

**THE NATIONAL  
ASSEMBLY**

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The Law No. 91/2015/QH13

**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence - Freedom - Happiness**

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*Hanoi, November 24, 2015*

**CIVIL CODE**

*Pursuant to the Constitution of the Socialist Republic of Vietnam;  
The National Assembly promulgates a Civil Code.*

**PART ONE**

**GENERAL PROVISIONS**

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope**

The Civil Code provides the legal status, legal standards for the conduct of natural and juridical persons; the rights and obligations of natural and juridical person (hereinafter referred to as persons) regarding personal and property rights and obligations in relations established on the basis of equality, freedom of will, independence of property and self-responsibility (hereinafter referred to as civil relations).

**Article 2. Recognition, respect, protection and guarantee of civil rights**

1. In the Socialist Republic of Vietnam, all civil rights are recognized, respected, protected and guaranteed under the Constitution and law.
2. Civil rights may be limited as prescribed in law in exceptional circumstances that due to national defense and security, social safety and order, social ethics and the community's health.

**Article 3. Basic principles of civil law**

1. Every person shall be equal in civil relations, may not use any reason for unequal treatment to others, and enjoy the same protection policies of law regarding moral rights and economic rights.
2. Each person establishes, exercises/fulfills and terminates his/her civil rights and obligations on the basis of freely and voluntarily entering into commitments and/or agreements. Each commitment or agreement that does not violate regulations of law and is not contrary to social ethics shall be bound by contracting parties and must be respected by other entities.
3. Each person must establish, exercise/ fulfill, or terminate his/her civil rights and/or obligations in the principle of goodwill and honesty.
4. The establishment, exercise and termination of civil rights and/or obligations may not infringe national interests, public interests, lawful rights and interests of other persons.
5. Each person shall be liable for his/her failure to fulfill or the incorrect fulfillment of any such civil obligations.

**Article 4. Application of the Civil Code**

1. This Law is a common law that applies to civil relations.

2. Any relevant law that applies to civil relations in specific fields may not be contrary to the basic principle of civil law prescribed in Article 3 of this Law.
3. If another relevant law has no regulation or has regulations that infringe Clause 2 of this Article, the regulations of this Law shall apply.
4. In cases where an international agreement to which the Socialist Republic of Vietnam is a signatory contains provisions different from the provisions of this Code with regard to a same matter, the provisions of such agreement shall apply.

#### **Article 5. Application of practices**

1. Practices mean rules of conduct obvious to define rights and obligations of persons in specific civil relations, forming and repeating in a long time, recognized and applying generally in a region, race, or a community or a field of civil.
2. In cases where it is neither provided for by law nor agreed upon by the parties, practices may apply but they must not contravene the principles provided for in Article 3 of this Code.

#### **Article 6. Application of analogy of law**

1. In cases where a issue rises under scope of civil law which it is neither provided for by law nor agreed upon by the parties nor, nor applied by practices, analogy of law shall apply.
2. In cases where it is neither provided for by law nor agreed upon by the parties, practices may apply but they must not contravene the principles provided for in Article 3 of this Code.

#### **Article 7. State policies on civil relations**

1. The establishment, performance and termination of civil rights and obligations must ensure the preservation of national identities, respect and promote good customs, practices and traditions, solidarity, mutual affection and cooperation, the principle of every individual for the community and the community for every individual and the noble ethical values of ethnicities living together on Vietnamese soil.
2. In civil relations, the conciliation between contracting parties in accordance with regulations of law shall be encouraged.

### **Chapter II**

#### **ESTABLISHMENT, EXERCISE AND PROTECTION OF CIVIL RIGHTS**

#### **Article 8. Bases for establishment of civil rights**

Civil rights shall be established on the following bases:

1. Contracts;
2. Unilateral legal acts;
3. Decisions of courts or other competent state agencies as prescribed;
4. Outcomes of labor, production and business; or creation of subjects of intellectual property rights;
5. Possession of property;
6. Illegal use of assets or illegal gain therefrom;

7. Damage caused by an illegal act;
8. Performance of a task without authorization;
9. Other bases specified by law.

#### **Article 9. Exercise of civil rights**

1. Each person shall exercise his/her civil on his/her own will in accordance with Article 3 and Article 10 of this Code.
2. The non-exercise of civil rights does not constitute a basis for termination of those rights, unless otherwise prescribed by law.

#### **Article 10. Limitations on exercise of civil rights**

1. Each person may not abuse his/her own civil rights to cause damage to other persons or violate his/her own obligations or for other unlawful purposes.
2. If a person fails to comply with Clause 1 of this Article, a court or a competent agency shall, according to the nature and consequences of the violation, either protect part or the whole of his/her rights, compel him/her to given compensation and other sanctions as prescribed by law.

#### **Article 11. Methods for protecting civil rights**

If a person has his/her civil rights violated, he/she may protect them himself/herself as prescribed in this Code, other relevant laws or request competent authorities to:

1. Recognize, respect, protect and guarantee of his/her civil rights;
2. Order the termination of the act of violation;
3. Order a public apology and/or rectification;
4. Order the performance of civil obligations;
5. Order compensation for damage;
6. Cancellation of isolated unlawful decision of competent agencies, organizations or persons;
7. Other requirements specified by law.

