (Contractual usufruct and statutory usufruct)

(1) Usufructs may be established by agreement of the parties or by law.

(2) Usufructs established by law shall be subject to the provisions of this Chapter unless otherwise provided by law.

(3) Usufructs established by law shall take precedence over contractual usufructs, unless otherwise provided by law.

258. (Formation of usufruct)

(1) A usufruct may be created in writing or otherwise.

(2) The owner may at any time give notice of the extinguishment of a usufruct that is not in writing. In cases where the time of extinguishment of the usufruct is not stated in the notice of extinguishment, or where the period stated, counting from the date of the notice, until the date of extinguishment is less than the applicable period noted below, the usufruct shall be extinguished upon the lapse of the applicable period noted below, counting from the date of the notice:

- a) in respect of a building, 3 months; and
- b) in respect of land, 1 year.

(3) In the case of a usufruct over land where there is a harvest season, the notice of extinguishment must be given after such harvest season and prior to the commencement of the next cultivation.

259. (Requirements for perfection of usufruct)

(1) Unless a usufruct is registered, it cannot be held up against third parties.

(2) Where the ownership of the immovable that is the subject of a

usufruct is assigned, the usufruct may be held up against the transferee if it is registered.

260. (Term of usufruct)

(1) A specified term may be provided for a usufruct, or it may be provided that it will continue until the occurrence of a certain event.

(2) If no term is specified for a usufruct, it shall be deemed to continue until the death of the usufructuary.

261. (Right to collect natural fruits)

(1) Natural fruits that were on the land at the time of establishment of the usufruct shall belong to the usufructuary.

(2) Natural fruits that are on the land at the time of extinguishment of the usufruct shall belong to the landowner.

(3) In cases described in paragraphs (1) and (2), no claims of unjust enrichment shall be recognized relating to the labor required for the cultivation of the natural fruits or otherwise.

(4) Notwithstanding the provisions of paragraph (1), if there is a perfected lease on the land that is the subject of the usufruct, the lessee shall be entitled to collect the natural fruits.

(5) Notwithstanding the provisions of paragraph (2), a lessee who leased the land from the usufructuary is entitled to collect the natural fruits that have been cultivated prior to the extinguishment of the usufruct.

262. (Right to collect legal fruits)

Legal fruits shall belong to the usufructuary in proportion to the term of the usufruct.

263. (Assignment of usufruct, etc.)

The usufructuary may assign the usufruct with or without consideration, or otherwise dispose it.

264. (Lease of usufruct immovable)

(1) The usufructuary may lease out the immovable that is the subject of the usufruct for a fixed term not exceeding 3 years.

(2) The term of the lease described in paragraph (1) may be renewed; provided that this term may not exceed 3 years.

(3) If the usufruct is extinguished, a lease agreement relating to the land subject to the usufruct may not be held up against the landowner.

265. (Usufructuary's real right of claim)

A usufructuary may exercise the same rights to demand return, to remove disturbance and to prevent disturbance vis-à-vis an infringement of the usufruct as the owner.

266. (usufructuary's duty to report)

(1) If a third party asserts any rights over the immovable that is the subject of the usufruct, the usufructuary shall report without delay to the owner, but this provision shall apply in case the owner is already aware of such fact.

(2) The usufructuary shall have duty to compensate the damages of owner caused by the failure to report to the owner.

267. (Demand for extinguishment of usufruct)

(1) If the usufructuary inflicts significant damage on or does not properly preserve the immovable that is the subject of the usufruct or otherwise breaches the spirit of the usufruct, the owner may demand that the court extinguish the usufruct.

(2) A demand for extinguishment under paragraph (1) shall not preclude a claim for damages in tort against the usufructuary.

268. (extinguishment of the usufruct by the death of the initial usufructuary or the expiry of the term of the condition)

A usufruct shall be extinguished by the death of the initial usufructuary, or the expiry of the term of the condition prescribed in the usufruct establishment agreement.

269. (Effect of extinguishment of usufruct)

(1) Upon extinguishment of a usufruct, the immovable owner cannot demand that the usufructuary restore the immovable to its original condition unless the usufructuary has destroyed the immovable or fundamentally changed its nature.

(2) Upon termination of a usufruct, the immovable owner shall acquire the ownership over any improvements and any structures installed on the immovable by the usufructuary without having to pay compensation to the usufructuary or its successor(s).

(3) A special agreement may be made at variance with paragraphs (1) and (2); provided that such special agreement cannot be held up against third parties unless it is registered.

270. (Loss of building that is the subject of the usufruct)

If a building above ground is the sole subject of the usufruct and such building is destroyed, the usufruct may not be exercised over the land.

If the subject of the usufruct is both land and building and the building is destroyed, the usufruct over the land shall survive.

271. (Allocation of expenses)



(1) The usufructuary shall bear the cost of maintenance and repairs of the immovable that is the subject of the usufruct, and the owner shall bear the expense of major repairs; provided that if major repairs have become necessary because the usufructuary has failed to effect maintenance and repairs, the usufructuary shall bear the cost of such major repairs.

(2) "Major repairs" under this Article refers to changes of principal walls, beams and pillars and foundations and to re-roofing, whereas other repairs refer to maintenance and repairs.

(3) If the immovable subject to usufruct has been damaged or destroyed by force majeure, neither the owner nor the usufructuary is responsible for reconstruction or any other responsibilities for the damages or destruction.

272. (Allocation of taxes and other imposts and insurance premiums)

During the term of the usufruct, the usufructuary has duty to pay taxes and other imposts relating to the immovable subject to usufruct, and to pay the premiums on insurance over said immovable contracted by the owner prior to the establishment of the usufruct.

273. (Mutatis mutandis application of the provisions of perpetual lease)

The provisions of Article 248 (Rental) and 249 (Right to demand increase or decrease of rental) of this code shall apply *mutatis mutandis* in cases where the usufructuary has duty to pay the consideration periodically.

## **Chapter Six RIGHT OF USE AND RIGHT OF RESIDENCE**

274. (Definition of right of use and right of residence)

(1) "Right of use" refers to the right to collect the fruits of immovable, to the extent of the needs of the right holder and his family.

(2) Right of residence refers to the right to occupy part of the building(s), to the extent required for residence by the right holder and his family.

275. (Contractual right of use and right of residence and statutory right of use and right of residence)

(1) Rights of use and rights of residence may be established by agreement of the parties or may arise by provision of law.

(2) Rights of use or residence established by law shall be subject to the provisions of this Chapter 6 unless otherwise provided by law.

(3) Rights of use or residence established by law shall take precedence over contractual rights of use or residence, unless

otherwise provided by law.

276. (Formation of rights of use and rights of residence)

(1) Rights of use and rights of residence may be created in writing or otherwise.

(2) The owner may at any time give notice of the extinguishment of a right of use or right of residence that is not in writing. In cases where the time of extinguishment of the right of use or right of residence is not stated in the notice of extinguishment, or where the period stated, counting from the date of the notice, until the date of extinguishment is less than 3 months, the right of use or right of residence shall be extinguished upon the lapse of 3 months, counting from the date of the notice.

277. (Requirements for perfection of rights of use and rights of residence)

(1) Unless the holder of a right of use or right of residence actually uses his/her right, it cannot be held up against third parties.

(2) Even though the ownership of the immovable that is the subject of a right of use or right of residence is assigned, the right may be held up against the transferee if it is actually used or resided.

278. (Term of right of use or right of residence)

(1) A specified term may be provided for a right of use or right of residence, or it may be provided that it will continue until the occurrence of a certain event.

(2) If no term is specified for a right of use or right of residence, it shall be deemed to continue until the death of the right holder.

279. (Expansion of family)

A right of use or right of residence shall remain in effect, notwithstanding the expansion of the family on account of marriage or childbirth after the creation of such right.

280. (Assignment of usufruct, etc.)

(1) Holders of rights of use or rights of residence are not permitted to assign or otherwise dispose such rights.

(2) Holders of rights of use or rights of residence are not permitted to lease out the immovable that is the subject of such rights.

281. (Right to demand based on real rights of holders of right of use and right of residence)

Holders of rights of use or rights of residence may exercise the same rights to demand return, to remove disturbance and to prevent disturbance vis-à-vis an infringement of his rights of use and rights

of residence as those of the owner.

282. (Demand for extinguishment of right of use or right of residence)

(1) If the holder of a right of use or right of residence inflicts significant damage on or does not properly preserve the immovable that is the subject of such right or otherwise breaches the spirit of the right, the owner may demand that the court extinguish the right of use or right of residence as the case may be.

(2) A demand for extinguishment under paragraph (1) shall not preclude a claim for damages in tort against the right holder.

283. (Extinguishment of right of use or right of residence upon the death of the right holder or according to the terms of the contract creating the right of use or right of residence)

The right of use or right of residence shall be extinguished by the death of the right holder of the right to use or the right to residence or according to the terms specified in the contract that creates the right of use or the right of residence.

284. (Allocation of expenses)

(1) If the holder of a right of use or right of residence collects the whole of the fruits of the land or occupies the whole of the building(s), he shall have the same obligation to pay expenses of repairs and maintenance, taxes and other imposts and insurance premiums as an usufructuary.

(2) If the holder of a right of use or right of residence collects only a portion of the fruits or occupies only a portion of the building(s), he shall be liable for the expenses described in paragraph (1) pro rata such portion.

## **Chapter Seven EASEMENTS**

### **Section I. General Rules**

285. (Definition of easement)

(1) An "easement" is the right to use the land of another for the benefit of one's own land, in accordance with the purpose specified in the contract of creation; provided that an easement may not be created that contravenes public order.

(2) The other person's land that is used for the benefit of one's own land is referred to as the "servient land", and the land that enjoys the benefit of the easement is referred to as the "dominant land".

(3) A perpetual lessee or usufructuary is also entitled to create an easement using the subject land as the dominant land.

286. (Formation of easement)

(1) An easement may be created by writing or otherwise.

(2) The owner of the servient land may at any time give notice of the extinguishment of an easement that is not in writing. In cases where the time of extinguishment of the easement is not stated in the notice of extinguishment, or where the period stated, counting from the date of the notice, until the date of extinguishment is less than 1 month, the easement shall be extinguished upon the lapse of 1 month, counting from the date of the notice.

287. (Requirements for perfection of easement)

(1) Unless an easement is registered, it cannot be held up against third parties.

(2) An easement that has been registered may be held up against a person acquiring the servient land.

288. (Scope of persons entitled to enjoy the benefit of an easement)

In addition to the owner of the dominant land, a lessee, perpetual lessee, usufructuary or holder of a right of use or right of residence over the dominant land is entitled to enjoy the benefit of an easement, except where otherwise provided in the contract creating the easement.

289. (Appurtenant nature of easement)

(1) An easement passes along with the ownership of the dominant land if the ownership of the dominant land is assigned, except where otherwise provided in the contract creating the easement.

(2) An easement may neither be assigned nor made the subject of other rights separately from the dominant land.

290. (Obligations of the servient land owner)

(1) The owner of the servient land must not obstruct the exercise of the easement or do anything that reduces the utility thereof.

(2) The owner of the servient land may not change the land that is originally agreed to be the servient land to other land without the consent of the easement holder; provided that if continuing to use the original servient land as the servient land would cause severe detriment to the owner of the servient land due to a change to circumstances accruing after the establishment of the easement, said owner may offer other land as the servient land that is beneficial to the same degree to the dominant land. If the easement holder does not consent to this, a judgment may be sought from the court in lieu of the said consent.

291. (Obligations of the easement holder)

(1) The easement holder may not use the servient land beyond the scope

provided in the contract creating the easement. The easement for using the water created at a water source includes the right to way over the land where the water source is.

(2) The easement holder may not alter the servient land or the dominant land in a manner that could have serious adverse impacts on the condition of the servient land.

(3) If the easement holder breaches the provision of the first sentence of paragraph (1), and paragraph (2) above, the owner of the servient land may apply to the court for extinguishment of the easement.

(4) An application for extinguishment under paragraph (3) above shall not preclude a claim for damages in tort against the usufructuary.

(5) If consideration is prescribed for the easement and the easement holder does not pay the prescribed consideration, the owner of the servient land may apply to the court for extinguishment of the easement.

292. (Right of easement holder to erect structures on servient land)

(1) The easement holder may erect structures necessary for the exercise of the easement on the servient land. Upon extinguishment of the easement, the easement holder shall remove such structures and restore the servient land to its original condition.

(2) To the extent that this does not obstruct the exercise of the easement, the owner of the servient land may use any structures erected on the servient land for the purpose of exercise of the easement.

(3) In cases described in paragraph (2), the owner of the servient land shall share the costs of erecting and maintaining the structures in proportion to the profits it receives.

293. (Allocation of expenses of structures)

(1) Unless otherwise provided, the owner of the dominant land shall pay the expenses of erection and maintenance of structures necessary for the exercise of the easement.

(2) If there is special agreement for the owner of the servient land to pay the expenses of erection and maintenance of structures and such agreement is registered, the burden thereof shall pass to any person who acquires the ownership of the servient land.

294. (Easement holder's real right of claim)

An easement holder may exercise the same rights to demand return, to remove disturbance and to prevent disturbance vis-à-vis an infringement of the easement as the owner.

295. (Relinquishment of ownership of servient land in favor of easement holder)

(1) Where there is special agreement for the owner of the servient

land to pay expenses under Article 293 (Allocation of expenses of structures), said owner may at any time be released from the burden of such agreement by relinquishing the ownership of that portion of the land that is necessary for the easement to the easement holder.

(2) "Relinquishment" refers to the relinquishment by the owner of the ownership of the servient land based on his unilateral [declaration of] intention and the transfer of such ownership to the easement holder.

296. (prescription of the term of easement)

(1) Where a term is prescribed in the contract that creates the easement, the easement shall be extinguished at the expiry of such term.

(2) Where a term is not prescribed in the contract of creation of easement, the owner of the servient land may apply to the court for extinguishment of the easement. The court shall decide whether to extinguish the easement or not, by considering the facts such as the circumstances of the creation, the execution in the past, existence or inexistence of the consideration.

297. (Extinguishment of easement due to the complete destruction of the dominant land)

An easement shall be extinguished in case the dominant land is completely destroyed.

298. (Extinguishment of easement by co-owners)

(1) A single co-owner of the dominant land may not extinguish an easement in respect of his share.

(2) A single co-owner of the servient land may not extinguish an easement in respect of his share.

299. (Subdivision or partial assignment of land and easements)

(1) If the dominant land is subdivided or a portion of it is assigned, the easement shall remain in force for each portion of said land; provided that if by its nature it only relates to a portion of the dominant land, it shall lapse in relation to the other portion(s) of said land.

(2) If the servient land is subdivided or a portion of it is assigned, the easement shall remain in force for each portion of said land; provided that if by its nature it only relates to a portion of the servient land, it shall lapse in relation to the other portion(s) of said land.

## Section II. Easements and Prescription

300. (Acquisitive prescription of easement)

(1) An easement may be acquired by acquisitive prescription, but only where it is continuous and apparent.

(2) "Continuous easement" refers to an easement where without human action being required, the easement has materialized only because of the location of the place, and without interruption has been [in the state of] providing a benefit to the dominant land and imposing a burden on the servient land.

(3) "Apparent easement" refers to an easement that has become apparent and materialized through an externally visible structure or other vestige.

301. (Acquisitive prescription of easement by one co-owner of dominant land)

(1) If one co-owner of the dominant land acquires an easement by prescription, the other co-owners shall also acquire such easement.

(2) Any interruption of prescription as against co-owners shall not be effective unless it is effected against each co-owner who is exercising the easement.

(3) If there are two or more co-owners exercising the easement, prescription shall run in favor of all the co-owners notwithstanding that there is cause for the suspension of prescription against one of them.

302. (Commencement of extinctive prescription of easement)

The period of extinctive prescription prescribed in Article 500 (Suspension of completion of extinctive prescription regarding rights between spouses) of this code, shall be computed in respect of a non-continuous easement, from the time when the easement was last exercised, and in the case of a continuous easement, from the time of occurrence of the event that is obstructing the exercise of the easement.

303. (Interruption or suspension of extinctive prescription of easement where the dominant land is co-owned)

If the dominant land belongs to two or more co-owners, interruption or suspension of prescription occurring in favor of one of them shall inure to the benefit of the other co-owners.

304. (Extinctive prescription of part of easement)

If the easement holder does not exercise part of the easement, that part of the easement shall be extinguished by prescription.

305. (Prescriptive acquisition by occupant of servient land and the fate of easements)

If the occupant of the servient land fulfills the conditions for acquisitive prescription, the easement shall thereby be extinguished.

If the easement holder exercises the easement within the period of occupancy required for acquisitive prescription, the servient land

acquired by prescription by the occupant shall be subject to the burden of the easement.

## **Chapter Eight OWNERSHIP AND OTHER REAL RIGHTS OF THE STATE, BUDDHIST TEMPLES, MINORITY ETHNIC GROUPS AND OTHER COMMUNITIES**

306. (Ownership and other real rights of the state, Buddhist temples, minority ethnic groups and other communities)

Ownership and other real rights of the state, Buddhist temples, minority ethnic groups and other communities shall be subject to the provisions of the Civil Code, except where otherwise provided by special law or custom.

## **Chapter Nine RIGHTS CREATED BY CONCESSION**

307. (Rights created by concession)

The provisions of the Civil Code relating to perpetual leases shall apply *mutatis mutandis* to land rights created by concession, within the scope of the conditions applying to such concession, except where otherwise provided by special law.

# **BOOK FOUR "OBLIGATIONS"**

## **Chapter One GENERAL PROVISIONS**

### **Section I. Causes of Obligation and Definitions of Several Concepts**

308. (Definition of obligation)

(1) An obligation is a legal relationship that connects a particular person with a specified person by having the particular person assume a certain duty with respect to the specified person.

(2) The person assuming the duty shall be called the 'obligor,' and the person receiving the benefit of performance of such duty shall be called the 'obligee.'

(3) An obligee shall possess those rights corresponding to the duty assumed by the obligor. [These rights are collectively referred to in this translation as a 'claim.'<sup>4</sup>]

309. (Causes of obligation)

(1) An obligation may arise from a contract, unilateral legal act, management of affairs without mandate, unjust enrichment, tortious act, or provision of law.

---

<sup>4</sup> While the term 'claim' generally refers to an action or demand deriving from a legal right, in this translation it refers to any substantial right that corresponds to an obligation owed by an obligor and is vested in an obligee.



(2) An obligation arising from a contract or unilateral legal act is an obligation created based on the intention of [one or both] parties.

(3) An obligation arising from management of affairs without mandate, unjust enrichment, tortious act or provision of law is an obligation created by law. The provisions set forth in Chapters Three through Seven of this Book shall apply *mutatis mutandis* to an obligation created by law.

310. (Definition of declaration of intention)

(1) A declaration of intention is an expression of intention made by a party with the intent to create a legal effect.

(2) The declaration of intention shall become effective when the notice thereof reaches to the other party.

311. (Definition of contract)

A contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation.

312. (Definition of unilateral legal act)

(1) A unilateral legal act is an act that creates, changes or extinguishes an obligation through the unilateral expression of an intention to dispose of property or through the exercise of a right granted by contract or provision of law.

(2) The provisions set forth in Sections II (Defective Declaration of Intention and Validity of Contract) and IV(Agency) of Chapter Two of this Book shall apply *mutatis mutandis* to unilateral legal acts.

## Section II. Types and States of Obligations

313. (Types of obligations)

The subject matter of an obligation may be the transfer of ownership of, or the right to possess, property or money, or to perform or not to perform a certain act.

314. (Obligation to deliver specific property)

If the subject matter of an obligation comprises delivery of a specific property, the obligor shall preserve such property with the care of a good manager until delivery thereof.

315. (Obligation to deliver property in species)

(1) Where the property to be delivered under an obligation is described only with reference to its class or type, if different levels of quality exist with regard to such property to be delivered, the obligor shall be obligated to deliver property of the quality that was

designated by the parties. If there is no such designation of the quality of the property to be delivered, the obligor shall be obligated to deliver property of medium quality.

(2) With regard to obligations to deliver property described only with reference to its class or type, where the obligor has specified the property to be delivered and has completed all acts required for delivery of that specified property, the obligor has the duty to subsequently deliver only that specified property.

316. (Monetary obligation)

(1) If the subject matter of an obligation comprises the payment of money, the obligor may effect payment in any desired currency. However, the obligee and the obligor may agree that the payment shall be effected by a specific currency.

(2) If the specific currency that forms the subject matter of an obligation has ceased to be legal tender at the time when the obligation becomes due, the obligor may effect payment in another currency.

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* in cases where the delivery of foreign currency forms the subject matter of the obligation.

317. (Monetary obligation in foreign currency)

(1) Even if the amount of an obligation is established in a foreign currency, the obligor may effect payment in Cambodian currency based on the foreign exchange rate at the place where the obligation is performed, when it becomes due. However, if the obligee and the obligor agree otherwise, such agreement shall prevail.

(2) Where the obligor has delayed performing his obligation, if the obligor effects payment in Cambodian currency, the obligee may demand that the obligor calculate the amount of the payment based on the foreign exchange rate in effect when it becomes due or, when the obligor effects actual payment. However, if the obligee and the obligor agree otherwise, such agreement shall prevail.

318. (Legal interest rate)

With respect to an interest-bearing obligation, the interest rate shall be 5 % per annum, unless otherwise agreed to between the parties.

319. (Interest on interest)

Where the payment of interest is in arrears for one year or more, if the obligor fails to pay such interest after receiving a demand of payment from the obligee, the obligee may include the amount of such interest in the principal.

320. (Alternative obligation)

If the subject matter of an obligation is to be determined by choosing

from among two or more acts of performance, the right to choose shall belong to the obligor. However, the obligor may grant the right to choose to the obligee or to a third party by specific agreement.

321. (Exercise of right to choose)

(1) The right to choose shall be exercised by giving notice to the other party. Where the obligor is vested with the right to choose, such right shall be deemed to be exercised through the delivery of the property chosen by the obligor. Where a third party is vested with the right to choose, the right to choose shall be exercised through the giving of notice to either the obligor or the obligee.

(2) The choice shall have retroactive effect from the time that the obligation arose.

322. (Transfer of right to choose)

(1) After an obligation becomes due, where either the obligor or the obligee holding the right to choose receives a demand from the other party instructing the right holder to make a choice within a reasonable fixed period of time but fails to make a choice within such period, the right to choose shall be deemed transferred to the other party.

(2) Where the right to choose is vested with a third party, if the third party receives a notice from the obligor or the obligee instructing the third party to make a choice within a reasonable fixed period of time but fails to make a choice within such period, the right to choose shall be deemed transferred to the obligor.

323. (Determination of irregular obligation when performance impossible)

(1) If, one of the acts of performance which is subject to a choice by the obligor, has become impossible not due to either party on or after the date of formation, the subject matter of the obligation shall comprise the remaining acts of performance. In this case, paragraph (2) of Article 321 shall apply mutatis mutandis.

(2) If an act of performance has become impossible due to the fault of the party who does not hold the right to choose, the right to choose shall be transferred to the other party.

(3) If any act of performance has become impossible due to the fault of an obligor who does not hold the right to choose, the party who holds the right to choose may, choose the act of performance that was rendered impossible and demand compensation for the damages from the obligor.

(4) If any act of performance has become impossible due to the fault of the obligee who does not hold the right to choose, the obligor who hold the right to choose may choose the act of performance that was rendered impossible and be released from the obligation.

324. (Obligation with a plurality of parties)

(1) Where there are several obligee for one obligation, unless

otherwise is agreed by such obligees, each of them shall have a right to the obligation in an equal proportion.

- (2) Where the performance of an obligation is indivisible by its nature or by declaration of intentions by the parties, if there are several obligees for the obligation, each obligee may demand performance on behalf of all the obligees and the obligor may effect performance to any obligee on behalf of all the obligees.
- (3) With regard to the obligation prescribed in paragraph (2), the act by or circumstances occurred to an obligees of an indivisible obligation may not be effective to other obligees. In cases where the obligor has renewed the contract with, or been exempted from the performance for one of the obligees of an indivisible obligation, if the obligor has performed part or the whole obligation upon claims by other obligees, the obligor may seek compensation from the above-mentioned obligee for the benefit which may be distributed to such obligee if such obligee has not lost its right to the obligation.
- (4) Where there are multiple obligees for an obligation or a joint-obligation exists, the provisions of Article 921 (Definition of joint obligation) through 937 (Indivisible obligation, sham obligation, divisible obligation) shall be followed.

### Section III. Conditions, Time and Period

#### Sub-section I. Conditions

##### 325. (Meaning of conditions)

(1) The contracting party may impose conditions with regard to the occurrence or extinguishment of the effect of the contract. With regard to a unilateral legal act, conditions may be imposed only when the conditions are not unduly detrimental to the other party.

(2) Conditions are events, which occur in the future and are uncertain.

(3) If an obligation or a right which arose from a contract or a unilateral legal act is subject to a condition precedent, the obligation or a right shall become effective upon the fulfillment of the condition. If an obligation or a right arose from a contract or a right is subject to a condition subsequent, the obligation or a contract shall cease to be effective upon the fulfillment of the condition.

##### 326. (Disposition of right subject to condition)

A right that is subject to a condition may be the object of an inheritance, disposition or security interest. Furthermore, an obligation subject to a condition may be succeeded to in accordance with the provisions regarding inheritance, etc.

##### 327. (Impairment of pending benefit)

(1) Neither party to an obligation subject to a condition may, while such condition is pending, impair the benefits that the other party stands to receive if the condition is fulfilled.

(2) Where a third party impairs the benefits mentioned in paragraph (1), if such third party's act constitutes a tortious act, the third party shall be liable for damages.

328. (Constructive fulfillment of conditions)

If a party for whom the fulfillment of a condition would be detrimental intentionally obstructs the fulfillment of such condition, the other party may treat the condition as having been fulfilled.

#### Sub-section II. Time

329. (Meaning of time)

(1) If an effect of a contract is subject to a commencement time, the contract does not come into effect until such time has arrived. If a performance of a contract is subject to a commencement time, the obligee may not require the obligor to perform the obligation before such time has arrived.

(2) If an effect of a contract is subject to a termination time, it shall be ceased when such time arrives.

(3) With regard to an unilateral legal act, a commencement time stipulated in paragraph (1) or a termination time stipulated in paragraph (2) may be imposed, unless it is not unduly detrimental to the other party.

330. (Benefit of the determination of time)

(1) Time is presumed to be stipulated for the benefit of the obligor.

(2) The benefit of the determination of time may be waived, provided that it is not unduly detrimental to the other party.. However, if the other party suffered damages due to the waiver, the waiving party shall be liable for such damages.

331. (Forfeiture of benefit of time)

The obligor shall lose the benefit of time in the following cases:

- (a) where the obligor has been declared bankrupt;
- (b) where the obligor has destroyed or diminished the security;
- (c) where the obligor has failed to furnish the security that the obligor was bound to furnish; or
- (d) where an event that was agreed upon between the parties has occurred.

#### Sub-section II. Period

332. (Designation of period)

A period may be designated in terms of hours, minutes or seconds, or

in terms of days, weeks, months or years.

333. (Calculation of period established in terms of seconds, minutes or hours)

If a period has been fixed in terms of hours, minutes or seconds, it shall be computed from the first moment to the last moment.

334. (Calculation of period established in terms of days, weeks, months or years)

(1) If a period has been established in terms of days, weeks, months or years, the first day of such period shall not be included in the computation; provided, however, that this shall not apply if the period begins at midnight.

(2) In cases mentioned in paragraph (1), the period shall terminate at the end of the last day of the period.

(3) If the last day of a period falls on a national holiday, Sunday or any other holiday established by laws or ordinances, the period shall terminate at the end of the immediately following business day.

335. (Calculation of period by solar calendar)

(1) If a period has been established in terms of weeks, months or years, it shall be computed in accordance with the calendar.

(2) If a period does not commence at the beginning of a week, month or year, such period shall terminate on the day in the last week, month or year preceding the day corresponding to that on which it commenced. However, if the period has been fixed in terms of months or years and there is no corresponding day in the last month or year, the last day of the month shall be the day of termination.

## **Chapter Two DECLARATION OF INTENTION AND CONTRACT**

### **Section I. Formation of Contract**

336. (Formation of contract via offer and acceptance)

(1) A contract comes into effect when an offer and an acceptance thereof conform to each other.

(2) Notwithstanding the provisions of paragraph (1), a contract in which one of the parties bears a duty to transfer or to acquire ownership on an immovable, shall come into effect only when such contract is made by notarial document.

337. (Definition of offer and acceptance)

(1) An offer is an invitation to enter into a contract based on the offeror's intention to be legally bound by the other party's acceptance thereof.

(2) An offer shall take effect when it reaches the other party. However, an offer shall not take effect if a notice of revocation of the offer has reached the other party simultaneously with or prior to the offer.

(3) An acceptance is an expression of intention by the party who receive an offer, to agree it.

(4) An acceptance shall take effect when it reaches to the party who made the offer. However, an acceptance shall not take effect if a notice of revocation of the offer reaches simultaneously with or prior to the notice of acceptance,

338. (Offer with acceptance period and revocation of the offer)

(1) An offer may be made subject to an acceptance period. An acceptance period shall, where it is unclear whether the offeror set another date, be computed from the day of dispatch of the offer.

(2) An offer that specifies an acceptance period cannot be revoked.

(3) If the offeror does not receive notice of acceptance within the acceptance period described in paragraph (1), the offer shall automatically lapse upon the expiration of the acceptance period. The offer shall also lapse if a notice of refusal from the other party reaches the offeror, even where such notice is received within the specified acceptance period.

339. (Offer with no acceptance period and revocation of the offer)

(1) An offer that states no acceptance period and is made *inter praesentes* where the offeree can respond at once shall lapse unless it is accepted forthwith by the offeree.

(2) An offer that states no acceptance period and is made *inter absentes* cannot be revoked by the offeror within a reasonable period of time.

(3) A revocation of an offer shall not take effect unless notice thereof reaches the offeree, prior to the offeree's dispatch of a notice of acceptance.

340. (Formation of contract on receipt of acceptance)

A contract shall be formed when the notice of acceptance is received by the offeror.

341. (Delayed acceptance)

(1) Where cases a notice of acceptance of the offer that states an acceptance period reaches the other party after the expiration of the acceptance period, if the offeror could realize that the notice of acceptance was dispatched within the term which the notice of acceptance could reach with in the acceptance period in usual cases, the offeror must dispatch a notice of delayed acceptance to the offeror without delay. If the offeror fails to dispatch such notice, the delayed

acceptance deemed to be effective.

(2) The offeror can regard the notice of acceptance which reached the offeror after the acceptance period as a new offer.

342. (Acceptance of offer with modification)

(1) The acceptance, to which the acceptor attaches any condition or any other substantial modification, shall not be void, but such purported acceptance shall be a new offer. A contract shall be formed when the original offeror accepts such new offer.

(2) If the condition or modification attached to the acceptance does not substantially change the original offer, unless the offeror raises an objection immediately, the acceptance is deemed valid. The contents of the contract shall incorporate the condition or modification contained in the intended acceptance unless the offeror raises an objection immediately.

343. (Formation of contract by acts recognized as acceptance)

In the event that a notice of acceptance is not required under the intention of the offeror or under applicable trade customs, the contract shall be formed when the act that is recognized as an acceptance is performed.

344. (Revocation of offer made to unspecified party)

An offer made to unspecified parties made through advertising or other method may be revoked only using the same method employed to make the offer.

## Section II. Defective Declaration of Intention and Validity of Contract

345. (Defective declaration of intention)

In the following cases, a person who declares the intention may rescind the contract as the declaration of intention is defective pursuant to provisions set forth in this Section **II** (Defective Declaration of Intention and Validity of contract) and **III** (Invalidity and Rescission) :

- (a) where the declaration of intention is made as the result of mistake;
- (b) where the declaration of intention is made as the result of the other party's fraud, duress or misrepresentation; or
- (c) where the declaration of intention is made as the result of the other party's act that aims to obtain excessive profits and exploits the surrounding situation.

346. (Mistake )

(1) Where a party makes a mistake on the substantial terms of the contract, if the other party could have been aware of such mistake, the aggrieved party may rescind the contract on the ground of the defect of the declaration of intention.



(2) Where a party makes a mistake on a term of the contract, that such party deems important or important for the formation of the contract, if the other party could have been aware of the importance of such term and the mistake of the aggrieving party, such party may rescind the contract on the ground of the defect of the declaration of intention.

(3) Where both parties makes a mistake on the substantial terms of the contract that both parties deem important or important for the formation of the contract, each party may rescind the contract on the ground of the defect of the declaration of intention ,although a party could not be aware of such mistake of the party.

(4) The rescission of the contract on the ground of mistake may be asserted against a third party other than the other party. However the rescission may not be asserted against third party if the third party acts in good faith without negligence.

347. (Fraud)

(1) A person who makes a declaration of intention because of the fraud of the other party, the person may rescind the contract on the ground of the defect of the declaration of intention.

(2) If a party made a declaration of intention because of the fraud of a third party, such party may rescind the contract on the ground of the defect of the declaration of intention , only if the other party knew or could have known of the fraudulent conduct.

(3) A rescission of a contract on the ground of the fraud may be asserted against the third party other than the other party. However, if the third party has acted in good faith and without negligence, the rescission of the contract may not be asserted against such party.

348. (Misrepresentation)

(1) Where a fact asserted by a party in the course of the formation of the contract, is not true and the other party made a declaration of intention based on the asserted fact, but if such party had known that such fact was not true, such party would not have made a declaration of intention, such party may rescind the contract on the ground of the defect of the declaration.

(2) The provisions of paragraph (1) above do not preclude the party who made a declaration of intention from claiming the compensation for damages from the person who made the misrepresentation if such person committed a mistake.

(3) The rescission of the contract on the ground of misrepresentation may be asserted against a third party other than the other party. However, if the third party has acted in good faith and without negligence, the rescission of the contract may be asserted against such party.

349. (Abuse of circumstances)

(1) If, in the course of the formation of a contract, a contracting party used his/her economic or social position that is better than the other party, or used other circumstances so that the other party cannot contest unfairly, the other party may rescind the contract on the ground of the defect of the declaration of intention.

(2) The rescission of the contract set forth in the provisions of paragraph (2) may not be asserted against a third party who has acted in good faith and without negligence.

350. (Duress)

A person who makes a declaration of intention because of duress exerted by the other party or a third party may rescind the contract on the ground of the defect of the declaration of intention.

351. (Act of making excessive benefits)

If a party enters into a contract while taking advantage of the other party's economic difficulties, ignorance or inexperience, and made excessive benefits from that contract, the other party may rescind the contract on the ground of the defect of the declaration of intention.

352. (Mental reservation)

If a contract is formed by the declaration of intention made by the party who knows that it does not reflect the true intention of the declarant, the contract shall not be void. However, if the other party is aware also that such declaration of intention does not reflect the true intention of the declarant, the declarant may reject the performance of the contract.

353. (Fictitious declaration of intention)

(1) A contract formed by fictitious declaration of intention made in collusion with the other party shall be void.

(2) The nullity of the contract set forth in paragraph (1) cannot be asserted against a third party that has interests in the contract based on the fictitious declaration of intention. However, this provision shall not apply if the third party was unaware of the fictitious declaration of intention in malice or by gross negligence. If a part of a contract violates a mandatory provision of law or public order and good customs and if the remainder of the contract would not affect the reasonable expectations of the parties, only the part of the contract in violation of provision of law or public order and good customs shall be void.

354. (Contract in violation of laws or public order and good morals)

(1) Even where the declarations of intention of both parties are made without any defects, the contract shall be void in the following cases:

(a) where the contents of the contract violate a mandatory

- provision of law; or
- (b) where the contents of the contract contravene the public order and good customs.

(2) If a part of a contract violates a mandatory provision of law or public order and good customs and if the remainder of the contract would not affect the reasonable expectations of the parties, only the part of the contract in violation of provision of law or public order and good customs shall be void.

355. (Initial impossibility)

(1) Even where it was impossible to implement the content of a contract at the time of its formation, the contract shall not be void because of impossibility. However, this provision shall not preclude either contracting party to the contract from rescinding the contract on the ground of mistake if the requirements for mistake are met.

(2) In case a party could have known that the content of the contract was impossible at inception and the other party suffered any damages due to the formation of the contract, the first party shall be liable for damages of the other party in accordance with the provisions of Article 398 (Requirements for damages).

### Section III. Invalidity and Rescission

356. (Definition of 'Act')

An 'act' in Section III (Nullity and Rescission) shall mean a contract or an unilateral legal act.

357. (Definition of nullity)

Any person may assert the nullity of the act where the contents of the act are not consistent with the mandatory provisions of law public order and good customs. Any person may assert the nullity of the act where the act is not consistent with the forms required by this law or other laws.

358. (Voidable act)

(1) A voidable act is still effective until the person having a right of rescission exercise it.

(2) Where a person having a right of rescission rescind the voidable act, the act deemed void from the beginning.

(3) Where the person having a right of rescission ratifies the voidable act, the act is definitively deemed valid.

359. (A person having a right of rescission)

(1) Where an act is voidable on the ground of a defective declaration of intention set forth from article 346 (Mistake) to 351 (Conduct resulting in excessive benefits) of this code, the rescission may be effected by the person who made the defective declaration of intention, his legal representative or by his curator. His heir or the person who has succeeded him in the contract may also exercise the right of rescission.

(2) A rescission of an act based on incapacity or minority or other limitation on the capacity to act may be carried out by the person concerned or by his legal representative or his curator. The heir or general legatee of such person may also exercise the right of rescission.

360. (Method of rescission or ratification)

Where the other party to a voidable act is identified, the rescission or ratification shall be carried out with notification to the other party. The rescission or ratification shall be effectuated when the notification thereof reaches the other party.

361. (Ratifying persons, conditions of ratification)

(1) Ratification of a voidable act may be carried out by a person having a right of rescission. However, where the rescission of act which was based on a defective declaration of intention, the ratification may be carried out after the person having a right of rescission learns of the cause of rescission, and where the rescission was based on an act performed by an incompetent person, the ratification may be carried out after the circumstances giving rise to the rescission no longer exist.

(2) The proviso to paragraph (1) shall not apply where the ratification is carried out by the legal representative of an incompetent person or the curator.

362. (Constructive ratification)

A voidable act shall be deemed ratified where any of the following facts occurs after the time that ratification may be carried out pursuant to the provisions of Article 361 (Ratifying persons, conditions of ratification)

- (a) full or partial performance of an obligation arising due to a voidable act or the giving of security for such obligation;
- (b) the exercise of a right obtained through a voidable act or a demand for performance by the other party; or
- (c) a total or partial transfer or other disposition of a right obtained through a voidable act.

However, this shall not apply where it is specifically stated at the time such fact occurs that ratification shall not be carried out.

363. (Extinctive prescription of right of rescission)

(1) A right of rescission, as well as the right to demand the return of unjust enrichment that accompanies the exercise of a right of rescission, shall be extinguished if it is not exercised within three years of the date on which ratification may be performed. The provisions regarding interruption of prescription shall not apply to this period.

(2) Notwithstanding the provisions of paragraph (1), a right of rescission shall be extinguished upon the expiration of ten years from the date of the act subject to rescission.

(3) Where multiple persons have a right of rescission regarding the same act, the provisions of paragraphs (1) and (2) above shall apply to each such person's right of rescission.

#### Section IV. Agency

364. (Definition of agency)

Agency is defined as a relationship wherein where a representative enters into a contract with another party by stating that he is acting on behalf of a principal within the scope of the agency authorization, the effects of the contract are imputed directly to the principal.

365. (Creation of agency authorization)

An agency authorization can be created by contract between the principal and the agent or by law.

366. (Scope of agency authorization)

(1) The scope of an agency authorization is established in the contract that confers the agency authorization on the agent. Where an agency authorization is established by law, the scope of the agency authorization is established by the provisions of such law.

(2) Where there is no provision regarding the scope of the agency authorization, an agent is entitled to conduct acts to preserve or improve [the thing or right comprising the subject-matter of the agency.] However, this shall not apply to acts of improvement that would alter the nature of such thing or right.

367. (Limitations on agency authorization)

(1) An agent is not entitled to conduct acts with respect to which the interests of the principal conflict with the interests of the agent, even where such acts are otherwise within the scope of the agency authorization. However, this shall not apply where the principal consents thereto.

(2) Dealings between the agent and the principal are presumed to involve conflicting interests between the principal and the agent.

(3) Where an agent represents both a principal and a third party, paragraphs (1) and (2) shall apply *mutatis mutandis* to acts that give rise to conflicting interests between the principal and the third party.

368. (Grounds for extinction of agency authorization)

(1) An agency authorization conferred by a principal via contract is extinguished by any of the following:

- (a) the death, bankruptcy or dissolution of the principal;
- (b) the death or bankruptcy of the agent, or a restriction on the agent's capacity to act; or
- (c) the termination of the trust, employment or other legal relationship that gave rise to the agency authorization.

(2) A agency created by law is extinguished for reasons specified by law.

369. (Agency without authorizatoin)

(1) Where a person conducts an act as agent for another without having an agency authorization, the effects of that act shall not be attributable to the putative principal. However, this provision shall not apply where the act is ratified by the putative principal.

(2) The other party the act of the agency without authorization cannot assert that the act shall be effective with the agent without authorization but this provision shall not prevent the other party from exercising his rights to require the agent without authorization to be responsible based on the provisions of article 371 (Liability of person acting without agency authorization).

370. (Ratification of act performed without agency authorization, and right of rescission of the other party)

(1) The effect of ratification cannot be asserted against the other party unless such ratification is exercised against the other party.

(2) An act conducted without agency authorization that is subsequently ratified is valid retroactively from the time it is conducted. However, where rights accrue to a third party between the time that act is conducted and the time of ratification, such rights may not be infringed.

(3) The other party to an act conducted without agency authorization may demand that the putative principal indicate within a reasonable period of time designated by the other party whether the putative principal ratifies such act. If the putative principal does not respond within the established period of time, ratification shall be deemed to have been rejected.

(4) The other party to a contract executed without agency authorization may rescind the contract until it is ratified by the putative principal. A putative principal may not ratify an act conducted without agency authorization after rescission by the other party.

371. (Liability of person acting without agency authorization)

Where a person who executes a contract as agent for another cannot establish the existence of an agency authorization or obtain

ratification from the putative principal, such person is liable for either performing under the contract or paying damages, at the selection of the other party. However, where the other party knew of the lack of an agency authorization [when the contract was formed], the person acting without agency authorization shall be exempted from such liability. Where the person acting without agency authorization acted without negligence in regard to the absence of agency authorization, and the other party's ignorance of the lack of agency authorization was due to negligence, such person shall not be liable under the provisions of this Article.

372. (Agency by estoppel)

(1) Where an agent executes a contract outside the scope of the agency authorization, and the other party believed without negligence that the agent was authorized to enter into the contract, the principal is responsible for performing the contract.

(2) Where, after the extinction of an agency authorization, the former agent enters into a contract with another party as the agent of the former principal, the former principal is responsible for performing the contract. However, this shall not apply where the other party knew of the extinction of the agency authorization, or where the other party's ignorance of such extinction was due to the other party's negligence.

(3) Where, despite the absence of an agency authorization, a putative principal gives the impression that an agency authorization has been conferred on another, or allows another person to give the impression that he has received an agency authorization, the putative principal is obligated to the other party to make performance under the contract. However, this provision shall not apply where the other party knew the absence of an agency authorization, or where the other party's ignorance of the absence of agency authorization was due to other party's negligence.

373. (Anonymous acts of agency)

(1) Where an agent engages in a transaction with the intent of acting on behalf of a principal without disclosing such intent, the other party can treat the contract as executed between such party and the agent. However, where the other party knew [when the contract was executed] that the agent was acting on behalf of the principal, the other party can treat the contract as executed only between such party and the principal.

(2) The other party can treat the contract as executed between such party and the principal where such party know the existence of the principle, after engaged in a transaction with the agency without disclosing the intention of acting on behalf of a principle.

374. (Defective act of agency)

(1) Where the validity of a contract made by the person who makes declaration of intention may be affected on the grounds of mistake,

fraud, or duress, or the knowledge or negligent ignorance of any fact by mistake, the existence or inexistence of that facts shall be determined with respect to the agent.

(2) When applying the provision of paragraph (1), where the principal has authorized the agent to execute a particular contract, the principal cannot assert the agent's ignorance of facts if they were known to the principal. This provision shall also apply in case the principal was ignorant due to the principal's negligence.

375. (Capacity of agent)

A principal can confer an agency authorization on a person who has a limited capacity to engage in legal acts. In this case, a contract executed between an agent having a limited capacity to act and another party cannot be rescinded by the principal on account of the agent's limited capacity.

376. (Sub-agency)

A person authorized as an agent pursuant to a contract with a principal may not appoint a sub-agent. However, this shall not apply where the principal consents or circumstances exist that make such sub-agency unavoidable.

377. (Liability of agent where sub-agent has been appointed)

(1) Where an agent appoints a sub-agent in the circumstances described in the second sentence of Article 376(Sub-agency), the agent is responsible to the principal in connection with the appointment and supervision of the sub-agent.

(2) Where an agent appoints a sub-agent on the instructions of the principal, the agent is not responsible for the conduct of the sub-agent unless the agent knew that the sub-agent was unfit or untrustworthy and the agent failed to either notify the principal of such fact or remove the sub-agent.

(3) Where an agent appoints a sub-agent under circumstances other than those described in Article 376(Sub-agency), the acts of the sub-agent shall not be imputed to the principal. However, where the other party [to a contract entered into by the sub-agent] is unaware of the sub-agent's lack of authority, and such lack of knowledge is not the result of his negligence, the other party may demand that the agent perform [under the contract] or pay damages.

378. (Status of sub-agent)

(1) An act that is conducted by a sub-agent within the sub-agent's authority and is accompanied by the sub-agent's express statement that the act is conducted on behalf of the principal is binding on the principal.

(2) A sub-agent has the same rights and obligations as an agent with respect to the principal.



(3) The provisions of this Section IV shall apply *mutatis mutandis* to the relationship between a principal and a sub-agent, who shall be deemed an agent for purposes hereof.

## Section V. Contract for the Benefit of a Third Party

### 379. (Definition)

(1) The parties to a contract can agree to confer a right or benefit arising under the contract upon a third party. In this case, the person who is to perform a duty under the contract for the third party is termed the contract donor, and the other party to the contract is termed the contract donee. The person to receive the right or benefit is termed a third-party beneficiary.

(2) A third-party beneficiary is entitled to make a direct demand on the contract donor for performance.

### 380. (Third-party beneficiary)

In the course of the formation of the contract, the third-party beneficiary need not exist when the requirements identifying the third-party beneficiary are clearly stated. However, where a third-party beneficiary does not exist at the scheduled time for performance of the duty by the contract donor, the promise to perform the contract for the benefit of a third party shall lose its effect, and the contract donor may be discharged from the responsibility upon performance of the contract with respect to the contract donee.

### 381. (Declaration of intention to receive a benefit)

(1) A contract donee may, at any time prior to an intended third-party beneficiary's declaration of intention to accept the benefit to the contract donor or the contract donee, withdraw the promise to perform the contract for the benefit of a third party via notification to the contract donor and the third-party beneficiary.

(2) After the third-party beneficiary declares an intention to accept the right or benefit, the parties to the contract may not thereafter alter or extinguish the third-party beneficiary's right.

### 382. (Defense of contract donor)

A contract donor under a contract to confer a right or benefit on a third party may assert against the third-party beneficiary any defenses arising under the contract.

### 383. (Invalidity, rescission or termination of contract)

(1) Where grounds for invalidity or rescission of the contract exist between the contract donee and contract donor, either party may assert the invalidity of or seek to rescind the contract in accordance with the provisions of Section III or Chapter Two of this Book concerning invalidity and rescission, notwithstanding the existence of a provision

in the contract conferring a right or benefit on a third party.

(2) A contract donor may terminate the contract on the ground of the contract donee's breach thereof. Where the contract donor's breach is grounds for termination, and the third-party beneficiary has already declared an intention to accept the right or benefit, the contract donee can terminate the contract only with the consent of the third-party beneficiary.

### **Chapter Three PERFORMANCE OF CONTRACT**

384. (Obligor's duty to perform obligation)

(1) An obligor shall perform its contractual obligations in accordance with the purpose of the contract and the principle of good faith.

(2) The obligation of a party is extinguished by a performance that complies with the standard established in paragraph (1).

385. (Right to demand performance of obligation)

(1) An obligee is entitled to demand that the obligor perform the obligation either with or without filing a lawsuit.

(2) Notwithstanding the provisions of paragraph (1), an obligee may not file a lawsuit demanding performance where the parties to the contract have agreed not to seek judicial enforcement of performance.

(3) Even where a lawsuit seeking judicial enforcement of performance is barred under paragraph (2), if the obligor carries out such performance voluntarily, the obligee may receive and retain the benefits thereof.

386. (Defense of simultaneous performance)

Each party to a bilateral contract may refuse to perform its own obligation until the other party tenders the performance of its obligation. However, this shall not apply where the time for performance of the other party's obligation has not arrived.