#### **Article 12. Self-protection of civil rights**

The self-protection of a particular civil right must conform to the nature and severity of the violation against such civil right and be not contrary to basic principles of civil law prescribed in Article 3 of this Code.

#### **Article 13. Compensation for damage**

Each person has his/her civil rights violated shall be eligible for total damage, unless otherwise agreed by parties or unless otherwise prescribed by law.

#### **Article 14. Protection of civil rights by competent authorities**

1. Each court and a competent authority must respect and protect civil rights of persons.

If a particular civil right is violated or is under a dispute, the protection of such right shall be implemented as prescribed in procedural law at the court or arbitrator.

The protection of civil rights under administrative procedures shall be implemented as prescribed by law. A decision on settlement of case/matter under administrative procedures may be re-examined at a court.

2. Each court may not refuse to settle a civil matter or case with the season that there is no provision of law to apply; in this case, regulations in Article 5 and Article 6 of this Code shall apply.

### **Article 15. Cancellation of isolated unlawful decisions of competent agencies, organizations or persons**

A court or a competent authority is entitled to cancel an isolated decision of another competent agency, organization or person, upon a request for protection of civil rights.

If the isolated decision is cancelled, the civil right against which the decision violates shall be restored and protected by the methods prescribed in Article 11 of this Code.

## **Chapter III**

### **NATURAL PERSONS**

#### **Section 1. LEGAL PERSONALITY AND LEGAL CAPACITY OF NATURAL PERSONS**

##### **Article 16. Legal personality of natural persons**

1. The legal personality of a natural person is his/her capability to have civil rights and civil obligations.
2. All individuals shall have the same legal personality.
3. The legal personality of a natural person commences at birth and terminates at death.

##### **Article 17. Contents of the legal personality of a natural person**

1. Personal rights not associated with property, and personal rights associated with property.
2. Ownership rights, inheritance rights and other rights with respect to property.
3. Rights to participate in civil relations and to assume obligations arising out of such relations.

##### **Article 18. No restrictions on the legal personality of natural persons**

The legal personality of a natural person shall not be restricted, unless otherwise provided for by law.

##### **Article 19. Legal capacity of natural persons**

The legal capacity of a natural person is his/her capability to establish and exercise civil rights and perform civil obligations through his/her acts.

##### **Article 20. Adults**

1. Adults are persons who are eighteen years of age or older.
2. Each adult shall have full legal capacity, except for the cases prescribed in Articles 22, 23 and 24 of this Code.

##### **Article 21. Minors**

1. Minors are persons who are under eighteen years of age.

2. Civil transactions of each child under six years of age shall be established and performed by his/her legal representative.
3. Each person who is from six to under eighteen years of age must have the consent of his/her legal representative to enter in and perform civil transactions, except for civil transactions which are performed for the purpose of meeting the needs of daily life suitable for the age group.
4. Each person who is from fifteen to under eighteen years of age is entitled to enter in and perform civil transactions by himself/herself, except for civil transactions related to real estate, movables required registration and other civil transactions as prescribed by law that are subject to the consent of his/her legal representative.

#### **Article 22. Lack of legal capacity**

1. A court shall, based on the opinion of forensic-psychiatric examination by any authorized organization and at the request of a person with related rights or interests or a relevant agency or organization, issue a decision to declare a legally incapacitated person who as a result of his/her mental or other illnesses cannot realize or conduct his/her actions.

Where the basis on which a person has been declared incapacitated no longer exists, the court shall, at the request of such person or any person with related rights or interests, issue a decision to revoke the decision declaring the incapacitated person.

2. All civil transactions of a legally incapacitated person shall be established and performed by his/her legal representative.

#### **Article 23. Persons with limited cognition or behavior control**

1. A court shall, based on the opinion of forensic-psychiatric examination by any authorized organization and at the request of a person with related rights or interests or a relevant agency or organization, issue a decision to declare an adult with limited cognition or behavior control due to his/her physical or spiritual condition, and appoint a legal guardian and define rights and obligations of such guardian.

2. Where the basis on which a person has been declared limited cognition or behavior control no longer exists, the court shall, at the request of such person or any person with related rights or interests, issue a decision to revoke the decision declaring the person with limited cognition or behavior control.

#### **Article 24. Persons with limited legal capacity**

1. A court shall, at the request of a person with related rights or interests or a relevant agency or organization, issue a decision to declare a person with limited legal capacity after excessive drug consumption or other psychotropic substances, worsening material situation of the family.

The court shall appoint a legal representative of the person with limited legal capacity and the representation scope.

2. All civil transactions related to the property of a person with limited legal capacity declared by a court must obtain the consent of his/her legal representative, except for transactions to meet the needs of daily life.

3. Where the basis on which a person has been declared limited capacity of exercise no longer exists, the court shall, at the request of such person or any person with related rights or interests, issue a decision to revoke the decision declaring the incapacitated person.

## **Section 2. PERSONAL RIGHTS**

### **Article 25. Personal rights**

1. Personal rights specified in this Code are civil rights inherent to each natural person, which cannot be transferred to other persons, unless otherwise provided for by other laws.
2. All civil relations relating to personal rights of a minor, a legally incapacitated persons, or a person with limited cognition or behavior control shall be established and performed with the consent of his/her legal representative as prescribed in this Code, other relevant laws or decisions of a court.

All civil relations relating to personal rights of a person declared missing or dead shall be established and performed with the consent of his/her spouse or adult children; or his/her parents if he/she has no spouse or child, unless otherwise provided for by this Code or other relevant laws.

### **Article 26. Right to have family and given names**

1. Each natural person has right to have a family name and a given name (including a middle name, if any). The family and given names of a person shall be the family and given names in the birth certificate of such person.
2. The family name of a person shall be passed from his/her biological father's or mother's as mutually agreed between the parents; if the parents fails to agree, the person's family name shall be determined according to customary practices. If the father of such person is undetermined, his/her family name shall be passed from his/her natural mother's.

If an abandoned child whose natural parents are unidentified is adopted, his/her family name shall be passed from his/her adoptive father's or mother's as mutually agreed between the parents. If the child has either an adoptive father or an adoptive mother, his/her family name shall be passed from such person's.

If an abandoned child whose natural parents are unidentified and he/she has not been adopted but has been fostered by a foster establishment or a , his/her family name shall be determined at the request of the head of such foster family or at the request of the person registering the birth of the child.

Biological father and mother specified in this Code means a father and mother determined at the event of parturition; intended father and mother and the resulting child as prescribed in the Law on marriage and families.

3. The naming is restricted in case it violates lawful rights and interests of other people and contravenes basic principles of civil law prescribed in Article 3 of this Code.

The name of each Vietnamese citizen must be in Vietnamese or other ethnic minority languages of Vietnam and not include any figure or any symbol other than a letter.

4. Each natural person shall enter in and perform his/her civil rights and obligations following his/her family and given name.

5. A person may not use his/her code name or pen name to cause damage to the lawful rights and interests of other people.

### **Article 27. Right to change family names**

1. An individual has the right to request a competent authority to recognize a change of a family name in any of the following cases:

- a) Changing the family name of a natural child from biological father's to biological mother's or vice versa;
- b) Changing the family name of an adopted child from biological father's or mother's to adoptive father's or mother's at the request of the adoptive parents;
- c) If a person ceases to be an adopted child and such person or his/her biological father or mother request to reclaim the family name which is given by the biological father or mother;
- d) Changing the family name of a person whose biological parents have been identified upon the request on that father or mother or such person;
- dd) Changing the family name of a lost person who has discovered the origin of his/her bloodline;
- e) Changing the family name of a person to his/her spouse's in the marriage and family relations involving foreign elements in accordance with law of the country in which the foreign spouse is a citizen or retrieves his/her family name before the change;
- g) Changing the family names of children upon the change of family names of their father's or mother's;
- h) Other cases prescribed in by law on civil status affairs.

2. The changing of the family name of a person who is nine years of age or older shall be subject to the consent of such person.

3. The changing of a family name shall not change or terminate the civil rights and obligations which were established in the former family name.

### **Article 28. Right to change given names**

1. An individual has the right to request a competent authority to recognize the change of a given name in any of the following cases:

- a) Where it is so requested by the person who has a given name which causes confusion or has an adverse effect on his/her feelings or on his/her honor, legitimate rights and interests;
- c) Where the adoptive father or mother of the person wishes to change the given name of their adopted child; or if a person ceases to be an adopted child and such person or his/her biological father or mother request to reclaim the given name which is given by the biological father or mother;
- d) Changing the given name of a person whose biological parents have been identified upon the request on that father or mother or such person;
- dd) Changing the given name of a lost person who has discovered the origin of his/her bloodline;

dd) Change the given name of a person to his/her spouse's in the marriage and family relations involving foreign elements in accordance with law of the country in which the foreign spouse is a citizen retrieves his/her family name before the change;

e) Changing of given name of a person whose gender identity is re-determined or a transgender person;

g) Other cases prescribed in by law on civil status affairs.

2. The changing of the given name of a person who is nine years of age or older shall be subject to the consent of such person.

3. The changing of a given name shall not change or terminate the civil rights and obligations which were established in the former given name.

### **Article 29. Right to identify and re-identify ethnicity**

1. Each individual has the right to identify and re-identify his/her ethnicity.

2. Each individual shall have his/her ethnicity identified at birth in accordance with the ethnicity of his/her biological father and mother. Where the biological father and mother belong to two different ethnic groups, the ethnicity of the child shall be passed from the father's or mother's as mutually agreed between the parents; if the parents fail to agree, the ethnicity of the child shall be identified in accordance with relevant customary practices; if the customary practices are different, the ethnicity of the child shall be identified in accordance with the customary practice of smaller ethnic minority.

If an abandoned child whose natural parents are unidentified is adopted, his/her ethnicity shall be passed from his/her adoptive father's or mother's as mutually agreed between the parents. If the child has either an adoptive father or an adoptive mother, his/her ethnicity shall be passed from such person's.

If an abandoned child whose natural parents are unidentified and he/she has not been adopted but has been fostered by a foster establishment, his/her ethnicity shall be identified at the request of the head of such foster family or at the request of the person temporarily fostering the child at the time when the birth of the child is registered.