387. (Defense of insecurity)

A party to a bilateral contract who is required to perform an obligation in advance of the other party may refuse to perform the obligation if there is a significant risk that the other party will not substantially perform its obligation in accordance with its intended purpose. However, this shall not apply where the other party provides security or otherwise takes a measure that extinguishes the existing risk.

388. (Application of provisions relating to performance as a ground for extinction of obligation)

In addition to the provisions of this Chapter Three, the provisions of

Section I of Chapter Seven of this Book regarding performance as a ground for extinction of obligation shall also apply to 'performance of contract.'

## **Chapter Four REMEDIES FOR BREACH OF CONTRACT**

### **Section I. General Rules Concerning Non-Performance**

389. (Definition and types of non-performance)

'Non-performance' is defined as an obligor's failure to perform an obligation arising under a contract. The types of 'non-performance' are as follows:

- a) cases in which performance cannot be carried out by the established time for performance due to a delay in performance;
- b) cases in which performance is impossible;
- c) cases in which full and complete performance in accordance with the intended purpose of the obligation is not carried out; and
- d) other cases in which performance is not carried out in accordance with the intended purpose.

390. (Remedies for non-performance)

Where an obligor fails to perform an obligation, the obligee may demand specific performance, damages, or termination of the contract, in accordance with the provisions set forth in Sections II through IV of this Chapter IV.

391. (Delayed performance)

An obligor shall be liable for delayed performance if he fails to perform the obligation at the time described below:

- a) where performance is to occur at a time certain, when such time has arrived;
- b) where performance is to occur at a time that is uncertain, when the obligor knows that such time has arrived; or
- c) where no time for performance is specified, when the obligor receives a demand for performance.

392. (Impossibility of performance)

(1) Where it is physically impossible to perform the obligation, the performance is deemed impossible. Performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint.

(2) Where it is established prior to the time for performance that the performance of an obligation will be impossible at the time for performance, the performance shall be deemed impossible when such impossibility is established.

393. (Incomplete performance)

Incomplete performance refers to cases where an obligation has been performed but the act of performance was not complete, where only partial performance was carried out, or where for any other reason complete performance in accordance with the intended purpose of the obligation was not carried out.

394. (Other non-performance)

In addition to the types of non-performance described in Articles 391(Delayed performance) through 393(Incomplete performance), where there is a breach of any other duty arising under the contract, the contract shall be deemed non-performed.

395. (Multiple remedies)

Where multiple remedies are available to the obligee, the obligee may select any or all of such remedies so long as they are not in mutual conflict.

## Section II. Specific Performance

396. (Court order for specific performance)

Where an obligor does not voluntarily perform an obligation, the obligee may seek an order of specific performance from the court, except where the nature of the obligation is not suitable for specific performance. The provisions set forth in the Civil Enforcement Law shall apply to the proceedings of specific performance.

397. (Relationship to demand for performance and other remedies)

Where the obligor fails to perform an obligation, the obligee may demand damages either instead of performance or together with performance so long as there is no conflict between these two demands.

## Section III. Damages

398. (Requirements for damages)

(1) Where an obligation is not performed, the obligee may demand damages from the obligor for any resulting harm. However, if the obligor proves that the non-performance was not the fault of the obligor, the obligor is not liable for damages.

(2) Where an obligor uses another person as an assistant to assist in carrying out performance of the obligation, the obligor may not avoid liability unless the obligor proves that the obligor was not negligent in the selection of and supervision over the assistant and that the assistant was not at fault.

399. (Special rules for monetary obligations)

(1) Where the subject matter of the obligation is the payment of money,

the obligor is not exempted from payment of interest for delay even where the obligor proves that the delay in payment was the result of force majeure. The interest for delay shall be calculated based on the legal rate of interest. Where an agreed-upon interest rate exceeds the legal interest rate, the agreed-upon interest rate shall be applied.

(2) The obligor shall be exempted from liability for damages beyond interest for delay if the obligor proves that the obligor was not at fault for the non-performance.

400. (Concept of damages)

(1) The obligee may demand as damages (a) compensation for the benefit of performance that would have been received under the contract, as well as (b) expenditures that were wasted due to the non-performance to the extent that such expenditures do not duplicate amounts received as benefit of performance damages, and (c) additional expenditures or burdens resulting from non-performance.

(2) The court may, based on a demand from the obligee, order payment of damages for mental harm. The amount of damages payable for mental harm shall be determined by the court after consideration of the surrounding circumstances.

401. (Scope of damages)

The obligor shall provide compensation for the following types of damages:

- a) Normally occurring damages suffered by the obligee due to non-performance;
- b) Regarding special damages suffered by the obligee due to special circumstances, [such damages shall be compensated] where the occurrence of such special damages could have been anticipated by the parties when the contract was executed. However, this shall not apply where the parties did not take the possible occurrence of special damages into consideration when the contract was executed; and
- c) Notwithstanding subparagraphs (a) and (b), where the non-performance is the result of [the obligor's] malicious intent or bad faith conduct, the court may, based on the obligee's demand for damages, order that the obligor pay to the obligee as damages the profit or benefit obtained by the obligor from the conduct comprising the non-performance.

402. (Grounds for reduction of damages)

(1) Where the obligee's negligence or fault contributed to the occurrence of non-performance or damages, the court may reduce the amount of damages to be paid by the obligor to the extent that the obligee's conduct contributed thereto.

(2) Where damages have been expanded due to the obligee's negligent failure to mitigate damages, the court may reduce the amount to be paid by the obligor in proportion to the amount of the damages that could have been mitigated by the obligee.

403. (Liquidated damages, etc.)

(1) The obligor and obligee may separately and in advance establish conditions for the payment of damages and an amount to be paid.

(2) A special agreement exempting the obligor from liability for non-performance that is intentional or the result of gross negligence is void.

(3) Where the parties agree on the amount of damages, the court may not increase or reduce the agreed-upon amount. However, where the amount fixed by the parties as liquidated damages is either grossly higher or grossly lower than the amount of damages calculated in accordance with the provisions of Article 401(Scope of damages), the court may increase or decrease the liquidated damages amount fixed by the parties.

(4) The liquidation of damages does not obstruct a claim for performance or for termination of the contract. An amount fixed and agreed to by the parties as damages for delay shall not be binding on the parties where the obligee seeks termination of the contract and compensation for damages as a substitute for [the delivery of] the property comprising the subject matter of the contract.

(5) A penalty for breach of contract shall be presumed to constitute liquidated damages.

404. (Compensation in money)

Compensation for damages for non-performance shall be made by the obligor in money. However, this shall not apply where the parties separately agree otherwise.

405. (Subrogation by compensation)

Where an obligee has received as damages compensation for the value of the property or right comprising the subject matter of the obligation, the obligor shall be automatically subrogated to the position of the obligee in regard to that property or right.

406. (Extinctive prescription)

The period of extinctive prescription applicable to the right to demand compensation for damages based on non-performance is five years from the time when the damages occurred.

## Section IV. Termination of Contract

407. (Termination for non-performance)

Where one of the parties to a bilateral contract commits a material breach of the contract, the other party may terminate the contract immediately.

408. (Material breach of contract)

(1) A material breach of contract occurs where, as a result of one party's breach of a contract, the purpose of the contract for the other party cannot be achieved, and shall be deemed to occur in any of the following situations:

- a) where after a failure to perform at the specified time, the other party demands that the non-performing party perform the obligation by establishing a period of performance of reasonable length, and the obligation is not performed within such period;
- b) where a party fails to perform at the specified time, and the purpose of the contract cannot be achieved if performance is not made at the specified time;
- c) where it is impossible to carry out the essential act of performance; and
- d) where the magnitude of the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

(2) The non-performing party may not prevent termination of the contract based on the reasons set forth in paragraph (1) on the ground that the non-performance occurred without fault on his part.

409. (Method of exercise of right of termination)

(1) A party having the right to terminate a contract may terminate the contract by expressing an intention to terminate to the other party. Such an intention may be expressed by means other than a lawsuit.

(2) An expression of an intention to terminate may not be revoked or withdrawn.

(3) An expression of an intention to terminate may be subject to a condition precedent.

410. (Termination in cases of multiple parties)

(1) Where one of the parties comprises multiple persons, termination of the contract must be effected by all of such persons to the other party or by the other party to all of such persons.

(2) In the case described in paragraph (1), where the right of termination is extinguished as to one person, it is extinguished as to all persons.

411. (Effect of termination)

(1) Termination of a contract relieves both parties of their duties under the contract except for the duty to pay damages.

(2) Upon termination, a party that has received all or part of a performance under the contract shall return those items received as performance to the other party and return the other party to the other party's original state. Where both parties are required to return the

other party to the party's original state, these duties shall be carried out simultaneously.

(3) A party required to return money as a result of termination shall return the money with interest computed from the date on which the money was received. A party required to return property or other benefit due to termination shall return any benefit received thereby.

(4) The legitimate interests of third parties may not be prejudiced by a termination.

412. (Right of termination when subject matter is destroyed)

(1) Where due to the intentional act of a person having a right of termination a thing comprising the subject-matter of a contract is lost, destroyed or rendered incapable of being returned, or where such thing is changed into a thing of a different type due to processing or reworking, the right of termination shall be extinguished.

(2) Where a right of termination is exercised by a person who is incapable of returning the thing in the case described in paragraph (1), the value of the thing shall be paid in money, such value not to exceed the actual price thereof [as fixed in the contract].

(3) Where a thing has been destroyed or rendered incapable of being returned due to the negligence of or any other reason attributable to the other party, the person possessing a right of termination is not obligated to return the price of the thing pursuant to the provisions of Paragraph (2).

413. (Extinctive prescription)

The period of extinctive prescription of the right of termination based on non-performance as well as the right to demand actions to return to the original state that existed prior to the execution of the contract is five years from the time when the non-performance occurred.

414. (Agreed-upon right of termination and termination by agreement)

(1) The parties to a contract may agree under the contract that either one or both of the parties shall be given a right of termination. The provisions of Articles 409(Method of exercise of right of termination) through 412(Right of termination when subject matter is destroyed) pertaining to termination granted by law shall apply *mutatis mutandis* to the method and effect of an agreed-upon right of termination unless the parties agree otherwise.

(2) Even in the absence of a contractual provision regarding a right of termination, the parties to a contract may agree to terminate the contract. However, the legitimate interests of third parties may not be prejudiced thereby.

## Chapter Five BURDEN OF RISK



415. (Extinction of obligation in case of impossibility of performance)

If performance of an obligation has become impossible without the fault of the obligor, the obligation shall be extinguished and the obligee may not demand performance thereof.

416. (Burden of risk in a contract to transfer title to specific property)

(1) Where the subject matter of a bilateral contract is to transfer title to specific property and the property is destroyed, lost or damaged without the faults of either party, the obligor shall bear the risk thereof, and may not demand counter-performance.

(2) The risk of destruction, loss or damage of the property comprising the subject matter of the contract shall be transferred to the obligee upon any of the following events unless otherwise provided for in the contract:

- a) when the obligor delivers the property or transfers the registration of the title thereto to the obligee, or substantial control over the property is otherwise judged to be shifted to the obligee;
- b) when the obligor has made a proper tender of performance; or
- c) when the obligee has unreasonably refused to accept the performance of the obligor.

417. (Burden of risk associated with other types of rights)

The provisions of Article 416 (Burden of risk in a contract to transfer title to specific property) shall apply *mutatis mutandis* to the establishment or transfer of rights *in rem* other than ownership, claims or other rights.

418. (Burden of risk where the subject matter of contract constitutes unspecified property)

(1) Where the subject matter of a bilateral contract constitutes the transfer of title to non-specific property and the property to be delivered has not yet been specified, even if the property which the obligor was preparing for a tender of performance was destroyed or lost without the fault of the obligor, the obligation shall not be extinguished, and the obligor remains obligated to perform under the contract.

(2) The provisions of Article 416 (Burden of risk in a contract to transfer title to specific property) shall apply *mutatis mutandis* after the property to be delivered has been specified.

419. (Contract subject to condition precedent)

Where the property comprising the subject matter of a bilateral contract subject to a condition precedent is destroyed, lost or damaged prior to fulfillment of the condition without the fault of the obligor, the risk of such destruction, loss or damage shall be borne by the obligor. The

provisions of Article 416(Extinction of obligation in case of impossibility of performance) shall apply *mutatis mutandis* after the condition has been fulfilled.

420. (Burden of risk in bilateral contract involving commission or omission of act)

Where one of the parties to a bilateral contract has an obligation to perform or not perform a certain act and the carrying out of this obligation becomes impossible without the faults of both parties, the obligation shall be extinguished. In such a case, the obligor may not demand counter-performance.

421. (Impossibility due to fault of obligee)

Where the performance of an obligation in a bilateral contract becomes impossible without the fault of the obligor but due to the fault of the obligee, the obligor does not lose the right to demand counter-performance. However, where the obligor receives a benefit from being exempted from his obligation, he must deliver such benefit to the obligee.

## **Chapter Six EFFECT OF OBLIGATION AGAINST THIRD PARTIES**

### **Section I. Subrogation by the Obligee**

422. (Obligee's right of subrogation)

(1) An obligee may, where necessary to preserve his claim, exercise a right held by the obligor in place of the obligor. However, this shall not apply to a right that is personal to the obligor, a right the exercise of which is entrusted to the complete discretion of the obligor, or a right that may not be made the subject of attachment.

(2) An obligee may, where necessary to receive satisfaction of a claim held by the obligee, exercise via subrogation a right possessed by an obligor having a close connection to such claim.

423. (Requirements for exercise of right of subrogation)

(1) In order for an obligee to exercise the right provided for in Article 422(Obligee's right of subrogation), the obligor himself may not have previously exercised such right.

(2) An obligee may not exercise via subrogation a right possessed by the obligor before the obligee's own claim has ripened without the permission of the court. However, this shall not apply to an act of preservation.

424. (Defense of third-party obligor)

A third-party obligor facing the exercise of an obligee's right of subrogation may assert against the subrogating obligee any defenses possessed by the third-party obligor against his own obligee.

425. (Relationship between subrogating obligee and obligor)

Where the obligor is notified of the obligee's exercise of the obligor's rights via subrogation, the obligor may not exercise such rights once more against a third-party obligor. However, this shall not preclude the obligor from accepting performance made by the third-party obligor.

426. (Effect of obligee's right of subrogation)

(1) The effect of an obligee's exercise of a right of subrogation regarding a right held by the obligor shall inure directly to the obligor.

(2) Where the obligor cannot accept performance from a third party obligor, an obligee who exercises a right of subrogation can demand that the third-party obligor tender performance directly to the obligee.

427. (Effect of exercise of right of subrogation and other obligees)

Where performance is received by a subrogating obligee from a third-party obligor due to exercise of a right of subrogation by the obligee, the thing delivered as such performance shall be preserved for the benefit of all obligees until it is delivered to the obligor. However, this shall not apply to cases described in paragraph (2) of Article 422(Obligee's right of subrogation).

## Section II. Avoidance of Fraudulent Act

428. (Requirements for avoidance of fraudulent act)

(1) An obligee may petition the court to order that an act conducted by the obligor with the knowledge that the act would infringe on the obligee's claim be rescinded, and that a person who receives a benefit from the act of the obligor return the thing delivered or make restitution for the value thereof.

(2) The rescission referred to in paragraph (1) shall be denied if the person who received a benefit from the obligor's act or a subsequent acquirer was not aware of the infringement of the obligee's claim at the time of the obligor's act or at the time of the subsequent acquisition. However, the obligee may seek rescission against a benefiting person or subsequent acquirer who paid no consideration for the benefit or the acquisition even if such person did not know of the infringement of the obligee's claim.

(3) The provisions of paragraphs (1) and (2) shall not apply to acts that were not intended to acquire a property right<sup>5</sup>.

429. (Claims to be preserved)

The provisions of Article 428(Requirements for avoidance of fraudulent act) shall also apply to an obligee having a non-monetary claim. However,

---

<sup>5</sup> See the footnote to Article 195 for the explanation of 'property right.'

the claim must be transformed into a monetary claim by the end of oral argument proceedings on which a judgment of rescission is based.

430. (Method of rescission of fraudulent act)

Where no other appropriate method exists to achieve restitution by a person receiving a benefit from the obligor's act or a subsequent acquirer, an obligee who exercises a right of rescission may demand that the benefiting person or subsequent acquirer deposit the thing obtained with an authorized depository office.

431. (Effect of rescission of fraudulent act)

A rescission conducted pursuant to the provisions of Article 428(Requirements for avoidance of fraudulent act) shall inure to the benefit of all obligees.

432. (Period for exercise of right of rescission of fraudulent act)

(1) The right of rescission established in Article 428(Requirements for avoidance of fraudulent act) shall expire if it is not exercised within one year of the time that the ground for rescission is first discovered by the obligee, or within three years of the occurrence of the act giving rise thereto.

(2) The provisions of law pertaining to interruption of a period of prescription shall not apply to the expiration period of a right of rescission as provided in paragraph (1).

## **Chapter Seven EXTINCTION OF OBLIGATION**

433. (Grounds for extinction of obligation)

Obligations shall be extinguished on the following grounds:

- a) by performance, set-off, release, novation or merger as provided in Sections I through V of this Chapter Seven;
- b) by impossibility of performance without the fault of the obligor as provided in Chapter Five of this Book;
- c) by the fulfillment of a condition subsequent as provided in Section III of Chapter One, or by termination of the contract as provided in Section IV of Chapter Four;
- d) by extinctive prescription as provided in Chapter Eight; or
- e) by the exercise of a right of rescission pursuant to the provisions of Section III of Chapter Two.

### **Section I. Performance**

#### **Sub-section I. General provisions regarding performance**

434. (Performing person)

(1) An obligation may be performed by a third party as well as by the obligor.

(2) If the purpose of the obligation cannot be achieved by the performance of a third party, the third party may not perform the obligation unless the obligee consents.

(3) The obligor and the obligee may agree not to allow performance by a third party.

435. (Authority of disposition of performing person)

(1) A performance made by a person who neither owns the property delivered for the purpose of performance nor has the authority to dispose of it shall not be a valid performance.

(2) Where the person making performance did not own the property delivered for the purpose of performance, he cannot recover such property until valid performance is made. However, the owner of such property may recover the property from the person receiving the invalid performance.

(3) Where a person carrying out performance lacks capacity to dispose of the property delivered for the purpose of performance, such person may rescind the act of performance. Paragraph (2) shall apply *mutatis mutandis* to the return of the property delivered for the purpose of performance.

436. (Good faith consumption, transfer or acquisition by bona-fide obligee)

(1) In the cases described in paragraphs (2) and (3) of Article 435(Authority of disposition of performing person), where the property delivered for the purpose of performance constituted movable property and the obligee has consumed or transferred in good faith the items received as performance, such performance shall be deemed valid and the performing person may not demand the return of such property.

(2) In the case described in paragraph (1), the owner of the property delivered for the purpose of performance may demand reimbursement for such property from the receiver of performance, unless such receiver acquired ownership of the property in accordance with the provisions set forth in Article 193(Bona fide acquisition of ownership of movable) regarding good faith acquisition. However, an obligee that has compensated the owner of the property delivered for the purpose of performance may demand reimbursement for such amount from the obligor.

437. (Power to accept performance)

(1) Performance is invalid unless it is carried out for the obligee or other person authorized to receive the performance.

(2) Where the obligor performs his obligation for a person who does not have power to receive performance, the obligor must perform once more for the obligee at the obligee's request. However, the person who made performance may demand that the unauthorized receiver of the performance return the property delivered for the purpose of the performance.

438. (Restriction of power to accept performance)

(1) Where a claim held by an obligee has been subject to attachment by an order of the court, the obligee shall not have the power to accept performance made by the obligor, and the obligor may not make performance to the obligee.

(2) Paragraph (2) of Article 437(Power to accept performance) shall apply *mutatis mutandis* to the case in which an obligor that has been barred from making payment makes performance to his obligee.

439. (Performance to quasi-holder of claim)

(1) A performance made to a person who appears to be the obligee but who in fact is not the true obligee shall be treated as valid if the performing party believed the receiver to be the true obligee and such belief was not the result of gross negligence.

(2) In cases described in paragraph (1), the true obligee may not demand that the obligor perform again. However, the true obligee may demand that the person receiving the performance return the property delivered for the purpose of the performance.

440. (Manner of performance)

An obligor shall perform the obligation in accordance with the purpose of the obligation and in good faith.

441. (Partial performance)

An obligee is not required to accept partial performance. However, where an obligee accepts a performance knowing that it is partial, the performance is effective to the extent it is accepted.

442. (Performance with substitute property)

(1) Where with the consent of the obligee an obligor makes a substitute act of performance that differs from the originally intended act of performance, it shall have the same effect as a valid performance.

(2) An obligee and obligor can agree that a substitute act of performance be made in place of the originally intended act of performance. In such a case the obligor may choose to perform either the originally intended act of performance or the agreed substitute act of performance, except where the right to choose has been given to the obligee.

443. (Time of performance, performance before set time)

(1) An obligor shall perform the obligation at the time for performance as determined in each of the sub-paragraphs of Article 391(Delayed performance).

(2) A performance may be made before it is due according to the

provisions of paragraph 2 Article 330 (Benefit of the determination of time).

444. (Hours of performance)

An obligor shall effect performance during regular business hours in accordance with prevailing customs and in good faith.

445. (Place of performance)

Where the place of performance is not agreed to between the parties, performance of an obligation to deliver specific property shall be made at the place where the property was located at the time the obligation arose. For other obligations, the performance shall be made at the current residence of the obligee.

446. (Costs of performance)

In the absence of an agreement regarding the costs of performance, such costs shall be borne by the obligor. However, if an increase in the costs of performance is due to a change in the residence of the obligee or to some other act of the obligee, such increase shall be borne by the obligee.

447. (Delivery of receipt)

The performing party may demand a receipt from the person accepting the performance.

448. (Return of documents)

If documents evidencing the obligation exist, the performing party may demand the return of such documents when the entire obligation has been performed.

## Sub-section II. Assignment of Performance

449. (Assignment via designation)

(1) Where an obligor owes to the same obligee multiple obligations of the same type, if a tender of performance is not sufficient to discharge all of the obligations, the performing party may at the time of performance designate the obligation to which the performance shall be assigned.

(2) If the performing party does not make the designation described in paragraph (1), the party accepting the performance may make the assignment when performance is accepted. However, the [provisions of] statutory assignment shall apply if the performing party makes an immediate objection to such assignment.

(3) The assignment described in paragraphs (1) and (2) shall be made via notice to the other party.

450. (Statutory assignment)

If neither the performing party nor the party receiving performance make an assignment of performance, the performance shall be assigned according to the following rules:

- a) Between the obligations that are due and those that are not due, the former shall have priority.
- b) Where all of the obligations are either due or not due, the obligation as to which discharge would confer the greatest benefit on the obligor shall have priority.
- c) If the obligor would benefit equally from the discharge of all obligations, the obligation which first became due or will become due shall have priority.
- d) Among multiple obligations that are equal in regard to the benefit of discharge for the obligor and that become due at the same time, the performance shall be assigned in proportion to the amount of each obligation.

451. (Order of assignment among costs, interests and principal)

If an obligor as to one or more obligations is obligated to pay interest and costs in addition to principal, a performance that is insufficient to discharge all of these shall be assigned in the order of costs, interest and principal. However, if the obligor and the obligee have agreed otherwise, such agreement shall prevail.

452. (Performance for two or more obligees)

The provisions of Articles 449 (Assignment via designation), 450 (Statutory assignment) and 451 (Order of assignment among costs, interests and principal) shall apply *mutatis mutandis* where the obligor owes multiple obligations to different obligees and the obligation as to which the obligor's performance was directed cannot be determined.

## Sub-section II. Tender and Deposit

453. (Meaning and basic effect of tender of performance)

(1) Tender of performance shall mean that the obligor has completed preparations for an act of performance and has asked the obligee to accept such performance.

(2) Even where the obligor has made a tender of performance, if an obligee does not take the actions necessary to accept the performance, the obligor is relieved of liability for non-performance.

(3) Where the obligor who owes a monetary obligation with interest accruing thereon makes a tender of performance, if the obligee does not accept the performance, the obligor shall subsequently not be required to pay interest thereon.

454. (Method of tender)

A tender of performance must constitute an actual tender of performance in accordance with the intended purpose of the obligation. However,



where the obligee has refused in advance to accept the tender of performance, or an act on the part of the obligee is necessary for performance of the obligation, it is sufficient for the obligor to give notice to the obligee that preparations for performance have been completed and demand the obligee's acceptance of performance.

455. (Effect of tender)

Where an obligee does not accept a tender of performance, the following effects shall occur, in addition to the effect described in Article 453 (Meaning and basic effect of tender of performance):

- a) where the obligor bears the risk in a bilateral contract, the risk shall be transferred to the obligee;
- b) the obligee shall lose the defense of simultaneous performance in a bilateral contract; and
- c) the obligor may be exempted from the obligation by carrying out deposit.

456. (Delayed receipt)

(1) Where the obligee has in advance refused to accept performance, or where tender of performance has been made to the obligee, if performance is not accepted due to the obligee's fault, the obligor may demand damages from the obligee for any injury caused by such non-acceptance.

(2) Where the obligee's non-acceptance of a tender of performance constitutes a material breach of the obligee's contractual duties, the obligor may terminate the contract.

457. (Deposit)

(1) An obligor may discharge the obligation by depositing the property comprising the subject matter of the obligation with an authorized depository office in the following situations:

- a) where the performing party has made a tender of performance, but the obligee refuses to accept or cannot accept the performance; or
- b) where the identity of the obligee cannot be determined without any fault of the obligor.

(2) The performing party may recover the property deposited until the obligee has accepted the deposit or a judgment declaring the deposit valid has become final and binding. In such a case, the deposit shall be deemed not to have occurred. However, this shall not apply where a pledge or hypothec has been extinguished as a result of the deposit.

(3) The details and procedures governing deposit shall be prescribed in the [Official Deposit Act].

458. (Obligor's right to sell)

If the property comprising the subject matter of the obligation is not suitable for official deposit, or is in danger of perishing or being damaged, the obligor may, with the permission of the court, sell the

property via public auction and deposit the proceeds with an authorized depository office. The same applies where the cost of preserving the property is prohibitive.

### Sub-section III. Subrogation by performance

#### 459. (Subrogation by performance)

(1) A person who has procured a discharge through his own performance or other expenditure and thereby obtains the right to demand indemnification from the obligor may exercise via subrogation the claim held by the obligee and all other rights associated therewith.

(2) The provisions of Article 503 (Conditions for asserting assignment of claim belonging to specified person) shall apply *mutatis mutandis* to the situation described in paragraph (1).

(3) The notification described in Articles 913 (Requirements for indemnification) and 933 (Notification as requirement for indemnification) may be substituted for the notification described in paragraph (2). However, where a date-certified instrument is demanded in connection with provisions as to which paragraph (2) hereof applies *mutatis mutandis*, the notification described in this paragraph shall also be provided by means of a date-certified instrument.

#### 460. (Scope of subrogation; relationships among subrogees)

(1) A person who has been subrogated to the position of an obligee through the operation of Article 459 (Subrogation by performance) may exercise, within the scope of indemnification that can be demanded based on his own right, any and all rights that were possessed by the obligee by virtue of the automatic effect of the principal claim or that derive from a security interest. However, this shall not apply to rights that directly accompany the contractual position of the obligee under the contract.

(2) The following conditions shall apply to a subrogee:

- a) Unless the existence of a subrogation is entered in the registration of a preferential right, pledge of immovable or hypothec that is created over any of the obligor's property, a guarantor or third party security provider cannot assert his subrogation to the position of an obligee against a third-party acquirer who acquires an immovable comprising the object of such preferential right, pledge or hypothec.
- b) A third-party acquirer who acquires a thing comprising the object of any security interest from an obligor shall not be subrogated to the position of an obligee with respect to a guarantor.
- c) A third-party acquirer who acquires a thing comprising the object of any security interest from an obligor shall be subrogated to the position of an obligee with respect to other third-party acquirers who acquire the objects of other security interests from such obligor in proportion to their respective values of the acquired things.

- d) The provisions of sub-paragraph (c) shall apply *mutatis mutandis* to the relationship between third party security providers as described in Article 758.a.766(Definition of security provider and third party acquirer).
- e) As between guarantors and third party security providers, subrogation to the position of the obligee shall be made in accordance with the number of persons of each group. However, where there are multiple third-party security providers, subrogation to the position of the obligee shall be made in accordance with the respective prices of the things [provided for security by each third-party security provider] with regard to the portion of the obligation remaining after subtracting the portion for which [a group of] guarantors is responsible.

461. (Partial subrogation)

(1) Where subrogated performance of a part of an obligation has been made, a subrogee shall exercise the rights of the obligee together with the obligee to the extent of the partial performance. However, where the subrogee seeks to execute these rights, the obligee's consent must be obtained. Furthermore, at the request of the obligee, such rights or ranking shall be transferred to the obligee at no cost to the extent of the remaining obligation.

(2) In the case described in paragraph (1), only the obligee may terminate the contract on the ground of non-performance. However, the subrogee shall be compensated to the extent of the subrogee's performance and interest thereon.

462. (Subrogated performance by a third party and certificate of claim/object of security)

(1) An obligee who has received full performance via subrogated performance shall deliver to the subrogee a certificate of claim and any object of security possessed by the obligee.

(2) Where subrogated performance has been made with respect to a portion of the claim, the obligee shall indicate on the claim instrument that subrogation has been carried out and shall ensure that the subrogee supervises the preservation of the object of security possessed by the obligee.

463. (Obligation to preserve security for benefit of subrogee)

Where a person exists who could be subrogated to the position of an obligee pursuant to the provisions of Article 459(Subrogation by performance), and the security has been lost or diminished due to the intentional or negligent act of the obligee, a person qualified to invoke such subrogation may be exempted from his own responsibility or seek damages to the extent that such person is no longer able to receive indemnification due to such loss or diminution.

## Section II. Set-off

464. (Conditions of statutory set-off and set-off contract)

(1) Where two persons owe mutual obligations having the identical subject-matter, if both obligations are due for performance, one party may extinguish mutual obligations to the extent that their respective amounts are equal by making a declaration of intention of set-off.

(2) The parties may enter into a set-off contract to extinguish the mutual obligations even though both obligations do not have an identical subject-matter. However, the right of a third party who is ignorant of such particular contract may not be infringed thereby.

465. (Method of set-off)

(1) A set-off shall be effected by a party's declaration to set-off to the other party.

(2) A declaration of intention of a set-off may be subject to a condition precedent, but it may not be subject to a condition subsequent or to a fixed time.

466. (Timing of effect of set-off)

Where the requirements for a set-off are satisfied, if a party declares a set-off, the set-off shall have effect of retroactively extinguishing the two obligations as of the time that the obligations became suitable for a set-off.

467. (Limitations on set-off)

(1) If either or both of the obligations are not suitable for a set-off in light of the nature of the obligation(s), a set-off may not be executed.

(2) If there is an agreement between the parties not to declare a set-off, neither party may declare a set-off. However, such an agreement may not be asserted against a bona fide third party.

468. (Set-off when the counter-obligation is subject to defense)

(1) A party may not execute a set-off if [the counter-obligation owed by the other party] is subject to any defense exercisable by the other party.

(2) An obligation as to which the period of prescription or the period for exercise has elapsed may be set off by the obligee where the requirements for a set-off were met prior to the elapsing of such period.

469. (Set-off of obligation arising out of tort)

An obligor who owes an obligation arising out of tort may not assert the extinction of such obligation based on a set-off.

470. (Obligation prohibited from being attached)

Where attachment of an obligation [by the obligee's creditors] is prohibited, the obligor may not assert the extinction of such obligation based on a set-off.

471. (Obligation under attachment order)

(1) Where an obligation is under an order of attachment initiated by a third party, the obligor may set off the obligation only against a counter-obligation owed by the other party and obtained prior to such attachment, and when the counter-obligation becomes due. However, this shall not apply to cases where such counter-obligation will become due later than the obligation owed and to be set off by the obligor.

(2) The second sentence of paragraph (1) shall not apply if there is an agreement between the parties allowing a set-off of obligations irrespective of the time for performance thereof.

472. (Assignment in case of set-off)

If one or both of the parties to a set-off owe more than one obligation suitable for set-off, the party declaring a set-off may designate the obligations which are to be extinguished by the set-off. If a set-off is declared without the designation described in the first sentence of this Article, the provisions regarding assignment of performance shall apply *mutatis mutandis*.

### Section III. Release

473. (Release as unilateral legal act)

An obligation is extinguished when an obligee expresses to the obligor an intention to release the obligor from the obligation.

474. (Partial release)

An obligee may declare a partial release from an obligation.

475. (Limitation on release)

If an obligation is under attachment by a third party or the power of the obligee to dispose of the obligation is restricted for any other reason, the obligee may not release the obligor from the obligation.

### Section IV. Novation

476. (Meaning of novation)

(1) A novation shall refer to a contract that extinguishes the original obligation and creates a new obligation in its place as between the same obligee and obligor.

(2) The original obligation is extinguished at the moment that the novation contract described in paragraph (1) becomes effective.

477. (Non-extinction of original obligation)

If an obligation created by a novation contract does not come into effect because the obligor of the original obligations cannot be expected or if the new obligation is impossible to perform from the beginning, the original obligation is not extinguished.

478. (Transfer of security right)

(1) If so agreed to between the parties to the novation contract, a pledge, hypothec or other security interest established in regard to the original obligation may be transferred to a new obligation to the extent that it falls within the scope of the original obligation. However, a security interest provided by a third party shall not be transferred without the third party's consent.

(2) With regard to a quasi-loan for consumption, the agreement mentioned in the first sentence of paragraph (1) shall be presumed to exist.

### Section V. Merger

479. (Merger of claim and obligation)

(1) Where an obligation and a claim [corresponding to such obligation] belong to one and the same person, such obligation and claim shall be extinguished via merger.

(2) If the claim mentioned in paragraph (1) comprises the object of a right possessed by a third party, such claim is not extinguished by merger.

## Chapter Eight EXTINGTIVE PRESCRIPTION REGARDING CLAIMS

480. (Definition of extinctive prescription regarding claim)

Extinctive prescription regarding a claim refers to the extinction of a claim based on an obligee's continuous failure to exercise the claim for a certain period of time.

481. (Commencement of extinctive prescription period for claim)

Extinctive prescription regarding a claim runs from the time that the claim is capable of being exercised.

482. (Extinctive prescription period for general claim)

The extinctive prescription period for claims is five years, except as otherwise provided in this Code or in other laws or ordinances.

483. (Short extinctive prescription period)

The extinctive prescription period for a claim pertaining to the price of a product or service sold or provided by a manufacturer or merchant

to a non-merchant is two years.

484. (Extinctive prescription period for established claim)

(1) The extinctive prescription period for a claim that is definitively established through a final and binding judgment, a judicial settlement, or other determination having the effect of a final and binding judgment shall be five years from the time when it is definitively established, even where a prescription period of less than five years is otherwise established by law.

(2) The provisions of paragraph (1) shall not apply where the time for performance has not occurred as of the time that the claim is definitively established.

485. (Retroactive effect of extinctive prescription regarding claim)

The effect of extinctive prescription of a claim is retroactive from the date of commencement of the period thereof.

486. (Invocation of extinctive prescription regarding claim)

(1) A court cannot render a judgment based on extinctive prescription regarding a claim unless extinctive prescription is invoked by a party.

(2) Extinctive prescription regarding a claim may be invoked only by an obligor, a joint obligor, a guarantor, a third party security provider and a third party acquirer as specified in Article 758.a.766(Definition of security provider and third party acquirer), or other person possessing a legally recognized interest in the invocation of extinctive prescription.

(3) Where extinctive prescription regarding a claim is invoked by an obligor, third parties shall also receive the benefit of the extinctive prescription. Where extinctive prescription regarding a claim is invoked by a person having a right to do so other than the obligor, the invocation is effective only as between such person and the obligee.

487. (Renunciation of benefit of extinctive prescription regarding claim)

The benefit of extinctive prescription cannot be renounced in advance. The benefit of an extinctive prescription the period for which has already been completed can be renounced.

488. (Scope of persons to whom effect of renunciation of benefit of extinctive prescription regarding claim extends)

A renunciation of the benefit of extinctive prescription of a claim is effective only as between the obligee and the renouncing party having the right to invoke extinctive prescription.

489. (Grounds for interruption of extinctive prescription of claims)

Extinctive prescription regarding a claim is interrupted by the

occurrence of any of the following events:

- a) filing of a lawsuit, participation in a bankruptcy proceeding, or the equivalent exercise of a claim;
- b) an act of execution or issuance of a preliminary injunction; or
- c) partial repayment, payment of interest, provision of security or acknowledgement of the existence of the claim by some other method.

490. (Effect of interruption of extinctive prescription regarding claim; scope of persons)

Where extinctive prescription regarding a claim is interrupted as against an obligor, other persons may not contest the effect of that interruption. Where extinctive prescription regarding a claim is interrupted against a person who is not the obligor and has a right to invoke extinctive prescription, the interruption is effective only between the obligee and such person entitled to invoke extinctive prescription.

491. (Lawsuit)

A judicial action does not interrupt extinctive prescription where the action is dismissed without prejudice or discontinued.

492. (Rescission of act of execution or preliminary injunction)

Where an act of execution or preliminary injunction is rescinded upon the motion of a right-holder or for failure to comply with conditions imposed by law, interruption of extinctive prescription effected by such act shall be deemed not to have occurred.

493. (Act of execution or preliminary injunction conducted as against person other than obligor)

An act of execution or preliminary injunction conducted as against a person other than the obligor interrupts extinctive prescription as to the obligor only where the obligor is notified of such act.

494. (Running of extinctive prescription period regarding claim following interruption)

(1) An extinctive prescription period that was interrupted shall begin anew from the time that the ground for interruption no longer exists.

(2) An extinctive prescription period that was interrupted due to the filing of a lawsuit shall begin anew from the time that the decision resolving the lawsuit becomes final and binding.

495. (Suspension of completion of extinctive prescription period upon demand with or without filing of lawsuit)

(1) Where a right-holder demands satisfaction of such right within six months of the completion of an extinctive prescription period, the



extinctive prescription period is not completed as against such person until six months elapses after the time of the demand. However, a subsequent demand for satisfaction by the right-holder shall not delay the completion of the extinctive prescription.

(2) Even where a lawsuit does not have the effect of interrupting the extinctive prescription period due to the dismissal without prejudice or discontinuation of the lawsuit, a demand shall be deemed to have been provided continuously from the time the complaint was filed until the time the lawsuit was dismissed or discontinued. In this case, the extinctive prescription period is not completed as against the person who brought the lawsuit until six months have elapsed from the date of dismissal or discontinuation.

(3) Where the right-holder asserts his right as a defendant in litigation, such assertion shall be deemed a continuous demand during the pendency of the lawsuit from the time at which it is made. In this case, the extinctive prescription period is not completed as against such person until six months have elapsed from the date on which the judgment in the case becomes final and binding.

496. (Suspension of completion of extinctive prescription period regarding rights pertaining to minors or incompetent persons)

Where there is no legal representative for a minor or incompetent person within six months prior to the completion of an extinctive prescription period, the extinctive prescription period for claims is not perfected as against such person until six months elapses after the time such person attains the age of majority or a legal representative is retained on the person's behalf.

497. (Suspension of completion of extinctive prescription regarding rights between spouses)

Where one spouse possesses a right with respect to the other, extinctive prescription regarding such right is not completed until six months elapses after the marriage is dissolved.

498. (Suspension of completion of extinctive prescription due to natural disaster)

Where a right-holder is unable to interrupt extinctive prescription within six months prior to the completion of the extinctive prescription period due to natural disaster or other *force majeure*, extinctive prescription is not completed until six months elapses after the time that such *force majeure* ceases to exist.

499. (Performance in order to satisfy right subject to extinctive prescription)

A person who provides a performance in order to satisfy a right subject to completed extinctive prescription may not thereafter seek repayment, even where the performance is provided without knowledge of the fact that such right was subject to completed extinctive prescription.

500. (Extinctive prescription for property rights other than claims and ownership)

Except as otherwise provided in this Code or in other laws or ordinances, the period for extinctive prescription regarding property rights other than claims and ownership shall be 15 years. The provisions pertaining to extinctive prescription regarding claims shall apply *mutatis mutandis* to extinctive prescription for property rights other than claims and ownership.

## **Chapter Nine ASSIGNMENT OF CLAIMS AND ASSUMPTION OF OBLIGATIONS**

### **Section I. Assignment of Claims**

501. (Assignability of claims, special agreement prohibiting assignment)

(1) A claim may be assigned unless the nature of the claim is inconsistent with such an assignment. In such a case, the assignee shall become a new obligee.

(2) Assignment of a claim can be prohibited by a declaration of intention by the partie(s), even where the nature of the claim is not inconsistent therewith.

(3) The declaration of intention referred to in paragraph (2) cannot be asserted against a third party having no knowledge thereof. However, this shall not apply where the third party's lack of knowledge is the result of the third party's gross negligence.

502. (Establishment of assignment of claim)

The assignment of a claim shall take effect only through agreement between the obligee seeking to assign the claim and the assignee. However, in order to assert the assignment of a claim against the obligor or a third party, the conditions established in Article 503(Conditions for asserting assignment of claim belonging to specified person) must be met.

503. (Conditions for asserting assignment of claim belonging to specified person)

(1) The assignment of a claim belonging to a specified person cannot be asserted as against the obligor or any third party unless the assignor has given notice thereof to the obligor or the obligor has consented thereto to the assignor or the assignee.

(2) The notice or consent described in paragraph (1) cannot be asserted against a third party other than the obligor unless they are given in a date certified writing.

504. (Priority among multiple assignments)

(1) Where one claim has been assigned multiple times, the priority

among such assignments shall be determined based on the chronological order of the times at which the competing written and date-certified notifications thereof reach the obligor, or of the times at which the obligor gives written and date-certified consents thereto. In this case, the obligor must perform the obligation owed to the obligee having the priority position.

(2) In the situation described in paragraph (1), where the priority among the notifications or consents cannot be clearly determined, they shall be deemed to have arrived or been given at the same time. In this case, each assignee may demand performance from the obligor for the entirety of the assigned obligation. Where the obligor performs the obligation to one obligee, the obligation is extinguished.

(3) In the case described in paragraph (2), the obligor can be relieved of the obligation by making a deposit of the thing comprising the subject-matter of the obligation.

505. (Effect of notification and consent)

(1) If the obligor has given the consent described in Article 503 (Conditions for asserting assignment of claim belonging to specified person) without raising any objection, he cannot assert against the assignee any defenses that he could have asserted against the assignor. However, if the obligor has made payment or incurred a new obligation to the assignor in order to discharge the original obligation, he may recover such payment or treat such new obligation as if it had not been incurred.

(2) Where the assignor has merely given notice of the assignment, the obligor may assert against the assignee any defenses that came into being against the assignor prior to the receipt of the notice.

506. (Assignment of negotiable claim)

The conditions governing assignment of a claim payable to order or other claim regarding which an instrument representing such claim has been issued shall be established separately by special law.

## Section II. Assumption of Obligations

507. (Possibility of assumption of obligation)

(1) An obligation that can be performed by a third party other than the obligor can be assumed by a third party.

(2) The assumption of an obligation may be prohibited through a declaration of intention by parties.

508. (Establishment of assumption of obligation)

The assumption of an obligation takes effect based on agreement between the obligor and the person assuming the obligation or between the obligee and such person.

509. (Rights of obligee)

(1) An obligee's rights against the obligor are not extinguished by an assumption of the obligation. In this case, the obligor and the party assuming the obligation are jointly and severally responsible with respect to the obligee.

(2) A party who assumes an obligation may exempt the obligor with the consent of the obligee.

510. (Defenses after obligation is assumed)

Where an obligation is assumed, the assuming party may assert against the obligee any defenses possessed by the obligor up to the time that the assumption came into existence.

511. (Assumption of performance)

Where a person assumes responsibility for performance of an obligation based on agreement between the obligor and the assuming party without assuming the obligation itself, the obligee may not demand performance from the assuming party.

### Section III. Assignment of Contractual Position

512. (Assignment of contractual position)

(1) A person who has executed a contract with another person may assign to a third party his position under the contract. However, this shall not apply where assignment is inconsistent with the nature of the contract. Moreover, assignment of a party's contractual position may be prohibited by the agreement of the parties. In this case, the provisions of paragraph (3) of Article 501 (Assignability of claims, special agreement prohibiting assignment) pertaining to assignment of obligations shall apply *mutatis mutandis*.

(2) Where the assignment of a contractual position is substantially disadvantageous to the other party to the contract, the party seeking to assign the contractual position shall obtain the approval of the other party to the contract to the assignment.

513. (Establishment of assignment of contractual position)

The assignment of a contractual position shall take effect only upon the agreement of the assignee and the party to the contract who is seeking to assign the contractual position. However, in order to assert the assignment against the other party to the contract or a third party, the conditions for assertion set forth in Article 503 (Conditions for asserting assignment of claim belonging to specified person) pertaining to assignment of obligations must be met.

514. (Effect of assignment of contractual position)

Where a contractual position has been assigned, all of the rights and obligations possessed by the assignor shall be transferred to the

assignee unless a specific declaration of intention is made to the contrary. In this case, the provisions of Article 505 (Effect of notification and consent) pertaining to assignment of claims and of Article 510 (Defenses after obligation is assumed) pertaining to the assumption of obligations shall apply *mutatis mutandis*.

## BOOK FIVE “PARTICULAR TYPES OF CONTRACTS / TORTS”

### Chapter One SALE

#### Section I. General Provisions

##### 515. (Nature of sale)

A sale is a contract whereby one party, called the ‘seller’, is obligated to transfer ownership or other property rights<sup>6</sup> to the other party, called the ‘buyer,’ and the buyer is obligated to pay the purchase price to the seller.

##### 516. (Formation of sale contract)

A sale contract is formed based only on the agreement of the parties thereto unless otherwise provided by law. However, the parties may require as a condition for the formation of the contract the execution of a notarial document or a written document signed by the parties in their individual capacities.

##### 517. (Unilateral promise to sell or purchase)

(1) Where a promise is made with respect to either a sale or a purchase, the sale shall become effective from the time that the promisee expresses to the promisor an intention to complete the sale.

(2) Where no period is fixed for the expression of intention described in paragraph (1), the promisor may issue a notification to the promisee demanding the expression of intention within a fixed period of reasonable length regarding whether the promisee intends to complete the sale. If the promisee fails to provide the expression of intention within such period, the promise shall lapse.

##### 518. (Earnest money)

Where the buyer has paid earnest money to the seller, the buyer may rescind the contract by giving up his earnest money, and the seller may rescind the contract by refunding twice the amount thereof. However, neither party may rescind the contract after the other party has commenced performance thereof.

##### 519. (Sale after tasting)

---

<sup>6</sup> See the footnote to Article 2-4-20-1 of Book Three for the explanation of ‘property right.’

(1) A sale of goods<sup>7</sup> of a type that are customarily tasted before purchase shall be formed when the [prospective] buyer accepts the sale after carrying out such tasting.

(2) Where no period is fixed for the [prospective] buyer's acceptance, the seller may issue a notification to the [prospective] buyer demanding a definite answer within a fixed period of reasonable length regarding whether the [prospective] buyer accepts the sale. If the [prospective] buyer fails to provide an answer within such period, the [prospective] buyer shall be deemed to have refused to enter into the sale.

520. (Trial sale)

(1) A trial sale shall become effective when the [prospective] buyer accepts the sale within the trial period or when the trial period has lapsed without the [prospective] buyer's expression of any intention in regard to sale. If the [prospective] buyer refuses to receive the delivery of the goods, the sale contract shall be deemed not formed.

(2) Where no period is fixed for trial, the [prospective] seller may issue a notification to the [prospective] buyer demanding a definite answer within a fixed period of reasonable length regarding whether the [prospective] buyer accepts the sale. If the [prospective] buyer continues to use the goods without providing an answer within that period, the [prospective] buyer shall be deemed to have accepted the sale.

521. (Sale price)

(1) The parties to a sale shall fix under the contract the amount of the sale price or establish a formula to determine such amount.

(2) The amount of the sale price may be determined in accordance with the present or future market price of certain merchandise or based on the appraisal of a third party who is appointed by a method designated by the parties. Where an appraisal by a third party is based on mistake, or where the appraisal appears to violate principles of fairness, the contract party that would be harmed as a result may object to such appraisal.

(3) The parties to the contract may fix the sale price at a certain definite amount or based on indefinite or lifetime installment payments. However, where a third party is to appraise the sale price in accordance with the provisions of paragraph (2), the sale price shall be fixed as a certain definite amount, except where the parties have explicitly authorized the third party [to fix the sale price based on indefinite or lifetime installment payments].

522. (Sales Expenses)

Unless otherwise agreed to between the parties, the cost of preparing written instruments and other expenses incurred in connection with the

---

<sup>7</sup> See the footnote to Article 1-1-1 of Book Three for the explanation on the usage of 'goods.'

execution of a contract of sale shall be borne equally by both parties.

523. (*Mutatis mutandis* application to other types of contract in which either or both parties provide consideration)

The provisions of this Chapter One shall apply *mutatis mutandis* to contracts, other than sale contracts, in which either or both parties provide consideration.