3. An individual has the right to request a competent authority to identify or re-identify the ethnicity in any of the following cases:

a) Re-identification of the ethnicity of the biological father or mother where they belong to two different ethnic groups;

b) Re-identification of the ethnicity of the biological father or mother where the adoptive child have their biological parents identified.

4. The re-identification of the ethnicity of a person who is from fifteen to eighteen years of age shall be subject to the consent of such person.

5. It is forbidden to abuse the ethnicity re-identification intended to profiteering or divisive, prejudicial to the unity of the ethnic groups of Vietnam.

### **Article 30. Right to declaration of birth and death**

1. When an individual is born, he/she has the right to have his/her birth declared.

2. When an individual dies, he/she has the right to have his/her death declared.
3. If a newborn dies after 24 hours or later from the time of birth, his/her birth and death must be declared; if he/she dies under 24 hours from the time of birth, his/her birth and death are not required to be declared, unless his/her biological father or mother request.
4. The declaration of birth and death shall be prescribed in by law on civil status affairs.

#### **Article 31. Right to nationality**

1. Each individual has the right to nationality.
2. The identification, change, acquirement, renouncement, or assume of Vietnamese nationality shall be stipulated in the Law on Vietnamese nationality.
3. Rights of each non-nationality resident within Vietnam's territory shall be guaranteed as prescribed by law.

#### **Article 32. Rights of an individual with respect to his/her image**

1. Each individual has rights with respect to his/her own image.

The use of an image of an individual must have his/her consent.

When an image of an individual is used for commercial purposes, that person is eligible for a remuneration, unless otherwise agreed.

2. The use of image for any of the following purposes needs not the consent of the image's owner or his/her legal representative:

a) For national and public benefits;

b) For public activities, including conventions, seminars, sports activities, art shows and other public activities that do not infringe the honor, dignity or prestige of the image's owner.

3. If the use of an image violates the regulation prescribed in this Article, the image's owner has the right to request a court to issue a decision that compel the violator or relevant entities to revoke, destroy or terminate the use of the image, compensate for damage and adopt other measures as prescribed in law.

#### **Article 33. Right to life, right to safety of life, health and body**

1. Each individual has the right to life, the inviolable right to life and body, the right to health protection by law. No one shall be killed illegally.

2. When any person has a life threatening accident or illness, a person who discovers such situation must take such person or require suitable entities to a nearest health facility; the health facility must provide medical examination and treatment in accordance with law on medical examination and treatment.

3. The consent of a person is required for the anesthesia, surgery, amputation, transplant of his/her tissues or bodily organs; the application of new medical cures to that person; medical, pharmacy or scientific testing or any method of testing on a human body.

If the person is a minor, a legally incapacitated person, a person with limited cognition or behavior control or an unconscious patient, the consent of his/her father, mother, spouse, grown child or legal guardian is required; in cases where there is a threat to the life of the patient which

cannot wait for the consent of the aforesaid persons, a decision of the head of the health facility is required.

4. A post-mortem operation shall be performed in any of the following cases:

a) The deceased person expressed consent prior to death;

b) In the absence of such consent, the consent of a parent, spouse, grown child or legal guardian of the deceased was obtained;

c) In necessary cases, pursuant to a decision of the head of the health facility or a competent authority as prescribed in law.

#### **Article 34. Right to protection of honor, dignity and prestige**

1. Honor, dignity and prestige of an individual is inviolable and protected by law.

2. Each individual has the right to request a court to reject any piece of information adversely affecting to his/her honor, dignity and/or prestige.

The honor, dignity and prestige of a deceased person shall be protected at the request of his/her spouse or grown children; or his/her parent if he/she has no spouse or child, unless otherwise prescribed by law.

3. If a piece of information adversely affecting to the honor, dignity and prestige of a person is posted on a mean of mass media, that piece of information shall be removed or rectified by that kind of mean. If that piece of information is kept by an agency, organization or individual, such entity is required to cancel it.

4. In case it is impossible to identify the person informing the information adversely affecting the honor, dignity and/or prestige of a person, the latter person has the right to request a court to declare that such piece of information is incorrect.

5. The person receiving the information adversely affected his/her honor, dignity and/or prestige both has the right to request rejection of such piece of information and has the right to require to informing person gives a public apology and rectification and compensation.

#### **Article 35. Right to donate or receive human tissues and body organs and donate corpses**

1. Each individual has the right to donate his/her tissues or body organs when he/she is alive or donate his/her tissues, body organs or corpse after his/her death for the purpose of medical treatment of other persons or medical, pharmacy or other scientific researches.

2. Each individual has the right to receive tissues and/or body organs of other persons for his/her medical treatment. Health facilities and juridical persons competent to scientific research have the right to receive human body organs and/or corpses for the purpose of medical treatment or medical, pharmacy or other scientific researches.

3. The donation or removal of human tissues and body organs and donation or removal of corpses must comply with statutory requirements and regulations of this Code, the Law on donation, removal and transplantation of human tissues and organs, and donation or removal of corpses and other relevant laws.

#### **Article 36. Right to re-determine gender identity**

1. An individual has the right to re-determine his/her gender identity.

The re-determination of the gender identity of a person is implemented where the gender of such person is subject to a congenital defect or has not yet been accurately formed and requires medical intervention in order to identify clearly the gender.

2. The re-determination of the gender identity of a person shall comply with regulations of law.
3. Each individual undergone re-determination of gender identity has the right and obligation to apply for change of civil status affairs as prescribed in law on civil status affairs and has the personal rights in conformity with the re-determined gender identity as prescribed in this Code and relevant laws.

#### **Article 37. Sex reassignment**

The sex reassignment shall comply with regulations of law. Each surged transgender has the right and obligation to apply for change of civil status affairs as prescribed in law on civil status affairs and has the personal rights in conformity with the transformed gender as prescribed in this Code and relevant laws.

#### **Article 38. Right to private life, personal secrets and family secrets**

1. The private life, personal secrets and family secrets of a person are inviolable and protected by law.
2. The collection, preservation, use and publication of information about the private life of an individual must have the consent of that person; the collection, preservation, use and publication of information about the secrets of family must have the consent of all family's members, unless otherwise prescribed by law.
3. The safety of mails, telephones, telegrams, other forms of electronic information of an individual shall be ensured and kept confidential.

The opening, control and keeping of mails, telephones, telegrams, other forms of electronic information of an individual may only be conducted in cases provided by law.

4. Contracting parties of a contract may not disclose information about each other's private life, personal secrets or family secrets that they know during the establishment and performance of the contract, unless otherwise agreed.

#### **Article 39. Personal rights in marriage and families**

1. Each individual has the right to marry or divorce, the right to equality between husband and wife, the right to acknowledge father, mother or child, the right to adopt children and be adopted in marriage relation, parent-children relation and relations between family's members.

All children, of the same parents, regardless of their parents' marriage status, have the same rights and obligations to their parents.

2. Each individual exercises his/her personal rights in marriage and families as prescribed in this Code, the Law on marriage and families and relevant laws.

### **Section 3. PLACE OF RESIDENCE**

#### **Article 40. Place of residence of individuals**

1. The place of residence of an individual is the place where such person usually lives.

2. In cases where it is impossible to determine an individual's place of residence as provided for in Clause 1 of this Article, his/her place of residence shall be the place where such person is currently living.

3. If a party, in a particular civil relation, changes his/her place of residence in association with his/her exercise of right or fulfillment of obligation, he/she must notify the other of the new place of residence.

#### **Article 41. Place of residence of minors**

1. The place of residence of a minor is the place of residence of his/her parents; if the parents have separate places of residence, the place of residence of the minor shall be the place of residence of the father or mother with whom the minor usually lives.

2. A minor may have a place of residence separate from the place of residence of his/her parents if so agreed by his/her parents or so provided for by law.

#### **Article 42. Place of residence of wards**

1. The place of residence of a ward is the place of residence of his/her guardian.

2. A ward may have a place of residence separate from the place of residence of his/her guardian if so agreed by the guardian or so provided for by law.

#### **Article 43. Places of residence of husbands and wives**

1. The place of residence of a husband and wife is the place where the husband and the wife usually live together.

2. A husband and a wife may have separate places of residence if they so agree upon.

#### **Article 44. Places of residence of military personnel**

1. The place of residence of a military personnel member currently performing his/her military service is the place at which his/her military personnel's unit is stationed.

2. The place of residence of a/an army officer, regular member of military personnel, defense worker or official is the place at which his/her unit is stationed, except in cases where he/she has a place of residence as specified in Clause 1 Article 40 of this Code.

#### **Article 45. Place of residence of persons performing itinerant occupations**

The place of residence of a person performing an itinerant occupation on a ship, boat or other means for itinerant work is the place of registration of such ship, boat or means, unless he/she has a place of residence specified in Clause 1 Article 40 of this Code.

### **Section 4. GUARDIANSHIP**

#### **Article 46. Guardianship**

1. Guardianship means an individual or organization (hereinafter referred collectively to as guardian) is required by law or appointed to take care of and protect legitimate rights and interests of a minor or a legally incapacitated person or a person with limited cognition and behavior control (hereinafter referred to as a ward).

2. When a person with limited cognition and behavior control is capable of expressing his/her will anytime when he/she requests the guardianship, his/her consent is required.

3. The guardianship must be registered at a competent authority as prescribed in law on civil status affairs.

Natural guardians must fulfill their obligations regardless of their registration of guardianship.

#### **Article 47. Wards**

1. Wards include:

- a) Minors who have lost their mothers and fathers, or whose parents are unidentifiable;
- b) Minors whose parents are both incapacitated persons; parents have limited cognition or behavior control; parents have limited capacity of exercise; parents have their parental rights restricted by a court; and parents do not have the means to care for or educate such minor and the parents request the minor to be a ward;
- c) Incapacitated persons;
- d) Persons with limited cognition or behavior control.

2. A person may only be a ward of one guardian, except where the guardians are parents in charge of one child or grandparents in charge of one grandchild.

#### **Article 48. Guardians**

1. Each natural person or juridical person who meets all requirements prescribed in this Code is entitled to be a guardian.

2. If a person with full legal capacity chooses a guardian for him/her, such guardian shall be selected if the person needs the guardianship with the consent of the ward. The selection of guardian must be made in writing and notarized or certified.