## Section II. Parties to and Goods Covered by Sale Contract

524. (Parties to sale contract)

Any natural or juridical person may sell or purchase [goods or rights] except where prohibited by law.

525. (Persons who may not be buyers (1))

(1) An administrator appointed by law, court order or contract may not be a buyer, either directly or through a third party, of goods that the administrator has been entrusted to sell.

(2) Paragraph (1) shall apply *mutatis mutandis* to government officials responsible for the execution or administration of compulsory sale.

(3) Where a sale is conducted in violation of the provisions of paragraphs (1) and (2), such sale may be rescinded only by the person who owned the goods prior to the sale or by the heir of such person or such person's successor in interest.

526. (Persons who may not be buyers (2))

(1) A judge, prosecutor, court clerk or other court official may not be a buyer, either directly or through a third party, of goods or rights as to which civil actions are pending before the court at which such person works or practices.

(2) Paragraph (1) shall apply *mutatis mutandis* to lawyers and notaries public becoming buyers of goods or rights involved in actions in which they are retained.

(3) Where a sale is conducted in violation of paragraphs (1) and (2), such sale may be rescinded only by the seller, the opposing party in a civil action involving the goods or rights, or their respective heirs or successors in interest.

527. (Goods that may be sold)

Any good or right, including one that comes into existence in the future, may be the object of a contract of sale, except for goods or rights that are not transferable by their nature, or those as to which transfer is prohibited by law.

### Section III. Effect of Sale Contract

528. (Transfer of title)

(1) With respect to the transfer of title to the goods under a contract of sale, the general rules provided for in Articles 133(Creation, transfer and alternation of real rights by agreement), 134(Perfection), 135(requisites of transferring real rights of immovables by agreement), 160(Acquisition of ownership over immovables) and 187(Acquisition of ownership over movable) of this code shall apply to contracts of sale.

(2) If the objectives of the sale and purchase contract are rights other than title to the property, with respect to the transfer of such rights, the general rules regarding the transfer of each rights shall apply to each contracts.

#### Sub-section I. Obligations of Seller

529. (Seller's duty to provide explanation)

A seller is required to provide the buyer with a clear explanation concerning (i) the contents of the obligations to be assumed by the buyer, and (ii) the legal circumstances surrounding the goods or rights comprising the object of a sale, particularly, in the case of a sale of immovable property, the state of the title, encumbrances, boundaries, etc.

530. (General obligations of seller)

The seller owes to the buyer, in accordance with the terms of the contract and the provisions of this Code, (i) an obligation to transfer the property right sold [in the goods], (ii) an obligation to deliver the goods, (iii) an obligation to preserve such goods until they are delivered, and (iv) an obligation to deliver all instruments required to evidence proof of title thereto.

531. (Obligation to transfer the right and warranty liability of seller)

(1) The seller owes an obligation to transfer the property right of the subject matter of the sale to the buyer.

(2) In the event that a right belonging to a third party is the object of a sale, the seller is obligated to acquire such right and thereafter transfer it to the buyer.

(3) If, in the case described in paragraph (1), the seller cannot acquire the right and thereafter transfer it to the buyer, the buyer may rescind the contract. In such a case, if the buyer was not aware at the time the contract was executed that the right did not belong to the seller, the buyer may also demand compensation for damages.

532. (Rescission of contract by seller who sells right of another person)



(1) Where a seller is unaware when a contract is executed that the right to be sold does not belong to the seller, and if the seller is subsequently unable to acquire the right and transfer it to the buyer, the seller may rescind the contract by compensating the buyer for any damages [incurred by the buyer in connection with the attempted sale].

(2) In the case described in paragraph (1), if the buyer was aware when the contract was executed that the right to be sold did not belong to the seller, the seller may rescind the contract without compensating the buyer for damages.

533. (Warranty liability of seller when part of right sold belongs to another person)

(1) If part of a right comprising the object of a sale belongs to a third party and the seller cannot subsequently acquire that part and transfer it to the buyer, the buyer may demand a reduction of the purchase price proportional to the percentage of that part.

(2) In the case described in paragraph (1), the buyer may terminate the contract if the buyer was unaware when the contract was executed that the part of the right did not belong to the seller and it is judged that the buyer would not have purchased the right if the object of the sale comprised the remaining part only.

(3) In case described in paragraphs (1) and (2), if the buyer was not aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, the buyer may also demand compensation for damages.

(4) Where the buyer was not aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, the buyer's rights as provided for in paragraphs (1), (2) and (3) must be exercised within one year from the date that the buyer became aware of such fact. Where the buyer was aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, these buyer's rights must be exercised within one year from the date of execution of the contract.

534. (Seller's warranty liability when encumbrance exists)

(1) Where goods comprising the object of a sale are subject to a perpetual lease, usufruct, right of use, right of residence, servitude, leasehold, right of retention or pledge, and due to such encumbrance the buyer cannot enjoy the use of all or a part of such goods or receive profits therefrom, the buyer may demand compensation for damages from the seller if the buyer was not aware of the existence of such encumbrance when the contract was executed.

(2) In the case described in paragraph (1), if the purpose of the buyer's execution of the contract cannot be achieved due to the existence of the encumbrance, the buyer may also terminate the contract if the buyer was not aware of the existence of the encumbrance when the contract was executed.

(3) The rules set forth in paragraphs (1) and (2) shall also apply to cases where a servitude that was represented as existing with regard to immovable property comprising the object of the sale does not in fact exist.

(4) In the case described in paragraphs (1), (2) and (3), the buyer's rights to terminate the contract and to demand compensation for damages must be exercised within one year from the date that the buyer learned of such fact.

535. (Seller's warranty liability when real security exists)

(1) Where the immovable property to be sold under the sale contract is subject to a preferential right, a pledge that bars the obligee from using or receiving benefits from the property, or a hypothec, if the buyer has lost ownership due to the exercise of such security interest, the buyer may terminate the contract.

(2) If any costs or expenses are incurred by the buyer to preserve ownership, the buyer may demand reimbursement of such costs and expenses from the seller.

(3) In either of the cases mentioned in paragraphs (1) and (2), the buyer may demand compensation for any damages sustained.

(4) If the buyer of the immovable property which is subject to a preferential right mentioned in paragraph (1) bought at the price which is deducted the price of the claim which is secured by the preferential right, shall not have the rights mentioned in paragraph (1) through (3)

536. (Seller's warranty liability in case of compulsory sale by public auction)

(1) In the case of a compulsory sale, the buyer may, in accordance with the provisions of Articles 531 (Obligation to transfer the right and warranty liability of seller) through 535 (Seller's warranty liability when real security exists), either rescind the contract or demand a reduction of the purchase price from the obligor.

(2) In the case described in paragraph (1), if the obligor is insolvent, the buyer may demand from any obligee to whom any share of the proceeds has been distributed the return of some or all of such proceeds.

(3) In the case described in paragraphs (1) and (2), if the obligor was aware of existence of the ground of the warranty liability and nevertheless failed to disclose it to the auctioning body or if the obligee was aware of such non-existence and nonetheless demanded a compulsory sale, the buyer may demand damages from such parties.

537. (Warranty by seller of a claim)

(1) The seller of a claim shall be liable as to the existence of that claim.

(2) Where the seller of a claim warrants the solvency of the obligor,

such seller is presumed to have warranted the obligor's solvency as at the time the contract was executed.

(3) Where the seller of a claim that has not yet become due warrants the future solvency of the obligor, such seller is presumed to have warranted the obligor's solvency as on the date on which the obligation is to be performed.

538. (Agreement regarding discharge from or limitation of warranty liability)

Even if it is agreed between the seller and the buyer that the seller's liability arising from the warranties set forth in Articles 531(Obligation to transfer the right and warranty liability of seller) through 537(Warranty by seller of a claim) are discharged or limited, the seller may not be relieved of liability in regard to any fact of which the seller was aware and nevertheless failed to disclose, or in regard to any right that the seller created in favor of, or assigned to, a third party.

539. (Obligation to deliver conforming goods)

(1) The seller has an obligation to deliver to the buyer goods that conform to the contract.

(2) Except where the parties have agreed otherwise, the goods delivered to the buyer shall be deemed nonconforming goods in any of the following situations:

- a) where the goods do not conform to the quantity, quality and description required by the contract;
- b) where the goods differ from those that the seller held out to the buyer as a sample or model in terms of their quantity, quality or description;
- c) where the goods are not fit for a particular purpose expressly or impliedly made known to the buyer when the contract was executed;
- d) where the goods are not fit for the purposes for which goods of the same description would ordinarily be used; or
- e) where the goods are not contained or packaged in the manner usual for such goods or in a manner adequate to preserve and protect the goods.

540. (Conforming Goods Warranty Liability)

(1) Where the goods are nonconforming in any respect at the time that the risk passes to the buyer, even if the existence of such nonconformance becomes apparent after the passage of such risk, the buyer may, in accordance with in the terms of the contract and the provisions of this Code, demand that substitute goods be delivered or that such nonconformance be remedied, terminate the contract or reduce the purchase price as against the seller<sup>8</sup>.

---

<sup>8</sup> The seller's liability covered under Article 1-3-13 shall be referred to as 'Conforming Goods Warranty Liability' in this translation.

(2) The seller shall owe the Conforming Goods Warranty Liability described in paragraph (1) in regard to any nonconformance that occurs due to a breach of any of the seller's obligations, including any nonconformance that occurs after the time indicated in paragraph (1).

(3) Where the seller warrants that for a certain period of time after delivery the goods will remain fit for their ordinary purpose or for some particular purpose, or will retain specified qualities or characteristics, if there is a breach of such warranty, the seller shall owe the same Conforming Goods Warranty Liability.

(4) If when the contract was executed the buyer was aware that the goods were nonconforming in any respect, or was unaware of such nonconformance as a result of gross negligence, the seller shall not owe the Conforming Goods Warranty Liability with respect to such nonconformance.

541. (Seller's right to remedy nonconformance)

(1) If the seller has delivered goods before the date for delivery, he may, up to that date, remedy any nonconformance in the goods delivered so long as the buyer's interests are not unfairly prejudiced thereby. However, the buyer shall not be precluded from exercising the right to demand compensation for damages.

(2) The seller may, even after the date for delivery, remedy at his own expense any nonconformance in the goods so long as the buyer's interests are not unfairly prejudiced thereby. However, the buyer shall not be precluded from exercising the right to terminate the contract and the right to demand compensation for damages.

542. (Buyer's right to demand complete performance)

(1) The buyer may demand that the seller [fully and completely] perform its obligations. However, this shall not apply where the buyer has resorted to a remedy that is inconsistent with such demand.

(2) Where the goods are nonconforming in any respect, the buyer may demand that the seller deliver substitute conforming goods. However, this shall not apply where supplying goods of the same description would cause undue burden to the seller in consideration of the surrounding circumstances.

(3) Where the goods are nonconforming in any respect, the buyer may demand that the seller remedy the nonconformance. However, this shall not apply where remedying the goods would cause undue burden to the seller in consideration of the surrounding circumstances.

(4) The buyer may fix an additional period of time of reasonable length for the seller's performance of its obligations. Unless the buyer has received notice from the seller that the seller does not intend to perform within such period, the buyer may not resort to any remedy for breach of contract during such period. However, the buyer is not deprived thereby of the right to demand compensation for damages incurred due to the delayed performance.

543. (Buyer's right to terminate)

If the goods delivered are nonconforming in any respect and such nonconformance prevents the achievement of the buyer's purpose for entering into the contract, the buyer may terminate the contract.

544. (Buyer's right to demand price reduction)

Where the goods delivered are nonconforming in any respect, regardless of whether or not the price has already been paid, the buyer may demand reduction of the price by a percentage that reflects the difference between the value of the goods actually delivered and the value that conforming goods would have had at the time of delivery. However, where the seller has remedied the nonconformance in accordance with Article 542 (Buyer's right to demand complete performance), or where the buyer has refused to accept an offer by the seller to remedy the nonconformance without good cause, the buyer may not demand a reduction of the price.

545. (Buyer's right to demand damages)

The buyer may demand compensation for damages, in accordance with the provisions set forth in Section III, Chapter Four of Book Four, independently of or together with any remedies provided for in Articles 542 (Buyer's right to demand complete performance) through 544 (Buyer's right to demand price reduction).

546. (Special provisions regarding excess or deficiency in area of land)

(1) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area is less than the indicated area, the buyer may demand, in accordance with the provisions set forth in Articles 542 (Buyer's right to demand complete performance) through 545 (Buyer's right to demand damages), (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency or (iii) termination of the contract, and/or (iv) compensation for damages, unless otherwise agreed to between the parties.

(2) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area exceeds the indicated area, if the seller was unaware of such excess without negligence on his part, the seller may demand an increase in the purchase price reflecting the excess amount of land, unless otherwise agreed to between the parties.

(3) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, even if the actual area is less than the indicated area, the buyer may not demand (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency, (iii) termination of the contract or (iv) compensation for damages. However, this shall not apply to cases where (i) the seller knew of the deficiency of the actual area, (ii) the seller guaranteed the accuracy of the indicated size of the

area, or (iii) the deficiency exceeds five percent of the indicated area.

(4) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, the seller may not demand an increase in the purchase price even if the actual area exceeds the indicated area. However, this shall not apply where the excess area exceeds five percent of the indicated area, and the seller was ignorant of such fact without negligence on his part.

(5) In a case in which the seller demands an increase in the purchase price based on the provisions of paragraphs (2) or (4), the buyer may terminate the contract.

547. (Period for exercise of rights)

(1) The rights provided for in Articles 542 (Buyer's right to demand complete performance) through 544 (Buyer's right to demand price reduction) and 546 (Special provisions regarding excess or deficiency in area of land) must be exercised within one year. However, the provisions of Article 482 (Extinctive prescription period for general claim) shall apply to the right to demand damages described in paragraph (1) and in the second sentence of paragraph (2) of Article 546 (Special provisions regarding excess or deficiency in area of land).

(2) The period described in the first sentence of paragraph (1) shall be computed from the dates identified below:

- a) for the buyer, the date that the buyer knew or should have known of the existence of the nonconformance or damage; and
- b) for the seller, the date of execution of the contract.

548. (Special provisions regarding discharge from or limitation on Conforming Goods Warranty Liability)

Even if the seller and the buyer agree to discharge or limit the seller's Conforming Goods Warranty Liability arising from the provisions set forth in Articles 540 (Conforming Goods Warranty Liability) et seq, the seller may not be relieved of liability in regard to any nonconformance regarding which the seller had knowledge and nevertheless failed to disclose.

549. (Duty to deliver goods)

(1) The seller shall have duty to deliver the goods to the buyer at the time and the place provided for in the contract.

(2) If only the time of payment of purchase price is provided for in the contract, such time is presumed to apply also to the delivery of the goods.

(3) If the contract does not provide for either a time for delivery or a time for the payment of the purchase price, the seller shall have duty to deliver the goods immediately after the buyer's demand for delivery.

(4) If the place of delivery is not provided for in the contract, the seller shall effect the delivery, in the case of the sale of a specified goods, at the place where such specified goods was located at the time of the formation of the contract, and in other cases, at the domicile of the buyer.

(5) The costs of delivery shall be borne by the seller unless otherwise agreed to by the parties. However, if the costs of delivery increase due to a change of the buyer's address, or any buyer's act, the increased costs shall be borne by the buyer.

550. (Manner of Delivery)

Delivery of property shall be effected through actual delivery, delivery by declaration, transfer by direction, or constitutum possessorium in accordance with the provisions described in Article 229(Assignment of possession). The delivery of an immovable may be effected through the actual delivery of the keys to the structures comprising or residing on such immovable or of the documents evidencing title thereto.

551. (Defenses of simultaneous performance, insecurity)

(1) The seller may refuse to transfer of the right or to deliver the goods until the buyer tenders payment of the purchase price. However, this shall not apply where the buyer's obligation has not yet become due or where it is agreed that the obligation to transfer the right or to deliver the goods is to be performed prior to payment of the purchase price.

(2) Even where the seller has granted the buyer a grace period for the payment of the purchase price, if the buyer becomes bankrupt or insolvent after the execution of the contract, or has concealed his insolvency prior to execution of the contract, the seller may refuse to transfer the right and to deliver the goods. However, this shall not apply where the buyer has provided the seller with security or has otherwise taken a measure that has extinguished such insecurity.

552. (Obligation to preserve goods)

(1) The seller of a specified good shall preserve such good with the care of a good manager until it is delivered. The same rule shall apply with respect to the seller of a fungible good after specification thereof.

(2) If a good is destroyed, lost or damaged due to the seller's failure to conform to the duty of care set forth in paragraph (1), the seller shall be liable to the buyer in accordance with the terms of the contract and the provisions of Section III, Chapter Four of Book Four of this Code.

553. (Right to acquire fruits)

If a good comprising the object of a sale produces natural fruits before it is delivered to the buyer, such fruits shall belong to the seller

unless otherwise agreed to between the parties. The same rule shall apply where the good produces rent or other legal fruits.

## Sub-section II. Obligations of Buyer

### 554. (General obligations of buyer)

The buyer is obligated to pay the purchase price to the seller, and to receive the goods that the buyer has purchased.

### 555. (Obligation to pay purchase price)

(1) The buyer has duty to pay the monetary purchase price agreed upon in the contract at the time and place agreed upon in the contract.

(2) Where the sale contract of a movable provides only a time for the delivery of goods subject to the sale contract or the sale contract of an immovable provides only a time for the acts required for the registration of an immovables subject to the sale contract, such time is presumed to apply also to the payment of the purchase price.

(3) If the contract does not provide for neither a time for delivery of a movable or for acts required to register an immovable subject to the contract, nor a time for the payment of the purchase price, the buyer shall have duty to pay the purchase price immediately after the seller's demand for payment.

(4) Where the place to effect payment of the purchase price is not provided for in the contract, if the purchase price is to be paid simultaneously with the delivery of the goods or acts required to register of the immovable subject to the contract, the buyer shall pay the purchase price at the place where the seller shall deliver a movable or complete the acts required for the registration of an immovables.

### 556. (Damages for delayed payment)

Even where payment of the purchase price is delayed, the buyer need not pay damages for the delayed performance until he receives delivery of the goods.

### 557. (Right to refuse payment when third party claims interest in goods)

(1) Where a third party claims an interest in the goods comprising the object of the sale, thereby resulting in a risk to the buyer of the loss of all or part of the right purchased by the buyer, the buyer may refuse to pay the purchase price in proportion to the extent of such risk. However, this shall not apply where the seller has provided the buyer with adequate security.

(2) In the cases described in paragraph (1), the seller may demand that the buyer deposit the amount of the purchase price with an authorized depository office.



558. (Defenses of simultaneous performance, insecurity)

(1) The buyer may refuse to pay the purchase price until the seller tenders performance of his obligation. However, this shall not apply when the seller's obligation has not yet become due or where it is agreed that the obligation to pay the purchase price shall be performed prior to the seller's performance.

(2) Even where the buyer has granted the seller a grace period for performance, if there is a significant risk of the seller's non-performance, the buyer may refuse to pay the purchase price. However, this shall not apply where the seller has provided the buyer with security or has otherwise taken a measure that has extinguished such insecurity.

559. (Delayed Receipt)

(1) In the event of a delay in the performance of the buyer's obligation to receive the goods, the seller may demand compensation for damages or terminate the contract in accordance with the provisions set forth in Sections III and IV, Chapter Four of Book Four.

(2) In the case described in paragraph (1), if the goods is destroyed, lost or damaged due to any reason other than the seller's negligence, the buyer shall assume the risk of such destruction, loss or damage.

(3) If the buyer refuses to receive delivery of the goods even though the seller has tendered delivery thereof, the seller may deposit the goods with the official depository office or sell them in accordance with the provisions of Articles 457 (Deposit) and 458 (Obligor's right to sell).

#### Section IV. Termination of Contract By Exercise of Repurchase Right

560. (Special agreement for repurchase)

(1) The seller may, based on a special agreement for repurchase that is clearly provided for in the written contract of sale, terminate the contract by returning the purchase price paid by the buyer and the costs described in Article 563 (Exercise of Repurchase).

561. (Period for repurchase)

(1) No period for repurchase shall exceed five years with respect to immovable property and two years with respect to movable property. If a longer period has been fixed, it shall automatically be reduced to five years with respect to immovable property or two years with respect to movable property.

(2) If a period has been once fixed for repurchase, it cannot subsequently be extended.

(3) If no period has been fixed for repurchase, the seller must exercise the right of repurchase within the period set forth in paragraph (1) of this article.

562. (Perfection of special agreement for repurchase against third parties)

(1) The buyer may exercise any and all rights associated with the owner. However, if such exercise contravenes the purpose of special agreement for repurchase, the buyer shall be liable for breach of the contract.

(2) The special agreement for repurchase shall be effective even against third parties only if it is registered simultaneously with the execution of the sale contract.

563. (Exercise of Repurchase)

(1) The seller may not repurchase the goods sold unless he tenders the purchase price and all costs incurred in connection with [the execution of] the contract within the period of repurchase.

(2) Where the buyer or a subsequent transferee has made expenditures in connection with the good, if they are necessary expenditures, the seller shall provide reimbursement for the entire amount thereof, while if they are merely useful expenditures, the seller must provide reimbursement of, at the seller's election, either the amount of such expenditures which the buyer or the person who bought the goods from the buyer made, or the increase in the value of the goods attributable to such expenditures to the extent that such increase in value continues to exist.

564. (Sale including special agreement for repurchase of co-owned good)

(1) Where co-owners sell all of a co-owned good by entering into a single contract that includes a special agreement for repurchase, if one of the co-owners demands repurchase either of his share only or of the entire co-owned good, the buyer need not respond to such demand.

(2) Where all co-owners sell their respective shares of the co-owned good by entering into separate contracts that include a special agreement for repurchase, each co-owner may repurchase his respective share separately from the other co-owners.

565. (Effect of non-exercise of right of repurchase)

Where a seller does not exercise a right of repurchase within a period fixed in accordance with Article 561 (Period for repurchase), the right of repurchase shall be extinguished, and the buyer's ownership shall not thereafter be subject to a demand for restitution.

## **Chapter Two EXCHANGE**

566. (Definition)

An exchange shall take effect when parties agree to transfer to one

another property rights<sup>9</sup> other than money.

567. (Mutatis mutandis application of provisions relating to sale)

The rules relating to sale shall apply *mutatis mutandis* to exchange.

### **Chapter Three GIFT**

568. (Definition)

A gift is a contract which comes into effect when one party declares the intention to give property to another party free of charge, and the other party accepts it.

569. (Transfer of ownership)

Transfer of the ownership of an object pursuant to a contract of gift shall be subject to the general principles provided in Articles 133(Creation, transfer and alternation of real rights by agreement), 134(Perfection), 135(requisite of transfer of title by agreement pertaining to an immovable), 160(Acquisition of ownership over immovable) and 187(Acquisition of ownership over movable).

570. (Gift not in writing)

Even where a promise of gift is made, if it is not put into writing, either party to the contract of gift may revoke the contract by withdrawing his declaration of intention; provided however that the declaration of intention may not be withdrawn in respect of any portion of the gift of which performance has been completed.

571. (Rescission of gift on account of breach of trust, etc.)

(1) If the donee commits a serious breach of trust against the donor, the donor shall be entitled to rescind the gift.

(2) Rescission of a gift under paragraph (1) in respect of any portion of the gift of which performance has been completed may be effected only within the period of 5 years following the occurrence of the serious breach of trust.

572. (Rescission of gift on account of poverty of donor)

(1) If the donor is reduced to a state of extreme poverty and is no longer able to maintain the living of himself and persons whom he has obligation to provide with support after making a declaration of intention to gift, the donor shall be entitled to rescind the gift.

(2) Rescission of a gift under paragraph (1) in respect of any portion of the gift of which performance has been completed may be effected only within the period of 5 years following said performance.

---

<sup>9</sup> See the footnote to Article 195 for the explanation of "property rights".

573. (Effect of rescission of gift)

In the event of rescission of a gift under Articles 571 (Rescission of gift on account of breach of trust, etc.) and 572 (Rescission of gift on account of poverty of donor), the donor shall be entitled to demand return of the gift in accordance with the provisions relating to the return of unjust enrichment.

574. (Alleviation of warranty liability)

A donor shall not be liable for any defect or deficiency in the thing or right which forms the subject matter of the gift; provided that this shall not apply if the donor is aware of such defect or deficiency but fails to advise the donee thereof.

575. (Periodical gift)

A gift of which the subject matter is periodical performance shall lapse upon the death of either the donor or the donee.

576. (Gift subject to a charge)

(1) A gift of which the donee is obliged to carry out a specified performance in order to receive the gift is referred to as a gift subject to a charge.

(2) In the case of a gift subject to a charge, the donor shall assume the same warranty liability as a seller to the extent of the charge.

(3) In the case of a gift subject to a charge, if one party performs, such party shall be entitled to demand that the other party perform.

(4) In the absence of specific agreement, one party to a contract of gift subject to a charge may withhold his performance until the other party [tenders to] perform.

(5) If the donee does not execute the charge, the donor of a gift subject to a charge shall be entitled to terminate the contract of gift in accordance with the provisions relating to termination.

577. (Gift upon death)

(1) A gift which is to become effective upon the death of the donor shall be referred to as a "gift upon death" (*donatio mortis causa*).

(2) The provisions relating to testamentary gifts shall apply *mutatis mutandis* to the effect of a gift upon death.

## **Chapter Four LOAN FOR CONSUMPTION**

### **Section I. Definition and Formation of Loans for Consumption**

578. (Definition of loan for consumption)

A loan for consumption is a contract whereby one party, called the lender, assumes an obligation to entrust the free use of money, foodstuffs, paddy or other fungible objects for a specified term to another party, called the borrower, who assumes the obligation to return objects of the same type, quality and quantity as those received from the lender upon the expiry of the said term.

579. (Formation of contract of loan for consumption)

A contract of loan for consumption is formed by agreement of the lender and the borrower alone.

580. (Revocation of contract of loan for consumption not in writing)

Either party shall be entitled to revoke at any time a contract of loan for consumption without interest that is not in writing; provided that this shall not apply to any portion of the object of the loan that has been delivered by the lender.

581. (Termination for deterioration of borrower's creditworthiness)

(1) If after the formation of a contract of loan for consumption but before delivery of the object thereof the economic situation of the borrower deteriorates and performance of the obligation to return becomes doubtful, the lender shall be entitled to terminate the contract.

(2) If a lender who has terminated a contract under paragraph (1) has received interest, commission or other consideration in advance, the lender shall return the same to the borrower.

582. (Quasi-loan for consumption)

(1) If a person who assumes an obligation to deliver money or other fungible objects other than pursuant to a loan for consumption agrees with the obligee to make such objects the subject matter of a loan for consumption, a loan for consumption shall be formed thereby.

(2) In cases described in paragraph (1), any security for the original obligation shall be presumed to be transferred to the new obligation.

## Section II. Loans for Consumption With Interest

583. (Claim for interest)

(1) "Interest" refers to that amount of money or other things calculated by multiplying a certain percentage by the number of things loaned and delivered to the borrower, as the price for consumption thereof.

(2) In respect of paragraph (1), the things loaned and delivered to the borrower are referred to as the principal, and the percentage

multiplied by the number of things constituting the principal is referred to as the "interest rate".

(3) The parties to a contract of loan for consumption may by agreement bring into existence a claim [separate from the loan] having as its subject matter the payment of interest; provided that a claim for interest shall not come into effect unless it is in writing and bears the signature of the borrower.

(4) If an agreement to bring into existence a claim for interest is made without writing, and the borrower, with awareness of the applicability of the proviso to paragraph (3), voluntarily pays the interest, the claim shall be valid to the extent of such payment.

584. (Legal interest rate<sup>10</sup> and agreed-on interest rate)

(1) The interest rate shall be that provided by law or by agreement of the parties.

(2) If the parties have agreed to the payment of interest but have not specified an interest rate, the interest rate specified in this Code or by special law shall apply.

(3) If the interest rate agreed by the parties is not specified in a document that complies with the formalities provided in paragraph (3) of Article 583(Claim for interest), it shall have no effect.

585. (Limitations on interest)

(1) The maximum interest rate refers to the upper limit on the interest rate that may be legally agreed by the parties, as provided by law or ordinances.

(2) The interest rate agreed by the parties may exceed the legal rate provided in paragraph (2) of Article 584(Legal interest rate and agreed-on interest rate), but may not exceed the maximum interest rate.

(3) If the agreement of the parties provides for an interest rate exceeding the maximum interest rate, such agreement shall be invalid in respect of that portion of interest that exceeds the maximum interest rate, and the borrower shall only be obliged to pay interest calculated on the basis of said maximum rate.

(4) If interest in excess of the maximum interest rate has already been paid, such excess portion shall be deemed to have been allocated to repayment of principal. If even after such allocation of the excess portion to principal there still remains a surplus on the side of the lender, this must be returned to the borrower together with damages in the form of interest at the legal interest rate calculated from the date of the payment which caused such surplus to arise until the date of return.

(5) In the application of this Article, if there is a difference

---

<sup>10</sup> See Article 315.

between the amount of principal stipulated under the contract and the number or amount of things actually delivered by the lender to the borrower, for example, if the lender deducts the amount of interest that will accrue in the future from the stipulated principal in advance, and deliver the remaining to the borrower, the number or amount of things actually delivered shall be taken as the principal amount.

(6) In the application of this Article, money and all other things other than principal received by the lender in relation to the contract of loan for consumption shall be deemed to be interest, regardless of whether they are described as honorarium, commission, survey fee or howsoever otherwise; provided that this shall not apply to contract execution fees and expenses of repayment.

586. (Time of payment of interest and statutory compound interest)

(1) Unless otherwise specifically provided, interest shall be payable upon the expiry of each year after delivery of the object; provided that if the object must be returned prior to the expiry of one year from delivery, interest shall be paid at the time of return.

(2) If more than one year's interest is in arrears, and the borrower does not pay such interest despite notice from the lender, the lender may compound such interest with the principal.

### Section III. Lender's Obligation to Lend

587. (Obligation to lend object)

(1) The lender assumes an obligation to allow the borrower to use things that are in conformity with the contract.

(2) From the time of delivery of the object, the borrower can freely use, profit from and dispose of the things loaned and shall bear the risk of destruction or loss thereof or damage thereto that is not attributable to fault on the part of the lender.

588. (Lender's warranty liability for things delivered belonging to another person)

(1) In the case of a contract of loan for consumption with interest, a lender who delivers things that are not his own property shall be obliged either to acquire the ownership thereof and transfer it to the borrower, or to substitute other things owned by the lender; provided that the borrower shall not be entitled to demand delivery of substitute things after consuming the things.

(2) If the lender is unable to fulfill the obligation described in paragraph (1), the borrower shall be entitled to terminate the contract.

(3) In cases described in paragraphs (1) or (2), a borrower who has accepted delivery of things loaned without knowing that the lender had no title thereto may demand compensation for damage from the lender.

(4) In the case of a contract of loan for consumption without interest, the provisions of paragraphs (1), (2) and (3) shall apply *mutatis mutandis* if the lender has delivered things belonging to another person with knowledge that he had no right to dispose of them and without disclosing this fact to the borrower.

(5) If a borrower of things owned by a person other than the lender returns the things delivered or the value thereof to the owner, he shall be exempted from the obligation to return vis-à-vis the lender, except where substitute things have been delivered and accepted by the borrower in accordance with paragraphs (1) or (4).

589. (Right of termination of lender who has delivered things belonging to another person)

A lender who has unknowingly delivered things belonging to another person and who is unable to transfer the ownership of those things or substitute things to the borrower may terminate the contract; provided that if the borrower, in good faith, has a claim for compensation for damage under Article 588(Lender's warranty liability for things delivered belonging to another person), such termination shall only be permitted if such damage has been compensated.

590. (Loan for consumption of defective things and lender's warranty liability)

(1) In the case of a contract of loan for consumption with interest, if there is a hidden defect in any things delivered by the lender, the borrower who has received the things without knowing of the defect may demand replacement by things without defect and compensation for any damage.

(2) In the case of a contract of loan for consumption without interest, a borrower who has received defective things may return the value of the defective things; provided that if the lender knew of the defect but did not advise the borrower thereof, paragraph (1) shall apply *mutatis mutandis*.

#### Section IV. Borrower's obligation to return

591. (Borrower's obligation to return)

(1) The borrower has an obligation to return, on the return date, things of the same type, quality and quantity as those received by delivery from the lender.

(2) The borrower of a loan for consumption with interest must pay interest according to the provisions of Articles 584(Legal interest rate and agreed-on interest rate) through 586(Time of payment of interest and statutory compound interest).

592. (Return in form of value)

(1) If the borrower becomes unable to return things loaned in



accordance with Article 591 (Borrower's obligation to return), the borrower shall be obliged to pay the value of the things loaned on the date of return at the place of return.

(2) If in a case described in paragraph (1) the date or place of return has not been specified, the amount of money equivalent to the value of the things loaned on the date and at the place of conclusion of the contract shall be payable.

593. (Change in value of currency, etc.)

In the absence of specific agreement, even if the value of the currency or things fluctuates prior to the date of return, the borrower must return the same number or unit of currency or things that were delivered to him.

594. (Time of return)

(1) If the parties have stipulated the date of return, the lender is not permitted to demand return of the object prior to said date; provided that this shall not apply if the borrower has been served with a bankruptcy notice, or causes the destruction or diminishment of the security.

(2) If the parties have not stipulated the date of return, the lender may give notice of demand of return within a reasonable period of time designated by him.

(3) In the case of a contract of loan for consumption without interest, the borrower may return the object at any time.

(4) In the case of a contract of loan for consumption with interest, the borrower may return the object prior to the agreed date of return; provided that if damage is thereby caused to the lender, the borrower must compensate such damage in accordance with Article 330 (Benefit of the determination of time).

595. (Place of return)

If there has been no agreement between the parties concerning the place of return, the borrower must return the object by bringing it to the permanent residence of the lender.

## **Chapter Five LEASE**

### **Section I. General Provisions**

596. (Definition of lease)

(1) A lease is a contract whereby one party allows another party to use and profit from a certain thing for consideration.

(2) Things comprising the subject matter of a lease may be movables

or immovables.

597. (Formation of lease)

A lease comes into effect when one party promises to allow the other party to use and take profit from a certain thing, and the other party promises to pay rent in exchange.

598. (Conditions for perfection of lease of immovable)

(1) A lease of an immovable may be held up against a subsequent acquirer of any real right over the immovable by virtue of the fact that the lessee has occupied, and continuously used and profited from the leased immovable.

(2) A lessee actually occupying a leased property may exercise the same rights as the owner to demand return [of a dispossessed thing], for removal of disturbance and/or for prevention of disturbance, against an infringement of the lease rights.

599. (Lease period)

(1) A lease may be entered into with or without stipulating a period.

(2) A lease of an immovable not in writing shall be deemed to be a lease without stipulation of period.

(3) A lease of an immovable for a period of 15 years or more shall be complied with the provisions set forth Article 244 (Definition of perpetual leases) et seq of this code.

## Section II. Effect of Lease

600. (Right and obligation of lessee to use and profit in accordance with normal method)

(1) The lessee shall have the right and obligation to use and profit from the leased property in a manner that is consistent with the contract or the nature of the property.

(2) If the lessee infringes the obligation described in paragraph (1), the lessor may terminate the contract.

(3) The lessor shall not interfere with the use and taking of profits by lessee in the normal manner.

601. (Lessee's duty of care as prudent manager)

(1) The lessee has a duty to manage the leased property with the care of a prudent manager.

(2) If the lessee infringes the obligation described in paragraph (1), the lessor may terminate the contract.

602. (Duty to repair)

The lessor has a duty to carry out repairs required for the use and profit from the leased property.

603. (Preservative action by lessor)

(1) The lessee shall not obstruct any action by the lessor that is required to preserve the leased property.

(2) If the lessor proposes to take action to preserve the leased property against the wishes of the lessee, and as a result of such action it would become impossible for the lessee to achieve the objectives for which he entered into the lease, the lessee may demand a reduction of the rental or may terminate the contract.

604. (Right of lessee to demand reimbursement of expenditures)

(1) If the lessee outlays any necessary expenditure that should be borne by the lessor, the lessee may immediately demand reimbursement from the lessor.

(2) If the lessee pays for improvements or other beneficial expenses, the lessee may demand upon the expiry of the lease that the lessor reimburse the lessee for the amount actually disbursed by the lessee or the increase in value of the property, at the discretion of the lessor, so long as the increase in value of the leased property remains in effect. However, upon application by the lessor, the court may grant a reasonable time for such reimbursement.

605. (Lessor's liability for defects in leased property)

(1) If the lessee did not examine the leased property whether it is suit to the condition mentioned in the written contract, when accepting the delivered property, the lessee may not demand that the lessor shall be responsible for the difference between the conditions stated in the written contract and the leased property which could have been easily found.

(2) If there is a hidden defect in the leased property of which the lessee was unaware, the lessee may demand the repair of such defect or the replacement of such property by a non defective property and the compensation for damage.

(3) The lessor may repair the defect at the lessor's own expense as long as this does not unduly harm the lessee's interest; provided that this shall not bar any claim by the lessee for damages.

(4) In lieu of making a demand described in paragraph (1), the lessee may demand reduction of the rental commensurate with the defect retroactive to the time that the lessee received the delivery of the leased property.

(5) If as a result of the hidden defect it is impossible for the lessee to achieve the objectives for which he entered into the lease, the lessee

may terminate the contract.

(6) Any demand for repairs, replacement, reduction of rental and termination must be made not later than one year from when the lessee became aware or should have become aware of the fact giving rise to such demand.

606. (Right of claim for reduction of rental or termination for decrease of income)

(1) If a lessee who has leased land with a view to profit therefrom receives less profit than the amount of the rental by reason of force majeure, he may demand that the rental be reduced to the amount of such profit.

(2) In cases described in paragraph (1), if a lessee receives profit less than the amount of the rental for two or more years successively by reason of force majeure, the lessee may terminate the lease contract.

607. (Right of claim for reduction of rental or termination for partial loss of leased property)

(1) If a part of the leased property is destroyed or lost otherwise than by reason of negligence on the part of the lessee, the lessee may demand reduction of the rent proportional to the part that has been destroyed or lost.

(2) In cases described in paragraph (1), if the remaining part alone is not sufficient to enable the lessee to attain the objectives for which the lease was entered into, the lessee may terminate the lease contract.

608. (Transfer of lease rights and sublease)

(1) Except in the case of a perpetual lease, the lessee is not permitted to transfer his lease rights, or to sublease the leased property, without the permission of the lessor.

(2) If contrary to paragraph (1) the lessee allows a third party to use or profit from the leased property, the lessee may terminate the lease contract.

609. (Sublease)

(1) If a lessee lawfully subleases the leased property, the sublessee shall assume the lease obligations directly vis-à-vis the lessor. An advance payment to the sublessor cannot be held up as payment of the sublease rental to the lessor.

(2) The provisions of paragraph (1) shall not prevent the lessor exercising his rights against the lessee.

610. (Obligation to pay and time of payment of rental)

(1) The lessee assumes an obligation to pay the rental to the lessor at the agreed time.

(2) If there is no specific provision in the contract concerning the time of payment of rental, it shall be paid at the end of each month in the case of movables and buildings, and at the end of each year in the case of land; provided that if there is a harvest season the rental shall be paid without delay upon the close of such season.

611. (Lessee's duty to report)

If repairs are required to the leased property or a third party asserts any rights over it, the lessee shall report without delay to the lessor, except where the lessor is already aware of such fact.

### Section III. Termination of lease

612. (Expiry of term)

A lease for which a term has been provided shall terminate upon the expiry of such term.

613. (Refusal of renewal of immovable lease)

In the case of a lease of an immovable, the parties shall be deemed to have agreed to renewal of the term of such lease unless a party has declared his intention to refuse to renew not later than three months prior to the expiry of the term of the lease, in the case of a building, and not later than one year prior to the expiry of the term of the lease in the case of land; provided that the lease as renewed shall be a lease without fixed term.

614. (Tacit renewal)

In the case of a lease of a movable, if the lessee continues to use or profit from the leased property after the expiry of the lease term, and moreover the lessor is aware of this fact and makes no objection, the lease shall be presumed to have been renewed as a lease without fixed term and with conditions identical to those of the original lease (except for the term).

615. (Notice of cancellation of lease without fixed term)

(1) If no term is fixed for a lease in the contract, either party may give notice of cancellation at any time. If the notice of cancellation does not fix a time of termination of the lease contract, or the period from the time of the notice until the time of termination stated therein is less than the applicable period set forth below, the lease contract shall terminate upon the expiry of the applicable period set forth below:

- a) 1 day in the case of movables
- b) 3 months in the case of buildings
- c) 1 year in the case of land.

(2) In the case of a lease of land which has a harvest season, the notice of cancellation shall be given after the end of the harvest season

and before the commencement of the next cultivation.

616. (Reservation of right of cancellation)

Even in cases where parties have fixed a term for the lease, if one or both parties have reserved the right to cancel within such term, the provisions of Article 615 (Notice of cancellation of lease without fixed term) shall apply *mutatis mutandis*.

617. (Non-retroactivity of termination)

Termination of a lease shall have effect only for the future.

618. (Obligation to return leased property)

(1) Upon termination of a lease, the lessee shall restore the leased property to its original condition and return it to the lessor immediately.

(2) Except for wear and tear arising from normal use, the lessee shall be liable to repair, or pay compensation for, all damage arising due to fault on his part.

619. (Lessee's right of removal)

Upon termination of the lease, the lessee may remove any things that have been attached to the leased property.

620. (Successor's right to terminate after death of lessee)

The lessee's successor(s) may terminate the lease contract if the successor(s) do not wish to continue it.

621. (Period for exercise of right to claim damages and/or reimbursement of expenses)

Any claim by the lessor for damages for loss arising from the lessee's use or profit taking in breach of the spirit of the contract, and any claim by the lessee for reimbursement of expenses disbursed by the lessee, must be made not later than one year following the return of the leased property to the lessor.

#### Section IV. Profit-sharing Lease

622. (Definition of profit-sharing lease)

A contract whereby a landowner [("lessor")] lends land or livestock to another person [("lessee")] and allows the lessee to profit therefrom subject to sharing the profits with the lessor is referred to as a "profit-sharing lease".

623. (Method of sharing profits)

Unless otherwise agreed, profits shall be shared equally.

624. (Lessee's right to dispose of profits)

The lessee may only dispose of any profits distributable to himself after completing the distribution of the profits that are due to the lessor.

## **Chapter Six LOAN FOR USE**

625. (Definition of loan for use)

A loan for use refers to a contract pursuant to which one party allows another party to use and profit from a certain thing free of charge.

626. (Conditions for formation of loan for use)

A loan for use comes into effect by virtue of one party receiving a certain thing from the other party subject to a promise to return it after using and profiting from it free of charge.

627. (Borrower's obligations)

(1) The borrower shall manage the thing borrowed with the care of a prudent manager.

(2) The borrower shall use and profit from the thing borrowed in a manner that is consistent with the contract or the nature of the thing borrowed.

(3) The borrower shall not allow any third party to use or profit from the thing borrowed without the permission of the lender.

(4) The lender may terminate the contract if the borrower breaches the provisions of paragraphs (1), (2) or (3).

628. (Allocation of expenses)

(1) The borrower shall bear the normal necessary expenses of the thing borrowed.

(2) If the borrower disburses necessary expenses other than the normal necessary expenses, such as major repairs, or beneficial expenses such as for improvements of the thing borrowed, the borrower may demand upon the expiry of the loan that the lender reimburse the borrower either for the amount actually disbursed by the borrower or the increase in value of the thing borrowed, at the discretion of the lender, so long as the increase in value of the thing borrowed remains in effect; provided, however, that upon application by the lender, the court may permit a reasonable time for such reimbursement.

629. (Warranty liability of lender)

The lender assumes no liability for warranty of any defect in the thing

borrowed or deficiency in the title thereto; provided that this shall not apply where the lender was aware of such defect or deficiency but did not advise the borrower thereof.

630. (Termination of loan for use for expiry of term or completion of use and taking of profits)

(1) A loan for use with a specified term shall terminate upon the expiry of the said term.

(2) If no term has been specified by the parties, but the purpose of the loan for use has been specified, the loan for use shall terminate upon completion of use and taking of profits in accordance with such purpose; provided, however, that if the use and taking of profits have not been completed on account of neglect by the borrower, the loan for use shall terminate upon the expiry of a sufficient time for such use and taking of profits.

631. (Lender's notice of cancellation)

(1) If neither the term nor the purpose is specified, the lender may give notice of cancellation of the loan for use at any time.

(2) Even before the expiry of the term or the completion of use and taking of profits, if the lender has urgent and unforeseeable need for the loaned thing, he may give notice of cancellation of the loan.

632. (Borrower's notice of cancellation)

Regardless of whether a term has been specified, the borrower may give notice of cancellation of the loan; provided that if the lender has the benefit of time, the borrower shall be liable to compensate the lender for any damage arising from the notice of cancellation.

633. (Termination of loan for use upon the death of the borrower)

A loan for use shall terminate upon the death of the borrower.

634. (Obligation to return borrowed thing)

(1) Upon termination of the loan for use, the borrower shall restore the borrowed thing to its original condition and immediately return it to the lender.

(2) Except for wear and tear arising from normal use, the borrower shall be liable to repair, or pay compensation for, all damage arising due to any cause attributable to the fault on his part.

635. (Borrower's right of removal)

Upon termination of the loan for use, the borrower may remove any things that have been attached to the borrowed thing.

636. (Period for exercise of right to claim damages and/or reimbursement of expenses)



Claims by the lender for damages arising from the borrower's use or profit taking in breach of the spirit of the contract, and claims by the borrower for reimbursement of expenses disbursed by the borrower, must be made not later than one year following the return of the borrowed thing to the lender.

## **Chapter Seven MANDATE**

637. (Definition of mandate)

"Mandate" refers to a contract whereby one party, called the "mandator", grants to another party, called the "mandatary", the power to perform certain business on behalf of the mandator.

638. (Mandate in principle gratuitous)

(1) A mandate may be onerous or gratuitous. If no intention is declared that the mandate be onerous, it shall be presumed to be gratuitous.

(2) Article 644 (Mandatary's right to demand remuneration) shall govern remuneration in the event that the mandate is onerous.

639. (Formalities of contract)

A contract of mandate shall be formed by agreement of the parties alone.

640. (Mandatary's duty of care)

(1) The mandatary shall perform the mandated business in accordance with the tenor of the mandate, and with the care of a prudent manager; provided that this shall not prevent the parties from agreeing on a lesser standard of care for the mandatary.

(2) If the mandatary breaches the mandatary's duty of care under paragraph (1) and thereby inflicts damage on the mandator, the mandator may claim compensation for such damage from the mandatary. In such a case, if the mandate is gratuitous, the court may reduce the amount of compensation.

641. (Mandatary's duty to report)

The mandatary shall report on the progress of the conduct of the mandated business whenever requested by the mandator, and upon termination of the mandate shall provide a detailed final report.

642. (Mandatary's obligation to deliver)

(1) The mandatary must deliver to the mandator all money and other things received in the course of performing the mandated business. The mandatary must also deliver the received fruits to the mandator.

(2) The mandatary must transfer to the mandator any rights obtained

by the mandatary in its own name on behalf of the mandator.

643. (Mandatary's liability to compensate for money spent)

If the mandatary spends for his own benefit money that must be delivered to the mandator or that must be used for the benefit of the mandator, he must pay interest to the mandator as from the date of such spending. The mandatary shall also be liable to compensate the mandator for damage, if any.

644. (Mandatary's right to demand remuneration)

(1) The mandatary cannot demand remuneration unless there is a specific agreement with regard thereto.

(2) If a mandatary is to receive remuneration, he can only demand it when the mandated duty has been performed; provided that if there is a provision for remuneration to be paid on the basis of a period, payment may be demanded upon the expiry of such period.

(3) If a mandate terminates in the course of its performance for cause not attributable to fault on the part of the mandatary, the mandatary may demand remuneration in proportion to the performance already effected.

645. (Advance payment of expenses by mandator)

Where expenses are necessary in order to perform the mandated business, the mandator shall pay such expenses in advance upon demand by the mandatary.

646. (Mandatary's right to demand reimbursement of expenses, etc.)

(1) If a mandatary pays any expenses that are considered necessary for the performance of the mandated business, the mandatary may demand from the mandator the reimbursement of such expenses together with interest thereon from the date on which they are defrayed.

(2) If the mandatary has assumed an obligation that is considered necessary for the performance of the mandated business, the mandatary may require the mandator to discharge such obligation in mandatary's place, or if the obligation is not yet due, to provide reasonable security.

(3) If a mandatary, without fault on his part, sustains damage as a result of performing the mandated business, the mandatary may demand that the mandator compensate such damage; provided that where such damage arises from the intention or negligence of a third party, the mandatary may only claim compensation from the mandator to the extent that he is unable to receive compensation from such third party.

647. (Termination of mandate)

(1) A mandate may be terminated by either party at any time.

(2) If a party terminates a mandate at a time that is unfavorable to the other party, the terminating party shall compensate the other party for any damage, provided that this shall not apply where there are unavoidable grounds.