3. Each natural or juridical person may be a guardian of multiple persons.

#### **Article 49. Requirements for natural persons to be guardians**

Each natural person who meets all of the following requirements may act as a guardian:

1. Having full legal capacity;
2. Having good ethics and necessary means to exercise rights and fulfill obligations of a guardian;
3. Not being a person facing a criminal prosecution or a person who has been convicted but his/her criminal record has been not expunged for a deliberate crime of violation of life, health, honor, dignity or property of another person;
4. Not being a person having parental rights to minor child restricted by a court.

#### **Article 50. Requirements for juridical persons to be guardians**

Each juridical person who meets all of the following requirements may act as a guardian:

1. Having civil legal personality in conformity with the guardianship;
2. Having necessary means to exercise rights and fulfill obligations of a guardian.

#### **Article 51. Supervision of guardianship**

1. The relatives of a ward shall have the responsibility to appoint a representative to supervise the guardianship in among the relatives or appoint another natural or juridical person to act as a guardianship supervisor.

The appointment of guardianship supervisor must have the consent of such person.

If the supervision relates to management of property of the ward, the supervisor must register it at the People's Committee of commune where the ward resides.

Relatives of a ward means his/her spouse, parents and children; if there is no such person, relatives of the ward means his/her grandparents and biological siblings; if there is also no such person, relatives of the ward means his/her biological uncles and aunts.

2. If there is no relative of a ward or the relatives fails to appoint a guardianship supervisor as prescribed in Clause 1 of this Article, the People's Committees of commune where the guardian resides shall appoint a natural or juridical person to supervise the guardianship. If there is a dispute over the appointment of guardianship supervisor, it shall be subject to a court's decision.

3. Each supervisor being natural person must have full legal capacity, each supervisor being juridical person must have legal personality in conformity with the supervision; the supervisor must have necessary means to conduct the supervision.

4. Each guardianship supervisor has the following rights and obligations:

a) Monitor and inspect the guardian in the guardianship;

b) Examine and offer opinions in writing in terms of establishment and performance of civil transactions prescribed in Article 59 of this Code.

c) Request a regulatory agency in charge of guardianship to change or terminate the guardianship or supervision of guardianship.

#### **Article 52. Natural guardians of minors**

A natural guardian of a minor prescribed in Points a and b Clause 1 Article 47 of this Code shall be determined as follows:

1. The eldest brother or sister shall be the guardian of the ward; if the eldest brother or sister fails to satisfy all requirements for acting as a guardian, the next eldest brother or sister shall be the guardian, unless otherwise agreed that another biological brother or sister shall be the guardian;

2. If there is no guardian prescribed in Clause 1 of this Article, the paternal grandfather, grandmother or the maternal grandfather, grandmother shall be the guardian; or those persons shall agree to appoint a person or some persons to be guardian(s);

3. If there is no guardian prescribed in Clause 1 and Clause 2 of this Article, a biological uncle or aunt of the ward shall be the guardian.

#### **Article 53. Natural guardians of incapacitated persons**

If there is no guardian prescribed in Clause 2 Article 48 of this Code, the natural guardian of a legally incapacitated person shall be determined as follows:

1. If a wife is a legally incapacitated person, her husband shall be the guardian; if a husband is a legally incapacitated person, her wife shall be the guardian;

2. If both parents are incapacitated persons or either of them is a legally incapacitated person and the other does not fully meet requirements to be a guardian, the eldest child shall be the guardian; if the eldest child does not fully meet the requirements to be a guardian, the next eldest child shall be the guardian;

3. If an adult being a legally incapacitated person has no spouse or child or such person has spouse or children but they do not fully meet the requirements to be a guardian, his/her father and/or mother shall be the guardian.

#### **Article 54. Appointment of guardians**

1. If a minor or a legally incapacitated person has no guardian as prescribed in Article 52 and 53 of this Code, the People's Committee of commune where such person resides must appoint a guardian for the ward.

If there is a dispute between guardians prescribed in Article 52 and Article 53 of this Code in terms of guardians or appointment of guardians, a court shall appoint the guardian.

The expectation of a minor aged 6 years or older in terms of his/her guardian must be considered.

2. The appointment of a guardian must have the consent of such person.

3. The appointment of a guardian must be made in writing, specifying the reason for appointing the guardian, the specific rights and obligations of the guardian and the status of the ward's property.

4. Apart from the cases prescribed in Clause 2 Article 48 of this Code, the guardian of a person with limited cognition and behavior control shall be appointed among the guardians prescribed in Article 53 of this Code by a court. If there is no such person, the court shall appoint another natural or juridical person to be a guardian.

#### **Article 55. Obligations of guardians with regard to wards under fifteen years of age**

1. Take care of and educate the ward.

2. Represent the ward in civil transactions, except where it is provided for by law that wards under fifteen years of age can enter in and perform civil transactions by themselves.

3. Manage the property of the ward.

4. Protect legitimate rights and interests of the ward.

#### **Article 56. Obligations of guardians with regard to wards from fifteen to eighteen years of age**

1. Represent the ward in civil transactions, except where it is provided for by law that wards from fifteen to eighteen years of age can enter in and perform civil transactions by themselves.