648. (Non-retroactivity of termination)

Termination of a mandate shall have effect only for the future; provided that this shall not preclude the making of a claim for damages where a party has been negligent.

649. (Grounds of termination of mandate)

(1) In addition to termination pursuant to Article 647 (Termination of mandate), a mandate shall terminate for the following grounds:

- a) death of the mandator or mandatary;
- b) the mandator or mandatary being served with a declaration of bankruptcy;
- c) the mandator being served with a declaration of commencement of guardianship or curatorship;
- d) the mandatary being served with a declaration of commencement of guardianship or curatorship;
- e) if the mandator or mandatary is a corporation, its dissolution;
- f) if the mandator or mandatary is a corporation, its merger with another corporation; or
- g) the occurrence of any other ground agreed by the parties.

(2) Even where a ground described in items (i) through (vi) of paragraph (1) occurs, the parties may agree that the mandate shall not terminate; provided that this shall not apply in the cases of death or commencement of guardianship of the mandatary, or dissolution or merger of the mandatary where it is a corporation.

650. (Duties of mandatary in emergency after termination of mandate)

In the case of an emergency arising after the termination of the mandate, the mandatary, his successor or legal representative shall take all necessary measure until the mandator, his [heir] or legal representative is able to deal with the mandated business.

651. (Conditions for perfection of termination of mandate)

Regardless of whether it relates to the mandator or to the mandatary, no ground of termination of a mandate can be set up against the other party unless said other party is given notice thereof or is aware thereof.

## **Chapter Eight CONTRACT FOR WORK**

652. (Definition of contract for work)

A contract for work is a contract whereby one party [ (the "contractor") ]

assumes the obligation to complete agreed work and the other party [(the "principal")] assumes the obligation to pay remuneration for the results of such work.

653. (Time of payment of remuneration)

The remuneration shall be paid simultaneously with the delivery of the object of the work; provided that if no delivery of a thing is required, the contractor may demand the remuneration after the completion of the work.

654. (Obligation to complete work without defect)

(1) The contractor assumes an obligation vis-à-vis the principal to complete the work without defect.

(2) Work shall be deemed to be defective if it does not conform to the nature agreed. If the nature of the work has not been agreed, work shall be deemed to be defective if it is not fit for the use assumed in the contract, and if no specified use is assumed in the contract, the work shall be deemed to be defective if it is not fit for normal use.

(3) Work shall be deemed to be defective if the contractor produces work that is different from that ordered, or deficient in quantity.

655. (Demand for subsequent completion)

(1) If the work is defective, the principal may demand that the contractor effect subsequent completion within a reasonable time designated by the principal. In such a case, the contractor at his option may either rectify the defect or redo the work.

(2) The contractor may refuse to effect subsequent completion if the cost thereof is excessive in comparison with the detriment resulting from the defect.

(3) If the contractor redoes the work, he may demand that the principal return the defective work.

656. (Rectification of defect by principal)

(1) After the expiry of the reasonable time fixed for the subsequent completion of the work, the principal may rectify the defect himself and demand payment of the cost of rectification by the contractor.

(2) If the subsequent completion [by the contractor] is unsuccessful, or if relying on the contractor in effecting the subsequent completion of the work is judged to be unduly detrimental to the principal, the principal may also rectify the defect himself and demand payment of the cost thereof by the contractor.

(3) In cases falling under paragraphs (1) or (2), the principal may demand that the contractor pay the cost of rectification in advance.

(4) The provisions of paragraphs (1), (2) or (3) shall not apply to cases where the contractor had refused to effect subsequent completion on the basis of paragraph (2) of Article 655 (Demand for subsequent completion).

657. (Principal's right of termination)

(1) The principal may terminate the contract on the ground of the defect in the work in accordance with the provisions of Book Four, Chapter Four, Section IV (Termination of contract). The same shall apply to cases where subsequent completion by the contractor is unsuccessful or where relying on the contractor in effecting the subsequent completion of the work is judged to be unduly detrimental to the principal.

(2) The provisions of paragraph (1) shall not apply to buildings or other structures on land. However, where because of a major defect the structure has no use value to the principal, the provisions of paragraph (1) shall apply.

658. (Right of principal to demand reduction of price)

(1) After the expiry of the reasonable time fixed for subsequent completion of the work, the principal may demand reduction of the remuneration for the work on the ground of the defect in the work by declaration of intention to the contractor. The same shall apply to cases where subsequent completion by the contractor is unsuccessful or where relying on the contractor in effecting the subsequent completion of the work is judged to be unduly detrimental to the principal.

(2) In response to the demand by the principal described in paragraph (1), the remuneration for the work shall be reduced by the ratio of the value of the defective work to the value of the work without defect.

659. (Principal's right to demand damages)

(1) In lieu of, or in addition to exercising his rights provided in Articles 655 (Demand for subsequent completion) through 658 (Right of principal to demand reduction of price), a principal may make a demand for damages in accordance with the provisions of Book Four, Chapter Four, Section III (Damages), provided that a demand for damages in lieu of subsequent completion may only be made in cases where, after the expiry of the reasonable time fixed for subsequent completion of the work, subsequent completion by the contractor is unsuccessful or where relying on the contractor in effecting the subsequent completion of the work is judged to be unduly detrimental to the principal.

(2) Where the cost of subsequent completion is considered excessive in comparison with the detriment resulting from the defect, the principal may not demand as damages under paragraph (1) the amount of the cost of rectification of the defect.

660. (Treatment of cases where the defect is the result of the materials or directions of the principal)

(1) The provisions of Articles 655(Demand for subsequent completion) through 659(Principal's right to demand damages) shall not apply in cases where the defect in the work arose as a result of the nature of the materials provided by the principal or the directions given by the principal; provided that mere wishes expressed by the principal shall not be deemed to be directions.

(2) The provisions of paragraph (1) shall not apply if the contractor was aware that the materials or directions were not appropriate but did not advise the principal to this effect.

661. (Period for exercise of rights)

(1) The rights provided in Articles 655(Demand for subsequent completion) through 658(Right of principal to demand reduction of price) must be exercised within a period of 1 year.

(2) The period described in paragraph (1) shall be computed from the time that principal became aware or ought to have become aware of the defect.

662. (Special agreements exempting warranty liability)

Even where a special agreement has been made exempting or limiting any liabilities provided in Articles 655(Demand for subsequent completion) through 658(Right of principal to demand reduction of price), the contractor shall not be entitled to any exemption or limitation of liability in respect of any fact of which he was aware but did not advise the principal.

663. (Principal's right of termination while work is uncompleted)

So long as the contractor has not completed the work, the principal may terminate the contract at any time by paying damages.

## **Chapter Nine CONTRACT OF EMPLOYMENT**

664. (Contract of employment)

(1) A contract of employment is formed by the promises of one party to perform services under employment, and another party to pay wages for it.

(2) The party who promises to perform services under employment is referred to as the "employee" and the other party as the "employer".

665. (Specification of working conditions)

(1) At the time of conclusion of the contract of employment, the employer must specify the wages, working hours and other working conditions for the employee.

(2) The employee may terminate the contract of employment immediately

if the actual working conditions differ from those specified in accordance with paragraph (1).

666. (Duty of care relating to safety)

When establishing and managing the place, facilities and equipment to be used for the employee's work, the employer shall be obliged to take care to protect the worker's life and health, etc. from danger.

667. (Personal exclusivity of employment contract)

(1) Without the permission of the employee, the employer cannot assign his rights to a third party.

(2) Without the permission of the employer, the employee may not procure a third party to perform services in his place.

(3) If a party breaches paragraph (1) or paragraph (2), the contract of employment may be terminated.

668. (Application of Labor Law)

Employment contracts shall be governed by the provisions of the Labor Law in addition to those of this Code.

## **Chapter Ten BAILMENT**

### **Section I. General Provisions Relating to Bailment**

669. (Definition of bailment)

(1) Bailment refers to a contract whereby one party, the bailee, accepts a thing for custody for a certain period from another party, the bailor, and promises to return the identical thing to the bailor upon the expiry of the period of custody.

(2) Except where there is specific agreement, the bailor assumes no obligation to pay remuneration to the bailee; provided that the bailee may demand reasonable remuneration from the bailor even in the absence of specific agreement if the bailee has concluded the contract of bailment as its own business or where there is a provision of law to this effect.

670. (Requirement of delivery of thing for effective contract)

(1) A contract of bailment is formed by virtue of receiving the delivery by the bailee of a thing comprising the object of the bailment in accordance with an agreement.

(2) If a thing comprising the object is already possessed by the bailee, the contract of bailment is formed by virtue of the agreement to the effect that a bailment relationship shall be formed. In the case of a thing possessed by a third party, the contract of bailment is formed

at the time when the possession is assigned by direction<sup>11</sup>.

671. (Effectiveness of consensual contract of bailment)

If there is a mere agreement between the parties to form a bailment in the future, either party may withdraw from such agreement at any time until delivery of the object of the bailment; provided that in the case of a promise to form an onerous contract of bailment, if in breach of such promise the party who is to become the bailee causes damage to the other party by refusing to receive the delivery of the object of the bailment, he must compensate the other party for such damage unless he has a good reason for such refusal.

672. (Bailment contract concluded by non-owner)

Even if the bailor is not the owner of the object of the bailment, the bailment contract is validly formed. In such a case, even if a suit claiming return of the thing is filed by the owner against the bailee, the bailee can return the thing to the bailor; provided that this shall not apply where the owner's claim is found to be valid [by the court].

673. (Bailee's duties)

(1) A bailee shall be obliged to keep custody of the thing bailed with the care of a prudent manager.

(2) The bailee may not use the thing bailed without the consent of the bailor.

674. (Liability of bailee)

(1) The bailee shall be liable to pay damages if he destroys, loses or damages the object of the bailment; provided that this shall not apply if the bailee proves that such destruction, loss or damage was not the result of negligence on his part.

(2) In the case of a bailment effected at the request of the bailee, the bailee shall not be exempted from liability for destruction or loss of or damage to the object of the bailment unless he proves force majeure.

(3) In the case of hotels, lodging houses, restaurants, bathhouses or other facilities where guests congregate, the owner of the facility who accepts bailment of things by guests shall not be exempted from liability for destruction or loss of or damage to the object of the bailment unless he proves force majeure.

675. (Reduction of liability of gratuitous bailee)

In the case of a gratuitous bailment, the court may reduce the liability of the bailee in damages, taking into account the financial situation of both the parties and other circumstances generally.

---

<sup>11</sup> See paragraph (4) of Article 228.



676. (Mitigation of liability where valuables not declared)

The court may reduce the liability of the bailee in damages where the bailor has deposited cash, negotiable instruments or other valuable items without declaring the type and the value thereof to the bailee.

677. (Duty of personal custody)

(1) The bailee may not without the permission of the bailor entrust the custody of the object of the bailment to any third party.

(2) In cases where the bailee is permitted to entrust the custody of the object of the bailment to a third party, the bailee shall be liable for the choice of and the supervision of the sub-bailee.

678. (Sub-bailment)

(1) The provisions of Chapter 10 (Bailment) shall apply *mutatis mutandis* to the relationship of the bailee and the sub-bailee.

(2) The sub-bailee shall have the same rights and obligations as the bailee vis-à-vis the bailor.

(3) If the sub-bailee returns the object of the bailment to the bailor, he shall be exempted from the obligation to return it to the bailee.

679. (Bailee's notice obligation)

If a third party files a suit against the bailee claiming any rights over the object of the bailment or seizes it, the bailee shall report to the bailor without delay.

680. (Bailor's demand to return)

Even where the parties have stipulated a time for return of the object of the bailment, the bailor may demand return thereof at any time.

681. (Return by bailee)

(1) If the parties have not stipulated a time for return of the object of the bailment, the bailee may return it at any time.

(2) If a time for return has been stipulated, the bailee may not return the object prior to such time except in unavoidable circumstances.

682. (Details of obligation to return)

(1) The bailee assumes an obligation to return to the bailor the identical thing received at the time of the bailment.

(2) In cases where the bailee is not liable for destruction or loss of or damage to the object of the bailment, the bailee shall be obliged to deliver to the bailor any insurance money or other things received as replacement for the original object that was destroyed, lost or damaged.

683. (Treatment of fruits, etc.)

If the bailee receives any fruits or income from the object of the bailment, the bailee must deliver the same to the bailor.

684. (Bailment of money)

(1) If a bailee accepts a bailment of money, the bailee must keep custody of it in the manner prescribed in the contract. In such a case, the bailee does not assume any liability to pay interest, except where this is specifically agreed.

(2) Where the money can be kept as a bank deposit, the provisions of Article 683(Treatment of fruits, etc.) shall apply to interest.

685. (Expense of return of object)

In the case of a gratuitous bailment, the bailor shall bear the cost of return of the object of the bailment; provided that where the bailee changes the location of the object, the bailee shall bear any increase in the cost of return resulting from such change.

686. (Obligation of bailor to reimburse costs)

(1) The bailor shall be required to pay the costs of keeping the object of the bailment.

(2) The bailee may demand that the bailor compensate him for any damage suffered on account of the object of the bailment without negligence on the part of the bailee.

687. (Place of return)

In the absence of any specific provision in the contract, the object of the bailment shall be returned at the place where it should be kept; provided that if the bailee has changed the location of the object for good reason, it may be returned at its current location.

688. (Bailee's right of retention)

The bailee may retain the object of the bailment until such time as the bailor pays any costs and damages prescribed in paragraphs (1) and (2) of Article 686(Obligation of bailor to reimburse costs).

## Section II. Mingling of objects of bailment

689. (Mingling of objects of bailment)

Where a bailee has accepted for bailment objects of the same type from multiple bailors and under the contract such objects can be kept together without being separated, each bailor shall have a right proportionate to the quantity of his own object over the whole of the objects kept together by the bailee.

### Section III. Bailment for consumption

690. (Bailment for consumption)

If there is provision in the bailment contract permitting the bailee to consume the object of the bailment, the bailee assumes an obligation to return an object of identical type and quantity to the bailor.

691. (*Mutatis mutandis* application of provisions governing loan for consumption)

The provisions governing loan for consumption shall apply *mutatis mutandis* to a bailment for consumption under Article 690 (Bailment for consumption); provided that if no time of return is provided in the contract, the bailor may demand return at any time.

### Section IV. Bailment of object in dispute

692. (Definition of bailment of object in dispute)

A bailment of an object in dispute refers to an agreement by a number of persons to deposit with a third party an object of which the first-mentioned parties are disputing the right of possession or ownership pending the conclusive determination of the holder of such rights.

693. (Parties to bailment of object in dispute)

(1) Where an object in respect of which a number of parties are claiming rights is in the possession of another party, the disputing parties, with the consent of the possessor of the object, may conclude an agreement to place the custody of the object with a third party. In such a case, the bailment agreement will come into force at the time of delivery of the object in dispute by the current possessor to the third party.

(2) In cases described in paragraph (1), the disputing parties may also conclude a bailment agreement that makes the current possessor the bailee of the object in dispute.

694. (Condition of validity)

A bailment of an object in dispute shall not be valid unless all the parties claiming rights over the said object consent.

695. (In principal onerous)

In the case of a bailment of an object in dispute, the bailors assume an obligation to pay remuneration to the bailee. If there is no agreement by the parties as to remuneration, the bailee may demand a reasonable amount of remuneration from the bailors.

696. (Return of object in dispute)

Upon the conclusion of the dispute, the bailee shall return the object to the party found to be entitled to it.

697. (Termination of bailment agreement concerning object in dispute)

The bailee may not return the object in dispute to the bailors prior to the resolution of the dispute unless all the bailors agree.

698. (Bailment of object in dispute by court order)

The court in which a case over a possession or aownership of a goods is pending, may order the object in dispute placed in the custody of a third party even in the absence of agreement by the parties.

## **Chapter Eleven PARTNERSHIP**

699. (Definition of partnership)

A partnership contract refers to a contract for the establishment of an organization without judicial person's status for the purpose of carrying on a common undertaking with contributions made by each party.

700. (Establishment of partnership)

(1) A partnership refers to an organization established by agreement of partners to contribute to and carry on a common undertaking.

(2) The contributions to be made by each partner may take the form of services instead of property rights.

(3) If a partner contributing money is late in payment, in addition to interest in arrears he shall be liable for any damage suffered by the partnership as a result of such delay.

(4) In case where acts of establishing a partnership of any party among the parties who agreed to establish the partnership become void or are rescinded under the provisions Section II (Defective declaration of intention and the validity of the contract) of Chapter 2 in Book Four, the partnership shall be deemed to have been established by the other parties; provided that if by reason of the lack of the withdrawing party the objective of the partnership cannot be attained, the partnership shall be deemed not to have been established.

701. (Co-ownership of partnership property)

(1) The contributions of the partners and all other partnership property shall be co-owned by all the partners.

(2) No partner may seek partition of the partnership property prior to the dissolution of the partnership; provided however that where all the partners agree, a partner may seek partition of the partnership property prior to the dissolution of the partnership.

(3) A partition described in the proviso of paragraph (2) may not be set up against a third party who entered into a transaction with the partnership prior to the partition.

(4) The partners may not dispose of their shares in the partnership property.

702. (Method of conducting business)

(1) In the absence of any provision in the contract that mandates the business of the partnership to a particular partner or a third party, each partner shall have the power to conduct said business; provided that the conduct of the business of the partnership shall be determined by a majority of the partners.

(2) Where the conduct of the business of the partnership is mandated by the contract to more than one partner or third party, said conduct shall be determined by a majority of said persons.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any partner or manager of the business may conduct the ordinary business of the partnership alone; provided that this shall not apply if any other partner or manager raises an objection before the completion of such business.

703. (*Mutatis mutandis* application of provisions governing mandate)

The provisions of Articles 640(Mandatory's duty of care) through 646(Mandatory's right to demand reimbursement of expenses, etc.) shall apply *mutatis mutandis* to managing partners of a partnership.

704. (Resignation or dismissal of managing partner)

(1) A managing partner may not resign, nor may the managing partner be dismissed, without good reason.

(2) The approval of a majority of the other partners must be obtained in order to dismiss a managing partner for good reason.

705. (Right to inspect status of business and assets)

Whether or not they are managing partners, all partners shall have the right to inspect the business and the partnership assets.

706. (Right to demand dividends, ratio of distribution of profit and loss)

(1) The partners shall periodically calculate the profit and loss, and may demand a dividend in the event of a profit.

(2) If the partners have not stipulated the ratio of distribution of profit and loss, it shall be based on the value of each partner's contribution.

(3) If a stipulation has been made of the distribution ratio for profit or loss alone, such ratio shall be presumed to apply to both profit and loss.

707. (Apportionment of losses among partners vis-à-vis creditor)

(1) An obligation arising from the acts of the partnership is a joint-obligation of the partners, but the obligation should be performed initially from the partnership property, and where in case the partnership property is not enough to perform all obligation, each partner shall perform from his own property.

(2) Unless otherwise agreed, the proportion of each partner's liability shall be decided according to each contribution.

708. (Prohibition of set-off of partnership's claim)

A debtor of the partnership cannot set off his debt against a claim that the debtor holds against a partner.

709. (Voluntary withdrawal)

(1) If no period has been stipulated in the contract for the duration of the partnership, or if such duration is stipulated to be the life of a certain partner, any partner may withdraw at any time; provided, however, that no partner may withdraw at a time that would be unfavorable to the partnership except for unavoidable reason.

(2) Even if a duration has been stipulated for the partnership, any partner may withdraw for unavoidable reason.

(3) Withdrawal shall be effected by declaration of intention to all the other partners.

710. (Involuntary withdrawal)

In addition to the cases described in Article 709 (Voluntary withdrawal), a partner shall withdraw upon the occurrence of any of the following events:

- a) Death;
- b) Bankruptcy;
- c) Being served with a declaration of commencement of guardianship; or
- d) Expulsion.

711. (Expulsion)

Expulsion of a partner may be done only for reasonable cause, with the consent of all the other partners; provided that expulsion cannot be set up against the expelled partner until he has been given notice thereof.

712. (Return of share to withdrawing partner)

(1) Accounts shall be taken between a withdrawing partner and the

other partners on the basis of the status of the partnership property at the time of withdrawal.

(2) Regardless of the type of contribution, the share of a withdrawing partner may be returned in cash.

(3) With regard to any matter that was not yet concluded at the time of withdrawal, account shall be taken upon the conclusion of such matter.

(4) An expelled partner's share shall be returned together with interest at the legal interest rate calculated from the date of notice of expulsion until return.

713. (Dissolution of partnership)

(1) A partnership shall be dissolved upon the occurrence of any of the following events:

- a) The conclusion, or the impossibility of conclusion, of the business that was the objective of the partnership;
- b) Unanimous agreement of the partners;
- c) The partners having been reduced to one person; or
- d) The expiry of the duration of the partnership stipulated in the partnership agreement.

(2) Where there is unavoidable reason, any partner may demand dissolution of the partnership.

(3) A demand under paragraph (2) shall be effected by declaration of intention to all the other partners.

714. (Non-retroactivity)

The dissolution of a partnership shall not have retroactive effect.

715. (Liquidators)

(1) If a partnership is dissolved, the liquidation shall be carried out by all the partners jointly, or by liquidator(s) appointed by the partners.

(2) Unless otherwise provided in the partnership contract, the appointment of liquidator(s) shall be determined by a majority of the partners.

716. (Conduct of business by liquidators)

If there is more than one liquidator, Article 702 (Method of conducting business) shall apply *mutatis mutandis*.

717. (Resignation or dismissal of liquidator(s))

Where liquidator(s) have been selected from among the partners by unanimous agreement of the partners, the provisions of Article 704 (Resignation or dismissal of managing partner) shall apply *mutatis*

*mutandis.*

718. (Duties and powers of liquidators, method of distribution of surplus property)

(1) The provisions of Article 71 (Duties and powers of liquidators) shall apply *mutatis mutandis* to the duties and powers of the liquidators.

(2) Surplus property shall be distributed in proportion to the value of each partner's contribution.

## **Chapter Twelve LIFE ANNUITY**

719. (Definition of life annuity contract)

(1) A contract of life annuity refers to a contract pursuant to which one party, the annuity debtor, promises to assume an obligation to deliver money periodically to another party, the annuity creditor, or to a third party, until the death of the annuity debtor, annuity creditor or third party, and in exchange the annuity creditor promises to assume the burden of the obligation to pay the principal as consideration thereto.

(2) A contract of life annuity shall not be valid unless it is in writing.

(3) An annuity creditor shall acquire a preferential right in regard to annuity over movable or immovable of the principal delivered to the other party. The preferential right which the annuity creditor obtains, shall be deemed as a preferential right prescribed in Article 797 (Preferential right for sale of a movable) or Article 802 (Preferential right for a sale of an immovable), in accordance with the types of the object.

720. (Calculation of life annuity)

A life annuity shall be calculated on a daily basis.

721. (Non-performance of annuity obligation)

(1) If the annuity debtor neglects to regularly deliver the annuity or fails to perform any other duties, the other party may rescind the life annuity contract and demand the principal to reestablish the status quo ante; provided that the other party must return the amount of the annuity less the interest of the principal till rescission to the life annuity debtor.

(2) The provisions of paragraph (1) shall not preclude a claim for damages.

722. (Death attributable to fault of annuity debtor)



If the death of a person on whose death the life annuity is to terminate occurs due to a cause attributable to fault on the part of the annuity debtor, the court, on the application of the annuity creditor or his successor, may declare that the [life annuity] shall continue to exist for a reasonable period.

723. (Testamentary gift of life annuity)

The provisions of this Chapter 12 (Life annuity) shall apply *mutatis mutandis* to a testamentary gift of a life annuity.

### **Chapter Thirteen COMPROMISE**

724. (Definition)

A compromise is a contract involving mutual promises by the parties to a dispute to resolve such dispute by concessions.

725. (Subject matter of compromise)

(1) In order to make a compromise, the parties must have the power to dispose of the subject matter involved in the compromise.

(2) A compromise purporting to validate legal relations that are invalid on account of breach of mandatory law or public order and good morals shall be invalid.

726. (Penalty clause)

A compromise contract may include a provision for a penalty to be imposed on a party breaching the contract.

727. (Effect of compromise)

Where by virtue of a compromise it is admitted that one of the parties possesses the right in dispute, or that the other party does not possess such right, and thereafter it is confirmed that in fact the first-mentioned person did not possess the right in question or that the other party did possess it, such right shall be treated as having been transferred to the first-mentioned party, or extinguished, as the case may be, by virtue of the compromise.

728. (Mistake relating to rights, etc. in dispute)

Even where one of the parties has made a compromise based on a mistake as to the ownership of the right or a fact that forms the basis of the calculation of the subject matter in dispute, if the parties have made the compromise by making concessions concerning the ownership of the relevant right or the existence of the fact or the value in question, etc., the compromise cannot be rescinded on the ground of mistake as to the ownership of the right, the existence of the fact or the value in question, etc.

## **Chapter Fourteen MANAGEMENT OF AFFAIRS WITHOUT MANDATE**

729. (Duty of manager of affairs without mandate)

(1) "Management of affairs without mandate" refers to entering into the management of affairs on behalf of another person despite not being authorized to do so, and the person who does this is referred to as the "manager [of affairs]".

(2) The manager shall take the care of a prudent manager and manage the affairs in the manner most advantageous to the principal in accordance with the nature of the affairs.

(3) If the manager is aware of or should be aware of the intention of the principal, he shall conduct the management in accordance with such intention.

730. (Urgent management of affairs)

If the manager manages the principal's affairs in order to avoid imminent danger to the principal's life, reputation or property, the manager assumes no liability to compensate any damage that arises as a result thereof, except where there is mala fide or gross negligence on the part of the manager.

731. (Manager's obligation to give notice)

The manager shall give notice without delay to the principal of his commencement of management, except where the principal is already aware of this fact.

732. (Manager's obligation to continue management)

The manager must continue management until such time as the principal, his successor or legal representative is ready to conduct such management; provided that if continuation would clearly be contrary to the intention of the principal or detrimental to his interests, the management shall be discontinued.

733. (Application *mutatis mutandis* of provisions governing mandate)

The provisions of Articles 641(Mandatory's duty to report) through 643(Mandatory's liability to compensate for money spent) shall apply *mutatis mutandis* to management of affairs without mandate.

734. (Manager's right to demand reimbursement of expenses)

(1) If a manager pays a necessary or beneficial expense on behalf of the principal, he may demand reimbursement from the principal.

(2) If the manager assumes a beneficial liability on behalf of the principal, the provisions of paragraph (2) of Article 646(Mandatory's right to demand reimbursement of expenses, etc.) shall apply *mutatis*

*mutandis.*

(3) If the manager conducts affairs contrary to the intention of the principal, the provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to the extent that the principal is actually enriched thereby.

735. (Manager's right to demand remuneration)

A manager may demand that the principal pay the amount of normal remuneration for management of affairs carried out by the manager after the principal becomes aware of the fact of management, in cases where such management is included in the occupation or business of the manager.

## **Chapter Fifteen UNJUST ENRICHMENT**

736. (Requirements and effect of unjust enrichment)

(1) A person who without legal cause derives a benefit from the property or services of another and thereby causes loss to said other shall be obliged to return such benefit to the extent that it subsists.

(2) Where a person receives the benefit of performance under a contract, if such contract is or becomes void, the person receiving the benefit from such performance shall be obliged to return the benefit to the person who effected such performance, in the same manner as under paragraph (1).

737. (Obligation to return benefit received mala fide)

(1) Where a person receiving a benefit under Article 736 (Requirements and effect of unjust enrichment) was aware that there was no legal ground or that the contract was void, the said person shall be obliged to return any benefit subsisting at the time he became aware of the said fact together with interest thereon.

(2) A person who has received a benefit under a contract that is invalidated due to an intent or negligence of such person shall be obliged to return such benefit together with interest in the same manner as under paragraph (1).

(3) The person receiving the benefit under paragraphs (1) or (2) shall be obliged to compensate any damage suffered by the person who incurred the loss [by enriching the first-mentioned person].

738. (Discharge when there is no obligation)

A person who effects performance in [purported] discharge of an obligation that does not exist may demand return of those delivered by the performance; provided however that, where such person was aware at the time of performance that the obligation did not exist, he may not demand return of those delivered by the performance.

739. (Discharge before maturity)

A person who effects performance in discharge of an obligation prior to its maturity may not demand return of those delivered by such performance; provided that where an obligor effects discharge without being aware that the obligation has not yet matured, the obligee shall return any benefit derived from the obligation being discharged prior to maturity.

740. (Discharge of obligation of another)

(1) A person not being the obligor who effects performance of an obligation in purported discharge thereof under the mistaken belief that the obligation is his own, may demand return of those delivered by such performance; provided however that, where the obligee, being unaware of the mistake on the part of the person who effects performance and believing that this constitutes a valid discharge of the obligation, destroys the documentary evidence of the existence of the obligation or relinquishes security thereover, the person who effected the performance may not demand return of those delivered by the performance.

(2) The provisions of paragraph (1) shall not preclude the exercise by the person who effects performance in purported discharge of an obligation of the right to demand reimbursement by the obligor.

741. (Performance for illegal cause)

Under this Chapter 15 (Unjust Enrichment), if a demand by the person who has suffered loss for return of unjust enrichment would be in breach of public order and good morals or any law regarding public order, such demand shall not be allowed.

## **Chapter Sixteen TORTS**

742. (Definitions of intent and negligence)

For the purposes of this Chapter, an intentional or negligent act is either of the following types of act:

- a) an act that harms another where the actor has foreseen that a particular result would occur but accepted the occurrence of such result; or
- b) an act with respect to which (i) a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from the act, but the actor failed to foresee the result due to an absence of care, and (ii) the actor owes a duty to avoid the occurrence of such result but neglected to fulfill such duty.

743. (Elements of general tort and burden of proof)

(1) A person who intentionally or negligently infringes on the rights or benefits of another in violation of law is liable for the payment of damages for any harm occurring as a result.

(2) Paragraph (1) shall apply *mutatis mutandis* to cases where a harm has occurred due to non-performance of a certain act with respect to which the actor owes a duty to perform such act.

(3) Except as otherwise provided in this Code or in other laws, the person seeking damages must prove the intent or negligence of the tortious actor, the causal relationship between the actions of the tortious actor and the harm that occurred, and the harm suffered by the injured party.

744. (Damages for non-economic harm)

The person liable under the provisions of Article 743 (Elements of general tort and burden of proof) must also pay damages for non-economic harm.

745. (Lack of competence to assume liability)

(1) A minor under the age of 14 cannot be held liable in tort.

(2) A person who due to mental defect or other reason lacks the capacity to understand the legal ramifications of their actions when committing a tortious act cannot be held liable in tort. However, this shall not apply where the person's condition was invited through intent or negligence.

746. (Liability of persons having a duty to supervise)

(1) A person who has a legal duty to supervise a minor under the age of 14 or a person who due to mental defect lacks the capacity to understand the legal ramifications of their actions is liable for damages for any harm caused to others by the actions of the minor or person lacking capacity.

(2) A person who has a legal duty to supervise a minor 14 years old or older is jointly liable with the minor for damages for any harm caused to others by the actions of the minor.

(3) A person under a duty of supervision who is liable for damages pursuant to paragraph (2) can avoid liability by proving that he had fulfilled his duty to provide regular and consistent supervision.

747. (Employer's liability)

(1) A person who uses an employee to perform work is liable for damages caused in violation of law to another in the performance of that work by the employee through the employee's intent or negligence.

(2) A person who is charged with performing supervision of the employee in place of the employer bears the same liability as the employer. However, this shall not apply where supervision was properly performed.

(3) An employer or substitute supervisor may demand compensation from

the employee in proportion to their degree of negligence.

748. (Tortious act of juridical person)

(1) Where a director or other legal representative of a juridical person intentionally or negligently causes harm to another in violation of law in the exercise of such person's duties, the juridical person is liable for the payment of damages.

(2) A juridical person that pays damages in accordance with paragraph (1) may demand compensation from the representative who committed the tortious act.

749. (Tortious act of public official)

(1) Where a public official who exercises the public authority possessed by the national government or a governmental entity intentionally or negligently harms another in violation of law in the course of his public duties, the national government or governmental entity is liable for the payment of damages.

(2) In the case described in paragraph (1), the national government or governmental entity may demand compensation from the public official if the official's act constituted a serious breach of the official's duty to avoid the occurrence of the result.

750. (Liability of animal possessor)

The possessor of an animal is liable for damages for any harm caused to another by the possessed animal.

751. (Product liability)

(1) Where an unreasonably dangerous defect exists in a manufactured movable and harm results to another due to such defect, the manufacturer of the movable is liable for damages. However, this shall not apply where the defect could not have been discovered based on the scientific standards existing at the time of manufacture.

(2) The manufacturer of a movable that incorporates a defective part or material is also liable for damages as a manufacturer.

(3) For the purposes of this Article, the importer of an imported movable shall be deemed the manufacturer.

(4) For the purposes of this Article, a person who affixes his name on a movable as a manufacturer or distributor shall be deemed the manufacturer.

752. (Liability for dangerous item)

A person who owns or manages an automobile or other transportation apparatus, an explosive item, a radioactive substance, a toxic chemical, a toxic organism or any other highly dangerous item is liable for damages for any harm caused to another thereby. However, this shall not apply

where the harm occurred due to an unavoidable force, or where there was no failure in the person's management of the dangerous item and the harm was caused by the act of the injured party or a third party.

753. (Liability for structure affixed to land)

(1) Where harm results to another due to a failure in the installation or control of a structure affixed to or appurtenant to land, the person who manages the structure and the owner of the structure are jointly liable for damages. However, the person who manages the structure shall be exempted from liability if he proves that he exercised proper control over the structure.

(2) The relative proportions of liability between the person who managed the structure and the owner of the structure shall be determined in accordance with their relative contributions to the failure in the installation or control of the structure.

754. (Joint tort)

(1) Where harm is caused jointly by the acts of several persons, each actor is jointly liable for the resulting harm.

(2) In the case described in paragraph (1), where a joint tortfeasor proves his individual percentage contribution to the harm, such actor shall be liable only for that percentage of the total harm. However, this shall not apply where it is determined that the actors engaged in a conspiracy or otherwise colluded in causing the harm.

(3) Where a joint tortfeasor voluntarily pays the entire amount of damages, the joint tortfeasor may demand indemnification from the other jointfeasors in accordance with their respective contributions to the harm.

755. (Definitions of justifiable self-defense and emergency escape)

(1) An act of justifiable self-defense is a harmful act that is made against an unlawful harmful conduct but is necessary in order to defend the physical well-being or the property of oneself or another from such conduct, and involves a situation in which the harmful conduct and the act of self-defense are closely related in time and there is no disparity in the means of self-defense employed and the severity of the harmful conduct [to be prevented thereby].

(2) An act of emergency escape is an act that causes harm to another but was necessary in order to defend the physical well-being or the property of oneself or another from a present or impending danger, and involves a situation in which there is no disparity in the means of emergency escape and the severity of the danger [to be avoided thereby].

756. (Grounds for excuse from illegality or responsibility)

(1) A tortfeasor shall be excused from responsibility for harm caused by the tortfeasor where the injured party consented to or assumed the risk of such harm. However, this shall not apply where such consent or

assumption of risk contravenes prevalent social standards.

(2) A person who causes harm while engaged in justifiable self-defense or emergency escape shall not be held responsible for harm that results therefrom. In this case, the person committing the unlawful conduct that gave rise to such justifiable self-defense or emergency escape shall be held responsible for the resulting harm.

(3) A person who commits an act that is deemed reasonable and acceptable under prevalent social standards shall not be held responsible for the harm caused thereby.

757. (Principle of monetary damages; exceptions)

(1) Damages shall be paid in money in principle.

(2) Where money would not provide an appropriate remedy, the injured party may demand restitution or injunctive relief.

(3) A person who suffers harm to their honor or reputation may demand, in addition to damages, that the tortfeasor take measures to restore the injured party's honor or reputation, such as a published apology.

758. (Calculation of damages)

(1) When calculating the economic loss caused by a tortious act, the difference between the economic situation that would be presumed to exist had the tortious act not occurred and the actual economic situation after the tortious act occurred shall be calculated using statistics and other materials to the extent possible.

(2) When calculating the mental or emotional distress caused by a tortious act, [the amount of damages] shall be determined taking into account such factors as the degree of culpability of the tortious actor, the type and degree of harm, and the tortious actor's conduct after committing the tortious act.

759. (Damages for harm caused by loss or destruction of a thing)

Where a thing is destroyed or damaged by a tortious act, the injured party may seek compensation for the price of the damaged or destroyed thing, the cost of repair, etc.

760. (Damages for wrongful death)

(1) Where the injured party dies as the result of a tortious act, such injured party shall acquire a right to demand damages for economic harm and emotional distress suffered prior to death. As used herein, 'economic harm' includes medical expenses which have already been paid or which the injured party is obligated to pay from the date of the tortious act until the date of death, as well as other expenditures, income which the injured party was unable to receive between the date of the tortious act and the date of death, etc.

(2) Where a person who is obligated by law, custom or contract to



provide support to a dependent dies as the result of a tortious act, the dependent may demand damages for economic harm suffered as a result of the injured party's death. As used herein, economic harm includes support that the dependent was unable to receive as a result of the injured party's death, expenditures made in place of the injured party, funeral expenses, etc.

(3) Where the injured party dies as the result of a tortious act, the injured party's spouse, relatives within the first degree of consanguinity and relatives living in the same household as the injured party may demand damages for emotional distress they have suffered due to the injured party's death.

761. (Damages for bodily harm)

Where an injured party suffers bodily harm as the result of a tortious act, the injured party may demand damages for economic harm and emotional distress suffered thereby. As used herein, economic harm includes medical expenses already paid or expected to be paid in the future, loss of income while receiving medical treatment, future income that cannot be received due to the residual effects of the injury, etc. As used herein, emotional distress includes emotional distress suffered while receiving medical treatment, future emotional distress, etc.

762. (Damages for mental or emotional distress caused by injury to honor or reputation)

Where one's honor or reputation is damaged by a tortious act, the injured party may seek damages for mental or emotional distress accompanying the drop in one's social standing.

763. (Set-off of losses and benefits)

Where an injured party receives a gain or benefit from the result of a tortious act, the amount of such gain or benefit shall be deducted from the amount of recoverable damages when such damages are calculated.

764. (Set-off for contributory negligence)

Where the negligence of the injured party or that of a person under a duty to supervise the injured party contributed to the occurrence or aggravation of the injury, the court may take the degree of contribution of such negligence into account when calculating the amount of recoverable damages.

765. (Extinctive prescription)

The right to demand damages on account of a tortious act shall be extinguished by prescription upon the expiration of three years from the time that the injured party or such party's legal representative becomes aware that he is entitled to seek damages against the tortious actor, or ten years from the time that the tortious act occurred.

## **BOOK SIX "SECURITY"<sup>12</sup>**

### **Chapter One GENERAL PROVISIONS**

766. (Definition of security provider and third party acquirer)

(1) A person who creates a real security right over his own property so as to secure the debt of another shall be called a 'security provider'.

(2) A person who receives the assignment of the object of a real security right created by the debtor to secure his own debt shall be called a 'third party acquirer.'

767. (Types of real security rights)

(1) The types of real security rights are limited to those established in the Civil Code or in special laws, and no other type of real security may be created.

(2) The five types of real security rights established in the Civil Code are (i) rights of retention, (ii) preferential rights, (iii) pledge, (iv) hypothec and (v) security right by way of transfer of title.

768. (Object of real security right)

A thing or right which cannot be transferred cannot comprise the object of a real security right. However, the lack of transferability of a thing shall not prevent the creation of a right of retention with regard thereto.

769. (Subordinate nature of real security right)

(1) A real security right is established in order to secure an existing debt. A real security right may also be established in order to secure a debt to be incurred in the future if it can be specified.

(2) Where a debt is not formed due to the absence of the necessary elements thereof, real security is not formed as well.

(3) Where a debt is void or rescinded due to a defective declaration of intention or other reason, the real security right is also void.

(4) Where a debt is extinguished due to satisfaction, prescription or other reason, the real security right is also extinguished.

(5) The provisions set forth in paragraphs (1) through (4) shall not

---

<sup>12</sup> In the translation of this Book, the terms 'debt,' 'debtor,' and 'creditor' are used in lieu of 'obligation,' 'obligor' and 'obligee' (the terms used in the Khmer original). Because it is assumed that cases to which this Book will apply will typically involve monetary obligations, it is thought that the use of such terms will aid in understanding the underlying concepts. However, regardless of terminology, the provisions of this Book should be understood to apply to both monetary and non-monetary obligations.

apply to a floating hypothec that is created to secure multiple debts to be accrued under a continuing contract.

770. (Subordinate nature of real security when a secured claim is assigned to another)

(1) Where a claim secured by real security is assigned, the real security is assigned as well to the assignee of the claim unless otherwise [agreed to] [between the assignor and the assignee] **[To check]**. However, where it is required that the holder of a real security right possess the object of the real security right, the assignee of the claim must acquire possession thereof.

(2) The provisions of paragraph (1) shall not apply to claims that are secured by a floating hypothec.

771. (Indivisibility of real security right)

The effect of the real security right shall extend over the whole of the thing or right comprising the object of the security right until the holder of the real security right has received full satisfaction of the secured claim.

772. (Power to extend the effect of real security)

Except for cases referred to in Article 807 (Power to pursue third party acquirer) concerning preferential rights and Article 894 (Disposition of object by [security creator]) concerning a right of security by way of transfer of title, where the object of a real security right is transferred to a third party, the holder of the real security right may assert the effect of his security right against the third party; provided that such holder fulfills and complies with the established requirements for such assertion.

773. (Enforcement of real security right)

Where the holder of a real security right does not receive satisfaction of the secured claim, he may enforce the real security right in accordance with procedures established by law.

## **Chapter Two RIGHT OF RETENTION**

774. (Meaning of right of retention)

(1) Where a person possessing a thing belonging to another has a claim arising in regard to such thing, the person may retain the thing until the claim is satisfied. However, if the claim has not yet become due, the right of retention shall not be created.

(2) The provisions of paragraph (1) shall not apply where the possession commenced as a result of a tortious act.

775. (Preferential application of fruits<sup>13</sup>)

(1) The holder of a right of retention may collect fruits produced by the thing retained and apply them to satisfy the secured claim in preference to other creditors.

(2) The fruits described in paragraph (1) must first be applied to the payment of the interest and the surplus, if any, to the principal.

776. (Duty of holder of right of retention to preserve the thing retained)

(1) The holder of a right of retention shall possess the thing retained with the care of a good manager.

(2) The holder of a right of retention may not use, lease or give as security the thing retained without the consent of the debtor. However, the holder of a right of retention may use the thing retained so long as such use is necessary to preserve the thing.

(3) Where the holder of a right of retention violates the provisions of paragraphs (1) and (2), the debtor may demand the extinction of the right of retention.

777. (Right to demand reimbursement of expenditures)

(1) Where the holder of a right of retention has defrayed necessary expenses in regard to the thing retained, he may seek reimbursement for such expenses from the owner.

(2) Where the holder of a right of retention has defrayed useful expenses in regard to the thing retained, he may seek reimbursement from the owner of, at his option, either the amount defrayed or the amount by which the value of the thing has increased, so long as the increase in value remains in effect. However, the court may upon application of the owner grant him reasonable time for reimbursement.

778. (Extinctive prescription regarding claim)

The exercise of a right of retention shall not interrupt or suspend a period of extinctive prescription with regard to the secured claim.

779. (Extinction of right of retention by furnishing of security)

The debtor may demand the extinction of a right of retention upon the furnishing of adequate security.

780. (Extinction of right of retention by loss of possession)

(1) A right of retention is extinguished by the loss of possession of the thing retained. However, this shall not apply to cases where the thing retained has been leased or pledged with the consent of the debtor in accordance with the provisions of paragraph (2) of Article 776 (Duty

---

<sup>13</sup> See Article 127 for the definition of 'fruit.'

of holder of right of retention to preserve the thing retained).

(2) Even where the holder of a right of retention loses possession of the thing retained, if the holder of the right of retention regains possession of the thing retained pursuant to the provisions of Article 237(Right to demand return of thing in possession) possession shall be deemed to have continued uninterrupted.

## **Chapter Three PREFERENTIAL RIGHTS**

### **Section I. General Provisions**

781. (Definition of preferential rights)

(1) A creditor holding a preferential right has a right to obtain satisfaction of the claim from the assets subject to preferential rights in priority to other creditors.

(2) A preferential right held by a creditor over all of the property of the debtor is called the general preferential rights.

(3) A preferential right held by a creditor over a specific property of the debtor is called a special preferential right. In this case, the preference right over a specific movable held by the creditor is called a preferential right over a movable, whereas the preferential right over a specific immovable held by the creditor is called a preferential right over an immovable.

782. (Subrogation)

(1) A preferential right may also be exercised against money or other things which the debtor is entitled to receive due to a sale, lease or loss of, or damage to the object of such preferential right. However, the holder of the preferential right must levy an order of attachment over the claim to receive such money or things prior to the payment or delivery thereof.

(2) The same shall apply to money to be paid as the price of creating a real right over the object of the preferential right.

### **Section II. General Preferential Right**

783. (Definition of general preferential right)

A person having a claim arising from any of the causes provided below has a preferential right over all of the property of the debtor:

- a) Expenses for common benefit
- b) Claims held by employee
- c) Funeral expenses
- d) Supply of daily necessities.

784. (Expenses for common benefit)

(1) A preferential right for expenses for common benefit exists in

regard to expenses related to the preservation, liquidation or distribution of the debtor's property incurred for the benefit of all creditors.

(2) Where the expenses described in paragraph (1) have been incurred for the benefit of only some of the creditors, the preferential rights exists only as against those creditors who have benefited therefrom.

785. (Preferential right for claims held by employee)

A preferential right for claims held by an employee exists in regard to any and all claims which the employee possesses under the labor contract..

786. (Preferential right for funeral expenses)

(1) A preferential right for funeral expenses exists in regard to expenses incurred for a funeral conducted in accordance with the deceased debtor's station in life.

(2) The preferential right described in paragraph (1) exists in regard to expenses incurred for a funeral conducted in accordance with the station in life of a deceased relative whom the debtor was obligated to support.

787. (Preferential right for supply of daily necessities)

A preferential right for the supply of daily necessities exists in regard to the past six months' supply of food, drink and other daily necessities required for the subsistence of the debtor, relatives who live with the debtor and whom the debtor is obligated to support, and the debtor's servants.

### Section III. Preferential Right Over Specific Movables

788. (Definition of preferential right over movables)

A person having a claim arising out of any of the following events has a preferential right over a specific movable of the debtor:

- a) Lease of immovable property
- b) Carriage of passengers or goods
- c) Preservation of movable property
- d) Sale of movable property, and
- e) Supply of seeds, seedlings, or fertilizer and breeding stocks, progeny, or forage of creatures.

789. (Preferential right based on lease of immovable property)

A preferential right based on the lease of immovable property exists over movables of the lessee in order to secure the rent and other obligations of the lessee arising under the lease.

790. (Scope of preferential right based on lease of immovable property  
- normal case)

(1) A preferential right held by the lessor of land exists over movables attached to the leased land or installed in buildings thereon, as well as over movables provided for use of the land and over the fruits from such land that are in the possession of the lessee.

(2) A preferential right held by the lessor of a building exists over movables installed in the building by the lessee.

791. (Scope of preferential right based on lease of immovable property - assignment or sublease)

In the event of an assignment of a lease or a sublease, the preferential right of a lessor shall extend to the movables of the assignee or sublessee. The same shall apply to any money that the assignor or sublessor is to receive.

792. (Scope of preferential right based on lease of immovable property)

Where all of the assets of a lessee are liquidated, the preferential right of the lessor exists only with regard to rent and other obligations owing for the previous, current and succeeding lease terms, and the reparation of any damage occurring during the previous and current lease terms.

793. (Scope of preferential right based on lease of immovable property - in case of deposit)

Where a lessor has received a deposit, his preferential right exists only with respect to the portion of his claim that cannot be satisfied from the deposit.

794. (Preferential right for carriage)

A preferential right held by a carrier exists over the baggage in the possession of the carrier with regard to the costs of carriage of the passenger or the baggage and incidental charges.

795. (Bona fide acquisition)

The provisions of Article 193(Bona fide acquisition of ownership of movable) regarding bona fide acquisition shall apply *mutatis mutandis* to preferential rights as set forth in Articles 789(Preferential right based on lease of immovable property) through 794(Preferential right for carriage).

796. (Preferential right for preservation of a movable)

(1) A preferential right for preservation of movables exists over a movable in regard to costs incurred for the preservation thereof.

(2) The preferential right described in paragraph (1) also exists in regard to costs incurred for the preservation, ratification or exercise of the title or other right pertaining to the movable.

797. (Preferential right for sale of a movable)

A preferential right for sale of a movable exists over the movable in regard to the price and interest thereon.

798. (Preferential right for supply of seeds, seedlings or fertilizer, and breeding stocks, progeny or forage of creatures.)

(1) A preferential right for the supply of seeds, seedlings or fertilizer exists, in regard to the price thereof and the interest thereon, over the fruits derived from the land on which they are used for a period of one year from the time they are used.

(2) A preferential right for the supply of breeding stocks, progeny or forage of creatures exists, in regard to the price thereof and the interest thereon, over the creatures and fruits derived from the creature on which they are used for a period of one year from the time they are used.

(3) The preferential right described in paragraph (2) exists, for the supply of silkworm eggs or mulberry leaves provided for the breeding of silkworms, over the things produced from the silkworm eggs or the mulberry leaves.

#### Section IV. Preferential Right Over Specific Immovables

799. (Preferential right over immovables)

A person having a claim that arises out of any of the following events has a preferential right over a specific immovable of the debtor:

- a) Preservation of an immovable
- b) Work on an immovable
- c) Sale of an immovable.

800. (Preferential right for preservation of an immovable)

(1) A preferential right for preservation of an immovable exists over the immovable in regard to costs incurred for the preservation thereof.

(2) The preferential right described in paragraph (1) also exists in regard to costs necessary for the preservation, ratification or exercise of the title or other right pertaining to the immovable.

801. (Preferential right for work on an immovable)

(1) A preferential right for work on an immovable exists over the immovable in regard to construction costs incurred in relation thereto by artisans, engineers and contractors.

(2) The preferential right described in paragraph (1) exists only where the increase in the value of the immovable due to such work still remains, and only with respect to such increase in value.

802. (Preferential right for sale of an immovable)

A preferential right for sale of an immovable exists over the immovable



in regard to the price and interest thereon.

## Section V. Ranking of Preferential Rights

### 803. (Ranking of general preferential rights)

(1) Where multiple general preferential rights exist, their respective priority rankings shall follow the order prescribed in Article 783(Definition of general preferential right).

(2) Where a general preferential right and a preferential right over a specific property coexist, the preferential right over a specific property shall have priority. However, a preferential right for expenses for common benefit shall have priority as against all creditors benefited thereby.

### 804. (Ranking of preferential rights over movables)

(1) Where multiple specific preferential rights coexist over the same movable, their respective priority rankings shall be as follows:

- First rank: Preferential rights for lease of an immovable or for carriage;
- Second rank: Preferential right for preservation of a movable, except that where two or more persons have preserved the movable, the person whose acts of preservation have occurred later shall take priority; and
- Third rank: Preferential right for sale of a movable or for supply of seeds, seedlings or fertilizer, and preferential right for supply of breeding stocks, progeny or forage of creatures..

(2) Where a person having a preferential right of the first rank was aware at the time that he acquired his claim of the existence of a person having a preferential right of the second or third rank, his rank shall be inferior to that of all persons having preferential right of the second or third rank. A person having a preferential right of the first rank is also inferior to a person who has preserved the thing for the benefit of preferential right holder.

(3) The first rank regarding fruits shall belong to the supplier of seeds, seedlings or fertilizer, while the second rank shall belong to the lessor of the land.

### 805. (Ranking of preferential rights over immovables)

(1) Where multiple specific preferential rights coexist over the same immovable, their respective priority rankings shall follow the order prescribed in Article 799(Preferential right over immovables).

(2) Where successive sales of the same immovable have occurred, the priority rankings of the sellers' preferential rights shall follow the chronological order of the sales.

### 806. (Preferential rights of same rank)

Where two or more persons have preferential rights over the same object and their priority rankings are equal, they shall receive satisfaction in proportion to the amounts of their respective claims.

## Section VI. Effect of Preferential Right

807. (Power to pursue third party acquirer)

[Where a third party acquires a movable comprising the object of a preferential right from the debtor,] once the debtor has delivered the movable to the third party acquirer, the holder of the preferential right may not exercise the preferential right over the movable.

808. (Relationship to pledge over movable)

Where a preferential right and a pledge coexist over a movable, the pledgee shall have the same right as the person having a preferential right of the first rank mentioned in Article 804 (Ranking of preferential rights over movables).

809. (Effect of general preferential right)

(1) A person having a general preferential right may not receive satisfaction out of immovables unless he has first resorted to property other than immovables and failed to obtain full satisfaction therefrom.

(2) With regard to immovables, satisfaction must first be sought out of those that are not subject to a specific security right<sup>14</sup>.

(3) If a person having a general preferential right fails to participate in a distribution of the proceeds in accordance with the provisions of paragraphs (1) and (2), he may not, to the extent of what he would have received through such participation, exercise his preferential right as against a registered third party.

(4) The provisions of paragraphs (1) through (3) shall not apply to cases where a distribution is to be made of the price of an immovable comprising the object of a specific security right prior to that of the price of non-immovables.

810. (Effect of general preferential right against third party)

The holder of a general preferential right may, even where the right is not registered over an immovable, assert such right against a creditor who has no specific security right over the immovable. However, such right may not be asserted against a registered third party.

811. (Effect of preferential right for preservation of immovable against third party)

(1) The effect of a preferential right for preservation of an

---

<sup>14</sup> The term 'specific security right' refers to a preferential right over a specific immovable, pledge, hypothec or security right by way of transfer of title.

immovable may not be asserted against a third party unless it is registered immediately after the act of preservation has been completed.

(2) The amount of increase in the value of the immovable arising from preservation shall be determined by an expert for appraisal appointed by the court at the time of participation in the distribution is sought.

812. (Effect of preferential right for work on immovable against third party)

(1) The effect of a preferential right for work on an immovable may not be asserted against a third party unless the right is registered immediately after the work has been completed.

(2) The amount of increase in the value of the immovable arising from the work performed shall be determined by an expert appointed by the court at the time participation in the distribution is sought.

813. (Relationship between hypothec and preferential right for preservation of an immovable or work on an immovable)

A preferential right registered in accordance with Articles 811 (Effect of preferential right for preservation of immovable against third party) and 812 (Effect of preferential right for work on immovable against third party) may be exercised in preference to a hypothec.

814. (Effect of preferential right for sale of immovable against third party)

The effect of a preferential right for sale of an immovable may not be asserted against a third party unless a statement that the sales price or interest thereon has not been paid is registered simultaneously with [the execution] of the sale contract.

815. (*Mutatis mutandis* application of provisions regarding hypothec)

In addition to the provisions of this Chapter, the provisions of Articles 846 (Scope of effect of hypothec) through 848 (Effect of hypothec over fruits), 851 (Ranking of hypothecs), 852 (Scope of claims secured), 853 (Compulsory sale of hypothecated property) and 859 (Sub-hypothecation) through 863 (Ranking of disposal of hypothec) regarding hypothec shall apply *mutatis mutandis* to the effect of preferential rights.

## **Chapter Four PLEDGE**

### **Section I. General Provisions**

816. (Meaning of pledge)

A pledgee is entitled to hold possession of the thing that he has received from the debtor or a third party as security for his claim, and to obtain satisfaction of his claim out of such thing in preference

to other creditors.

817. (Subrogation)

(1) A pledge may also be exercised against money or other things which the debtor is entitled to receive due to a sale or loss of, or damage to the thing pledged. However, the pledgee must levy an order of attachment over the claim to receive such money or things prior to the payment or delivery thereof.

(2) The same shall apply to money to be paid as the price of creating a real right over the thing pledged.

818. (Formation of pledge and requirement of delivery)

(1) A pledge shall be created when the thing to be pledged is delivered to the pledgee by the debtor or a third party who provides the security.

(2) The delivery referred in Paragraph (1) includes summary delivery provided by Paragraph (3) of Article 229 (Assignment of possession).

819. (Prohibition against pledger retaining direct possession)

A pledgee may not allow the pledger to retain direct possession of the thing pledged.

820. (Scope of secured claim)

Unless otherwise provided in the act of creation thereof, a pledge shall secure the principal, interest, penalties, expenses for enforcement of the pledge, expenses for preservation of the thing pledged, and damages arising from nonperformance of the debt or from latent defects in the thing pledged.

821. (Retention of thing pledged)

A pledgee may retain the thing pledged until he obtains satisfaction of his claim [the scope of which is] mentioned in Article 820 (Scope of secured claim). However, this right cannot be asserted against any creditor who has priority over the pledgee.

822. (Priority right to receive satisfaction from fruits)

(1) A pledgee is entitled to receive the fruits produced from the thing pledged and obtain satisfaction of the claim in priority to other creditors.

(2) The fruits described in paragraph (1) shall first be applied to interest on the debt, and the remainder, if any, shall be thereafter applied to the principal.

823. (Pledgee's duty to preserve thing pledged)

(1) A pledgee shall possess the thing pledged with the duty of care of a good manager.

(2) Where a pledgee violates the provisions of paragraph (1), the debtor may demand the extinction of the pledge.

824. (Pledgee's right to reimbursement)

(1) Where a pledgee has defrayed necessary expenses in regard to the thing pledged, he may seek reimbursement for such expenses from the owner.

(2) Where a pledgee has defrayed useful expenses in regard to the thing retained, he may seek reimbursement from the owner of, at his option, either the amount defrayed or the amount by which the value of the thing has increased, so long as the increase in value remains in effect. However, the court may upon application of the owner grant him reasonable time for reimbursement.

825. (Extinctive prescription of claim)

The exercise of a pledge shall not interrupt or suspend a period of extinctive prescription with regard to the claim .

826. (Sub-pledge)

(1) A pledgee may sub-pledge the thing pledged in order to secure his own debt with the consent of the pledger.

(2) A pledgee may within the duration of the original pledge sub-pledge the thing pledged on his own responsibility. In such a case, the pledgee shall be responsible even for damages due to *force majeure* that would not have occurred if the thing had not been sub-pledged.

(3) Where the thing pledged is sold by compulsory sale and the price is apportioned, the sub-pledgee may receive full satisfaction of his claim from and to the extent of the amount to be apportioned to the pledgee. However, during the period that the claim of the sub-pledgee has not yet become due, the sub-pledgee may only demand that the amount to be received be officially deposited.

827. (Prohibition against forfeiture agreement)

Unless otherwise provided for in this Code or other law, a pledger may not, either in the act of creation of the pledge or by a contract executed before the time the debt becomes due, agree that the pledgee shall acquire ownership of the thing pledged or dispose of it in a manner other than that provided for by law.

828. (Third party security provider's right of indemnification)

If a person who has pledged his own property to secure the debt of another discharges the debt or loses ownership of the thing pledged due to the enforcement of the pledge, he is entitled to receive indemnification from the debtor in accordance with the provisions of this Code regarding guaranty.

## Section II. Pledge Over Movable

829. (Requirements for asserting pledge)

The pledgee of a movable cannot assert the pledge against a third party unless he continuously holds possession of the thing pledged.

830. (Loss of possession)

If the pledgee of a movable is deprived of possession of the thing pledged, he can recover it only by an action for recovery of possession.

831. (Use of or receipt of benefits from thing pledged by pledgee)

(1) A pledgee may not use or lease the thing pledged without the consent of the debtor. However, the pledgee may use the thing pledged so long as such use is necessary to preserve the thing.

(2) Where a pledgee violates the provisions of paragraph (1), the debtor may demand the extinction of the pledge.

832. (Summary enforcement of pledge)

(1) If the pledgee of a movable does not obtain satisfaction of his claim, he may apply to the court to have the thing pledged appropriated to himself in satisfaction of the debt to the extent of its value as appraised by an expert, provided that reasonable grounds exist for doing so. In such case the pledgee must provide the debtor with advance notice of the application.

(2) In the case referred to in paragraph (1), where the value of the thing pledged as determined by expert appraisal exceeds the amount of the debt, the pledgee of the movable shall return the excess amount to the owner of the thing pledged.

833. (Ranking of pledges over movable)

If multiple pledges have been created over the same movable, their respective priority rankings shall follow the chronological order of their creation.

## Section III. Pledge Over Immovable

834. (Pledgee's right to use and receive profits)

(1) The pledgee of an immovable may use and receive the profits of the immovable in accordance with its ordinary use.

(2) With respect to the land to which a pledge for an indefinite period of time was created to secure the claim, where the pledgee uses the land for cultivation, if the time for harvest of the crops which the pledgee seeded or planted is coming within a year, the pledgee may use the land till the time for harvest of the crops, even though the pledge has been extinguished by the performance.

(3) With respect to the land to which a pledge for a definite period

of time was created to secure the claim, where the pledgee uses the land for cultivation, if the time for harvest of the crops which the pledgee seeded or planted is coming within a year, the pledgee may use the land till the time for harvest of the crops, even though the pledge has been extinguished by the performance before the due time. However the pledgee must return the land immediately after receiving the performance, if the time for harvest is arriving after the due time for performance, even though the time for harvest is arriving within a year after the performance.

835. (Costs of management, etc.)

The pledgee of an immovable shall pay the costs of management thereof and shall bear all other charges pertaining to such immovable.

836. (Interest)

The pledgee of an immovable may not demand interest on the secured claim.

837. (Validity of special provisions)

The provisions of Articles 834(Pledgee's right to use and receive profits) through 836(Interest) shall not apply where otherwise provided in the act of creation of a pledge.

838. (Duration)

(1) The duration of a pledge of an immovable cannot exceed five years. If a pledge of an immovable is created for a longer period, such period shall be reduced to five years.

(2) The pledge of an immovable may be renewed. However the renewal period cannot exceed five years from the time of renewal.

839. (*Mutatis mutandis* application of provisions regarding hypothec)

In addition to the provisions of this Section, the provisions of Chapter Five (Hypothec) shall apply *mutatis mutandis* to pledges of immovables.

#### Section IV. Pledge Over Right/Claim

840. (Object of pledge over rights)

(1) Any property right<sup>15</sup> may comprise the object of a pledge.

(2) In addition to the provisions of this Section IV, the provisions of Sections I, II and III shall apply *mutatis mutandis* to the pledges mentioned in paragraph (1).

841. (Requirements for assertion of pledge over claim in name of specific creditor)

(1) Where a claim belonging to a specific creditor is made the object

---

<sup>15</sup> See the footnote to Article 195 for the explanation of 'property right.'

of a pledge, the pledge cannot be asserted against the original debtor of such claim or any other third party unless such original debtor has been notified of the creation of the pledge or unless he has given consent thereto.

(2) The notice and consent described in paragraph (1) may not be asserted against a third party other than the original debtor unless they are evidenced by a date certified writing.

842. (Enforcement of pledge through collection of debt)

(1) A pledgee may directly collect the debt comprising the object of the pledge.

(2) If the subject-matter of the claim is money, the pledgee may only obtain payment of such portion thereof as corresponds to the amount of the secured claim held by him.

(3) In the case described in paragraph (2), if the claim described above becomes due earlier than the pledgee's claim, the pledgee may require the original debtor to deposit the amount payable. In such a case, the pledge shall exist over the money deposited.

(4) If the subject-matter of the claim is not money, the pledgee has a pledge over the thing to be received as satisfaction thereof.

## **Chapter Five HYPOTHEC**

### **Section I. Nature of Hypothec**

843. (Nature of hypothec)

(1) A hypothee is entitled to obtain satisfaction of his claim in preference to other creditors out of the immovable property that has been furnished as security by the debtor or a third party without transfer of possession.

(2) A perpetual lease or usufruct may also be made the object of a hypothec. The provisions of this Chapter Five shall apply *mutatis mutandis* in such a case.

(3) Where a special law allows a certain type of property other than immovable property to be the object of a hypothec, such law shall apply.

### **Section II. Creation of Hypothec**

844. (Creation of hypothec)

A hypothec is created through an agreement reached between a creditor and a debtor or third party that furnishes immovable property as security.

845. (Asserting hypothec)



A hypothec may not assert the hypothec against a third party who is not the hypothecator unless the instrument creating a hypothec is notarized and registered in the land registry.

### Section III. Effect of Hypothec

846. (Scope of effect of hypothec)

(1) [The effect of] a hypothec shall extend to all things that are attached to and form part of the land comprising the object of the hypothec when the hypothec is created, including buildings residing thereon. It also extends to things that attach to the land after the hypothec is created.

(2) A contract creating a hypothec may not contain any provision that is contrary to the provisions set forth in paragraph (1).

847. (Effect of hypothec on land over building owned by third party)

Where based on a perpetual lease, usufruct or leasehold a third party owns a building on the land comprising the object of the hypothec [when the hypothec is created], [the effect of] the hypothec does not extend to the building.

848. (Effect of hypothec over fruits)

The provisions of Article 846 (Scope of effect of hypothec) do not apply to the fruits produced from the immovable comprising the object of the hypothec. However, this shall not apply after the immovable is subject to an order of attachment.

849. (Subrogation)

(1) A hypothec may be enforced against money or other things which the hypothecator is entitled to receive by reason of the sale or loss of, or damage to, the object thereof.

(2) A hypothec may be enforced against fruits that are produced after the object of the hypothec is subject to an order of attachment.

850. (Right of indemnification of a third party security provider)

If a person who creates a hypothec to secure the debt of another discharges the debt or loses ownership of the hypothecated immovable as a result of the enforcement of the hypothec, such person is entitled to demand indemnification from the debtor in accordance with the provisions of this Code regarding guaranty.

851. (Ranking of hypothecs)

Where multiple hypothecs have been created on an immovable in order to secure multiple debts, the rank of their priority shall be based on the

order of their registration.

852. (Scope of claims secured)

(1) Where a hypothec is entitled to receive interest or periodic payments, he can enforce the hypothec only in regard to payments due for the last two years. However, if a special registration was made in regard to periodic payments for an earlier period after they became due, the hypothec may also be enforced in regard to such payments from the time of such registration.

(2) Where a hypothec is entitled to demand damages due to the debtor's default, the provisions of paragraph (1) shall apply in regard to the last two years. However, the damages together with interest and other periodic payments may not exceed the total amount due over those two years.

#### Section IV. Enforcement of Hypothec

853. (Compulsory sale of hypothecated property)

In the event of a failure to perform on a debt, a hypothec may apply to the court for compulsory sale of the hypothecated immovable.

854. (Compulsory sale of buildings owned by third party)

(1) Where the hypothecator or a third party erects a building on land after it is hypothecated, and the hypothecator owns that building, the hypothec may demand the compulsory sale of the building together with the hypothecated land. However, if the price of the land together with the building thereon is less than the price of the land as a vacant plot, the hypothec may demand that the hypothecator remove the building prior to the compulsory sale of the land.

(2) Where a third party owns the building on the hypothecated land based on a perpetual lease, usufruct or leasehold, if the third party cannot assert such perpetual lease, usufruct or leasehold against the hypothec, the hypothec may demand the compulsory sale of the building together with the hypothecated land.

855. (Third party acquirer's application to purchase)

A third party acquirer of a hypothecated immovable may purchase the immovable at the compulsory sale.

856. (Third party acquirer's right to reimbursement)

Where a third party acquirer has defrayed necessary or useful expenses in regard to a hypothecated immovable, he may obtain reimbursement from the proceeds of the sale of the immovable with priority over the hypothec.

857. (Simultaneous or staggered application of proceeds in case of joint hypothec)

(1) Where two or more immovables are hypothecated to secure the same claim and their proceeds from compulsory sale are to be applied simultaneously to its satisfaction, the burdens of satisfaction of the claim shall be allocated in proportion to the value of each immovable.

(2) [Where two or more immovables are hypothecated to secure the same claim,] if the proceeds of only one of the immovables are to be so applied, the hypothec may obtain full satisfaction of his claim therefrom. In this case, the hypothec next in rank may exercise the right of the prior hypothec via subrogation to the extent of the amount that the prior hypothec would have received out of the other immovables in accordance with the provisions of paragraph (1).

858. (Joint hypothec - registration of subrogation)

A person who enforces a right of hypothec via subrogation in accordance with the provisions of paragraph (2) of Article 857 (Simultaneous or staggered application of proceeds in case of joint hypothec) must enter the subrogation in the registry of the hypothec.

## Section V. Disposal of Hypothec

859. (Sub-hypothecation)

(1) A hypothec may hypothecate his right of hypothec in order to secure the debt of himself or another. This is referred to as 'sub-hypothecation'.

(2) Where a hypothecated thing is sold by compulsory sale and the proceeds are apportioned, the sub-hypothec may receive full satisfaction of his claim from and to the extent of the amount to be apportioned to the hypothec. However, during the period that the claim of the sub-hypothec has not yet become due, the sub-hypothec may demand only that the amount to be received be officially deposited.

860. (Transfer or waiver of hypothec)

(1) A hypothec may transfer or waive his right of hypothec for the benefit of another creditor(s) of the same debtor.

(2) A transferee of a right of hypothec may exercise the received right of hypothec as security for his own debt. In this case, the provisions of paragraph (2) of Article 859 (Sub-hypothecation) shall apply *mutatis mutandis*.

(3) A person who waives a right of hypothec may not thereafter assert the right of hypothec against the creditor(s) for whose benefit the waiver was made.

861. (Transfer, waiver or change of ranking)

(1) A hypothec may transfer or waive his priority ranking for the benefit of another hypothecary creditor of the same debtor. Moreover, a hypothec may change the priority of his ranking among multiple hypothecs with the consent of the other hypothecs. However, where such

a change would affect the interests of another party, such party's consent must be obtained.

(2) Where the object of a right of hypothec is sold by compulsory sale and the proceeds are apportioned among multiple hypothees, a transferee of a priority ranking in regard to the right of hypothec may receive full satisfaction of his claim from and to the extent of the total amount to be apportioned to [both the transferor and the transferee].

(3) Where the object of a right of hypothec is sold by compulsory sale and the proceeds are apportioned among multiple hypothees, a hypothee who has received a waiver of a priority ranking in regard to the right of hypothec may, as between himself and the hypothee who has waived the priority ranking, receive equal repayment from and to the extent of the total amount to be apportioned to [both of them].

(4) A hypothee who consents to a change in priority ranking may enforce the right of hypothec in accordance with such consent.

862. (Effect of disposal of hypothec)

(1) The disposal of a hypothec described in Articles 859(Sub-hypothecation), 860(Transfer or waiver of hypothec) and 861(Transfer, waiver or change of ranking) shall be ineffective unless it is notarized and entered in the registration thereof

(2) The disposal of a hypothec may not be asserted as against the principal debtor, a guarantor, hypothecator or their respective successors unless the principal debtor is notified of such disposal or consents thereto.

(3) Where the principal debtor receives notice of or consents to a disposal of a right of hypothec as described in paragraph (2), repayment made without the approval of a person receiving the benefit of such disposal may not be asserted against such person.

863. (Ranking of disposal of hypothec)

If in the case described in Articles 859(Sub-hypothecation), 860(Transfer or waiver of hypothec) and 861(Transfer, waiver or change of ranking) the hypothee has disposed of his right of hypothec for the benefit of two or more persons, the rank of priority of the rights of the persons benefiting from such disposal shall be determined by the order of entries in the registration of the hypothec.

## Section VI. Extinction of Hypothec

### Sub-section I. Extinction by demand

864. (Payment of price)

Where a third party who has purchased ownership of or perpetual lease or usufruct on the hypothecated immovable pays the price thereof to the hypothee on the hypothee's demand, the hypothec shall be thereby

extinguished in favor of the third party.

## Sub-section II. Extinction by prescription

865. (Acquisition of hypothec via extinctive prescription)

A hypothec may be not be extinguished by prescription in favor of the debtor or the hypothecator unless the claim secured thereby is extinguished at the same time.

866. (Extinction of hypothec by acquisition of hypothecated immovable by acquisitive prescription)

Where a person other than the debtor or the hypothecator has completed possession of a hypothecated immovable that satisfy the requirements for acquisitive prescription regarding such immovable, the hypothec shall be extinguished thereby. However, this shall not apply where a third party acquirer of the hypothecated immovable acquires the immovable with knowledge of the existence of the hypothec.

## Section VII. Revolving Hypothec

867. (Definition of revolving hypothec)

(1) A hypothec may be created between a creditor and a debtor to secure unspecified claims, within a maximum credit limit, that may occur from a certain type of transactions conducted on an ongoing basis. A hypothec of this nature is referred to as a revolving hypothec.

(2) The extent of the unspecified claims that are secured by a revolving hypothec must be set forth in the agreement creating the revolving hypothec.

868. (Extent of secured claims)

The hypothec under a revolving hypothec may exercise the hypothec within the maximum credit limit in connection with the entire amount of the finalized principal as well as the interest or other periodic payments and damages that have occurred as a result of default on the debts.

869. (Amendment of the extent of secured claims)

(1) The parties to a revolving hypothec agreement may through their mutual agreement amend the extent of the claims secured by the revolving hypothec during the period of time until the principal is finalized.

(2) Amendment pursuant to paragraph (1) shall not require the consent of subordinate hypothecs or any other third party.

(3) An amendment pursuant to paragraph (1) must be registered prior to the finalizing of the principal.

870. (Amendment of maximum credit limit)

(1) The parties to a revolving hypothec agreement may through their mutual agreement amend the maximum credit limit of a revolving hypothec.

(2) The consent of parties with an interest must be obtained in the event of an amendment as set forth in paragraph (1).

(3) An amendment set forth in paragraph (1) cannot be set up against any third party other than the persons who have consented pursuant to paragraph (2) unless the amendment is registered.

871. (Date of finalization of principal)

(1) It shall be possible to prescribe a date on which finalization should take place of the principal to be secured under a revolving hypothec. It shall also be possible to amend the prescribed date.

(2) The provisions of paragraph (2) of Article 869 (Amendment of the extent of secured claims) shall apply *mutatis mutandis* to paragraph (1).

(3) The date set forth in paragraph (1) must be within five (5) years of the date on which it is prescribed or amended.

(4) The amendment of the date set forth in paragraph (1) must be registered prior to said date.

872. (Assignment of secured claim or assumption of debt)

(1) A person who acquires a claim from the revolving hypothec prior to the finalization of the principal may not exercise a revolving hypothec in connection with said claim. A person who has made payment for or on behalf of the debtor prior to finalization of the principal also shall not be able to exercise a revolving hypothec through subrogation.

(2) If a debt is assumed by a third party prior to finalization of the principal, the revolving hypothec shall not be able to exercise a revolving hypothec in connection with the assumed debt.

873. (Inheritance by hypothec or debtor under a revolving hypothec)

(1) When a succession has commenced in connection with a revolving hypothec prior to the finalizing of the principal, the revolving hypothec shall secure the claims that exist at the time of the commencement of the succession. The revolving hypothec shall also secure the claims that the successor acquires after the commencement of the succession that are prescribed by agreement between the successor and the hypothecator.

(2) If a succession has commenced in connection with a debtor prior to the finalizing of the principal, the revolving hypothec will secure the debts that exist at the time of the commencement of the succession. The revolving hypothec shall also secure the debts that are incurred by the successor after the commencement of the succession that are

prescribed by agreement between the hypothec and the hypothecator.

(3) The provisions of paragraph (2) of Article 869 (Amendment of the extent of secured claims) shall apply *mutatis mutandis* to an agreement set forth in paragraph (1) or (2).

(4) If an agreement as set forth in paragraph (1) or (2) is not registered within six (6) months after the succession commences, the principal to be secured shall be deemed to have been finalized at the time that succession has commenced.

874. (Merger of hypothec or debtor under a revolving hypothec)

(1) If a merger has occurred in connection with a corporate hypothec to a revolving hypothec prior to the finalizing of the principal, the revolving hypothec shall secure the claims that exist at the time of the merger, and shall also secure the claims acquired after the merger by the surviving corporation or the corporation established as a result of the merger.

(2) If a merger has occurred in connection with a corporate debtor prior to the finalizing of the principal, the revolving hypothec shall secure the debts that exist at the time of the merger, and shall also secure the debts incurred by the surviving corporation or the corporation that is established as a result of the merger.

(3) In the event of paragraph (1) or paragraph (2), the revolving hypothecator may demand the finalizing of the principal to be secured under the revolving hypothec; provided that this shall not apply in the case of paragraph (2) if the debtor is the hypothecator under the revolving hypothec.

(4) If a demand pursuant to paragraph (3) has been made, the principal to be secured under the revolving hypothec shall be deemed to have been finalized at the time of the merger.

(5) A demand pursuant to paragraph (3) cannot be made if two (2) weeks have expired from the date that the hypothecator under the revolving hypothec has become aware of the merger. The same shall apply if one (1) month has expired from the date of the merger.

875. (Division of hypothec or debtor under a revolving hypothec, prior to finalization)

(1) If a division occurs of a corporate hypothec under a revolving hypothec, prior to the finalizing of the principal, the revolving hypothec shall secure the claims that occurred at the time of the division, as well as the claims acquired after the division, by the corporation that divided, or the corporation that was established or assumed the business as a result of the division.

(2) If a division occurs in connection with a corporate debtor, prior to the finalizing of the principal, the revolving hypothec shall secure the debts that exist at the time of the division, as well as the debts that are incurred after the division, by the corporation that divided

or the corporation that was established or assumed the business as a result of the division.

(3) The provisions of paragraphs (3), (4) and (5) of Article 874 (Merger of hypothec or debtor under a revolving hypothec) shall apply *mutatis mutandis* to paragraphs (1) and (2) hereof.

876. (Disposition of revolving hypothec)

(1) The hypothec under a revolving hypothec cannot make any disposition as set forth in paragraph (1) of Article 860 (Transfer or waiver of hypothec), or paragraph (1) of Article 861 (Transfer, waiver or change of ranking), prior to the finalizing of the principal; provided, however, that this shall not prevent a disposition as set forth in Article 859 (Sub-hypothecation).

(2) The provisions of paragraph (3) of Article 862 (Effect of disposal of hypothec) shall not apply to repayments made prior to the finalizing of the principal in the case of the proviso to paragraph (1).

877. (Transfer of revolving hypothec)

(1) The hypothec of a revolving hypothec may obtain the consent of the hypothecator under the revolving hypothec, and transfer the revolving hypothec prior to finalizing of the principal.

(2) The hypothec of a revolving hypothec may divide the revolving hypothec into two revolving hypothecs, and transfer one of these in accordance with paragraph (1). In this event if that revolving hypothec has been the subject of rights of a third party, the rights of said third party shall be extinguished in connection with the revolving hypothec that was transferred.

(3) The hypothec under a revolving hypothec must obtain the consent of the third party set forth in paragraph (2) in order to make the transfer set forth therein.

878. (Partial transfer of revolving hypothec)

A hypothec under a revolving hypothec may obtain consent from the hypothecator under the revolving hypothec prior to the finalizing of the principal, and transfer a portion of the revolving hypothec and share the same with the acquiring party.

879. (Sharing of revolving hypothec)

(1) The co-owners of a revolving hypothec shall receive payment in proportion to the amounts of the claims held by each; provided that if prior to finalizing the principal a different ratio is prescribed, or it is prescribed that one of the parties shall receive payment in preference to other parties, then payment shall be received as so prescribed.

(2) A co-owner of a revolving hypothec may obtain the consent of the other co-owners and transfer his rights under the revolving hypothec



in accordance with the provisions of paragraph (1) of Article 877(Transfer of revolving hypothec).

880. (Effect of transfer of revolving hypothec by a hypothec under a revolving hypothec who has received the transfer or waiver of priority ranking)

If a hypothec under a revolving hypothec who has received the transfer or waiver of priority ranking from other hypothecary creditor transfers or partially transfers said revolving hypothec, the acquiring party shall acquire the benefit of the transfer or waiver of said ranking.

881. (Joint revolving hypothec)

The provisions of Articles 857(Simultaneous or staggered application of proceeds in case of joint hypothec) and 858(Joint hypothec - registration of subrogation) shall apply in connection with a revolving hypothec, only if it is registered [with all of the immovables] that a revolving hypothec is created over more than one immovable as security over the same claims, simultaneously with the creation of the revolving hypothec.

882. (Amendment, transfer or finalizing of a joint revolving hypothec)

(1) Any amendment of the extent of claims secured by or the debtors or maximum credit limit of a revolving hypothec registered pursuant to Article 881(Joint revolving hypothec), or the transfer or partial transfer thereof shall not have effect unless registered in connection with all of the immovables.

(2) The principal secured by a revolving hypothec that has been registered pursuant to Article 881(Joint revolving hypothec) shall be finalized even if cause for finalization has occurred in connection with only one immovable.

883. (Cumulative revolving hypothec)

A person who has revolving hypothecs over more than one immovable may exercise those revolving hypothecs in preference to other subordinate creditors up to each maximum credit limit in connection with the price for each immovable except in the event of Article 881(Joint revolving hypothec).

884. (Demand for finalization of principal)

(1) The hypothecator under a revolving hypothec may demand the finalizing of the principal to be secured if three years have passed since the creation of the revolving hypothec; provided that this shall not apply if a date has been prescribed on which the principal is to be finalized.

(2) The hypothecator under a revolving hypothec may demand the finalizing of the principal to be secured if as a result of a change of the scope of claims to be secured, termination of transaction, or

other cause, it becomes definite that no more principal will arise which is to be secured.

(3) The hypothec under a revolving hypothec may demand the finalizing of the principal to be secured; provided that this shall not apply if a date has been prescribed on which the principal is to be finalized.

(4) If a demand is made pursuant to paragraph (1), (2) or (3), the principal to be secured shall be finalized with the expiration of two weeks from the time of the demand.

885. (Cause for finalizing of principal)

(1) In addition to cases in which a demand for finalizing has been made as set forth in Article 884 (Demand for finalization of principal), the principal to be secured under a revolving hypothec shall be finalized in the following circumstances:

- a) if the hypothec under the revolving hypothec has made a petition for compulsory sale of the immovable under the hypothec, provided that this shall be limited to cases in which the compulsory sale procedures have commenced;
- b) if the hypothec under the revolving hypothec has attached the immovable under the hypothec, through a disposition for arrears;
- c) if two weeks have passed since the hypothec became aware that compulsory sale procedures have been commenced or attachment through a disposition for arrears has been made against the immovable under the hypothec; or
- d) if the debtor or the hypothecator under the revolving hypothec has received a declaration of bankruptcy.

(2) If the effect of a compulsory sale or attachment pursuant to paragraph (1) (c) or a declaration of bankruptcy pursuant to paragraph (1) (d) has been extinguished, the finalizing of the principal shall be deemed not to have taken place; provided that this shall not apply if a third party has acquired the revolving hypothec or the rights created over the same on the basis that the principal has been finalized.

886. (Demand for reduction of maximum credit limit)

(1) After the principal has been finalized, the hypothecator under the revolving hypothec may demand the reduction of the maximum credit limit of the revolving hypothec to the amount that is the sum of the debt currently existing and the amount of interest and other periodical payments that will accrue for two years thereafter, as well as the amount of damages for default.

(2) The demand of paragraph (1) need only be made for one immovable in connection with the reduction of the maximum credit limit of a revolving hypothec that is registered pursuant to Article 881 (Joint revolving hypothec).

887. (Demand for extinguishing of revolving hypothec)

(1) If the amount of the debt currently existing after the finalizing

of the principal exceeds the maximum credit limit of a revolving hypothec, a person who has created the revolving hypothec to secure the debts of another, or a third party who has acquired over the immovable under the revolving hypothec ownership or perpetual lease, or a leasehold that can be set up against third parties may, by paying or depositing with a depository office an amount equivalent to the maximum credit limit, demand that the revolving hypothec be extinguished. In this event, the payment or deposit shall have the effect of performance [as a ground of extinction of debt].

(2) A revolving hypothec with a registration prescribed in Article 881(Joint revolving hypothec) (Joint revolving hypothec) shall be extinguished if a demand set forth in paragraph (1) is made against one of the immovables.

(3) The debtor, guarantor or their successor in interest cannot make a demand for extinguishing as prescribed in paragraph (1).

(4) A third party who has acquired ownership or another right set forth in paragraph (1) that is encumbered by a condition precedent cannot make a request for extinguishing as prescribed in paragraph (1) during the period of time that the existence or absence of said condition remains undetermined.

## **Chapter Six TRANSFER AS SECURITY<sup>16</sup>**

### **Section I. Definition of Transfer as Security**

888. (Definition of transfer as security)

(1) A transfer as security shall mean the transfer of the ownership of a prescribed movable owned by a debtor or a third party, to the creditor, for the purposes of securing a debt. In this event, the ownership over the property shall be re-transferred to the person who provided the security when the debt is paid in full.

(2) It shall be possible to have more than one movable, for which the scope is defined according to the type of movable, the location or other standards, be the object of a transfer as security as one aggregate movable, even if there are changes in the individual movables included therein.

### **Section II. Formation of Security Interest Under a Transfer as Security**

889. (Creation of security interest under a transfer as security)

A security interest under a transfer as security shall be created through an agreement between the creditor and the debtor or the third party providing the movable(s) for the transfer as security.

---

<sup>16</sup> This is essentially the same as a common law "chattel mortgage," and only applies to movables.

890. (Perfection of security interest under a transfer as security)

A security interest under a transfer as security cannot be held up against a third party other than the [security creator] unless possession of the object is assigned pursuant to Article 229 (Assignment of possession).

### Section III. Effect of Security Interest Under a Transfer as Security

891. (Extent of effect of security interest under a transfer as security)

(1) [The effect of] a security interest under a transfer as security shall extend to all things that are affixed to and form part of the object of the security interest of the transfer as security at the time of the creation thereof. It shall also extend to all things that are affixed to the object subsequent to the creation of the security interest under the transfer as security.

(2) Provisions to the contrary may be set forth in the agreement creating the security interest under the transfer as security.

892. (Effect of security interest under a transfer as security on fruits)

(1) If the [security creator] or a third party on instruction from the [security provider] directly possesses the object, the provisions of Article 891 (Extent of effect of security interest under a transfer as security) shall not apply to the fruits thereof; provided that this shall not apply after the holder of the security interest under the transfer as security has demanded delivery of the object pursuant to paragraph (2) of Article 898 (Conversion to cash or conclusive transfer of ownership).

(2) If the holder of the security interest under the transfer as security or a third party on instruction from said holder directly possesses the object, the provisions of Article 822 (Priority right to receive satisfaction from fruits) concerning pledges shall apply *mutatis mutandis* to fruits produced from the object.

893. (Subrogation)

(1) The security interest under a transfer as security may be executed against money or other things to be received by the [security creator], as a result of sale, loss or destruction of, or damage to the object of the transfer as security; provided that it cannot be executed against the money or other thing after it has been paid or delivered to the [security creator].

(2) Notwithstanding the provisions of paragraph (1) above, if the object under the transfer as security consists of the movables prescribed in paragraph (2) of Article 888 (Definition of transfer as security), and the [security creator] plans to sell [any portion of the individual movables included therein] to another, the security interest

under the transfer as security cannot be exercised against the sale proceeds.

894. (Disposition of object by [security creator])

(1) Where a [security creator], who continues his direct possession over the object even after the security interest under a transfer as security has been created, assigns said object to a third party, or has created a real security right over said object in favor of a third party, if said third party satisfies the requirements set forth in Article 193(Bona fide acquisition of ownership of movable), said third party may set up its rights against the holder of the security interest under the transfer as security.

(2) Notwithstanding the provisions of paragraph (1) above, if the object under the transfer as security consists of the movables prescribed in paragraph (2) of Article 888(Definition of transfer as security), and the [security creator] plans to sell [any portion of the individual movables included therein] to another, and if the [security creator] who continues to be in direct possession of the object even after the creation of the transfer as security sells the object to a third party, the holder of the security interest under the transfer as security shall not be able to set up his security interest against the third party regardless of whether the third party satisfies the requirements set forth in Article 193(Bona fide acquisition of ownership of movable).

(3) Where another person on instruction from the [security creator] continues direct possession over the object even after the security interest under a transfer as security has been created, if the [security creator] assigns said object to a third party, or has created a real security right over said object in favor of a third party, the provisions of paragraph (1) or (2) shall apply *mutatis mutandis*.

895. (Extent of secured claim)

The security interest under the transfer as security shall secure the principle, interest, penalty, expenses for enforcing the security interest under the transfer as security, the expenses for preserving the object, as well as compensation for damage resulting from default on obligations, or an hidden defect in the object, except where otherwise provided in the act of creation.

896. (Special provisions in the event that the holder of the security interest under the transfer as security takes direct possession of the object)

(1) If the holder of the security interest under the transfer as security or a third party on instruction from the holder takes direct possession of the object, the provisions of Articles 821(Retention of thing pledged), 823(Pledgee's duty to preserve thing pledged), and 824(Pledgee's right to reimbursement) shall apply *mutatis mutandis*.

(2) In case where a third party has a direct possession over the subject matter by the direction of the holder of the security interest

under the transfer as security, who transferred the ownership of the subject matter to another third party or provided it as security for another third party, the provision of Paragraph (1) shall apply *mutatis mutandis*.

897. (Disposition of object by holder of security interest under the transfer as security)

Where the holder of the security interest under the transfer as security who is in direct possession of the object assigns the object to a third party, or creates a real security right in favor of a third party, if the third party satisfies the requirements set forth in Article 193 (Bona fide acquisition of ownership of movable), the third party may set said rights up against the [security creator].

#### **Section IV. Enforcement of the Security Interest Under the Transfer as Security**

898. (Conversion to cash or conclusive transfer of ownership)

(1) If the debt is not discharged, the holder of the security interest under the transfer as security may by giving notice to the [security creator] take a measure by himself to convert the object to cash, or obtain the ownership of the object conclusively.

(2) If in the event of paragraph (1) the object is held in the direct possession of the [security creator] or a third party on the instruction of the [security creator], a demand for delivery of the object may be made against said person.

(3) If in the event of paragraph (1) the price of the object exceeds the amount of debt payable, the holder of the security interest under the transfer as security must pay the [security] creator the difference as a settlement.

899. (Right of retrieval of a person who provides the security)

The person who provides the security may, even after the payment date of the debt has passed and until the settlement payment set forth in paragraph (3) of Article 898 (Conversion to cash or conclusive transfer of ownership) is made, tender the entire amount of the debt and show this fact to the holder of the security interest under the transfer as security, and retrieve the object under the transfer as security; provided, however, that if the price of the object encumbered by the security interest under the transfer as security does not exceed the amount of the debt that is payable, the preceding shall not apply after the holder of the security interest under the transfer as security has notified the person who provides the security to that effect.

## **Chapter Seven GUARANTY**

### **Section I. Formation of Guaranty**

900. (Formation of contract of guaranty)

(1) A guaranty shall be formed when (i) a prospective guarantor undertakes to the obligee that in the event the obligor ['principal obligor'] fails to perform his obligation ['underlying obligation'], the prospective guarantor will perform the whole or part of such obligation together with the obligor ['guarantor's obligation'], and (ii) the obligee accepts such undertaking.

(2) A rider providing security for loss, which shall constitute a guaranty obligation independent from the underlying obligation, may be executed as part of a contract of guaranty. However, this shall be limited to situations in which the provision of security for loss or guaranty constitutes part of the business of the person assuming the obligations imposed by such rider.

(3) Where assumption of the guaranty obligation does not constitute part of the business of the prospective guarantor, the obligee shall provide the prospective guarantor with any and all material information concerning the guaranty obligation to be assumed, thereby giving the prospective guarantor a chance to fully deliberate [whether to enter into the contract of guaranty based on such information].

(4) Where the obligee fails to carry out the duty described in paragraph (3), the guarantor may rescind the contract of guaranty.

901. (Formality of contract of guaranty)

(1) A guaranty undertaking made without being recorded in an instrument or document may be revoked at any time. However, this shall not apply where the guarantor has voluntarily set to perform the guaranty obligation.

(2) The provisions of paragraph (1) shall also apply to a guaranty undertaking made in connection with a monetary obligation where the amount of the guaranty obligation is not set forth in the guarantor's handwriting.

(3) The contents of the guaranty obligation shall be specifically described in the guaranty instrument or document.

902. (Floating guaranty)

(1) Notwithstanding the provisions of paragraphs (2) and (3) of Article 901 (Formality of contract of guaranty), a floating guaranty contract that guarantees the performance of unspecified future obligations accruing from a certain continuing legal relationship shall be valid and effective only if the continuing legal relationship forming the basis of the underlying obligations is specified.

(2) If the term of the guaranty is not stated in the floating guaranty contract, the guarantor may, after a reasonable period of time has elapsed since the date of execution of the contract, terminate the floating guaranty contract, and such termination is effective only for the future.

(3) If the principal obligor's business or financial position has deteriorated substantially since the date of execution of the floating guaranty contract, the guarantor may immediately terminate the floating guaranty contract, and such termination is effective only for the future.

(4) Upon the death of a guarantor under a floating guaranty contract, only the floating guarantor's obligations regarding the underlying obligations in existence at the time of the guarantor's death shall be subject to succession.

## Section II. Effect of Guaranty

### 903. (Scope of guaranty)

(1) A guaranty obligation shall include interest accruing on the underlying obligation, penalties, damages and all other charges incidental to the underlying obligation.

(2) A guaranty contract may specify the amount of penalties or damages payable for non-performance of the guaranty obligation.

### 904. (Nature of guaranty)

(1) Where an underlying obligation does not exist, a guaranty shall not be created. However, a guaranty can be created with regard to an underlying obligation that could arise in the future or an underlying obligation subject to a condition.

(2) If the guarantor's burden is more onerous than that of the underlying obligation with respect to either the object or the terms and conditions of the obligation, the guarantor's obligation shall be reduced in accordance with the scope of the underlying obligation.

(3) The extinction of the underlying obligation shall operate to extinguish the guaranty obligation as well.

(4) A demand for performance or any other ground for interruption of a prescription period against the principal obligor shall also be effective against the guarantor.

(5) Except as otherwise provided for in the guaranty contract, when the claim owed to the principal obligor was assigned, the claim owed to the guarantor shall also be deemed to have been assigned to the assignee.

### 905. (Rights of guarantor)

(1) The guarantor is entitled to invoke prescriptive extinction of the underlying obligation.

(2) The principal obligor's waiver of the benefit of prescription shall not be effective against the guarantor.



(3) The guarantor may raise any defenses available to the principal obligor.

(4) Where the principal obligor is entitled to rescind or terminate [the contract giving rise to the underlying obligation], the guarantor may refuse to perform the guaranty obligation.

(5) Where the principal obligor is entitled to a set-off of the underlying obligation by virtue of a counter-obligation owed by the obligee, the guarantor may refuse to perform the guaranty obligation to the extent that the underlying obligation would be extinguished by the exercise of the set-off.

906. (Guaranty of voidable obligation)

Where a guarantor who offers a guaranty or security against loss as part of his business assumes a guaranty obligation regarding the voidable obligation while being aware of grounds for rescission [of the contract giving rise to the underlying obligation], the guarantor shall be presumed to have assumed an independent obligation regarding the same subject matter as that of the underlying obligation.

907. (Qualification as guarantor)

(1) Where an obligor has a duty to furnish a guarantor to the obligee, the guarantor must be a person of full legal capacity who has sufficient financial ability to effect performance.

(2) If the guarantor ceases to fulfill the conditions set forth in paragraph (1), the obligee may demand that the obligor replace the guarantor with a person who fulfills such conditions.

(3) If the obligor is unable to furnish a guarantor who fulfills the conditions set forth in paragraph (1), the obligee may demand that the obligor furnish other security in lieu thereof.

(4) This Article shall not apply in cases where the obligee has designated the guarantor.

908. (Meaning of joint guaranty and principle of joint guaranty)

(1) [A guarantor who is obligated to perform jointly and severally with the principal obligor] may not (i) demand of the obligee that performance be demanded from the principal obligor prior to the guarantor, or (ii) exempt oneself from enforcement of the guaranty obligation by establishing that the principal obligor has sufficient resources to tender performance and is easily subject to execution.

(2) In the absence of an agreement to the contrary, the guarantor is bound to perform the guaranty obligation jointly and severally with the principal obligor.

909. (Effect of events occurring with respect to guarantor)

Events that occur with respect to the guarantor shall have no effect

with respect to the principal obligor. However, this shall not apply to a demand or other grounds for the interruption of prescription that is made or occurred to a guarantor who has been commissioned by the principal obligor.

910. (Co-guarantors)

(1) Where multiple persons undertake to be guarantors in a contract, each guarantor is obligated with respect to the entire amount of the underlying obligation.

(2) In the absence of an agreement to apportion the guaranty obligation among the co-guarantors and limit each co-guarantor's liability vis-à-vis the obligee to the apportioned share thereof, the burden of the guaranty obligation shall be presumed to be shared equally among all co-guarantors.

### Section III. Indemnification

911. (Commissioned guarantor's right to indemnification)

(1) Where a guarantor commissioned by the principal obligor has effected performance on behalf of the principal obligor or has otherwise extinguished the underlying obligation at his expense, the guarantor is entitled to demand indemnification from the principal obligor.

(2) The guarantor described in paragraph (1) may demand indemnification of the actual amount paid by him and interest accruing thereon from the time of payment, as well as compensation for damages.

(3) A guarantor commissioned by a principal obligor may preemptively exercise his right to indemnification in any of the following cases:

- a) Where the guarantor has without negligence on his part received the issuance of a judgment ordering performance to the obligee, and such judgment has become final and binding;
- b) Where the principal obligor has been declared bankrupt, and the obligee does not file for a distribution in the bankruptcy procedure;
- c) Where the underlying obligation has become due; or
- d) Where the deadline for performance of the underlying obligation is not fixed and its maximum period of performance cannot be established, and five years have elapsed since the date of execution of the guaranty contract.

(4) A principal obligor who has received a demand for indemnification from the guarantor pursuant to paragraph (1) may, so long as the obligee has not received full and complete performance of the obligation, demand that the guarantor furnish security or procure a discharge from the obligation for the benefit of the principal obligor.