2. Manage the property of the ward, unless otherwise prescribed by law.

3. Protect legitimate rights and interests of the ward.

#### **Article 57. Obligations of guardians with regard to incapacitated persons or person with limited cognition and behavior control**

1. The guardian of a legally incapacitated person shall have the following obligations:

a) Take care of and ensure the treatment of illness of the ward;

- b) Represent the ward in civil transactions;
- c) Manage the property of the ward;
- d) Protect legitimate rights and interests of the ward.

2. The guardian of a person with limited cognition and behavior control shall have obligations specified in the decision of a court according to the obligations prescribed in Clause 1 of this Article.

#### **Article 58. Rights of guardians**

1. The guardian of a minor or a legally incapacitated person shall have the following rights:

- a) Use the property of the ward in order to take care of and pay for the needs of the ward;
- b) Receive payment of all necessary expenditures on management of the property of the ward;
- c) Represent the ward in the establishment and performance of civil transactions in order to protect legitimate rights and interests of the ward.

2. The guardian of a person with limited cognition and behavior control shall have rights specified in the decision of a court according to the rights prescribed in Clause 1 of this Article.

#### **Article 59. Management of property of wards**

1. The guardian of a minor or a legally incapacitated person must manage the property of his/her ward as if it were his/her own property.

The sale, exchange, lease, lending, pledge, mortgage, deposit and other transactions involving the property of the ward, which has a high value, must have the consent of the guardianship supervisor.

The guardian must not donate the property of his/her ward to other persons. Unless the transaction is undertaken for the interests of the ward and the guardianship supervisor consents to the transaction, all civil transactions between the guardian and his/her ward in connection with the latter's property shall be void.

2. The guardian of a person with limited cognition and behavior control shall manage the property of the ward specified in the decision of a court according to guardianship scope prescribed in Clause 1 of this Article.

#### **Article 60. Replacement of guardians**

1. A guardian may be replaced in any of the following cases:

- a) The guardian no longer meets all of the requirements specified in Article 49 or 50 of this Code;
- b) The guardian being a natural person dies or is declared by court limited cognition or behavior control, limited legal capacity, incapacitated, missing or the guardian being a juridical person cease to exist;
- c) The guardian seriously violates a guardian's obligation;
- d) The guardian proposes his/her replacement and another person agrees to assume the guardianship.

2. In case of replacing a natural guardian, the persons defined in Article 52 and Article 53 of this Code shall assume the role of a natural guardian; if there is no natural guardian, the appointment of a guardian shall comply with the provisions of Article 54 of this Code.

3. The procedures for replacing a guardian shall comply with law on civil status affairs.

#### **Article 61. Transfer of guardianship**

1. Upon replacement of a guardian, the person who formally conducted the guardianship must transfer the guardianship to the new replacement within fifteen days as from the date the new guardian is found.

2. The transfer of guardianship must be made in writing, specifying the reason for the transfer and the status of the ward's property at the time of transfer. The agency which appointed the guardian and the guardianship supervisor shall witness the transfer of the guardianship.

3. With regard to replacement of guardian prescribed in Clause 1 Article 60 of this Code, the agency which appointed the guardian shall make a record thereon, clearly stating the status of the ward's property and the rights and obligations which have arisen in the course of performing the guardianship for transfer to the new guardian with the witness of the guardianship supervisor.

#### **Article 62. Termination of guardianship**

1. A guardianship shall be terminated in any of the following cases:

a) The ward attains full legal capacity;

b) The ward dies;

c) The ward's father and/or mother have/has fully met the conditions to exercise his/her rights or fulfill his/her obligations;

d) The ward has been adopted.

2. The procedures for termination of guardianship shall comply with law on civil status affairs.

#### **Article 63. Consequences of the termination of guardianship**

1. When a ward attains full legal capacity, the guardian shall settle the property with the ward and transfer all rights and obligations arising from civil transactions concluded by the guardian on behalf of that ward within 15 days from the date of termination of guardianship.

2. If a ward dies, the guardian must settle up the property with the ward's heirs or transfer the property to the estate administrator of the ward, or transfer all rights and obligations arising from the civil transactions on behalf of the ward within three months as from the date on which the guardianship terminates; if the ward's heirs are unidentifiable upon the expiry of such time limit, the guardian shall continue to manage the property of the ward until the property has been settled in accordance with the provisions of law on inheritance and shall notify such to the People's Committee of the commune where the ward resides.

3. With regard to termination of guardianship prescribed in Point c and Point d Clause 1 Article 62 of this Code, the guardian shall settle up the property and transfer all rights and obligations arising from the civil transactions on behalf of the ward to the ward's parent within 15 days from the date of termination of guardianship.

4. The settlement of property and transfer of rights and obligations prescribed in this Article must be made in writing under supervision of the guardianship supervisor.

## **Section 5. NOTICE OF SEARCH FOR PERSONS WHO ARE ABSENT FROM THEIR PLACES OF RESIDENCE, DECLARATION OF MISSING PERSONS AND DECLARATION OF DEATH**

### **Article 64. Request for notice of search for persons who are absent from their places of residence and the management of their property**

When a person has disappeared for six consecutive months or longer, any person with related rights or interests may request a court to issue a notice of search for the person absent from his/her place of residence under the provisions of civil procedure law and may request the court to apply measures for management of the property of the absent person in accordance with the provisions of Article 65 of this Code.