(5) In the case described in paragraph (4), the principal obligor may relieve himself from liability for indemnification by making a deposit with the official depository office, furnishing security to the guarantor or procuring a discharge from the obligation for the benefit of the guarantor.

912. (Voluntary guarantor's right to indemnification)

Where a guarantor who did not be commissioned by the principal obligor has effected performance on behalf of the principal obligor or has otherwise caused the principal obligor to be released from the underlying obligation at the guarantor's expense, the principal obligor shall indemnify the guarantor to the extent that the principal obligor was enriched thereby. However, if the guaranty was provided against the will of the principal obligor, the principal obligor shall indemnify the guarantor to the extent that the principal obligor continues to be enriched.

913. (Requirements for indemnification)

(1) Where the guarantor has, without notifying the principal obligor that he received a demand for performance from the obligee, effected performance of the obligation or otherwise procured the discharge thereof at his own expense, and if the principal obligor has had any means of defense against the obligee, the principal obligor may set it up against the guarantor's demand for indemnification. However, if the mean of defense so set up is a set-off, the guarantor may demand that the obligee perform the counter-obligation that might have been extinguished if it had been set-off.

(2) If, as a result of the guarantor's failure to notify the principal obligor that he has procured the discharge of the obligation at his own expense, the principal obligor has also effected in good faith performance of the obligation or otherwise procured a discharge at the principal obligor's expense, the principal obligor may treat his performance or other act of discharge as effective.

914. (Right to indemnification of guarantor on behalf of one of several obligors)

A guarantor on behalf of one of several joint obligors or obligors of an indivisible joint obligation may obtain indemnification from the other obligors in proportion to their respective shares.

915. (Right to indemnification of co-guarantors)

(1) If one of several co-guarantors has effected performance of the guaranty obligation or otherwise procured a common discharge thereof at his own expense, such guarantor may demand indemnification from the other guarantors in proportion to their respective shares of the burden.

(2) In the case described in paragraph (1), the guarantor may demand indemnification with respect to the actual amount paid and interest accruing thereon, as well as compensation for damages.

(3) In the case of a co-guaranty that contains an agreement to apportion the guaranty obligation among the co-guarantors and limit each co-guarantor's liability vis-à-vis the obligee to the apportioned share thereof, if one of the co-guarantors has procured at his own expense a common discharge of the obligation in excess of his share of

the burden, the provisions of Articles 912 (Voluntary guarantor's right to indemnification), 913 (Requirements for indemnification) and 914 (Right to indemnification of guarantor on behalf of one of several obligors) shall apply *mutatis mutandis*.

#### Section IV. Subrogation

916. (Subrogation following performance)

(1) A guarantor who has effected performance of the underlying obligation or otherwise procured discharge thereof at his own expense shall acquire the obligee's rights in connection with the underlying obligation, and shall be entitled to exercise in lieu of the obligee the security interests securing such rights.

(2) In the case described in paragraph (1), a guarantor who has obtained a partial discharge may exercise the obligee's rights and the associated security interests concurrently with the obligee in proportion to the value of the discharge obtained by the guarantor. In this case, the right of termination may be exercised solely by the obligee. However, in the event of termination, [the terminating obligee] shall return to the subrogor the amount for which the discharge was obtained and interest thereon.

917. (Duty to deliver documents, etc.)

(1) An obligee who has obtained full satisfaction by virtue of the guarantor's performance or other expenditure must deliver to the guarantor the instrument certifying the underlying obligation and the property held in the obligee's possession as security.

(2) If the guarantor's performance or other expenditure has been made with respect to only part of the obligation, the obligee shall record the fact of the subrogation in the instrument and allow the guarantor to supervise the preservation of the property held in the obligee's possession as security.

918. (Duty to preserve security)

An obligee who has obtained satisfaction by virtue of the guarantor's performance or other expenditure is obligated to preserve the security for the benefit of the guarantor who made such performance or other expenditure.

919. (Ranking of subrogors)

(1) A guarantor who effects performance or other expenditure may not thereafter be subrogated to the rights of the obligee as against a third-party acquirer of an immovable provided as security unless [the fact of subrogation] is registered after such performance or other expenditure.

(2) A guarantor shall be subrogated to the rights of the obligee as against third party security providers only in accordance with the proportion of the number of third party security providers to that of

guarantors.

920. (*Mutatis mutandis* application of provisions regarding subrogation of performing party)

With respect to subrogation arising out of a guarantor's performance or other expenditure, in addition to the provisions set forth in this Section VI, the provisions of Sub-section IV, Section I, Chapter Seven of Book Four shall apply *mutatis mutandis*.

## **Chapter Eight JOINT OBLIGATION**

### **Section I. Creation of Joint Obligation**

921. (Definition of joint obligation)

(1) Where multiple persons have assumed a joint obligation, the obligee may demand full or partial performance from any individual obligee or from all of the obligees simultaneously or separately.

(2) Where one, several or all joint obligors have been declared bankrupt, the obligee may seek distribution of the entire amount of the obligation in the bankruptcy proceedings for each of such obligors.

922. (Creation of joint obligation)

(1) A joint obligation is created by a provision of law or by the express or implied agreement between the obligee and each of multiple obligors who are acknowledged to have in common an intention of being obligated jointly with the others.

(2) The agreement described in paragraph (1) may be reached between the obligee and all obligors simultaneously or between the obligor and each obligor separately.

(3) The obligee can exempt any obligor from the joint liability with other obligors.

(4) An obligor who is exempted from the joint liability is thereafter liable only for that share of the obligation assumed by the obligor prior to the exemption.

(5) Each joint obligor is presumed to bear an equal share of the total obligation.

923. (Nullification or revocation regarding obligor)

The existence of grounds for nullification or revocation of an act regarding a joint obligor shall not affect the validity of the obligation assumed by the remaining joint obligors.

### **Section II. Effect of Events Occurring Regarding Single Joint Obligor**

924. (Universal effect of demand or other ground for interruption of prescription period)

A demand for performance or other act that serves to interrupt a period of prescription that is made with respect to one joint obligor shall be effective against all other joint obligors.

925. (Universal effect of performance, etc.)

Where one joint obligor makes performance, substitute act of performance or performance by deposit, the obligation is thereby extinguished with respect to the other joint obligors as well.

926. (Universal effect of offset)

(1) Where one joint obligor has a claim against the obligee, the obligor's offset of the claim against the obligation shall serve to extinguish the obligation on behalf of all joint obligors.

(2) While the obligor possessing the claim described in paragraph (1) does not exercise an offset of such claim against the obligation, the other obligors may refuse to perform with respect to that obligor's share of the obligation.

927. (Universal effect of novation)

The execution of a novation between the obligee and any joint obligor shall serve to extinguish the obligation for all obligors.

928. (Universal effect of merger)

A merger between the obligee and any joint obligor shall be deemed to constitute performance by that obligor.

929. (Universal effect of exemption)

(1) An exemption given to one joint obligor with respect to the entire obligation is effective with respect to the other obligors only to the extent of the share of the obligation for which that obligor is responsible.

(2) Where an exemption with respect to part of the obligation is given to one joint obligor, the exemption's effect with respect to the other obligors shall be proportional to the effect it would have had if it had constituted an exemption with respect to the entire obligation.

930. (Universal effect of prescription)

(1) Where one joint obligor invokes the benefit of a prescription that has been perfected with respect to that obligor, the other obligors shall be exempted from the obligation to the extent of the share of the obligation for which that obligor was responsible.

(2) In the case described in paragraph (1), where the prescription has been perfected but the benefit of prescription has not been invoked,

the other obligors may invoke such prescription with respect to the share of the obligation for which the obligor originally eligible to invoke prescription was responsible.

931. (Principle of relative effect)

Except as provided in Articles 924 (Universal effect of demand or other ground for interruption of prescription period) through 930 (Universal effect of prescription), an event occurring with respect to one joint obligor shall have no effect with respect to the other obligors.

### Section III. Indemnification

932. (Performing obligor's right to indemnification)

(1) Where a joint obligor has obtained a discharge from the obligation through his own performance or other expenditure, and the other joint obligors have consequently been discharged as well, the joint obligor may demand indemnification from the other obligors with respect to their respective shares of the obligation. Where the performance or other expenditure of a joint obligor covers only a part of the obligation, and that obligor and the other joint obligors receive a discharge to that extent, the obligor may demand indemnification in accordance with the percentage of the entire obligation that was discharged by such performance or expenditure.

(2) The demand for indemnification described in paragraph (1) may include legal interest incurred after the date of discharge through performance or other expenditure, as well as unavoidable expenses and other losses.

933. (Notification as requirement for indemnification)

(1) Where a joint obligor, without notifying the other obligors of the receipt of a demand for performance by the obligee, obtains a discharge from the obligation through his own performance or other expenditure, thereby discharging the other joint obligors as well, another obligor who had grounds to defend against the obligee's claim may raise such grounds, to the extent of such obligor's share of the obligation, as a defense to a claim for indemnification by the joint obligor who obtained a discharge from the obligation through performance or other expenditure. However, where the other obligor's grounds for defending against the obligee consist of an offset [with a counter-obligation owed by the obligee], the obligor against whom the defense is raised may demand that the obligee perform such counter-obligation that should have been extinguished by the offset.

(2) Where a joint obligor obtains a discharge from the obligation through his own performance or other expenditure and fails to notify the other obligors that they are thereby discharged from the obligation as well, and another joint obligor thereafter obtains a discharge from the obligation by tendering performance or other expenditure to the obligee without knowledge of the discharge obtained as a result of the first joint obligor's performance or expenditure, the second joint obligor may deem his own performance or other action discharging the

obligation as effective.

(3) Where performance or other expenditure that would discharge the obligation are made by multiple joint obligors, if the notification described in paragraphs (1) and (2) is not provided, the discharging performance or other expenditure that is made first in time shall be deemed effective.

934. (Indemnification where joint obligor lacks financial capacity)

Where a joint obligor lacks the financial capacity to make indemnification, the amount of that obligor's liability for indemnification shall be borne by the obligor demanding indemnification and by the remaining joint obligors having such capacity in proportion to their respective share of the obligation. However, where the obligor demanding indemnification is negligent, such obligor may not demand indemnification from the other obligors for the financially incapable obligor's share of the obligation.

935. (Exemption of joint liability and financially incapable obligor's share)

Where a joint obligor obtains an exemption from the joint liability with other obligors, if any of the other obligors lacks the financial capacity to make indemnification, the obligee shall assume that share of the indemnification amount imputed to the financially incapable obligor for which the obligor exempted from the joint liability would otherwise be liable.

#### Section IV. Subrogation by Performance

936. (Subrogation)

(1) Where a joint obligor obtains the right to demand indemnification from the other obligors, such obligor shall succeed to the claims possessed by the obligee against the other obligors to the extent of such indemnification, and shall be subrogated to the position of the obligee in regard to any security interests securing such claims.

(2) The provisions of Book Four, Chapter Seven, Section I, Sub-section IV shall apply *mutatis mutandis* to the subrogation of an obligor seeking indemnification.

#### Section V. Other Situations Involving Multiple Obligor

937. (Indivisible obligation, sham obligation, divisible obligation)

(1) Where multiple obligors owe the same obligation to a single obligee, if the obligors are not acknowledged to have in common an intention to assume joint and several responsibility with the others, the provisions of Article 921(Definition of joint obligation) shall apply *mutatis mutandis*. However, where performance of the obligation is divisible, and divided performances will not harm the obligee, each obligor shall assume a divided and separate obligation corresponding



to his respective share. Where each obligor's share cannot be determined, each share shall be presumed to be equal.

(2) In the case described in the first sentence of paragraph (1), events occurring with respect to one obligor shall not affect the other obligors except in the cases described in Article 925 (Universal effect of performance, etc.) and paragraph (1) of Article 926 (Universal effect of offset).

(3) Where one obligor described in the first sentence of paragraph (1) obtains a discharge of the obligation through his own performance or other expenditure and the other obligors are thereby discharged as well, if it is necessary to preserve fairness between the performing obligor and the other obligors, the performing obligor may, to the extent necessary to preserve fairness among the obligors, demand indemnification from the other obligors.

## **BOOK SEVEN "RELATIVES"**

### **Chapter One GENERAL PROVISIONS**

938. (Scope of relatives)

"Relatives" refers to the persons listed below:

- a) Relatives by consanguinity up to the sixth degree of relationship;
- b) Spouses; and
- c) Relatives by affinity up to the third degree of relationship.

939. (Calculation of degree of relationship)

(1) The degree of relationship is determined by counting the number of generations between the relatives.

(2) The degree of relationship between collateral relatives depends on the number of generations ascending from one of the relatives, or his or her spouse, back to the common ancestor, and then descending from such ancestor to the other relative.

940. (Arising of relationship from adoption)

The same relationship as between relatives by consanguinity arises on the date of an adoption between the adoptee on the one hand and the adopter and his or her relatives by consanguinity on the other hand.

941. (Extinguishment of affinity)

(1) Affinity shall be terminated by divorce.

(2) The same as set forth in paragraph (1) shall apply if after the death of a spouse, the surviving spouse remarries or declares his or her intention to terminate affinity.

942. (Extinguishment of relationship by dissolution of adoption)

The relationship between an adoptee, his or her spouse, his or her lineal descendants and their spouses on the one hand, and the adopter and his or her relatives by consanguinity on the other hand, is terminated by the dissolution of the adoption.

943. (Mutual obligations of respect and prevention of violence within families)

(1) Members of families shall respect each other's rights and freedom, and shall support each other.

(2) Family members shall prevent domestic violence and infringements of each other's human rights.

## **Chapter Two ENGAGEMENT**

944. (Formation of engagement)

An engagement shall be formed by promising to marry in the future between a man and a woman and performing the ceremony of engagement.

945. (Return of engagement gift)

Where an engagement is dissolved, a party who has presented an engagement gift to the other party in the expectation of the formation of marriage may demand the return of such gift from the other party.

946. (Liability for improper revocation)

Where an engagement is revoked by one of the parties without good reason, the other party may demand compensation for damage arising from such revocation.

947. (Time limit for filing suit)

A suit relating to Article 945 (Return of engagement gift) or to Article 946 (Liability for improper revocation) must be filed not later than one year following the dissolution of the engagement.

## **Chapter Three MARRIAGE**

### **Section I. Formation of Marriage**

#### **Sub-section I. Requirements for marriage**

948. (Marriageable age)

Neither men nor women may marry until they have reached their majority. However, if one of the parties has attained the age of majority and the other party is a minor at least 16 years of age, the parties may marry

with the consent of the parental power holders or guardian of the minor.

949. (Prohibition of bigamy)

A person who has a spouse may not effect an additional marriage.

950. (Period of prohibition of remarriage)

(1) A woman may not remarry until 120 days have elapsed from the day of the dissolution or annulment of her previous marriage.

(2) The provisions of paragraph (1) shall not apply if the woman was already pregnant from before the dissolution or annulment of the previous marriage and has given birth, or if she has a doctor's certificate that she is not pregnant.

951. (Prohibition of marriage between relatives by consanguinity)

(1) No marriage may be effected between lineal relatives by consanguinity, nor between collateral relatives by consanguinity up to and including the third degree of relationship.

(2) Paragraph (1) shall apply notwithstanding the termination of relationship pursuant to the provisions of Article 1016 (Dissolution of full adoption) or 1032 (Effect of dissolution of simple adoption).

952. (Prohibition of marriage between relatives by affinity)

(1) No marriage may be effected between lineal relatives by affinity. The same shall apply notwithstanding the termination of affinity pursuant to the provisions of Article 941 (Extinguishment of affinity), 1013 (Dissolution of full adoption) or 1029 (Effect of dissolution of simple adoption).

(2) No marriage may be effected between collateral relatives by affinity up to and including the third degree of relationship. The same shall apply notwithstanding the termination of affinity pursuant to the provisions of Article 941 (Extinguishment of affinity); provided that where either husband or wife has died, the surviving spouse may marry a person who was a collateral relative by affinity up to and including the third degree of relationship.

953. (Marriage of minor)

(1) If one of the parties wishing to marry is a minor, the consent of parental power holders or guardian must be obtained.

(2) If one of the parental power holders does not consent, the consent of the other parental power holder shall be sufficient.

(3) If the parental power holders or guardian unreasonably refuse consent, the minor wishing to marry may apply to the court for adjudication in place of consent.

954. (Marriage of person under general guardianship)

A person under general guardianship may marry if he or she has the minimum capacity required to effect a marriage. In such a case the consent of the general guardian is not required.

955. (Notification and registration of marriage)

(1) A marriage shall come into effect by virtue of notification, public notice, conclusion of the marriage contract in the presence of the family registration official and marriage registration.

(2) The notification, public notice, conclusion of marriage contract and registration described in paragraph (1) shall be effected in accordance with the procedures prescribed by the [Status Registration Order].

956. (Acceptance of notification of marriage)

A notification of marriage may be accepted only after confirming that there is no infringement of Articles 948 (Marriageable age) to 954 (Marriage of person under general guardianship) inclusive.

957. (Formalities of marriage between Cambodians outside Cambodia)

(1) Cambodians abroad wishing to marry may effect notification, public notice and conclusion of the contract of marriage in the presence of a Cambodian Ambassador, Minister or Consul accredited to that country, and register the marriage.

(2) The public notice described in paragraph (1) shall be effected by posting a notice at the Cambodian diplomatic establishment in the relevant country.

## Sub-section II. Nullity and Annulment of Marriage

958. (Nullity of marriage)

A marriage shall be treated as void only in the following cases:

- a) Where there is no intention to marry common to the parties on account of mistake as to the identity of the other party, coercion or other cause;
- b) Where the parties do not effect notification, public notice, conclusion of the contract of marriage or registration thereof; provided that a slight procedural defect alone shall not preclude validity of the marriage.

959. (Annulment of marriage)

Annulment of a marriage shall be effected in accordance with Articles 960 (Annulment of unlawful marriage), etc.) to 963 (Annulment of marriage based on fraud or duress).

960. (Annulment of unlawful marriage)

(1) Either party to a marriage, their parents or a public prosecutor may apply to the court for annulment of a marriage effected in contravention of Articles 948 (Marriageable age) to 952 (Prohibition of marriage between relatives by affinity); provided that a public prosecutor may not make such an application after the death of one of the parties.

(2) The spouse or former spouse of the party may also apply for annulment of a marriage effected in contravention of Articles 949 (Prohibition of bigamy) or 950 (Period of prohibition of remarriage).

961. (Extinguishment of right to annul marriage under marriageable age)

(1) No application may be made to annul a marriage effected in contravention of Article 948 (Marriageable age) once the under-age party attains the marriageable age.

(2) An under-age party to a marriage may apply for annulment of the marriage during the period of 3 months following his or her attainment of the marriageable age, except where he or she has ratified the marriage after attaining the marriageable age.

962. (Annulment of marriage within period of prohibition of re-marriage)

Upon the lapse of 120 days from the day of dissolution or annulment of the previous marriage, or where the woman has become pregnant after her remarriage, no application may be made for annulment of a marriage effected in breach of the provisions of Article 950 (Period of prohibition of remarriage).

963. (Annulment of marriage based on fraud or duress)

(1) A person who has been induced by fraud or duress to effect a marriage may apply to the court for annulment of such marriage.

(2) The right of annulment described in paragraph (1) shall be extinguished if 3 months have elapsed since the party discovered the fraud or became free of the duress, or if the party has ratified the marriage.

964. (Effect of annulment of marriage)

(1) The annulment of a marriage shall have no retroactive effect.

(2) If a party who was unaware at the time of the marriage of the existence of a ground for its annulment has acquired property as a result of the marriage, he or she shall return such property to the extent that he or she currently benefits thereby.

(3) A party who was aware at the time of the marriage of the existence of a ground for its annulment shall return the whole of the benefit that

such party has obtained as a result of the marriage, and shall furthermore be liable to compensate the other party for any damage if the other party acted bona fide.

(4) The provisions of Article 988(Presumption of paternity) shall apply *mutatis mutandis* to any child born to the parties to a marriage that is to be annulled.

(5) If a marriage that ought to be annulled is dissolved, the provisions of Article 980(Division of property) shall apply *mutatis mutandis*.

## Section II. Validity of Marriage

965. (Surname of a married couple)

A married couple may use the surname of the husband or the wife, or their respective surnames prior to the marriage, in accordance with their agreement at the time of the marriage.

966. (Obligation of cohabitation, cooperation and mutual assistance)

The husband and wife shall cohabit, cooperate and assist each other.

967. (Freedom to choose occupation and to participate in social activities)

The husband and wife shall be free to choose their occupation and to participate independently in political, cultural and social activities.

968. (Fictional attainment of majority upon marriage)

In the application of this Code, a minor who marries shall be deemed to have attained his or her majority by so doing.

## Section III. The Matrimonial Property System

### Sub-section I. The Contractual Property System

969. (Matrimonial property contract and statutory property system)

(1) Prior to or after their marriage, a husband and wife may enter into a contract governing their property relationship; provided that such contract may not contravene the provisions governing the right to demand support and the legally secured portions.

(2) Unless the husband and wife have entered into a contract with regard to their property, their property relations shall be governed by the provisions of Sub-section II (The Statutory Property System).

970. (Required formalities and conditions for perfection of matrimonial property contract)

(1) A matrimonial property contract shall be concluded in writing.

(2) Where the husband and wife conclude a contract that differs from the statutory property system, such contract cannot be held up against third parties unless it is registered.

## Sub-section II. The Statutory Property System

971. (Allocation of expenses of marriage)

Husband and wife shall share the expenses of married life, taking into account their property, income and all other circumstances.

972. (Separate property)

The types of property listed below shall be treated as separate property belonging to one of the spouses alone:

- a) Property held by a spouse from before the marriage;
- b) Property acquired by a spouse during the marriage by gift, succession, or testamentary gift;
- c) Property obtained as the consideration for disposing of property described in items (a) or (b) above.

973. (Common property)

Common property means any and all property acquired during the marriage by one or both spouses, other than property described in items (b) or (c) of Article 972 (Separate property).

974. (Management and use of property)

(1) Husband and wife shall have equal rights to use, enjoy the benefit from and manage the common property, and each of them shall have the right to use, enjoy the benefit from and manage their own property.

(2) Husband and wife shall have the right to use the common property to the extent necessary for their daily life.

(3) Husband and wife shall jointly manage the common property. Either spouse may demand that the other spouse take any measures required in order to secure, maintain and preserve the common property.

(4) If no agreement concerning the management or use of the common property is reached upon consultation between the spouses or if consultation cannot be held between the spouses, either spouse may seek adjudication by the court concerning such management or use.

975. (Joint liability for obligations)

Husband and wife shall be jointly liable for the following obligations:

- a) Expenses for the maintenance of the cohabitation of the

husband and the wife and expenses for the care of children such as educational and medical expenses;

- b) Obligations and other liabilities agreed in writing by both spouses with an obligee during the marriage and obligations and other liabilities assumed by one of the spouses with the written consent of the other spouse during the marriage; and
- c) Expenses for the management and maintenance of the common property.

976. (Disposition of common property of the spouses)

(1) The common property may not be sold or otherwise disposed of without the consent of both spouses.

(2) Notwithstanding paragraph (1), provided that with the permission of the court, one spouse may sell or otherwise dispose of common property in circumstances where this is unavoidable for the preservation of matrimonial cohabitation and livelihood.

(3) If one of the spouses sold or otherwise disposed of a common property without the consent of the other spouse nor a permission of the court, the non-consenting spouse may demand that the court nullify such disposition within two years commencing from the date when that spouse is aware of such disposition if the common property that was disposed of is immovable, and one year commencing from the date when that spouse is aware of such disposition if the common property that was disposed of is movable.

977. (Spouses' right of residence)

(1) A spouse may reside in the separate property of the other spouse if such property has been provided as the matrimonial residence.

(2) In cases described in paragraph (1), even if the separate property of one spouse that has been provided as the matrimonial residence is disposed of without the consent of the other spouse, the other spouse may continue residing the immovable.

### Sub-section I. Grounds of Divorce

978. (Grounds of divorce)

276. Husband or wife can bring a suit for divorce only in the following cases:

- a) If the other spouse has committed an act of infidelity;
- b) If he or she has been deserted without good reason by the other spouse;
- c) If it has been unknown for a year or more whether the other spouse is alive or dead;
- d) If the other spouse has been living apart contrary to the spirit of marriage for one year or more continuously; or
- e) If the matrimonial relationship has otherwise broken down and there is no prospect of reconciliation.



276. Even in cases falling under paragraph (1), the court, taking account of all the circumstances, may dismiss [with prejudice] a demand for divorce if divorce would cause extreme hardship or anguish to the other spouse or the children.

276. Even where the grounds described in item (d) or (e) of paragraph (1) exist, the court may in its discretion dismiss [with prejudice] a demand for divorce if it finds that the demand is in bad faith because the demandant has seriously neglected to cooperate with and assist the other spouse.

979. (Divorce by agreement)

Where both parties to a marriage have agreed to divorce, they may petition the court for divorce; provided that the court may only grant a divorce after confirming that the parties really desire to dissolve the matrimonial relationship by divorce.

980. (Division of property)

(1) In case of divorce, the property shall be divided fairly in accordance with the agreement of the parties to the marriage.

(2) If the spouses are unable to agree upon consultation, the property shall be divided in accordance with the following provisions:

- a) Each spouse shall retain separate property stated in Article 972 (Separate property).
- b) Each spouse shall have the right to receive one half of the common property in addition to his or her separate property; provided that where there are special circumstances and also an application is filed by one of the parties, the court may divide the common property [otherwise] taking into account all the circumstances, including, without limitation, the contribution of each spouse to the acquisition, maintenance and increase of property, the period of the marriage, the living standard during the marriage, the age, mental and physical condition of each spouse, their occupations, income and earning capacity, the welfare of any children, etc.

(3) House work shall be deemed to have the same value as work outside the house.

981. (Divorce and surname)

A wife or husband who has changed her or his surname on account of marriage may again use the original surname or may use the surname that was being used at the time of the divorce.

## Sub-section II. Divorce Procedures

982. (Suit for divorce)

(1) A suit for divorce shall be filed at the court having jurisdiction in accordance with Article 10 (Special jurisdiction in cases involving

divorce, parent-child relationships) of the Code of Civil Procedure.

(2) Either party to a marriage may file a petition for divorce at the *commune* or *sangkat* council for the domicile or location of residence as prescribed in paragraphs (1) or (3) of Article 10 (Special jurisdiction in cases involving divorce, parent-child relationships) of the Code of Civil Procedure. In such a case the *commune* or *sangkat* council may attempt conciliation during the period of 15 days following its receipt of the petition. If the conciliation is unsuccessful, the *commune* or *sangkat* council shall forward the complaint to the court immediately as if a suit has been filed.

983. (Provisional disposition)

Where this is necessary, a court which has accepted a suit for divorce, either upon petition of a party or *ex officio*, may make an order for provisional disposition relating to separation, custody of children, maintenance or management of property, support of a spouse, sharing of expenses of marriage, expenses of education of children, etc.

984. (Attempt to compromise by court)

(1) Even where one of the parties is strongly demanding divorce, the court may recommend and attempt to persuade the parties to reach a compromise.

(2) If no agreement to compromise is reached, the court shall try the suit for divorce and render a judgment.

## **Chapter Four PARENTS AND CHILDREN**

### **Section I. Natural Parents-Children Relationship**

#### **Sub-section I. General Provisions**

985. (Obligation to notify birth)

(1) The father or mother of a child shall report the birth not later than 30 days from the day of birth to the *commune* or *sangkat* office. If neither the father nor the mother can report the birth, an adult relative cohabiting with the child's father or mother shall promptly report the birth.

(2) If the father and mother neglect to fulfill the obligation described in paragraph (1) without good reason, they shall be subject to a fine of 10,000 riels.

986. (Method of calculation of age)

(1) A person's age shall be counted from the date of birth.

(2) The provisions of Article 335 (Calculation of period by solar

calendar) shall apply *mutatis mutandis* to the calculation of a person's age.

## Sub-section II. Determination of Natural Parents-Children Relationship

987. (Relationship of mother and child)

The woman who gives birth to a child is the child's mother.

988. (Presumption of paternity)

(1) A child conceived by the wife during the marriage shall be presumed to be the child of the husband.

(2) A child born 180 days or more after the day on which the marriage was formed or born not later than 300 days after the day on which the marriage was dissolved or annulled shall be presumed to have been conceived during the marriage.

(3) If a woman who has remarried contrary to the provisions of Article 950 (Period of prohibition of remarriage) gives birth to a child and the father of the child cannot be determined in accordance with the provisions of paragraphs (1) and (2), the child shall be presumed to be a child of the later marriage.

989. (Denial of paternity)

In cases described in Article 988 (Presumption of paternity), the husband or the child may deny the paternity.

990. (Suit of denial of paternity by husband)

(1) The husband shall exercise his right of denial of paternity under Article 989 (Denial of paternity) by suit against the child.

(2) The husband must file a suit of denial of paternity not later than 6 months after he becomes aware of the birth of the child.

(3) If the husband is a person under general guardianship at the time of expiry of the period described in paragraph (2), the said period shall be calculated from the time of the adjudication terminating the general guardianship as set forth in Article 27 (Revocation of declaration of commencement of general guardianship).

991. (Suit of denial of paternity by child)

(1) A child shall exercise the right of denial of paternity under Article 989 (Denial of paternity) by suit against the putative father.

(2) In a case where a minor child exercises his or her right of denial of paternity and the child has neither mother exercising the parental power over said child nor guardian, the court shall appoint a special representative for the child.

(3) Upon the lapse of 6 months following the attaining of majority by the child, he or she may not exercise the right of denial of paternity.

(4) If the child is a person under general guardianship at the time of expiry of the period described in paragraph (3), said period shall be calculated from the time of the adjudication terminating the general guardianship as set forth in Article 27 (Revocation of declaration of commencement of general guardianship).

992. (Retroactive effect of denial of paternity)

A denial of paternity shall have effect retroactively to the time of the birth of the child.

## Sub-section II. Acknowledgement

993. (Voluntary acknowledgement)

The father of a child may acknowledge the child, except where the child already has a legal father.

994. (Capacity to acknowledge)

Even if the father is a minor or a person under general guardianship, the consent of his legal representative shall not be required for acknowledgement.

995. (Acknowledgement by father)

(1) The father may acknowledge a minor child.

(2) A father may also acknowledge a child in the womb, with the consent of the mother.

996. (Acknowledgement of child who attained majority and of deceased child)

(1) A father may only acknowledge a child who attained his or her majority with the consent of such child.

(2) A father may acknowledge a deceased child only if such child has a lineal descendant or descendants; provided that if any of such descendants are adults, their consent must be obtained.

(3) Paragraph (2) of Article 997 (Formalities of acknowledgement) shall apply *mutatis mutandis* to consents under paragraphs (1) and (2).

997. (Formalities of acknowledgement)

(1) Acknowledgements shall be made by means of filing with the family registration official, and may also be made by will.

(2) The mother's consent provided in paragraph (2) of Article 995 (Acknowledgement by father) may be effected by signature on the

acknowledgement form.

998. (Notification of birth and effect of acknowledgement)

A person who files a notification of birth as the father, allows his name to be entered into the birth register as the father and himself affixes his signature or thumbprint shall be deemed to have effected an acknowledgement of being the father of the child.

999. (Retroactivity of acknowledgement)

An acknowledgement shall have effect retroactively to the time of the birth; provided that this shall not prejudice any rights already acquired by any third party.

1000. (Prohibition of revocation)

A father who has effected an acknowledgement cannot revoke such acknowledgement.

1001. (Suit of acknowledgement)

(1) A child may file a suit of acknowledgement; provided that a child who has not consented to acknowledgement under paragraph (1) of Article 996(Acknowledgement of child who attained majority and of deceased child) may not file such a suit.

(2) If a child is deceased, its lineal descendant may file the acknowledgement suit.

(3) The child or its lineal descendant must file the acknowledgement suit not later than 1 year after becoming aware of the father.

(4) If the child or its lineal descendant is a minor or a person under general guardianship at the time of becoming aware of [the identity] of the father, the period described in paragraph (3) shall be computed from the time of attaining majority or the time of the adjudication terminating the general guardianship as set forth in Article 27(Revocation of declaration of commencement of general guardianship), as the case may be.

(5) If the child or its lineal descendant becomes aware of the father after the death of the father, an acknowledgement suit may be filed up to 1 year following the date of death of the father.

(6) A suit described in paragraph (1) or (2) may be filed by the legal representative of the child or lineal descendant in place thereof.

### Sub-section III. Suit Confirming Absence of Parenthood

1002. (Suit confirming absence of parenthood)

(1) In cases where a person is noted in the birth register as the father despite there being no presumption of paternity, or as the mother

despite the fact that she did not give birth to the child, the child may file a suit against such person seeking confirmation of the absence of paternity or maternity, as the case may be.

(2) A person noted in the birth register as the father despite there being no presumption of paternity may file a suit seeking confirmation of the absence of paternity.

(3) A person noted in the birth registry as the mother despite the fact that she did not give birth to the child may file a suit seeking confirmation of the absence of maternity.

(4) A suit under paragraph (2) or (3) may not be filed in cases where legal paternity or maternity has arisen on account of intention or gross negligence on the part of the registered father or mother, or where 20 years have elapsed since the day of the birth of the child or the day on which an acknowledgement came into force.

(5) If the child is a minor, the parent who is not the other party to the suit shall represent the child. If there is no such parent, if the parent cannot represent the child, or if the suit seeking confirmation of absence of parenthood is against both of the parents, the court shall appoint a special representative for the child.

1003. (Retroactivity of confirmation of non-existence of parenthood)

A confirmation of non-existence of parenthood shall have effect retroactively to the time of the birth; provided that this shall not prejudice any rights already acquired by any third party.

#### Sub-section IV. Suit Seeking Confirmation of Maternity

1004. (Suit by child seeking confirmation of maternity)

(1) A child may file a suit seeking confirmation of maternity against the woman who gave birth to said child.

(2) If the child is deceased, its lineal descendant may file the suit described in paragraph (1).

(3) The child or its lineal descendant can file a suit under paragraph (1) not later than 1 year after becoming aware of [the identity of] the mother.

(4) If the child or its lineal descendant is a minor or a person under general guardianship at the time of becoming aware of [the identity of] the mother, the period described in paragraph (3) shall be computed from the time of attaining majority or the time of the adjudication terminating the general guardianship as set forth in Article 27 (Revocation of declaration of commencement of general guardianship), as the case may be.

(5) If the child or its lineal descendant becomes aware of [the

identity of] the mother after the death of the mother, a suit described in paragraph (1) may be filed up to 1 year following the death of the mother.

(6) A suit described in paragraph (1) or (2) may be filed by the legal representative of the child or lineal descendant in place thereof.

1005. (Suit by mother seeking confirmation of maternity)

(1) A mother may file a suit seeking confirmation of maternity against a child to whom she gave birth.

(2) A mother may also bring a suit under paragraph (1) if the child is deceased, but only if the child has a lineal descendant.

(3) A mother must file a suit under paragraph (1) not later than 1 year after becoming aware of [the identity of] the child.

(4) If the mother has become aware of [the identity of] the child after the death of the child, she must file suit under paragraph (1) not later than one year after the death of the child.

(5) If the mother is a person under general guardianship at the time of the expiry of the period described in paragraph (3) or (4), the said period shall be computed from the time of the adjudication terminating the general guardianship as set forth in Article 27 (Revocation of declaration of commencement of general guardianship).

(6) If the child or lineal descendant who is the other party to a suit under paragraph (1) has attained majority, the mother may not file the suit without the consent of the child or lineal descendant, as the case may be.

(7) Even where it has been proved that the woman gave birth to the child, the court may dismiss [without prejudice] the mother's suit if confirmation of maternity would be contrary to the interests of the child or the child's lineal descendant, as the case may be.

1006. (Retroactivity of confirmation of maternity)

A confirmation of maternity shall have effect retroactively to the time of the birth; provided that this shall not prejudice any rights already acquired by any third party.

## Section II. Adoption

### Sub-section I. Full Adoption

1007. (Formalities of establishment of full adoption)

If the conditions provided in Article 1008 (Joint adoption with spouse) through 1012 (Criteria for determination of establishment of full

adoption)are fulfilled, a court may on petition by the person(s) who will become the adopter(s) establish a full adoption, whereby the relationship with the blood relatives on the natural parents' side terminates.

1008. (Joint adoption with spouse)

(1) In order to become an adopter, a person must have a spouse.

(2) One spouse may not become an adopter unless the other spouse also does so, provided that this shall not apply if one spouse becomes the adopter of a natural child of the other spouse.

1009. (Age of adopter)

An adopter must be not less than 25 years of age, and moreover not less than 20 years older than the adoptee.

1010. (Age of adoptee)

In principle the adoptee must be less than 8 years of age.

1011. (Consent of parents)

In order to establish a full adoption, the consent of the natural parents or guardian of a minor to be adopted is required. However, it shall not apply to cases where the natural parents are unable to declare their intention or where on the part of the natural parents there is cruelty, abandonment in bad faith or other conditions that are extremely detrimental to the person to be adopted.

1012. (Criteria for determination of establishment of full adoption)

Full adoption shall be established where it is extremely difficult or inappropriate for the natural parent(s) to care for the child to be adopted or where other special circumstance exist such that this is considered especially necessary for the benefit of the child.

1013. (Trial period of care)

In considering whether to establish the full adoption, the court shall take into account the circumstances of the prospective adopter(s) having had the care and custody of the child to be adopted for a period of not less than 6 months, in principle.

1014. (Termination of relationship with natural parents)

The relationship between an adoptee and its natural parents and their blood relatives shall terminate upon full adoption, provided that this shall not apply to the relationship with the other spouse and his or her blood relatives prescribed in the provision of paragraph (2) of Article 1008(Joint adoption with spouse).

1015. (Effect of full adoption)



(1) By virtue of the establishment of a full adoption, the adoptee shall acquire the same status as that of a natural child of the adopter(s), and shall have the same rights and obligations as a natural child in relation to the adopter(s).

(2) The adoptee may use the surname of the adopter(s) or the child's own surname from before the adoption.

(3) An adoptee shall be subject to the parental power of the adopter(s), provided that where one spouse is becoming the adopter of a natural child of the other spouse, the adoptee shall be subject to the joint parental power of the natural parent and the adopter.

1016. (Dissolution of full adoption)

(1) Upon petition by the adoptee, the natural parents or a prosecutor, the court may dissolve an adoption upon the occurrence of all events described below, where this is considered necessary for the benefit of the adoptee:

- a) cruelty or abandonment in bad faith on the part of an adopter or other ground that is extremely detrimental to the adoptee;
- b) the natural parents being able to carry out suitable care and custody of the child.

(2) No adoption may be dissolved other than under the provisions of paragraph (1).

1017. (Effect of dissolution of full adoption)

As of the date of the dissolution of a full adoption, the child shall have the same relationship with its natural parents and their blood relatives as the relationship that was terminated by the full adoption.

1018. (Registration of full adoption and confidentiality)

Upon the establishment of a full adoption, a new birth certificate shall be prepared for the adoptee, provided that no reference to the adoption shall be made in any certified copy or abstract of the birth certificate.

1019. (Right of full adoptee to know antecedents)

A full adoptee who has attained majority may request the court that maintains records of the full adoption to disclose information relating thereto to the extent necessary, provided that this shall not apply if the objective of the request is improper. The court shall determine such matters as the mode of maintenance of records of full adoption and of requests for disclosure, etc.

### Sub-section V. Simple Adoption

1020. (Petition for simple adoption)

(1) A person aged 25 years or more, together with the person to be adopted, may file a petition to the court for establishment of a simple

adoption, provided that the person to be adopted must not be an ascendant or senior of the adopter.

(2) If the child being adopted is a minor, the parental power holder or guardian shall make the petition described in paragraph (1) in the capacity of legal representative.

1021. (The case where the adopter has a spouse)

If a person with a spouse wishes to adopt a minor, the petition prescribed in Article 1020 (Petition for simple adoption) must be made together with the spouse, provided that this shall not apply if the child being adopted is the spouse's child or the spouse is incapable of declaring his or her intention.

1022. (Consent of spouse)

If a person with a spouse makes a petition for simple adoption, the consent of such spouse must be obtained, provided that this shall not apply if the petition under Article 1020 (Petition for simple adoption) is made together with the spouse or the spouse is incapable of declaring his or her intention.

1023. (Criteria for determining establishment of simple adoption)

(1) The court may permit the establishment of an adoption only where it is able to confirm that the parties truly have the intention to form a parent and child relationship.

(2) The court must not permit the establishment of an adoption if it finds that the adoption is being abused for heterosexual or homosexual marriage or any other unjust purpose.

1024. (The case where the person to be adopted is a minor)

(1) Where the person to be adopted is a minor, the court may only permit the establishment of an adoption if it finds that this is especially necessary for the benefit of the minor.

(2) Where the person to be adopted is a minor whose natural parents have divorced, the court must hear the opinion of the parent without parental power in making its decision under paragraph (1).

(3) Where the minor has attained the age of 15 years, the court must obtain his or her consent in establishing the adoption. Even if the minor is less than 15 years old but can express his intention, the court must hear the minor's opinion in making its decision under paragraph (1).

1025. (Adoption between guardian and ward)

If a guardian of a minor petitions to adopt the minor under guardianship or a general guardian petitions to adopt the person under general guardianship, the court may permit the establishment of an adoption only in cases where care of the person in guardianship and management of the person's property is being carried out properly. The same shall apply

after the duties of the guardian have come to an end, so long as the guardian's accounts of his management have not been completed.

1026. (Effect of simple adoption on relationship of natural parents and child)

(1) Notwithstanding the establishment of a simple adoption, the relationship between the adoptee and the natural parents shall continue, and the adoptee and the natural parents shall have the right to inherit from each other.

(2) The adoptee and the natural parents shall have the right to claim support from the other and the obligation to support the other.

1027. (Effect of adoption on relationship with adopters, etc.)

(1) Provisions of paragraph (1) of Article 1015 (Effect of full adoption) shall apply mutatis mutandis to simple adoptions.

(2) The adoptee may use the surname of the adopters or the adoptee's own surname from before the adoption.

(3) If an adoptee is a minor, he shall be subject to the joint parental power of the adopters, provided that where one spouse is becoming the adopter of a natural child of the other spouse, the adoptee shall be subject to the joint parental power of the natural parent and the adopter.

1028. (Dissolution of simple adoption by agreement)

(1) Where the parties to an adoption have both agreed to dissolve it, they may petition the court for dissolution.

(2) Where the adoptee is a minor, the petition under paragraph (1) shall be made by the adopter(s) and the person who is to become the adoptee's legal representative after dissolution of the adoption, provided that if the adoptee has attained the age of 15 years, his or her consent must be obtained. If the adoptee has not attained the age of 15 years but is capable of expressing his or her intention, the court must hear his or her opinion.

(3) In cases under paragraph (2), if the adoptee's natural parents were divorced, they must through consultation determine which of them is to be the person with parental power over the adoptee after the dissolution of the adoption.

(4) If the consultations under paragraph (3) do not lead to agreement, or if consultations cannot be held, the court shall determine the person who is to have parental power, taking into account the welfare of the child.

1029. (Dissolution of joint adoption of minor by married couple)

If the adopters are a married couple, in order to dissolve the adoption of a minor the husband and wife must together make the petition prescribed in paragraph (1) of Article 1028 (Dissolution of simple

adoption by agreement), provided that this shall not apply if either the husband or the wife is unable to express his or her intention.

1030. (Determination of dissolution of simple adoption)

If a petition is made under paragraph (1) of Article 1028 (Dissolution of simple adoption by agreement), the court may grant the dissolution of the adoption only after confirming that both parties truly wish to dissolve the relationship of adopter(s) and adoptee.

1031. (Grounds for dissolution)

(1) A party to an adoption may file a suit for dissolution only in the following cases:

- a) being abandoned with malice by the other party;
- b) it being unclear for a year or more whether the other party is alive or dead; or
- c) other significant ground making it difficult to continue the adoption.

(2) So long as the adoptee is a minor, the adopter(s) may not file a suit under paragraph (1) against the adoptee.

(3) If the adoptee is a minor, the provisions of paragraphs (2) to (4) of Article 1028 (Dissolution of simple adoption by agreement) shall apply mutatis mutandis to any suit filed by the adoptee against the adopter(s) under paragraph (1).

1032. (Effect of dissolution of simple adoption)

(1) By virtue of dissolution of a simple adoption, the whole effect of the adoption shall terminate for the future.

(2) After dissolution of an adoption, the adoptee may restore his surname to that before the adoption, or may use the name of the adopter.

1033. (Registration of simple adoption and birth certificate)

The establishment of a simple adoption shall be noted on the adopters' civil status book, and shall also be noted on the margin of the adoptee's original birth certificate.

## **Chapter Five PARENTAL POWER**

### **Section I. General Provisions**

1034. (Definition of parental power)

A parental power holder<sup>17</sup> has the right and duty to effect physical custody of the child and management of the child's property.

---

<sup>17</sup> In this English translation, a person with the parental power shall be referred to as "parental power holder".

1035. (Parental power over adoptee)

The adopter shall be the parental power holder of the adoptee.

1036. (The principle of joint exercise)

During the marriage, the father and mother shall exercise the parental power jointly; provided that if one of the parents is unable to exercise the parental power, the other parent shall do so.

## Section II. Determination of Parental Power Holder in Case of Divorce or Acknowledgement

1037. (Determination of parental power holder in case of divorce)

(1) In the case of divorce between the father and mother, the father and mother shall determine upon mutual consultation which of them is to become the parental power holder of the child.

(2) If the father and mother divorce before the birth of the child, the mother shall become the parental power holder of the child when it is born; provided that after the birth of the child the father and mother may determine upon mutual consultation that the father shall be the parental power holder of the child.

(3) If no determination under paragraph (1) or (2) is rendered upon mutual consultation or if consultation cannot be held between the father and mother, the court shall determine which party is to be the parental power holder, taking into account the interests of the child.

1038. (Relationship between acknowledgement and parental power)

(1) An unmarried mother shall become the parental power holder of a child that she bears.

(2) The father may exercise parental power over a child that he has acknowledged only where the father and mother has determined upon mutual consultation that the father become a parental power holder of the child.

(3) Where no determination under paragraph (2) is rendered upon mutual consultation or where consultation cannot be held, the court may determine the parental power holder upon application by the father or the mother.

(4) Where the father and mother marry after the father has acknowledged the child, the father and mother shall exercise jointly the parental power over the child.

1039. (Change of parental power holder)

In cases described in Article 1037 (Determination of parental power

holder in case of divorce) and Article 1038 (Relationship between acknowledgement and parental power), the court may change the parental power holder where it finds this necessary in the interests of the child, upon application by a relative of the child up to the 4th degree of relationship.

1040. (Rights and obligations of parent who does not live with the child)

(1) After divorce, the parent not having the parental power shall have the right to meet and socialize with the child, and furthermore shall have the obligation to share the cost of care of the child.

(2) A father and mother intending to divorce shall consult and agree on the mode of meeting and socializing with the child and the sharing of the cost of care of the child.

(3) A father not living with a child whom he has acknowledged may consult with and agree with the mother concerning the mode of meeting and socializing with the child and the sharing of the costs of the care of the child.

(4) Where no agreement described in paragraph (2) or (3) is reached or where consultation cannot be held, the court, upon application by the father or mother, shall determine the mode of meeting and socializing with the child and the sharing of the costs of care of the child.

(5) The court, upon application by the father or mother, where it finds this necessary, may alter the mode of meeting and socializing with the child and the sharing of the costs of care of the child.

(6) In making its adjudications under paragraphs (4) and (5), the court shall give priority to the interests of the child when determining the mode of meeting and socializing with the child, and shall take into account the living environment of the father and mother and their economic circumstances when determining the sharing of costs of the care of the child.

(7) If the father or mother are unable to confer with each other or to apply to the court, a relative of the child up to the 4th degree of relationship may make an application under paragraph (4) or (5).

1041. (Right to demand report of condition of child)

(1) A parent not having the parental power may demand a report of the condition of the child from the parental power holder.

(2) The contents and frequency of the report under paragraph (1) shall be agreed by the father and mother upon mutual consultation; provided that if no such agreement is reached or if consultation cannot be held, the court, upon application by the father or the mother, may make adjudication in place of such agreement.

(3) A relative of the child up to the 4th degree of relationship may

demand a report of the condition of the child from the parental power holder.

1042. (Obligation to consult on important matters relating to the child)

The parental power holder shall consult with the parent not having the parental power concerning the matters listed below relating to the child, except in urgent cases:

- a) Education beyond compulsory education;
- b) Changing the location of residence of the child to another province;
- c) The child's occupation or business;
- d) Medical treatment affecting the child's life;
- e) Disposition of significant property of the child; and
- f) Other important matters relating to care of and property of the child.

### Section III. Rights and Obligations of the Parental Power Holder

1043. (Education of the child)

The parental power holder shall have the right and obligation to educate the child.

1044. (Location of residence of the child)

The child shall reside in the location of residence designated by the parental power holder.

1045. (Discipline of child)

The parental power holder may personally discipline the child to the extent necessary.

1046. (Permission to carry on occupation or business)

(1) A child may not carry on any occupation without the permission of the parental power holder.

(2) In cases falling under paragraph (2) of Article 20 (Minor permitted to conduct business), the parental power holder may rescind or limit the permission under paragraph (1).

1047. (Demand to hand over child)

(1) The parental power holder may demand hand-over of the child by a third party who illegally refuses to hand over the child.

(2) The parental power holder may demand that the parent not having the parental power hand over the child.

#### Section IV. Suspension and Divestment of Authority of Parental Power Holder

1048. (Order for suspension or divestment of authority of parental power holder)

If a father or mother exercising parental power abuses his or her rights or neglects his or her obligations, the court, upon application by a relative of the child up to the 4th degree of relationship, a *commune* or *sangkat* head, the head of a public child welfare institution or a public prosecutor, may order the suspension or divestment of the authority of the parental power holder.

1049. (Cancellation of suspension or divestment of parental power)

If the ground provided in Article 1048 (Order for suspension or divestment of authority of parental power holder) has disappeared, the court, upon application by the person who was subject to the order for suspension or divestment or his or her relative up to the 4th degree of relationship, may cancel the said order.

1050. (Resignation and resumption of parental power holder)

(1) With the permission of the court, a father or mother exercising parental power over a child may resign as the parental power holder where there are unavoidable grounds.

(2) With the permission of the court, if the grounds described in paragraph (1) cease to operate, the father or mother who has resigned may resume the parental power.

1051. (Change of parental power holder)

(1) Where only one of the parents is the parental power holder and there is no longer any parental power holder on account of the suspension, divestment or resignation of such person as parental power holder, the court may designate either the mother or the father who is not the parental power holder as the parental power holder.

(2) A relative of the child up to the 4th degree of relationship may seek an order under paragraph (1) where this is necessary.

(3) If the child no longer has a parental power holder on account of the death of the parent who was appointed as the parental power holder by agreement upon divorce, the father or mother who was not designated as the parental power holder shall become the parental power holder.

1052. (Commencement of guardianship of minor)

(1) If a child ceases to have any parental power holder by virtue of Article 1048 (Order for suspension or divestment of authority of parental power holder) or paragraph (1) of Article 1050 (Resignation and resumption of parental power holder) and moreover there is no change of parental power holder by virtue of Article 1051 (Change of parental power holder), the court shall issue a declaration of commencement of



minor guardianship in respect of the child.

(2) In the case mentioned in paragraph(1), the court shall appoint a guardian according to the provision of paragraph(3) of Article 1068 (Designation of a guardian of minor, appointment by court, appointment criteria).

## Section V. Authority of Management of Child's Property

1053. (Property management and representation)

The parental power holder shall have the right and duty to manage the child's property and to represent the child in any act relating to the property; provided that the consent of the child shall be obtained to the creation of any obligation having as its subject matter action on the part of the child.

1054. (Act committed by one parental power holder in the names of both parental power holders)

(1) Where one of the parents who are exercising joint parental power over a child performs an act in place of the child despite this being against the wishes of the other parent but in the names of both parents, the validity of such act shall not thereby be impaired, except where the other party to such act acted mala fide.

(2) Paragraph (1) shall apply in the same manner to the case where one of parents exercising joint parental power has consented to an act by the child despite this being against the wishes of the other parent.

1055. (Duty of care in management of property)

A parental power holder shall manage the child's property with the care of a prudent manager.

1056. (Account of management of property)

A parental power holder shall render an account of his or her management of the child's property without delay after the child attains his or her majority; provided that the expenses of the care of the child and the management of the property, on the one hand, and the profits arising from the child's property on the other hand, shall be deemed to have been set off against each other.

1057. (Exception)

If a third person who gratuitously transfers property to a child has declared a contrary intention, the proviso to Article 1056 (Account of management of property) shall not apply to such property.

1058. (Management of property granted by third party)

(1) If a third person who gratuitously transfers property to a child has declared the intention not to allow the child's mother and father or either of them exercising parental power to manage such property,

the property shall be excluded from the scope of the property managed by the child's father and/or mother, as the case may be.

(2) Upon application by the child, a relative of the child up to the 4th degree of relationship or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) not managed by the parental power holder(s) and in respect of which the third party has not appointed a manager.

(3) Even in a case where the third party has appointed a property manager, paragraph (2) shall apply if the third party fails to appoint a new manager where the authority of the first-mentioned manager has become extinguished or it has become necessary to replace said manager.

(4) The provisions of Articles 37 (Appointment of administrator by the court) to 40 (Authority of administrator, etc) inclusive shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

1059. (Mutatis mutandis application of provisions relating to mandate)

The provisions of Articles 650 (Duties of mandatory in emergency after termination of mandate) and 651 (Conditions for perfection of termination of mandate) shall apply *mutatis mutandis* to cases where a parental power holder manages the property of a child and to cases described in Article 1058 (Management of property granted by third party).

1060. (Extinctive prescription of claims between parent and child relating to property management)

(1) Any claims arising between a parental power holder and his or her child in connection with the management of the property shall be extinguished by prescription unless they are exercised within 3 years following the extinguishment of the parent's authority to manage the property.

(2) If the authority to manage property is extinguished while the child is still a minor and the child has no legal representative at that time, the prescription period prescribed in paragraph (1) shall be computed from when the child attains his or her majority or when a succeeding legal representative for the child assumes office [whichever occurs first].

## Section VI. Suspension and Divestment of Authority to Manage Property

1061. (Order for suspension or divestment of authority to manage

property)

If a parental power holder imperils the property of the child by improper management thereof, the court, upon application by a relative of the child up to the 4th degree of relationship, a *commune* or *sangkat* head, public child welfare institution head or public prosecutor, may order the suspension or divestment of the property management authority of such parental power holder.

1062. (Cancellation of order relating to property management)

If the ground of disqualification provided in Article 1061 (Order for suspension or divestment of authority to manage property) has ceased to be operative, the court, upon application by the person who was subject to the order for suspension or divestment of authority to manage property, or by his or her relative up to the 4th degree of relationship, may cancel the said order.

1063. (Resignation and resumption of property management)

(1) With the permission of the court, a parental power holder may resign his or her authority to manage the property of the child where there are unavoidable grounds.

(2) With the permission of the court, if the grounds described in paragraph (1) cease to operate, the parental power holder who has resigned may resume his or her authority to manage property.

1064. (No property manager)

If by virtue of Article 1061 (Order for suspension or divestment of authority to manage property) or paragraph (1) of Article 1063 (Resignation and resumption of property management) there is no longer anyone managing the child's property, the court shall by adjudication appoint a special representative for the child.

1065. (Conflict of interest between parental power holder and child)

(1) In respect of acts where the interests of a parental power holder conflict with those of the child, the parental power holder shall apply to the court for the appointment of a special representative for the child.

(2) If the parental power holder exercises parental power over two or more children, and the interests of one of the children conflict with those of the other or others in respect of certain acts, the parental power holder shall apply to the court for appointment of a special representative for certain of the children.

## Section VII. *Mutatis Mutandis* Application of This Chapter

1066. (Substituted exercise of parental power)

The parental power holder of an unmarried minor who has a child shall exercise parental power over such child in place of the minor. In such a case this Chapter Five shall apply *mutatis mutandis* to the substituted exercise of parental power.

## Chapter Six GUARDIANSHIP

### Section I. Guardianship of Minors

#### Sub-section I. Commencement of Guardianship of Minor

1067. (Grounds for commencement of guardianship of minor)

Guardianship of a minor shall commence at such time as there is no person who exercises the parental power over the minor.

#### Sub-section II. Guardian of Minor

1068. (Designation of guardian of minor, appointment by court, appointment criteria)

(1) The person who last exercises the parental power over a minor may designate a guardian of such minor by will.

(2) If there is no person to be appointed as a guardian of a minor under paragraph (1), the court may appoint such guardian, upon application by a relative of the minor up to the 4th degree of relationship, the head of the *commune* or *sangkat* in which the minor's permanent residence is located, the head of a public child welfare institution or a public prosecutor. The same shall apply if [the former guardian has ceased to serve, and] there exists no guardian.

(3) In appointing a guardian for a minor, the mental and physical condition of the minor, the state of the lifestyle and property of the minor, the occupation and career of the proposed guardian and any conflict of interest with the minor, the opinion of the minor and all other circumstances shall be taken into account.

1069. (Obligation to demand appointment of guardian for minor)

If a guardian of a minor appointed under Article 1052 (Commencement of guardianship of minor) has ceased to serve, the court shall promptly appoint a new guardian.

1070. (Number of guardians of minor, appointment of general guardian for minor)

(1) A minor shall not have more than one guardian; provided that a general guardian may be additionally appointed for a minor who remains in a habitual condition of lacking the ability to recognize and understand the legal consequences of his or her actions due to mental illness or disability, and with respect to whom the commencement of general guardianship is declared pursuant to Article 24 (Declaration of commencement of general guardianship).

(2) The provisions of this Code regarding general guardianship shall apply *mutatis mutandis* to general guardianship over a minor, except for paragraph (1) of Article 1120 (More than one general guardian).

1071. (Resignation of guardian of minor)

A guardian of a minor may resign the office for good reason, with the permission of the court.

1072. (Obligation to demand appointment of guardian for minor)

If a guardian of a minor resigns, the court shall promptly appoint a new guardian.

1073. (Dismissal of guardian of minor)

Upon application by the guardian's supervisor, a relative up to the 4th degree of relationship of the minor, the head of the *commune* or *sangkat* in which the minor's permanent residence is located, the head of a public child welfare institution or a public prosecutor, or *ex officio*, the court may dismiss a guardian of a minor who commits a wrongful act or other act rendering him or her unfit for the office of guardian.

1074. (persons who may not be guardian of minor)

None of the persons described below may become a guardian of a minor:

- a) A minor or person under general guardianship or curatorship;
- b) A legal representative, curator or supervisor of either of the foregoing who has been dismissed by a court;
- c) A bankrupt; or
- d) A person whose whereabouts are unknown.

#### Sub-section II. Supervisor of Guardian of Minor

1075. (Supervisor of designated guardian of minor, supervisor of appointed guardian of minor)

(1) A parental power holder who has the right to designate a guardian of a minor may designate a supervisor of the guardian by will.

(2) Where there is no supervisor of guardian designated under paragraph (1), upon application by the guardian, a relative up to the 4th degree of relationship of the minor, the head of the *commune* or *sangkat* in which the minor's permanent residence is located, the head of a public child welfare institution or a public prosecutor, or *ex*

*officio*, the court may appoint a supervisor of the guardian if it finds this necessary. The same shall apply if [the former supervisor has ceased to serve, and] there exists no supervisor.

1076. (Persons who may not be supervisor)

Neither the spouse nor a relative up to the 4th degree of relationship of a guardian of a minor may become a supervisor of the guardian.

1077. (Duties of supervisor)

The duties of a supervisor of a guardian of a minor shall be as follows:

- a) To supervise the performance of duties by the guardian;
- b) To apply to the court without delay for the appointment of a new guardian if [the former guardian has ceased to serve, and] there exists no guardian;
- c) In case of emergency, to take the necessary measures for care of the minor and management of the property of the minor;
- d) To represent the minor in respect of any act which involves a conflict of interest between the guardian and the minor.

1078. (*Mutatis mutandis* application of provisions)

The provisions of paragraph (3) of Articles 1068 (Designation of guardian of minor, appointment by court, appointment criteria), 1071 (Resignation of guardian of minor), 1073 (Dismissal of guardian of minor), 1074 (persons who may not be guardian of minor), paragraph (2) of 1087 (Estimates of outlays, expenses of guardianship), 1088 (Remuneration of guardian), 1093 (Guardian's duty of care), 1100 (Emergency obligations of guardian after termination of guardianship) and 1101 (Condition for perfection of termination of guardianship) shall apply *mutatis mutandis* to a supervisor of a guardian of a minor.

### Sub-section III. Duties of Guardian of Minor

1079. (Rights and obligations of guardian)

(1) A guardian of a minor shall have the same rights and obligations as a parental power holder in respect of matters provided in this Book Seven, Chapter Five (Parental Power), Section III (Rights and Obligations of the parental power holder); provided that in order to change the method of education and location of residence determined by the parental power holder, to discipline the minor, permit him or her to engage in business, cancel such permission, or limit such engagement in business, if there is a supervisor of a guardian, the consent of such supervisor must be obtained.

(2) In respect of matters provided in Article 1042 (Obligation to consult on important matters relating to the child), if there is a supervisor of a guardian, the guardian shall consult with said supervisor, except in cases of urgency.

1080. (Property management and representation)

(1) The guardian of a minor shall manage the minor's property and represent the minor in any act affecting the minor's property.

(2) The proviso to Article 1053 (Property management and representation) shall apply *mutatis mutandis* to cases described in paragraph (1).

1081. (Survey of property and preparation of inventory)

(1) Upon assuming office a guardian of a minor shall promptly commence a survey of the minor's property and within 3 months shall complete such survey and prepare an inventory; provided that said period may be extended by the court.

(2) If there is a supervisor of the guardian, the survey and inventory of the property shall have no effect unless conducted in the presence of said supervisor.

1082. (Authority prior to preparation of inventory)

Until the completion of the inventory, a guardian shall have authority to effect only acts of urgent necessity; provided that this restriction cannot be set up against a bona fide third party.

1083. (Reporting of claims or obligations by the guardian against or towards the minor)

(1) Where there is a supervisor of the guardian, if the guardian holds any claim against, or bears any obligation in favor of the minor, the guardian shall report such claim and/or obligation to the supervisor prior to commencing the survey of the property.

(2) If the guardian is aware of holding any claim against the minor but does not report it, such claim shall be forfeited.

1084. (Application *mutatis mutandis* to cases where minor acquires [general estate])

The provisions of Articles 1081 (Survey of property and preparation of inventory), 1082 (Authority prior to preparation of inventory) and 1083 (Reporting of claims or obligations by the guardian against or towards the minor) shall apply *mutatis mutandis* to cases where the minor has acquired universal property after the guardian has assumed office.

1085. (Permission for property management)

The permission of the court shall be required in cases where a guardian of a minor sells, leases, terminates the lease, establishes a hypothec or dispose of in another manner equivalent to the foregoing, in place of the minor, an immovable property provided for the residence of the minor.

1086. (Acts involving conflict of interests of guardian and minor)

The provisions of Article 1065 (Conflict of interest between parental power holder and child) shall apply *mutatis mutandis* to guardians of minors; provided that this shall not apply where the guardian has a supervisor.

1087. (Estimates of outlays, expenses of guardianship)

(1) Upon assuming office, a guardian of a minor shall estimate the amount of money to be expended annually for the care of the minor and the management of the minor's property.

(2) The expenses required for the performance by the guardian of his or her duties under the guardianship shall be defrayed from the minor's property.

1088. (Remuneration of guardian)

The court may allow reasonable remuneration to the guardian of a minor out of the minor's property, taking account of the financial capacity of the guardian and the minor and other circumstances.

1089. (Supervision of duties of guardian)

(1) The supervisor of a guardian or the court may at any time demand that the guardian of a minor provide a report of the conduct of his or her duties or the inventory of the property, and may also inspect the condition of the minor and/or the property.

(2) Upon application by the supervisor of a guardian of a minor, a relative of the minor up to the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the minor's permanent residence is located, the head of a public child welfare institution or a public prosecutor, or *ex officio*, the court may order the guardian to take necessary action relating to the care of the minor, the management of the minor's property or otherwise relating to the guardianship.

1090. (Limitations on right of representation and right to grant consent)

If the guardian of a minor has a supervisor, the permission of the supervisor must be obtained in order to conduct business or to do any of the acts listed in Article 30 (Right to rescind act) in place of the minor, or in order to consent to the doing of any of the foregoing acts by the minor; provided that this shall not apply to the receipt of principal.

1091. (Effect of breach of Article 1090)

(1) Any act done or consented to by a guardian of minor in breach of Article 1090 (Limitations on right of representation and right to grant consent) may be rescinded by the minor or the guardian. In such a case, the provisions of Article 32 (Right to demand) shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application



of the provisions of Article 357 (Definition of nullity) together with Articles 359 (A person having a right of rescission) to 363 (Extinctive prescription of right of rescission) inclusive.

1092. (Acquisition of property, etc. from minor)

(1) If the guardian of a minor acquires the minor's property or rights of a third party against the minor, the minor may rescind such acquisition. In such a case, the provisions of Article 32 (Right to demand) shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of Article 357 (Definition of nullity) together with Articles 359 (A person having a right of rescission) to 363 (Extinctive prescription of right of rescission) inclusive.

1093. (Guardian's duty of care)

(1) The guardian of a minor is obligated to perform the duties of guardianship with the care of a good manager.

(2) If the guardian breaches the obligation described in paragraph (1) and thereby causes loss to the minor, the minor may demand that the guardian compensate him or her for such loss.

1094. (Management of property granted by third party to minor)

(1) If a third person who gratuitously transfers property to a minor has declared the intention not to allow the minor's guardian to manage such property, the property shall be excluded from the scope of the property managed by the guardian.

(2) Upon application by the supervisor, a relative of the minor up to the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the minor's permanent residence is located, the head of a public child welfare institution or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) not managed by the guardian and in respect of which the third party has not appointed a manager.

(3) Even in a case where the third party has appointed a property manager, paragraph (2) shall apply if the third party fails to appoint a new manager where the authority of the first-mentioned manager has become extinguished or it has become necessary to replace said manager.

(4) The provisions of Articles 37 (Appointment of administrator by the court) to 40 (Authority of administrator, etc) inclusive shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

#### Sub-section IV. Release of Minor from Guardianship

1095. (Conditions for release of minor from guardianship)

(1) If a minor has reached the age of 16 and is living independently,

the court, upon petition by the minor, may declare the minor released from guardianship, if it finds that this is consistent with the interests of the minor. In such a case, the court shall hear the opinion of the guardian, and of the supervisor if there is one.

(2) A minor who marries shall be released from guardianship, without declaration by the court.

(3) In case described in paragraph (2), even if the parties afterwards divorce, the validity of the release from guardianship shall not be extinguished.

1096. (Effect of release from guardianship)

A minor released from guardianship shall be regarded to have attained the age of majority.

1097. (Account of property management and presence of supervisor)

(1) When the duties of a guardian of a minor have terminated, the guardian or his or her successor shall render an account of property management within 3 months following the date of termination; provided that this period may be extended by the court.

(2) If there is a supervisor of the guardian of a minor, the account described in paragraph (1) shall be prepared in the presence of such supervisor.

1098. (Rescission of contract between guardian and minor)

(1) A minor who has entered into a contract with his or her guardian or the successor of the guardian after attaining majority but before the completion of the accounts of the guardianship may rescind such contract. The same shall apply to any unilateral act effected by the minor vis-à-vis the guardian or the successor of the guardian.

(2) The provisions of Article 357 (Definition of nullity) together with Articles 359 (A person having a right of rescission) to 363 (Extinctive prescription of right of rescission) inclusive shall apply *mutatis mutandis* to cases described in paragraph (1).

1099. (Obligation to pay interest between guardian and minor)

(1) Any money required to be returned by a minor to the guardian or by the guardian to a minor shall bear interest as from the time of completion of the accounts of the guardianship.

(2) If a guardian of a minor has spent the minor's money on his or her own behalf, such amount shall bear interest as from the time of spending, and if the minor suffers any loss thereby, the guardian shall be liable to compensate the minor for such loss.

1100. (Emergency obligations of guardian after termination of guardianship)

(1) In cases of emergency after the termination of a guardianship, the guardian, his or her successor or representative shall take the necessary measures until such time as the minor, his or her successor or legal representative is able to attend to the minor's business.

(2) The provisions of paragraph 1 shall apply *mutatis mutandis* to property manager who was designated or appointed in accordance with the provisions of Article 10941060 (Extinctive prescription of claims between parent and child relating to property management).

1101. (Condition for perfection of termination of guardianship)

(1) Regardless of whether a ground of termination arises on the side of the minor or on that of the guardian, it can be held up against the other party only if it has been notified to the other party or the other party is aware of it.

(2) The provisions of paragraph 1 shall apply *mutatis mutandis* to property manager who was designated or appointed in accordance with the provisions of Article 10941060 (Extinctive prescription of claims between parent and child relating to property management).

1102. (Extinctive prescription of claims relating to guardianship)

(1) The provisions of Article 1060 (Extinctive prescription of claims between parent and child relating to property management) shall apply *mutatis mutandis* to claims arising in relation to the guardianship between a guardian of a minor or a supervisor on the one hand and the minor on the other hand.

(2) In the event that an act is rescinded pursuant to Article 1098 (Rescission of contract between guardian and minor), prescription under paragraph (1) shall run from the time of the rescission.

#### Sub-section V. *Mutatis Mutandis* Application to Child of Minor

1103. (Substituted exercise of parental power held by minor)

(1) The guardian of a minor shall exercise the parental power over a child of that minor, in place of the minor.

(2) The provisions of Articles 1079 (Rights and obligations of guardian) to 1102 (Extinctive prescription of claims relating to guardianship) inclusive shall apply *mutatis mutandis* to cases described in paragraph (1).

### Section II. General Guardianship

#### Sub-section I. Commencement of General Guardianship

1104. (Commencement of general guardianship)

General guardianship shall commence in accordance with Article 24 (Declaration of commencement of general guardianship).

## Sub-section II. General Guardian

### 1105. (Appointment of general guardian)

(1) At the time it makes a declaration of commencement of general guardianship, the court shall *ex officio* appoint a general guardian.

(2) If [the former general guardian has ceased to serve, and] there exists no general guardian, the court shall appoint a general guardian upon application by the guardian's supervisor, the person under general guardianship, the spouse of the person under general guardianship, any relative up to the fourth degree of relationship of the person under general guardianship, the chief of the *commune* or *sangkat* in which the permanent residence of the person under general guardianship is located, a public prosecutor or other interested person, or *ex officio*.

(3) Even where a general guardian has been appointed, the court may appoint an additional general guardian upon application by any person listed in paragraph (2) or by the general guardian, or *ex officio*, if it finds this necessary.

(4) In appointing a general guardian, the mental and physical condition of the person under general guardianship, the state of the lifestyle and property of the person under general guardianship, the occupation and career of the proposed general guardian and any conflict of interest with the person under general guardianship, the opinion of the person under general guardianship and all other circumstances shall be taken into account. If the proposed general guardian is a juristic person, the type and contents of its business and any conflict of interest between the person under general guardianship and the juristic person and/or its representatives shall be taken into account.

(5) The court may, when it appoints a general guardian for a minor, appoint the parental power holder or the guardian for minor as the general guardian. When the court appoints a person other than the parental power holder or the guardian for minor as the general guardian, the court must designate the allocation of duties among the parental power holder or the guardian for minor and the general guardian.

### 1106. (Resignation of general guardian)

A general guardian may resign the office for good reason, with the permission of the court.

### 1107. (Obligation to demand appointment of general guardian)

If a general guardian resigns, the court shall promptly appoint a new general guardian.

### 1108. (Dismissal of general guardian)

Upon application by the general guardian's supervisor, the person under general guardianship, the spouse of the person under general guardianship, a relative of the person under general guardianship up to the 4th degree of relationship, the head of the *commune* or *sangkat* in which the permanent residence of the person under general guardianship is located, a public prosecutor or other interested person, or *ex officio*, the court may dismiss a general guardian who commits a wrongful act or other act rendering him or her unfit for the office of general guardian.

1109. (Persons who may not be general guardian)

None of the persons described below may become a general guardian:

- a) A minor or person under general guardianship or curatorship;
- b) A legal representative, curator or supervisor of either of the foregoing who has been dismissed by a court;
- c) A bankrupt; or
- d) A person whose whereabouts are unknown.

#### Sub-section II. Supervisor of General Guardian

1110. (Supervisor of general guardian)

Upon application by the general guardian, the person under general guardianship, the spouse of the person under general guardianship, a relative of the person under general guardianship up to the 4th degree of relationship, the head of the *commune* or *sangkat* in which the permanent residence of the person under general guardianship is located, a public prosecutor or other interested person, or *ex officio*, the court may appoint a supervisor of a general guardian if the court finds this necessary. The same shall apply if [the former supervisor has ceased to serve, and] there exists no supervisor.

1111. (Persons who may not be supervisor of general guardian)

Neither the spouse nor a relative up to the 4th degree of relationship of a general guardian may become a supervisor of the general guardian.

1112. (Duties of supervisor of general guardian)

The duties of a supervisor of a general guardian shall be as follows:

- a) To supervise the performance of duties by the general guardian;
- b) To apply to the court without delay for the appointment of a new general guardian if [the former general guardian has ceased to serve, and] there exists no general guardian;
- c) In case of emergency, to take the necessary measures for management of the livelihood, health care and property of the person under general guardianship;
- d) To represent the person under general guardianship in respect of any act which involves a conflict of interest between the general guardian or the general guardian's representative and the person under general guardianship.

1113. (Provisions to apply *mutatis mutandis*)

The provisions of paragraph (4) of Article 1105 (Appointment of general guardian), Article 1106 (Resignation of general guardian), Article 1108 (Dismissal of general guardian), Article 1109 (Persons who may not be general guardian), Article 1120 (More than one general guardian), Article 1121 (Permission for property management), paragraph (2) of Article 1123 (Estimates of outlays, expenses of general guardianship), Article 1124 (Remuneration of general guardian), Article 1129 (Guardian's obligation of care), Article 1133 (Emergency obligations of guardian after termination of general guardianship) and Article 1134 (Condition for perfection of termination of general guardianship) shall apply *mutatis mutandis* to the supervisor of a general guardian.

### Sub-section III. Duties of General Guardian

1114. (Property management and representation)

(1) The general guardian shall manage the property of the person under general guardianship and represent the person under general guardianship in any act affecting the property of the person under general guardianship.

(2) The provision of the second sentence of Article 1053 (Property management and representation) shall apply *mutatis mutandis* to cases described in paragraph (1).

1115. (Survey of property and preparation of inventory)

(1) Upon assuming office a general guardian shall promptly commence a survey of the property of the person under general guardianship and within 3 months shall complete such survey and prepare an inventory; provided that said period may be extended by the court.

(2) If there is a supervisor of the general guardian, the survey and inventory of the property shall have no effect unless conducted in the presence of said supervisor.

1116. (Authority prior to preparation of inventory)

Until the completion of the inventory, a general guardian shall have authority to effect only acts of urgent necessity; provided that this restriction cannot be set up against a bona fide third party.

1117. (Reporting of claims or obligations by the general guardian against or in favor of the person under general guardianship)

(1) Where there is a supervisor of the general guardian, if the general guardian holds any claim against, or bears any obligation in favor of the person under general guardianship, the general guardian shall report such claim and/or obligation to the supervisor prior to commencing the survey of the property.

(2) If the general guardian is aware of holding any claim against the person under general guardianship but does not report it, such claim shall be forfeited.

1118. (Mutatis mutandis application to cases where the person under general guardianship acquires universal property)

The provisions of Articles 1115 (Survey of property and preparation of inventory), 1116 (Authority prior to preparation of inventory) and 1117 (Reporting of claims or obligations by the general guardian against or in favor of the person under general guardianship) shall apply *mutatis mutandis* to cases where the person under general guardianship has acquired universal property after the general guardian has assumed office.

1119. (Respect for wishes of the person under general guardianship, etc.)

(1) When performing matters that concern the livelihood, medical treatment and care of and management of the property of the person under general guardianship, the guardian shall respect the wishes of the person under general guardianship and shall take into account the mental and physical condition and living conditions of the person under general guardianship.

(2) The general guardian shall strive to provide the best possible medical care for the person under general guardianship, in accordance with the financial capacity of the general guardian and the person under general guardianship and their relationship.

1120. (More than one general guardian)

(1) If there is more than one general guardian, the court may determine *ex officio* whether the general guardians should exercise their functions jointly or whether the functions should be divided among the general guardians.

(2) The court may *ex officio* cancel a determination under paragraph (1).

(3) If there is more than one general guardian, it shall suffice if a third party declares his or her intention to one of them.

1121. (Permission for property management)

The permission of the court shall be required in cases where a general guardian sells, leases, terminates the lease, establishes a hypothec or dispose of in another manner equivalent to the foregoing, in place of the person under general guardianship, an immovable property provided for the residence of the person under general guardianship.

1122. (Acts involving conflict of interests of general guardian and the person under general guardianship)

The provisions of Article 1065 (Conflict of interest between parental power holder and child) shall apply *mutatis mutandis* to general guardians; provided that this shall not apply where the general guardian has a supervisor.

1123. (Estimates of outlays, expenses of general guardianship)

(1) Upon assuming office, a general guardian shall estimate the amount of money to be expended annually for the livelihood, medical treatment and care of and management of the property of the person under general guardianship.

(2) The expenses required for the performance by the general guardian of his or her duties under the general guardianship shall be defrayed from the property of the person under general guardianship.

1124. (Remuneration of general guardian)

The court may allow reasonable remuneration to the general guardian out of the property of the person under general guardianship, taking account of the financial capacity of the guardian and the person under general guardianship and other circumstances.

1125. (Supervision of duties of general guardian)

(1) The supervisor of the general guardian or the court may at any time demand that the general guardian provide a report of the conduct of his or her duties or the inventory of the property, and may also inspect the living conditions and health care of the person under general guardianship and the management of the property.

(2) Upon application by the supervisor of a general guardian, the person under general guardianship, the spouse of the person under general guardianship, a relative of the person under general guardianship up to the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the permanent residence of the person under general guardianship is located, a public prosecutor, or another interested person, or *ex officio*, the court may order the general guardian to take necessary action relating to the living conditions or medical care of the person under general guardianship, the management of property of the person under general guardianship or otherwise relating to the general guardianship.

1126. (Limitations on right of representation and right to grant consent)

If the general guardian has a supervisor, the permission of the supervisor must be obtained in order to conduct business or to do any of the acts listed in Article 30 (Right to rescind act) in place of the person under general guardianship, or in order to consent to the doing of any of the foregoing acts by the person under general guardianship; provided that this shall not apply to the receipt of principal.

1127. (Effect of breach of Article 1126)



(1) Any act done or consented to by a general guardian in breach of Article 1126 (Limitations on right of representation and right to grant consent) may be rescinded by the person under general guardianship or the general guardian. In such a case, the provisions of Article 32 (Right to demand) shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of Article 357 (Definition of nullity) together with Articles 359 (A person having a right of rescission) to 363 (Extinctive prescription of right of rescission) inclusive.

1128. (Acquisition of property, etc. from the person under general guardianship)

(1) If the general guardian acquires property of the person under general guardianship or rights of a third party against the person under general guardianship, the person under general guardianship may rescind such acquisition. In such a case, the provisions of Article 32 (Right to demand) shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of Article 357 (Definition of nullity) together with Articles 359 (A person having a right of rescission) to 363 (Extinctive prescription of right of rescission) inclusive.

1129. (Guardian's obligation of care)

(1) The general guardian is obligated to perform the duties of general guardianship with the care of a good manager.

(2) If the general guardian breaches the obligation described in paragraph (1) and thereby causes loss to the person under general guardianship, the person under general guardianship may demand that the general guardian compensate him or her for such loss.

1130. (Management of property granted by third party to the person under general guardianship)

(1) If a third person who gratuitously transfers property to a person under general guardianship has declared the intention not to allow the general guardian of the person under general guardianship to manage such property, the property shall be excluded from the scope of the property managed by the general guardian.

(2) Upon application by the supervisor, the person under general guardianship, the spouse of the person under general guardianship, a relative of the person under general guardianship up to the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the permanent residence of the person under general guardianship is located, or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) not managed by the general guardian and in respect of which the third party has not appointed a manager.

(3) Even in a case where the third party has appointed a property manager, paragraph (2) shall apply if the third party fails to appoint

a new manager when the authority of the first-mentioned manager has become extinguished or it has become necessary to replace said manager.

(4) The provisions of Articles 37 (Appointment of administrator by the court) to 40 (Authority of administrator, etc) inclusive shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

#### Sub-section IV. Termination of General Guardianship

1131. (Account of property management and presence of supervisor)

(1) When the duties of a general guardian have terminated, the general guardian or his or her successor shall render an account of property management within 3 months following the date of termination; provided that this period may be extended by the court.

(2) If the general guardian has a supervisor, the account described in paragraph (1) shall be prepared in the presence of such supervisor.

1132. (Obligation to pay interest between general guardian and person under general guardianship)

(1) Any money required to be returned by a person under general guardianship to the general guardian or by the general guardian to a person under general guardianship shall bear interest as from the time of completion of the accounts of the general guardianship.

(2) If a general guardian has spent money of a person under general guardianship on his or her own behalf, such amount shall bear interest as from the time of spending, and if the person under general guardianship suffers any loss thereby, the general guardian shall be liable to compensate the person under general guardianship for such loss.

1133. (Emergency obligations of guardian after termination of general guardianship)

(1) In cases of emergency after the termination of a general guardianship, the general guardian or his or her successor shall take the necessary measures until such time as the person under general guardianship, his or her successor or legal representative is able to attend to the business of the person under general guardianship.

(2) The provisions of paragraph 1 shall apply *mutatis mutandis* to property manager who was designated or appointed in accordance with the provisions of Article 11301060 (Extinctive prescription of claims between parent and child relating to property management).

1134. (Condition for perfection of termination of general guardianship)

(1) Regardless of whether a ground of termination of a general guardianship arises on the side of the person under general guardianship or on that of the general guardian, it can be held up against the other

party only if it has been notified to the other party or the other party is aware of it.

(2) The provisions of paragraph1 shall apply *mutatis mutandis* to property manager who was designated or appointed in accordance with the provisions of Article 11301060(Extinctive prescription of claims between parent and child relating to property management).

1135. (Extinctive prescription of claims relating to guardianship)

The provisions of Article 1060(Extinctive prescription of claims between parent and child relating to property management) shall apply *mutatis mutandis* to claims arising in relation to the general guardianship between a general guardian or a supervisor on the one hand and the person under general guardianship on the other hand.

## **Chapter Seven CURATORSHIP**

1136. (Commencement of curatorship)

Curatorship shall commence in accordance with Article 28(Declaration of commencement of curatorship).

1137. (Appointment of curator)

(1) When it declares the commencement of curatorship, the court shall *ex officio* appoint a curator.

(2) The provisions of paragraphs (2) to (4) of Article 1105(Appointment of general guardian) and Articles 1106(Resignation of general guardian) to 1109(Persons who may not be general guardian) inclusive shall apply *mutatis mutandis* to curator.

(3) Where there is a conflict of interest between the curator or the representative of the curator and the person under curatorship, the curator shall apply to the court for the appointment of a temporary curator, except where there is a supervisor of the curator.

(4) Paragraph (3) shall also apply to the case where there is a conflict of interest among a number of persons under a single curator.

1138. (Supervisor of curator)

(1) Upon application by the curator, the person under curatorship, the spouse of the person under curatorship, a relative up to the 4th degree of relationship of the person under curatorship, the chief of the *commune* or *sangkat* in which the permanent residence of the person under curatorship is located, a public prosecutor or other interested person, or *ex officio*, the court, where it finds this necessary, may appoint a supervisor of the curator. The same shall apply if [the former supervisor has ceased to serve, and] there exists no supervisor.

(2) The provisions of paragraph (4) of Article 1105(Appointment of general guardian), Article 1106(Resignation of general guardian),

Article 1108 (Dismissal of general guardian), Article 1109 (Persons who may not be general guardian), Article 1111 (Persons who may not be supervisor of general guardian), Article 1120 (More than one general guardian), paragraph (2) of Article 1123 (Estimates of outlays, expenses of general guardianship) and Article 1124 (Remuneration of general guardian) shall apply *mutatis mutandis* to supervisors of curators.

(3) If any act involves a conflict of interest between the curator or the representative of the curator and the person under curatorship, the supervisor may consent to the doing of such act by the person under curatorship.

(4) Paragraph (3) shall also apply to the case of conflict of interest among a number of persons under a single curator.

1139. (Duties of curator)

(1) The curator has the authority to grant consent to the doing by the person under curatorship of the acts listed in Article 30 (Right to rescind act), or to rescind any of such act effected by the person under curatorship without the consent of the curator.

(2) In effecting his or her duties under paragraph (1), the curator shall respect the wishes of the person under curatorship and take into account the mental and physical condition and the state of livelihood of the person under curatorship.

(3) The provisions of Article 1120 (More than one general guardian), paragraph (2) of Article 1123 (Estimates of outlays, expenses of general guardianship), Article 1124 (Remuneration of general guardian) and Article 1125 (Supervision of duties of general guardian) shall apply *mutatis mutandis* to the duties of curators.

(4) The provisions of Article 1060 (Extinctive prescription of claims between parent and child relating to property management) shall apply *mutatis mutandis* to claims arising in relation to the curatorship between the curator or the supervisor of the curator and the person under curatorship.

## **Chapter Eight SUPPORT**

1140. (Scope and order of persons obliged to provide support)

(1) Relatives shall be obliged to provide support in the scope and order described below:

- a) Cohabiting relatives;
- b) Lineal relatives by consanguinity;
- c) Siblings.

(2) If there are special circumstances, the court may impose an obligation of support on relatives up to the 3rd degree of relationship other than persons described in paragraph (1). The same shall apply to support between the surviving spouse and the relatives of the deceased

spouse in cases where a marriage is dissolved by reason of the death of one of the spouses.

(3) If circumstances change after the rendering of an adjudication described in paragraph (2), the court may cancel such adjudication.

1141. (Confirmation of who should actually provide and receive support)

(1) If there are two or more persons obliged to provide support, such persons shall agree, upon mutual consultation, as to which one or more of them shall actually provide support.

(2) If no agreement described in paragraph (1) is reached or if consultation cannot be held between them, the court shall determine which person or persons subject to an obligation to provide support should actually provide the support, taking into account the financial capacity, age, mental and physical condition of said persons, the relationship of the parties and all other circumstances.

(3) If there are two or more persons entitled to receive support and the financial capacity of the person or persons obliged to provide support is insufficient to support all of the persons entitled, the provisions of paragraphs (1) and (2) shall apply to the determination of who should actually receive support.

1142. (Extent and mode of support)

If no agreement is reached or consultation cannot be held between the relevant parties concerning the extent or mode of support, the court shall determine these matters, taking into account the necessity for such support in the life of the person or persons entitled to support, the financial capacity of the person or persons obliged to provide support and all other circumstances.

1143. (Variation and cancellation of support arrangement)

(1) If circumstances change after an agreement is concluded or a decision rendered concerning which party or parties are to provide or receive support or the extent or mode of support, the relevant parties may agree to vary the support relationship.

(2) If no agreement described in paragraph (1) is reached or if consultation cannot be held between the relevant parties, the relevant parties may apply to the court for cancellation or variation of the previous agreement or decision.

(3) The provisions of paragraphs (2) and (3) of Article 1141 (Confirmation of who should actually provide and receive support) shall apply *mutatis mutandis* to orders by the court for cancellation or variation under paragraph (2) of this Article.

1144. (Prohibition on disposing of right to demand support)

The right to receive support shall be an exclusive and personal right

of the person requiring support, and may not be made the subject of an assignment, gift, creation of security or any other transaction whatsoever with any third party.

## **BOOK EIGHT “SUCCESSION”**

### **Chapter One GENERAL PROVISIONS**

#### **Section I. Opening of Succession**

1145. (Cause of opening of succession)

(1) Succession shall open upon the death of the decedent.

(2) Succession shall be carried out in accordance with the provisions of law or the wishes of the decedent. Succession in accordance with the provisions of law shall be called "statutory succession", and succession in accordance with the wishes of the decedent "testamentary succession".

1146. (Place of succession)

Succession shall open at the permanent residence of the decedent at the time of death.

#### **Section II. Effect of Succession**

1147. (Succession to the succession property<sup>18</sup>)

(1) As of the commencement of the succession, a successor succeeds to all of the rights and obligations pertaining to the property of the decedent, except such as were entirely personal to the decedent.

(2) If there is a person who should succeed to the ownership of ceremonial implements, graves and movable ancestral heirlooms, such as a person who was designated by the decedent to preside over the rites for the ancestors, such person shall succeed to the said ownership. If there is no such designation by the decedent, the person who by custom should succeed to the ownership of those items such as the one who should preside over the rites for the ancestors shall succeed to the said ownership. If no such custom is apparent, the court shall determine the successor to the said ownership.

1148. (Succession to the property rights by multiple successors)

---

<sup>18</sup> In this translation, the term of "succession property" refer to any part or the whole of the property rights, including both positive and negative assets, that belong to the decedent at the time of the commencement of the succession. The translator avoided to use the term of "estate" because under the provisions of this Code property passes directly to the successors and there is no intermediate "estate", as seems to be the case in Anglo-American jurisdictions.

(1) If there is more than one successor, each co-successor shall succeed to the rights and obligations of the decedent in proportion to their share in the succession; provided that rights and obligations which of their nature cannot be partitioned shall be succeeded to unpartitioned.

(2) The co-successor shall be the co-owners of the succession property.

### Section III. Qualification for succession

1149. (Persons qualified for succession, etc.)

(1) Only persons who are alive at the time of commencement of succession and also do not fall under any provision of Articles 1150 (Persons disqualified for succession, etc.) through 1152 (Disinheritance by will) shall be qualified for succession.

(2) Notwithstanding the provisions of paragraph (1), paragraphs (2) and (3) of Article 9 (Fetus) shall apply to any fetus.

1150. (Persons disqualified for succession, etc.)

The persons described below cannot become successors or acquire property under a will:

- a) Any person who has been sentenced to punishment, whether being involved directly or indirectly, for having intentionally caused or attempted to cause the death of the decedent or of any person who has prior or equal rank in the succession;
- b) Any person who, knowing that the decedent has been murdered, fails to lodge an accusation or complaint; excepting, however, cases where such person lacks the capacity to discern right from wrong, or where the murderer is the spouse or lineal relative by consanguinity of such person;
- c) Any person who has by fraud or duress, prevented the decedent from making, revoking or altering a will relating to the succession;
- d) Any person who has by fraud or duress, induced the decedent to make, revoke or alter a will relating to the succession;
- e) Any person who has forged, altered, destroyed or concealed a will of the decedent relating to the succession.

1151. (Disinheritance of successor)

(1) If a presumptive successor with a legally secured portion engages in any of the following conduct, the decedent may apply to the court for the disinheritance of such presumptive successor. The intention to disinherit may also be declared by will:

- a) Being cruel to the decedent;
- b) Treating the decedent with great contempt;
- c) Failing to care for the decedent when the decedent was sick, despite being able to do so;
- d) Being found guilty of a crime that is subject to life

- imprisonment;
- e) Engaging in other egregious misconduct.

(2) A presumptive successor against whom disinheritance is sought may contest the existence of the grounds of disinheritance [at the trial] before the court described in paragraph (1).

1152. (Disinheritance by will)

If the decedent has made a will described in Article 1151 (Disinheritance of successor), the executor of the will shall apply to the court for disinheritance without delay after the will comes into effect. In such a case the disinheritance shall have effect retrospectively to the time of death of the decedent.

1153. (Possession by disqualified successor, etc. of succession property)

If a person disqualified from succession or from acquiring property by will under Article 1150 (Persons disqualified for succession, etc.) or who has been disinherited under Article 1151 (Disinheritance of successor) or Article 1152 (Disinheritance by will) possesses any of the succession property, such person shall be deemed to be a possessor in bad faith as from the time of the commencement of the succession.

1154. (Revocation of disinheritance)

(1) The decedent may apply to the court at any time for revocation of disinheritance of a presumed successor.

(2) The provisions of Article 1152 (Disinheritance by will) shall apply *mutatis mutandis* to a revocation of disinheritance.

1155. (Case where the successor, etc. is an alien)

(1) If the successor or person acquiring property under a will does not hold Cambodian nationality, such person shall be unable to succeed to land nor to acquire land by testamentary gift.

(2) If one or more co-successors do not hold Cambodian nationality, the succession property shall be partitioned having regard to the terms of paragraph (1).

(3) If none of the co-successors with prior ranks in the succession hold Cambodian nationality, land included in the succession property shall constitute a juridical person, and all of those co-successors with prior ranks shall jointly carry out the management and disposition thereof.

(4) If all of the co-successors with prior ranks in the succession effected absolute or qualified acceptance and, within three months after such acceptance, have sold the land as the person with the authority to dispose the succession property as described in paragraph (3), the sales proceeds thereof shall form the succession property, and the succession property juridical person as described in paragraph (3)



shall be dissolved thereby.

(5) If all of the co-successors with prior ranks in the succession do not jointly sell the land pursuant to the provisions of paragraph (4) within three months after they effected the absolute or qualified acceptance, the ownership of the land shall be succeeded to by successors with next rank in the succession who hold Cambodian nationality. In such a case, the succession property juridical person shall be deemed not having been existed.

## **Chapter Two STATUTORY SUCCESSION**

### **Section I. Successors**

1156. (Successors of first rank)

(1) Children of the decedent shall become successors of the first rank.

(2) Children of the decedent shall have equal shares in the succession regardless of whether they are natural or adopted.

1157. (Succession by representation)

(1) If a child of the decedent dies prior to the commencement of the succession, or loses the right to succession due to falling under the provisions of Article 1150 (Persons disqualified for succession, etc.) or due to disinheritance, the children of such person become successors by virtue of succession by representation; provided that this shall not apply to persons who are not lineal descendants of the decedent.

(2) The provisions of paragraph (1) shall apply in turn to successors by representation to whom any ground in the said paragraph applies.

1158. (Succession shares in case of succession by representation)

The share of a lineal descendant who becomes a successor under Article 1157 (Succession by representation) shall be equal to the share that the lineal ascendant of such descendant would have received. If there is more than one lineal descendant, they shall each succeed in equal shares to the share that their lineal ascendant would have received.

1159. (Successors of the second rank)

(1) In case there is no lineal descendant to become a successor of the decedent, the decedent's lineal ascendant(s) shall become the successor(s); provided that as between persons standing in different degrees of relationship, the person in the nearer degree of relationship shall be preferred.

(2) If there is more than one lineal ascendant to become successors, they shall succeed in equal shares.

1160. (Successors of the third rank)

(1) If there exist neither lineal descendants nor lineal ascendants to become successors of the decedent, the sibling(s) of the decedent shall become successors.

(2) If there is more than one sibling, they shall succeed in equal shares; provided that the share of a sibling who has only one parent in common with the decedent shall be half the share of a sibling who has both parents in common with the decedent.

(3) The provisions of paragraph (1) of Article 1157 (Succession by representation) and Article 1158 (Succession shares in case of succession by representation) shall apply *mutatis mutandis* to cases where siblings of the decedent, who should become successors pursuant to paragraphs (1) and (2), die prior to the commencement of the succession.

## Section II. Succession by Spouse

1161. (Succession by spouse)

(1) The spouse of the decedent shall become a successor in every case.

(2) If a person other than the spouse of the decedent is to become a successor under the provisions of Section I. in addition to the spouse, the spouse shall rank equally with such other person.

1162. (Shares in succession in case of succession by spouse)

The shares of the successors shall be as follows where there are other successors in addition to the spouse:

- a) If the successors are the spouse and lineal descendants, the spouse and each of the descendants shall succeed in equal shares.
- b) If the successors are the spouse and the decedent's parents, the spouse shall succeed to a one-third share and the parents to a two-thirds share; provided that, if only one of the parents of the decedent is still alive, such parent and the spouse shall succeed in equal shares.
- c) If the successors are the spouse and lineal ascendants other than the decedent's parents or siblings or their successors by representation, the spouse shall succeed to a one-half share and the lineal ascendants other than the decedent's parents or siblings or their successors by representation shall succeed to a one-half share.

## Section III. Adjustment of Succession Shares

1163. (Share of person receiving special benefit)

(1) If any of the co-successors has received from the decedent prior to the decedent's death any gift on the occasion of marriage or other event or as capital for livelihood, or has received a testamentary gift from the decedent, the value of the property owned by the decedent upon

the commencement of the succession plus the value of the gift shall be deemed to be the total succession property, and such person's share of the succession shall be the balance after deduction of the value of such gift or testamentary gift from the share calculated in accordance with the provisions of Sections I. and II.

(2) If the value of the gift or testamentary gift equals or exceeds the value of the share in the succession, such co-successor may not receive such share.

1164. (Value of gift)

If the property received by way of gift described in Article 1163 (Share of person receiving special benefit) has been disposed of by the donee or has been destroyed or lost prior to the commencement of the succession, the value shall be calculated according to the value at the time of such disposition, destruction or loss. If the value has changed as a result of the donee's alternation to any part of such property, its value shall be calculated as if it were in the original condition at the time of commencement of the succession. Any interest received or profit realized by a successor who has received a gift shall not be included in the calculation of the value.

1165. (Case where the value of special benefits exceeds the value of succession share)

(1) Even if the value of the gift or testamentary gift received by a co-successor exceeds the value of such successor's share of the succession, except where there is a claim of abatement for legally secured portion, the successor shall not be required to return the property forming the subject matter of the gift for the benefit of the other co-successors.

(2) In cases under paragraph (1), [the actual amount that each of the other successors is entitled to receive in the succession] shall be the amount allotted or distributed as a result of the partition of the succession property owned by the decedent upon the commencement of the succession in accordance with the ratio of the succession share of each co-successor set forth in paragraph (1) of Article 1163 (Share of person receiving special benefit).

1166. (Contributions)

(1) If any of the co-successors has made a special contribution to the maintenance or increase of the decedent's property by offering labor or property to the decedent's business, providing nursing services or in some other manner, the succession property owned by the decedent at the time of the commencement of the succession less the amount of the successor's contribution as aforesaid as determined upon consultation by the co-successors shall be deemed to be the succession property, and the share of such successor shall be the sum of the share calculated in accordance with the provisions of Sections I. and II. and the amount of said contribution.

(2) If determination under paragraph (1) is not rendered or if

consultation cannot be held between the co-successors, then on application by the person who made the contribution described in the said paragraph, the court shall determine [the amount of] such contribution, taking into account the timing, mode and extent of the contribution, the amount of the succession property and all other circumstances.

(3) [The amount of] the contribution cannot exceed the value of the succession property owned by the decedent at the time of the opening of the succession less the amount of the testamentary gift and the value of the property designated by the decedent as the share of the co-successor or as the method of partition of the succession property.

(4) The application under paragraph (2) may be done, in cases where there is application under paragraph (1) of Article 1270 (Partition by the court) or filing a complaint under Article 1274 (Demand by person who was acknowledged after partition) is done.

1167. (Relationship against third parties)

Adjustment of succession shares pursuant to the provisions of this Section III. may not be held up against any third party unless requirements for perfection are fulfilled with respect to the result of the partition of the succession property in accordance with the said adjustment.

## **Chapter Three TESTAMENTARY SUCCESSION**

### **Section I. Capacity to Make a Will**

1168. (Persons who can make a will)

(1) Persons who have attained the age of majority and minors who have been released from guardianship or parental power may make a will.

(2) The provisions of Articles 26 (Right to rescind act) and 30 (Right to rescind act) shall not apply to wills.

1169. (Capacity at time of making will)

(1) At the time of making a will, a testator must have the capacity to do so.

(2) A person asserting a defect in the testator's capacity must prove this; provided that this shall not apply in cases described in Article 1176 (Making of will by person under general guardianship).

### **Section II. Forms of wills**

1170. (Formality of will)

(1) Wills may not be made except in accordance with the forms

prescribed in this Code.

(2) Wills that do not conform with one of the forms prescribed in this Code shall be null and void; provided that an undated will shall be valid if, and only if, another will made by the same testator does not conflict with the first mentioned will. Any undated wills that contradict each other shall each be [thereby] rendered null and void to the extent of the contradiction.

1171. (Formal validity)

A will that conforms with any form prescribed by this Code shall be valid with regard to its formality.

1172. (Persons who may not be witnesses or observer)

None of the persons described below can be a witness or observer to the making of a will:

- a) Minors or persons in general guardianship;
- b) Presumptive successors or testamentary donees or their spouses or lineal relatives by consanguinity;
- c) In a case where a notary participates in the making of a will by notarial document or secret document, the spouse, lineal relatives by consanguinity, clerks and employees of the notary.

1173. (Will by notarial document)

(1) In order to make a will by notarial document, a testator shall carry out the formalities prescribed in paragraph (2), before a notary.

(2) A will by notarial document shall comply with the following formalities:

- a) That two or more witnesses are present;
- b) That the testator orally declares the tenor of the will to the notary;
- c) That the notary writes down the contents of the testator's will and reads it aloud to the testator and the witnesses;
- d) That, after acknowledging the contents of the writing correct, the testator and the witnesses each note their name, age, address and affix signature on it; provided that if the testator is unable to write or sign, the notary shall note the above matters and sign in lieu of the testator and make an additional note of the reason for so doing;
- e) That the notary dates and signs the document.

1174. (Will by privately produced document)

(1) In order to make a privately produced will, the testator writes the whole texts of the will and the date thereof holographically, and affixes his signature to it. A privately produced will written by another person or using a typewriter or other machine shall be null and void.

(2) Any addition or other alteration of a privately produced will

shall be null and void unless the testator indicates the place thereof, makes an additional entry that an alteration has been made, and specifically signs such entry.

1175. (Will by secret document)

In order to make a will by secret document, the following formalities must be complied with:

- a) That the testator signs the document;
- b) That the testator closes up the document and signs or initials the place of closing or takes such other measure as enables a judgment to be made as to whether the closure has been opened;
- c) That the testator produces the sealed document before a notary and at least two witnesses and declares that it is his or her testamentary document and, if it was written by a person other than the testator, the name and address of such other person.
- d) That after the notary has written on the cover of the sealed document the date of the production of the document and the declaration of the testator, the notary, the testator and the witnesses affix their signatures thereon.

1176. (Making of will by person under general guardianship)

(1) For a person under general guardianship to make a will when he has temporarily recovered the ability to recognize and understand the legal consequences of his actions, at least two medical practitioners must be present.

(2) The medical practitioners present at the making of the will must make a separate entry on the testamentary document to the effect that the testator was not in a condition of lacking the capacity to recognize and understand the legal consequences of his actions by reason of mental illness or disability at the time of making the will, and shall affix a statement that they are medical practitioners and their signatures thereto.

1177. (Will of a person in imminent danger of death)

(1) If a person who is in imminent danger of death from disease or other cause wishes to make a will, he or she may do so in the presence of at least three witnesses by orally declaring its tenor to one of them. In this case the person to whom the oral declaration is made shall write it down, and read it aloud or submit the writing to the perusal of the other witnesses, and each witness shall sign the writing after confirming that it is correct.

(2) A will made pursuant to the provisions of paragraph (1) shall not be valid unless within one month from the date on which the will was made one of the witnesses or an interested person applies to the court and obtains confirmation thereof.

(3) The court may not confirm a will unless convinced that it represents the true intention of the testator.

1178. (Will of person in quarantine, etc.)

(1) A person confined in quarantine by court judgment or administrative order may make a will in the presence of a police officer or official of the place of quarantine together with at least two witnesses.

(2) A person on board a ship or plane may make a will in the presence of the ship's or the plane's master or one of the ship's or the plane's clerks together with at least two witnesses.

(3) In order to make a will pursuant to the provisions of paragraphs (1) or (2), the testator may do so by oral declaration to the police officer, the official of the place of quarantine, the ship's or the plane's master or the ship's or the plane's clerk.

(4) In case of paragraph (3), the provisions of items (b) through (e) of paragraph (2) of Article 1173 (Will by notarial document) shall apply *mutatis mutandis*. In the application of these provisions, all of the references to "notary" shall be replaced by each of police officer, official of the place of quarantine, the ship's or the plane's master or the ship's or the plane's clerk.

(5) A will made pursuant to the provisions of paragraphs (1) through (4) shall take no effect if the testator survives for a period of 6 months from the time when, after his release from the place of the quarantine, or his getting off the ship or plane, he become able to make a will in accordance with the formalities set forth in Articles 1173 (Will by notarial document) through 1175 (Will by secret document).

1179. (Making of will by person unable to speak, etc.)

(1) In order for a person who is unable to speak to make a will pursuant to the formalities set forth in Article 1173 (Will by notarial document), 1175 (Will by secret document) or 1177 (Will of a person in imminent danger of death), the testator may declare through an interpreter the tenor of the will or a statement that the testamentary document is his own will, or may write any of the foregoing in his own hand, before the notary or witnesses, in stead of making an oral declaration himself.

(2) In a case where after noting the tenor of the will the notary or other person prescribed by this Code is to read aloud the contents thereof to the testator and the witnesses, if the testator or any witness is a deaf person, the communication of the written contents to the testator or witness may be effected through an interpreter in lieu of reading the contents aloud.

(3) The notary or other person prescribed by this Code shall note the action taken in any case described in paragraphs (1) and (2) on the document.

1180. (Entry of name with thumbprint in lieu of signature)

Where it is required for a notary or witness to affix his signature,

a notary or witness may make an entry of his name together with his thumbprint affixed with it in lieu of the signature.

1181. (Special provision governing making of will by Cambodian living abroad)

If a Cambodian national who is resident in a country where a Cambodian Consul is stationed wishes to make a will by notarial document or secret document, the functions of a notary shall be performed by such Consul.

### Section III. Matters To Be Included In Will

1182. (Designation of succession shares)

(1) A decedent may by will designate the succession shares of the co-successors and express an intention contrary to the provisions of Article 1163 (Share of person receiving special benefit) relating to the succession share of a person receiving special benefit; provided that any designation of a share that infringes any legally secured portion shall be subject to the provisions governing legally secured portions.

(2) If the decedent designates the shares of only one or more of the co-successors, the shares of the other co-successors shall be determined in accordance with the provisions of Section III. of Chapter Two.

1183. (Designation of manner of partition of succession property, etc.)

A decedent may by will determine or commission a third party to determine the manner of partition [of the succession property], or forbid partition for a period not exceeding five years from the time of commencement of the succession.

1184. (Transfer of property)

Subject to complying with the provisions governing legally secured portions, the testator may by will give the whole or any part of his property pursuant to the manners described in Article 1199 (Definition of testamentary gift).

1185. (Transfer of property to successors)

(1) If the decedent has made a will purporting to transfer one or more items of specified property to one successor or to co-successors, then except in cases that involve a clear intention to make a testamentary gift including testamentary gift with a charge, the testator shall be presumed to have designated the manner of partitioning the succession property, and if the value of the specified property that is subject to such designation exceeds the share in the succession of that successor(s), the testator shall also be presumed to have made a designation of share(s) in the succession.

(2) If the decedent has made a will concerning only a portion of the



succession property, and the value of such portion is less than the share of the successor who has become eligible to receive such portion, the testator shall be presumed to have declared no more than to have designated the manner of partition of the property that should belong to that successor.

1186. (Designation of executor of will)

A decedent may by will designate or commission a third party to designate one or more executors of the will.

1187. (Other matters)

In addition to the other matters prescribed in this Code, a testator may include in his will opinions aimed at the harmony of the family and other matters. In such a case, the successors, etc. shall honor the will.

#### Section IV. Revocation of Will

1188. (Time and mode of revocation of will)

A testator may at any time revoke his will in whole or part in accordance with the provisions of this Section IV.

1189. (Revocation using the formality of a will)

(1) The whole or part of a will may be revoked using the formality of a will.

(2) In the event of inconsistency between an earlier and a later will, the later will shall be deemed to have revoked the earlier will in respect of the inconsistent portion.

1190. (Revocation of will by inter vivos disposition)

An inter vivos transfer or other disposition pertaining to the subject matter of a will shall be deemed to be a revocation of such will in respect of the portion that is inconsistent with the will.

1191. (Revocation by destruction of testamentary document etc.)

If a testator intentionally destroys the original of a testamentary document, he shall be deemed to have revoked the will in respect of the destroyed portion. The same shall apply to intentional destruction of the subject matter of a will.

1192. (Waiver of right to revoke will)

A testator may not waive the right to revoke his will.

1193. (Revocation of a testamentary gift with a charge)

If a testamentary donee does not perform an obligation that has been imposed by the testator in exchange for a testamentary gift, the

executor of the will, or in the absence of an executor, the successor, may give notice of a reasonable time for performance, and if performance does not place within such period, may apply to the court for revocation of such testamentary gift.

## Section V. Effect of Will

1194. (Time when will becomes effective)

- (1) A will becomes effective upon the death of the testator.
- (2) If in a case where a will is subject to a condition precedent, the condition is fulfilled after the death of the testator, the will shall become effective upon the fulfillment of the condition.

1195. (Effect of designation of share in succession, etc.)

- (1) If the decedent has made a designation of the successors' shares in the succession or the manner of partition of the succession property by declaring the intention in a will to transfer one or more items of specified property to one or more co-successors, such specified property shall automatically devolve upon the successor(s) to whom it should belong upon the coming into effect of the will.
- (2) If the will has been made subject to a condition precedent and such condition is fulfilled after the death of the decedent, the property described in paragraph (1) shall be deemed to belong to the successor to whom it should belong retrospectively to the time of death of the decedent.

1196. (Death of presumed successor, etc.)

- (1) If in a case where the decedent has by will made a designation of the successors' shares or of the manner of partition of the succession property, a presumed successor dies before the opening of the succession, falls under the provisions of Article 1150 (Persons disqualified for succession, etc.) or loses the right of succession on account of being disinherited, the said designation shall be deemed to have been made in respect of any successor by representation of such presumed successor.
- (2) In cases described in paragraph (1), if there is no successor by representation of the presumed successor, the designation of such presumed successor shall have no effect. The same shall apply if a successor waives succession.
- (3) Notwithstanding the provisions of paragraphs (1) and (2), if the decedent has expressed a different intention in the will, such intention shall prevail.

1197. (Restrictions on wills in favor of general guardians, etc.)

- (1) If before the accounts of a general guardianship have been completed a person under general guardianship makes a will under which

the general guardian, the spouse of the general guardian or any lineal descendant of the general guardian is to take a benefit, such will shall be void.

(2) The provisions of paragraph (1) shall not apply in cases where a lineal relative by consanguinity, the spouse or a sibling of the person under general guardianship is the general guardian.

1198. (Devolution of property in cases where testamentary gift is void, etc.)

If a testamentary gift does not take effect by reason of the disqualification or death of the testamentary donee or other reason, or does not take effect by reason of renunciation, whatever the testamentary donee would have received shall devolve on the successors; provided that if the testator has declared a different intention in his will, such intention shall prevail.

## Section VI. Testamentary Gifts

1199. (Definition of testamentary gift)

An "universal testamentary gift" means that the testator gives by will the whole of the succession property or any part thereof designated by a certain ratio to one or more persons, and a "specific testamentary gift" means that the testator gives by will a specified property to one or more persons.

1200. (Death of testamentary donee)

(1) A testamentary gift shall not take effect if the testamentary donee dies on or before the death of the decedent. The same shall apply if the testamentary gift is subjected to a condition precedent and the testamentary donee dies prior to the fulfillment of such condition.

(2) Notwithstanding the provisions of paragraph (1), if the testator has declared a different intention in his will, such intention shall prevail.

(3) In a case where a presumed successor is the testamentary donee, the provisions of paragraph (1) shall not preclude the application of the provisions of paragraph (1) of Article 1196 (Death of presumed successor, etc.).

1201. (Renunciation of testamentary gift)

(1) A testamentary donee may effect a renunciation of a testamentary gift at any time after the death of the decedent; provided that, in case of an universal testamentary gift, a renunciation shall be effected in compliance with the provisions regarding renunciation of succession.

(2) A renunciation of a testamentary gift shall have effect retrospectively to the death of the decedent.

1202. (Notice by interested person)

A person charged with a testamentary gift or other interested person may give notice to the testamentary donee to effect either acceptance or renunciation of the testamentary gift within the reasonable period fixed in the notice. If the testamentary donee does not declare its intention to the person charged with the testamentary gift within said period, the testamentary donee shall be deemed to have accepted the testamentary gift.

1203. (Renunciation or acceptance by successor of donee)

If a testamentary donee dies without effecting either an acceptance or a renunciation of the testamentary gift, his successor may effect an acceptance or renunciation within the scope of his own right of succession; provided that if the testator has declared a different intention in his will, such intention shall prevail.

1204. (Revocation of acceptance or renunciation)

(1) Acceptance or renunciation of a testamentary gift cannot be revoked.

(2) The provisions of paragraph (2) of Article 1252 (Revocation of acceptance or renunciation) shall apply *mutatis mutandis* to revocation of acceptance or renunciation of a testamentary gift.

1205. (Acceptance or renunciation where the testamentary donee is a successor)

(1) If a testamentary donee who is also a successor renounces succession, he shall be deemed to have also renounced the testamentary gift. A testamentary donee cannot at the same time renounce succession and accept a testamentary gift.

(2) A testamentary donee described in paragraph (1) can, however, accept the succession and renounce a specific testamentary gift.

1206. (Right to acquire fruits by testamentary donee)

A testamentary donee acquires the fruits [of the gift] from such time as the performance or delivery of the testamentary gift can be demanded; provided that if the testator has declared a different intention in his will, such intention shall prevail.

1207. (Testamentary gift of rights not included in the succession property)

A testamentary gift shall not take effect if the rights that are the subject matter thereof were not included in the succession property at the time of the death of the testator.

1208. (Testamentary gift of things or rights subject to third party rights)

If the thing or right which constitutes the subject-matter of a testamentary gift is the subject-matter of a right belonging to a third party at the time of the death of the testator, the testamentary donee may not demand of the person charged with the testamentary gift that such right be extinguished.

1209. (Subrogation)

(1) Where a testator has a right to claim compensation from a third party by reason of the destruction, loss or alteration of the subject-matter of the testamentary gift or the loss of possession thereof, such right shall be presumed to have been made the subject matter of the testamentary gift.

(2) Where a thing constituting the subject-matter of a testamentary gift has been attached to or mixed or consolidated with another thing, if the testator has become the sole owner or a co-owner of the composite thing in accordance with the provisions of Article 186(Affixture of movable to immovable) or 198(Attachment, mixture, consolidation of movables), the testator shall be presumed to have made the whole ownership or co-ownership of the composite thing the subject matter of the testamentary gift.

1210. (Subrogation of testamentary gift of claim)

(1) Where a claim has been included in the subject-matter of a testamentary gift, if the testator has received performance of such claim and any thing that so received still remains part of the succession property, such thing shall be presumed to have been the subject-matter of the testamentary gift.

(2) In the case of a monetary claim, to the extent of [i] the amount of money that remains part of the succession property together with [ii] the balance of an account in which the payment of such monetary claim was deposited, these amounts of money shall be presumed to have been the subject-matter of the testamentary gift.

1211. (Liability of donee of testamentary gift subject to charge)

(1) A person who has received a testamentary gift subject to a charge shall be liable to perform the obligation which he has assumed only to the extent of the value of the subject-matter of the testamentary gift.

(2) Where the value of the subject-matter of a testamentary gift subject to a charge is reduced by reason of a qualified acceptance of the succession or a demand for abatement of a legally secured portion, the testamentary donee shall in proportion to such reduction be relieved of the obligation which he has assumed; provided that if the testator has declared a different intention in his will, such intention shall prevail.

1212. (Rights and duties of universal testamentary donee)

(1) An universal testamentary donee has the same rights and duties as a successor.

(2) If an universal testamentary gift has been made to a person other than a successor, the successor or successors shall be deemed not to have succeeded, except to rights over legally secured portions.

## Section VII. Execution of Wills

1213. (Probate and opening of wills)

(1) Upon becoming aware of the opening of the succession, the custodian of a testamentary document must without delay present it to the court and apply for probate thereof. Where there is no custodian of the testamentary document, the same shall apply upon discovery of the document by a successor or other interested person.

(2) The provisions of paragraph (1) shall not apply to a will made by notarial document.

(3) A sealed testamentary document may not be opened except in the court and in the presence of the successors, an interested party or their representative.

(4) A person who opened a sealed testamentary document outside the court in breach of the provisions of paragraph (3) shall be imposed with a civil fine of 1 million riels or less.

(5) A testamentary document that opened outside the court in breach of the provisions of paragraph (3) shall not be invalidated on that account.

1214. (Appointment of executors)

(1) A person who has been commissioned by the testator in his will to appoint executors shall without delay effect such appointment and give notice thereof to the successors.

(2) If a person commissioned to appoint executors under paragraph (1) desires to decline such commission, he shall without delay give notice to that effect to the successors.

1215. (Assumption of office by executor)

An executor who has agreed to assume office must at once enter upon his duties.

1216. (Notice of assumption of office by executor)

(1) A successor or other interested person may give a notice to a person appointed as an executor demanding that he give a definite answer within a reasonable period fixed by such notice as to whether he agrees to assume office. If such person fails to give a definite answer to the successor within such period, he shall be deemed to have declined to assume office.

(2) The first sentence of paragraph (1) shall apply *mutatis mutandis* to the case where the third party commissioned to appoint an executor does not promptly effect such appointment. In such a case, if the third party does not appoint an executor within the fixed period, he shall be deemed to have declined the commission.

1217. (Persons who may not be executor)

No person under general guardianship, person under curatorship, minor or bankrupt may become an executor.

1218. (Appointment of executor)

If there exists no executor or none remains, the court may appoint an executor upon the application of a successor or any interested party.

1219. (Preparation of inventory of property)

(1) The executor must without delay prepare an inventory of the succession property and deliver it to the successors.

(2) The successors shall have the right to be present at the preparation of the inventory by the executor.

1220. (Authority of executor)

The executor shall have the right and duty to manage the succession property and to perform all other acts necessary for the execution of the will.

1221. (Forfeiture of successors' right to dispose of succession property)

(1) If there is an executor, the successors must not in any way dispose of the succession property or do any other act that would obstruct the execution of the will.

(2) Any disposition in breach of paragraph (1) shall have no effect.

1222. (Execution of will over specified property)

If the will relates to specified property, the provisions of Articles 1219(Preparation of inventory of property) through 1221(Forfeiture of successors' right to dispose of succession property) shall apply to such property only.

1223. (Status of executor)

(1) The executor shall act in his own name in respect of any of the succession property that is subject to execution.

(2) The effect of any act of the executor performed as part of the duties of the executor shall extend to the successors directly.

1224. (Right to appoint sub-executor)

(1) An executor may not procure a third party to perform his duties except for unavoidable reasons; provided that if the testator has declared a contrary intention in the will, such intention shall prevail.

(2) If the executor procures the performance of his duties by a third party in accordance with paragraph (1), the executor shall be liable to the testamentary donee and the successors for the selection and supervision of such third party. If the executor procures the performance of his duties by a third party in breach of paragraph (1), the executor must compensate the testamentary donee and the executors for any loss incurred as a result thereof.

1225. (Co-executors)

(1) Where there are two or more executors, the conduct of their duties shall be determined by a majority; provided however that if the testator has declared a different intention in his will, such intention shall prevail.

(2) Notwithstanding the provisions of paragraph (1), each executor is entitled to effect acts of preservation.

1226. (Remuneration of executor)

(1) The executor shall be entitled to receive the remuneration prescribed in the will.

(2) If there is no prescription of remuneration in the will, the court, upon application by the executor, may prescribe the amount of remuneration, where it finds it appropriate for remuneration to be paid, having regard to the condition of the succession property, the relationship between the testator and the executor and other circumstances.

1227. (Resignation or removal of executor)

(1) If reasonable ground exists, an executor may resign from office with the leave of the court.

(2) If an executor neglects his duties or other reasonable ground exists, an interested person may apply to the court for the removal of such executor.

1228. (Execution expenses)

The expenses of execution of a will shall be borne by the succession property; provided that no legally secured portion can be diminished thereby.

1229. (*Mutatis mutandis* application of provisions on mandate)

The provisions governing mandates shall apply to the duties of an executor, to the extent that said provisions do not conflict with the nature of the duties of an executor.



## Chapter Four LEGALLY SECURED PORTIONS

### Section I. General Provisions

1230. (Persons entitled to legally secured portions)

(1) Lineal descendants, the parents or the grand parents and the spouse of the decedent shall be entitled to receive as their legally secured portion the property described below:

- a) One-third of the decedent's property, if only the parents or the grand parents are the successors;
- b) One-half of the decedent's property, in other cases.

(2) If there are two or more successors, the co-successors shall each receive the legally secured portion in proportion to their share in the succession.

(3) The provisions of Articles 1157 (Succession by representation) and 1158 (Succession shares in case of succession by representation) shall apply *mutatis mutandis* to legally secured portions.

1231. (The property that is the basis for calculation of legally secured portions)

(1) Legally secured portions shall be calculated by adding to the value of the property which the decedent had at the opening of the succession the value of any special benefit as described in Article 1163 (Share of person receiving special benefit) together with the value of any property gifted by the decedent as described in Article 1232 (Gifts [inter vivos] that are the basis for calculation of legally secured portions), and subtracting therefrom the total amount of [the decedent's] obligations.

(2) The value of a conditional right or a right of uncertain duration shall be determined in accordance with the assessment of an expert appointed by the court.

(3) Obligations described in paragraph (1) shall include funeral expenses appropriate to the decedent's status.

1232. (Gifts [inter vivos] that are the basis for calculation of legally secured portions)

(1) The gifts described below shall be the basis of calculation of legally secured portions:

- a) Gifts made within one year prior to the opening of the succession;
- b) Gifts other than gifts described in item (a) above, if both parties [to the gift] were aware that loss would be caused to a person entitled to a legally secured portion.

(2) In the application of this Chapter Four, a gratuitous release of obligations shall be deemed as gift.

1233. (Property that is subject to abatement for legally secured portion(s))

Testamentary gifts, designations of shares in a succession by will, special benefits and gifts described in Article 1232 (Gifts [inter vivos] that are the basis for calculation of legally secured portions) shall be subject to abatement for legally secured portion(s); provided that if a testamentary gift, designation of a share in a succession or special benefit to a successor is subject to abatement for a legally secured portion, such abatement shall be limited to the amount [by which such testamentary gift, etc.] exceeds the legally secured portion of such successor.

1234. (Amount of claim of abatement for legally secured portion)

The amount which a person entitled to a legally secured portion may claim as abatement shall be the amount calculated by deducting from the amount of the legally secured portion the total amount obtained by that person by succession together with the value of any special benefit, and adding thereto the amount of obligations in the succession to be borne by that person.

## **Section II. Method of Abatement for Legally Secured Portion**

1235. (Claim of abatement for legally secured portion)

A person entitled to a legally secured portion and his successor may demand abatement of a testamentary gift, etc. against a person who has obtained property or a benefit that is subject to abatement for a legally secured portion, to the extent necessary in order to preserve such legally secured portion.

1236. (Order of abatement)

Gifts inter vivos and special benefits cannot be abated until after testamentary gifts and designations of shares in a succession have been abated.

1237. (Abatement of testamentary gifts, etc.)

(1) In the first place testamentary gifts to successors and designations of shares in the succession are simultaneously abated, and if there is any deficit, testamentary gifts to persons who are not successors shall be abated.

(2) Testamentary gifts shall abate in proportion to the value of their subject-matter. The same shall apply in the case of designation of shares in a succession by the method of transfer of one or more specified items of property; provided that where a testamentary gift or designation of share in the succession to a successor is subject to abatement, the value of the subject-matter shall be deemed to be that portion which exceeds the amount of the legally secured portion of such successor.

(3) Designations of shares in a succession in a certain ratio shall be abated by changing such ratio of shares.

(4) Notwithstanding the provisions of paragraphs (1), (2) and (3), if the testator has declared a different intention in his will, such intention such prevail.

1238. (Order, etc. of abatement of gifts [inter vivos])

(1) Abatement of gifts [inter vivos] or special benefits shall commence with the latest and extend in successive order to the earliest.

(2) If the gift [inter vivos] or special benefit was granted 20 years or more prior to the opening of the succession, the donee or successor who received the special benefit shall be entitled to reject the claim of abatement for legally secured portion.

1239. (Return of fruits)

In addition to the property or money to be returned, a co-successor, a testamentary donee or donee [inter vivos] must also return the fruits of such property or money as from the day on which a claim for abatement was made.

1240. (Burden of loss arising from insolvency)

Any loss arising from the insolvency of a co-successor, testamentary donee or donee [inter vivos] subject to abatement shall be borne by the persons entitled to legally secured portions.

1241. (Abatement of gift subject to charge)

In the case of a gift subject to a charge, abatement may be claimed in respect of the value of the subject-matter less that of the charge.

1242. (Abatement of contract, etc. deemed to be a gift)

(1) A contract concluded for an inadequate consideration shall be deemed to be a gift only if both parties to such contract acted with knowledge that loss would be caused to a person with a legally secured portion. In such a case, the person entitled to a legally secured portion who claims abatement must repay the consideration.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to a release of obligations for an inadequate consideration.

1243. (Abatement of gift assigned to another person)

(1) Where a co-successor, testamentary donee or donee [inter vivos] has assigned the subject-matter of the gift to another person, such assignor must compensate the person entitled to a legally secured portion to the extent of the value thereof at the time of such assignment; provided that if at the time of the assignment, the assignee knew that loss would be caused to the person entitled to a legally secured portion, the latter may also claim abatement against the

assignee.

(2) The provisions of paragraph (1) shall also apply *mutatis mutandis* to cases where a co-successor, testamentary donee or donee [inter vivos] has created rights over the subject-matter of a gift.

1244. (Performance by payment of value)

(1) A co-successor, testamentary donee or donee [inter vivos] may relieve himself of the duty of restoration by paying to the person entitled to a legally secured portion the value of the subject-matter of the designated share, testamentary gift or gift [inter vivos] to the extent that such share, etc. is to abate.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to the case described in the proviso to paragraph (1) of Article 1243 (Abatement of gift assigned to another person).

### Section III. Extinction of Claim of Abatement

1245. (Extinctive prescription of right to claim abatement)

A right to claim abatement shall be extinguished by prescription if one year has lapsed, counting from the time when the person entitled to a legally secured portion becomes aware that the succession has opened and that a designation of share in succession, testamentary gift, gift [inter vivos] or special benefit has been granted. A right to claim abatement shall also be extinguished by prescription in any event if 5 years have lapsed since the opening of the succession.

1246. (Renunciation of legally secured portion)

A legally secured portion may be renounced in whole or part; provided that such renunciation effected prior to the opening of the succession shall be effective only if the approval of the court is obtained.

1247. (The case of co-successors)

Neither the extinguishment of the legally secured portion of one co-successor by prescription nor the renunciation by one co-successor of his legally secured portion shall have any effect on the legally secured portion of any other co-successor.

## Chapter Five ACCEPTANCE AND RENUNCIATION OF SUCCESSION

### Section I. General Provisions

1248. (Period for acceptance or renunciation)

(1) Within three months after becoming aware that a succession has opened in his favor, a successor must effect an acceptance, either absolute or qualified, or a renunciation thereof; provided that such period may be extended by the court upon application by the successor.

(2) A successor shall be entitled to inspect the succession property prior to effecting acceptance or renunciation thereof.

1249. (Special provisions concerning period in case of death of successor)

If a successor dies without effecting either acceptance or renunciation, the period described in paragraph (1) of Article 1248 (Period for acceptance or renunciation) shall be computed from the time when his successor becomes aware that the succession has opened in his favor.

1250. (Special provisions concerning period in case of minor, etc.)

If the successor is a minor or person under general guardianship, the period described in paragraph (1) of Article 1248 (Period for acceptance or renunciation) shall be computed from the time that his legal representative is aware that the succession has opened in favor of the minor or the person under general guardianship.

1251. (Special provision concerning period in case where the existence of obligations is unknown)

(1) In a case where the decedent had owed massive debts which cannot be repaid from the succession property, if a successor could not become aware of the existence of those debts by taking into account of the conditions of the life or the property of the decedent and other circumstances, the period described in paragraph (1) of Article 1248 (Period for acceptance or renunciation) shall be computed from the time that the successor becomes aware of the existence of those debts.

(2) In a case described in paragraph (1), if the successor has disposed of any of the succession property to pay off other decedent's obligation prior to the time that he becomes aware of the existence of the debts described in paragraph (1), the provisions of paragraph (1) of Article 1255 (Statutory absolute acceptance) shall not apply.

1252. (Revocation of acceptance or renunciation)

(1) Acceptance and renunciation cannot be revoked even within the period described in paragraph (1) of Article 1248 (Period for acceptance or renunciation).

(2) The provisions of paragraph (1) shall not prevent the revocation of an acceptance or renunciation on the ground of defect in the declaration of intention; provided that such right of revocation shall be extinguished if it is not exercised within six months from the time that it becomes possible to effect ratification, or within five years from the time of opening of the succession.

(3) A person who wishes to revoke a qualified acceptance or renunciation in accordance with paragraph (2) shall file application with the court to this effect.

1253. (Prohibition of suit against successor prior to acceptance)

No assertion of a claim against the succession property may be made against a successor prior to acceptance of the succession.

## Section II. Acceptance

### 1254. (Absolute acceptance)

Upon effecting an absolute acceptance, the successor succeeds without limitation to the rights and duties of the decedent.

### 1255. (Statutory absolute acceptance)

In the cases described below, the successor shall be deemed to have effected an absolute acceptance:

- a) If the successor has disposed of the whole or a part of the succession property; provided that this shall not apply to acts of preservation and mere acts of management;
- b) If the successor fails to effect a qualified acceptance or a renunciation within the period prescribed in paragraph (1) of Article 1248 (Period for acceptance or renunciation);
- c) If despite having effected a renunciation, the successor has concealed or privately consumed the whole or a part of the succession property; provided that this shall not apply after an acceptance has been effected by a person who has become successor due to renunciation by a successor with the prior rank.

### 1256. (Qualified acceptance)

(1) A successor may effect an acceptance with the reservation that the obligations and testamentary gifts of the decedent shall be performed only to the extent of the property acquired through the succession.

(2) If there is more than one successor, qualified acceptance may be effected only by the joint act of all the co-successors.

### 1257. (Procedure for qualified acceptance)

If a successor desires to effect a qualified acceptance, he must prepare an inventory within the period prescribed in paragraph (1) of Article 1248 (Period for acceptance or renunciation) and submit the same to the court with a declaration of qualified acceptance.

### 1258. (Effect of qualified acceptance)

(1) Where a successor effects a qualified acceptance, the succession creditors shall be unable to pursue liability against the individual property of the successor.

(2) In cases described in paragraph (1), any rights and duties of the successor vis-à-vis the decedent shall be deemed not to have been extinguished by virtue of merger.

1259. (Statutory acceptance after qualified acceptance)

(1) Where a single and sole successor has effected a qualified acceptance, if such successor does not make an entry of the whole or part of the succession property in the inventory in bad faith, or if a ground listed in items (a) through (c) of Article 1255 (Statutory absolute acceptance) applies to such successor, it shall be deemed that the successor have effected an absolute acceptance, and that the declaration of qualified acceptance take no effect *ab initio*.

(2) If any ground described in paragraph (1) applies to one or more co-successors who have effected a qualified acceptance, succession creditors may exercise their rights against the aforesaid co-successor(s) in proportion to their shares for the amount of claims that such creditors have been unable to receive payment of from the succession property.

### Section III. Renunciation

1260. (Renunciation of succession)

A person who desires to effect renunciation of succession must file a motion to that effect with the court.

1261. (Effect of renunciation)

A person who has renounced succession shall be deemed not to have been a successor *ab initio* in respect of such succession.

## Chapter Six MANAGEMENT AND PARTITION OF THE SUCCESSION PROPERTY

### Section I. Management of the Succession Property

1262. (Custody of the succession property)

(1) The successor in possession of the succession property at the time of the decedent's death shall have the custody and management of the succession property until the succession property is partitioned; provided that this shall be subject to the provisions of Article 1263 (Custody by executor).

(2) Even before accepting or renouncing succession, the successor shall manage the succession property with the same care as his own property. The same shall apply after a successor renounces succession until the person who becomes a successor by virtue of such renunciation is able to commence management of the succession property.

1263. (Custody by executor)

When the executor of a will assume office, he shall manage the succession property; provided that if the will only covers specified property, the executor shall manage such property only.

1264. (Temporary manager of inheritance)

(1) If there is no executor to manage the whole inheritance,, a successor, legatee or creditor of the decedent may apply to the court for appointment of a temporary manager of inheritance pending the partition of the inheritance.

(2) Notwithstanding the provisions of Article 1253(Prohibition of suit against successor prior to acceptance)of this code, a temporary manager appointed under paragraph (1) shall be in charge of suits involving claims against the inheritance on behalf of the successor, by specifying the name of the decedent,pending acceptance by the successor.

(3) The provisions of paragraph (1) and (3) of Article 40(Authority of administrator,etc) of this code shall apply mutatis mutandis to the temporary manager.

1265. (Expenses relating to succession property)

Expenses relating to the succession property shall be paid out of the succession property; provided that expenses arising from the negligence of a successor shall be borne by such successor.

## Section II. Partition of Succession Property

1266. (Consultation for partition of succession property)

(1) The co-successors may, at any time after the lapse of one month from the opening of the succession, commence a consultation on the partition of the succession property; provided however that the change of the name of [the owner of] any succession property as a result of the partition shall comply with the provisions of Article 1277(Prohibition of transfer of ownership), and that, where the decedent has forbidden partition in his will, the partition cannot be carried out for the forbidden period.

(2) The transfer of rights over things in partition shall be done in accordance with the required formalities such as documents, etc. for the respective rights.

1267. (Criteria of partition)

(1) Where the manner of partition is not designated in the will, partition of an succession property shall be carried out taking into account the kind and nature of the things or rights constituting the succession property, the age, occupation, state of mind and body and living conditions of each successor and all other circumstances.

(2) If the value of any succession property would be severely damaged by partition, where this is considered reasonable, the succession property may be caused to devolve on one successor, subject to the payment of compensation to the other successors.



1268. (Priority right of spouse)

If the spouse is a successor, and there is property acquired jointly by the spouse and the decedent during the marriage, the spouse shall have precedence over the other co-successors to acquire the decedent's share of such jointly owned property until the spouse attains his or her share in the succession.

1269. (Payment of debts, etc. of succession)

If the decedent has left debts, the co-successors must effect the partition by taking into account that such debts should be repaid, and that the shares of burden of such debts cannot be altered without the consent of the creditors.

1270. (Partition by the court)

(1) If no agreement is reached or consultation cannot be held among the co-successors for partition of the succession property, any co-successor may apply to the court for partition.

(2) In effecting partition, the court shall take account of the provisions of Articles 1267(Criteria of partition) through 1269(Payment of debts, etc. of succession), together with the customs of the region and the views of the majority of successors.

1271. (Clearance by sale)

The court may sell and partition the proceeds of property concerning the partition or ownership of which the co-successors cannot reach agreement.

1272. (Subrogation based on disposition of property, etc. prior to partition)

All compensation for loss, destruction or usurpation of or damage to the subject-matter of the succession property, and any thing acquired by a contract relating to the succession property, on the basis of rights belonging to the succession property, shall belong to the succession property.

1273. (Effect of partition)

(1) Partition of a succession property shall be effective retroactively to the opening of the succession; provided, however, that already registered or perfected rights of third parties cannot be harmed.

(2) Each co-successor shall receive a certificate of ownership of property which has devolved on him.

1274. (Demand by person who was acknowledged after partition)

Where a person who becomes a successor as a result of being acknowledged

after the death of the decedent demands of the partition of the succession property, if the other co-successors have already partitioned or otherwise disposed of the succession property, he shall only be entitled to demand of the distribution of the value thereof.

1275. (Conditions for [perfection] of partition of claims, etc.)

(1) Where the claims held by the decedent have been partitioned [upon partition of the succession property] other than in the ratio of the statutory shares in succession, then unless all of the co-successors give notice to this effect to the debtors of such claims, or if the partition of the succession property has been carried out by a notarial document, unless all the co-successors show said debtors the notarial document or provide them with a copy thereof, [such claims as partitioned] shall not be held up against such debtors.

(2) Any payment made by a debtor of the decedent in accordance with the ratio of the statutory shares of succession to co-successors prior to receiving a notice described in paragraph (1) can be held up against the successors who have acquired the claim by partition of the succession property.

1276. (Co-successor's liability for warranty)

In proportion to his share in the succession, each co-successor shall bear the same liability for warranty as a seller vis-à-vis the other co-successors.

### Section III. Adjustment Among Creditors

1277. (Prohibition of transfer of ownership)

Until the lapse of the period prescribed in paragraph (1) of Article 1248 (Period for acceptance or renunciation), neither the successors nor the succession property administrator shall change the name of the owner of any succession property to any successor or testamentary donee; provided that this prohibition shall not apply to change of name that are necessary in order to pay debts of the decedent.

1278. (Creditors of the decedent)

Creditors of the decedent may not enforce their rights against the personal property of a successor until the lapse of the period prescribed in paragraph (1) of Article 1248 (Period for acceptance or renunciation).

1279. (Creditors of successor)

Creditors of a successor may not enforce their rights against the succession property until the lapse of the period prescribed in paragraph (1) of Article 1248 (Period for acceptance or renunciation).

### Section IV. Liquidation in cases where there has been a qualified acceptance, etc.

1280. (Administration of succession property after qualified acceptance)

A successor effecting a qualified acceptance shall continue to manage the succession property with the care of a good manager.

1281. (Public notice and peremptory notice)

(1) Within five days after effecting a qualified acceptance, the acceptor shall give public notice to all creditors of the decedent and to all testamentary donees that a qualified acceptance has been effected by such acceptor and that they are called upon to present their claims within a specified period, which shall not be less than two months.

(2) An additional statement shall be included in notices under paragraph (1) that the claims of creditors who do not present their claims within the period shall be excluded from the liquidation; provided that qualified acceptors cannot exclude creditors known to them.

(3) A qualified acceptor shall give separate peremptory notice to each creditor known to the acceptor to present his claim.

1282. (Right to refuse to perform claims during the notice period)

A qualified acceptor may refuse performance to creditors of the decedent and testamentary donees until the expiration of the period for [response to] public notice prescribed in paragraph (1) of Article 1281(Public notice and peremptory notice).

1283. (Payment by distribution)

Upon the expiration of the public notice period prescribed in paragraph (1) of Article 1281(Public notice and peremptory notice), a qualified acceptor shall effect payment from the succession property to those creditors who have presented their claims within such period, in proportion to the amounts of their respective claims; provided that the rights of creditors with priority rights cannot be harmed thereby.

1284. (Performance of claims not yet due, etc.)

(1) In accordance with the provisions of Article 1283(Payment by distribution), a qualified acceptor shall effect payment even of claims that are not yet due.

(2) Conditional claims and claims of uncertain duration shall be paid in accordance with the valuation of an expert appointed by the court.

1285. (Payment to testamentary donees)

A qualified acceptor may effect payment to testamentary donees only after effecting payment to each of the creditors in accordance with the provisions of Articles 1283(Payment by distribution) and 1284(Performance of claims not yet due, etc.).

1286. (Realization of succession property)

(1) If it is necessary to sell the succession property in order to effect payment under Articles 1283(Payment by distribution) through 1285(Payment to testamentary donees), the qualified acceptor shall offer it for compulsory sale by auction or sell it for not less than the price assessed by an expert appointed by the court.

(2) The qualified acceptor, succession creditor or testamentary donee may be the purchaser in an auction or sale under paragraph (1).

1287. (Liability for improper performance)

(1) If a qualified acceptor has neglected to give the public or peremptory notice prescribed in Article 1281(Public notice and peremptory notice), or has made payment to some creditors or testamentary donees within the notice period prescribed in paragraph (1) of said Article and consequently has become unable to make payment to other creditors or other testamentary donees, he shall be bound to compensate any damage arising therefrom.

(2) The provisions of paragraph (1) shall not prejudice the right of other creditors or testamentary donees to demand compensation from creditors or testamentary donees who have received payment with knowledge of its impropriety.

1288. (Case of claims not presented)

Obligees and testamentary donees who have failed to present their claims within the period prescribed in paragraph (1) of Article 1281(Public notice and peremptory notice) and who were unknown to the qualified acceptor may exercise their rights only in respect of the surplus assets; provided that this shall not apply to a person who has security interest over a specified thing or right.

1289. (Case of joint succession)

(1) If a qualified acceptance has been made in a case where there is more than one successor, the court must appoint one of the successors as administrator of the succession property.

(2) The administrator shall do all acts necessary for the management of the succession property and the payment of the debts on behalf of both himself and the co-successors and in lieu of the co-successors.

(3) The provisions of Articles 1281(Public notice and peremptory notice) through 1288(Case of claims not presented) shall apply *mutatis mutandis* to an administrator; provided that the period for giving a public notice prescribed in paragraph (1) of Article 1281(Public notice and peremptory notice) shall be within ten days following the appointment of the administrator.

## **Chapter Seven NON-EXISTENCE OF SUCCESSORS**

1290. (The succession property juridical person)

If it is uncertain whether or not there are any successors, the succession property shall constitute a juridical person.

1291. (Appointment of administrator)

(1) In cases falling under Article 1290 (The succession property juridical person), the court shall appoint an administrator of the succession property upon the application of an interested person, the head of the *commune* or *sangkat* in which the decedent's last permanent residence is located or a public prosecutor.

(2) Upon the appointment of the administrator, the court shall without delay give public notice thereof.

1292. (Rights and duties of administrator)

(1) Without delay, the administrator shall prepare an inventory of the succession property.

(2) The administrator shall carry out custody and management of the succession property. If deemed necessary for this purpose, the administrator may realize or dispose of the succession property with the leave of the court.

(3) Upon demand by a succession creditor or testamentary donee, the administrator shall provide such person with a report on the condition of the succession property.

(4) The administrator shall perform the matters prescribed in Articles 1282 (Right to refuse to perform claims during the notice period) through 1288 (Case of claims not presented) as applied *mutatis mutandis* by paragraph (2) of Article 1296 (Public notice and peremptory notice to creditors, etc.).

(5) The administrator shall upon an order of the court investigate facts, and report the result thereof to the court.

1293. (Remuneration of administrator)

The court may pay reasonable remuneration to an administrator from the succession property, taking account of the condition of the succession property and other circumstances.

1294. (Emergence of successor)

If it becomes known that there is a successor, the succession property juridical person shall be deemed never to have existed; provided that this shall not affect the validity of acts effected by the administrator within the scope of his authority.

1295. (Time of extinguishment of authority of administrator)

(1) The authority of an administrator shall be extinguished when a

successor accepts the succession.

(2) When a successor accepts the succession, the administrator must without delay render an account of his administration to such successor.

1296. (Public notice and peremptory notice to creditors, etc.)

(1) If by two months following the public notice prescribed in paragraph (2) of Article 1291(Appointment of administrator) the existence of a successor has not been ascertained, the administrator shall without delay give public notice to all succession creditors and to all testamentary donees to present their claims within a specified period, which shall not be less than two months.

(2) The provisions of paragraph (2) of Article 1281(Public notice and peremptory notice) and Articles 1282(Right to refuse to perform claims during the notice period) through 1288(Case of claims not presented) shall apply *mutatis mutandis* to cases under paragraph (1); provided that the administrator cannot become the purchaser in an auction or sale under Article 1286(Realization of succession property) as applied *mutatis mutandis*.

1297. (Public notice of search for successor)

(1) If even after the expiration of the period prescribed in paragraph (1) of Article 1296(Public notice and peremptory notice to creditors, etc.) the existence of a successor still cannot be ascertained, the court, upon the application of the administrator or of a public prosecutor, shall give public notice calling upon the successor, if any, to declare himself to be the successor within a specified period which shall not be less than six months.

(2) If there is no prospect of a surplus arising from the succession property, the administrator and public prosecutor shall not be required to make application under paragraph (1).

1298. (Exclusion by public notice)

If no one declares himself to be a successor within the period prescribed in Article 1297(Public notice of search for successor), neither the successors nor any obligees of the decedent or testamentary donees who were unknown to the administrator shall be able to exercise their rights.

1299. (Distribution of succession property to person having special connection with decedent)

(1) If the court deems fit in a case under Article 1298(Exclusion by public notice), upon application by a person who has shared his livelihood with or devoted himself to the medical treatment and nursing of the decedent, or has otherwise had a special connection with the decedent, the court may confer part of the succession property remaining after liquidation upon such person; provided that the total amount of property conferred in this way shall not exceed one-half of the remaining succession property.

(2) An application under paragraph (1) shall be made within three months after the expiration of the period prescribed in Article 1297(Public notice of search for successor), and shall included clarification of the grounds for claiming a special connection with the decedent.

(3) In making a distribution under paragraph (1), the court may investigate the relevant facts. In such a case, the court may hear the opinion of the head of the *commune* or *sangkat*.

1300. (Reversion of succession property to the state)

Succession property that has not been disposed of under Article 1299(Distribution of succession property to person having special connection with decedent) shall revert to the state. In such a case, the administrator shall prepare an account of the administration and submit the same to the court.

## **Chapter Eight DEMAND FOR RECOVERY OF SUCCESSION**

1301. (Objective of demand for recovery of succession)

A successor may demand recovery of succession in order to recover the whole or a part of an succession property of which he has been deprived of the right to inherit.

1302. (Substance of demand for recovery of succession)

(1) A successor may demand that a person who has acquired succession property through a succession right that does not actually belong to such person return the thing acquired to the successor.

(2) Even a thing that the other party to the demand for recovery of succession has acquired under a contract relating to the succession property shall also be the object of the demand for recovery of succession.

1303. (Substance of obligation to return)

(1) The other party to the demand for recovery shall return the succession property to the successor who has demanded the same. If the other party acquired in good faith, he shall be entitled to retain the fruits and interest already received on the property, to demand reimbursement of outlays for the beneficial expenses of the property, and also to demand reimbursement of succession debts discharged.

(2) If the other party acquired in bad faith, he shall be obliged to return fruits and interest already received on the succession property, and shall have no right to demand reimbursement of succession debts discharged and to demand reimbursement of outlays for the beneficial expenses of the property.

1304. (Extinguishment by prescription of right to demand recovery of

succession)

The period of extinguishment by prescription of a right to demand recovery of succession shall be five years if the succession property has been transferred to the other party to such demand in accordance with a will or partition of the succession property, and five years from the date of death of the decedent in the case of succession by a single successor.

## **BOOK NINE “FINAL PROVIASION”**

1305. (Date to be applicable, etc.)

(1) This Law shall be applicable from the date to be designated separately by another law.

(2) Items necessary for application of this Law including transitional measures regarding application of this Law shall be determined separately by another law.