### **Article 65. Management of property of person absent from his/her place of residence**

1. At the request of a person with related rights or interests, a court shall hand over the property of a person absent from his/her place of residence to one of the following persons for management:

- a) With respect to property of which the management has been authorized to person by the absent person, such person shall continue to manage the property;
- b) With respect to joint property, the remaining co-owner(s) shall manage the property;
- c) The property being currently managed by the spouse's absent person shall continue to be managed by such spouse; if that spouse dies or that spouse is legally incapacitated, has limited cognition or behavior control or has limited legal capacity, his/her adult children or parents shall manage the property.

2. If there is no person defined in Clause 1 of this Article, a court shall appoint a person among the relatives of the absent person to manage his/her property; if the absent person does not have any relative, the court shall appoint another person to manage the property.

### **Article 66. Obligations of persons managing property of person absent from his/her place of residence**

1. Keep and preserve the property of the absent persons as if it were his/her own property.
2. Sell immediately any property being crops or other products being in danger of decay;
3. Perform the absent persons' obligations to pay maintenance their dependents and/or pay due debts or financial obligations with such persons' property under the court's decisions.
4. Return the property to the absent persons upon their return and to notify a court thereof; or compensate for any damage caused during the course of management of the property due to his/her fault.

### **Article 67. Rights of persons managing property of person absent from his/her place of residence**

1. Manage the property of the absent persons.

2. Deduct a portion from the property of the absent person in order to perform the obligations of such person to pay maintenance to his/her dependents, due debts or financial obligations.
3. Receive payment of all necessary expenditures on management of the property of the absent person.

#### **Article 68. Declaration of person missing**

1. When a person has disappeared for two consecutive years or longer and there is no reliable information on whether such person is still alive or dead even though notification and search measures have been fully applied in accordance with the civil procedure law, a court may, at the request of a person with related rights or interests, declare such person is missing.

The two-year time limit shall commence from the date the last information on such person is obtained; if the date of the last information cannot be determined, this time limit shall commence from the first day of the month succeeding the month when the last information is received; if the date and month of the last information cannot be determined, this time limit shall commence from the first day of the year succeeding the year when the last information is received.

2. In cases where the wife or the husband of a person who has been declared missing files for a divorce, a court shall grant the divorce as prescribed in law on marriage and family.
3. The decision on declaration of a missing person issued by a court must be sent to the People's Committees of commune where the missing person last resides for record as prescribed in law on civil status affairs.

#### **Article 69. Management of property of persons declared missing**

The person currently managing the property of a person absent from his/her place of residence as provided for in Article 65 of this Code shall continue to manage the property of such person when he/she is declared missing by a court and such person shall have the rights and obligations specified in Article 66 and Article 67 of this Code.

If a court has granted divorce to the wife or the husband of the person who has been declared missing, the property of the missing person shall be handed over to the adult children or to the parents of the missing person for management. If there is no such person, the property shall be handed over to a relative of the missing person for management; if there is no relative, the court shall appoint another person to manage the property.

#### **Article 70. Annulment of decision declaring person missing**

1. When a person who has been declared missing returns or when there is reliable information that such person is still alive, a court shall, at the request of such person or a person with related rights or interests, issue a decision on annulment of the decision declaring the person missing.
2. A person who has been declared missing shall, upon his/her return, be permitted to receive his/her property back from the person managing the property after paying the management expenses.
3. If the wife or the husband of a person who has been declared missing has been granted a divorce, the decision granting the divorce shall retain legal effect notwithstanding the return of the person who has been declared missing or the reliable information that such person is still alive.

4. The decision on annulment of a decision declaring a person missing issued by a court must be sent to the People's Committees of commune where the missing person resides for record as prescribed in law on civil status affairs.

#### **Article 71. Declaration of person dead**

1. A person with related rights or interests may request a court to issue a decision declaring that a person is dead in any of the following cases:

a) After three years from the effective date of a court's decision declaring a person missing, there is still no reliable information that such person is alive;

b) The person has disappeared during a war and there is still no reliable information that such person is alive for five years from the end of the war;

c) The person met with an accident, catastrophe or a natural disaster and there is still no reliable information that such person is alive for two years from the end of such accident, catastrophe or natural disaster, unless otherwise provided for by law;

d) The person has been missing for five consecutive years or longer and there is no reliable information that such person is still alive; this time limit shall be calculated in accordance with Clause 1 Article 68 of this Code.

2. A court shall, according to the cases specified in Clause 1 of this Article, determine the date of death of a person declared dead.

3. The decision on declaration of a dead person issued by a court must be sent to the People's Committees of commune where the dead person resides for record as prescribed in law on civil status affairs.

#### **Article 72. Personal relations and property relations of persons declared dead by courts**

1. When a decision of a court declaring that a person is dead becomes legally effective, all marriage and family relations and other personal relations of such person shall be resolved in the same manner as if the person were dead.

2. The property relations of a person who is declared dead by a Court shall be resolved in the same manners as if such person were dead; the property of such person shall be dealt with in accordance with the law on inheritance.

#### **Article 73. Annulment of decision declaring person dead**

1. When a person who has been declared dead returns or when there is reliable information that such person is still alive, a court shall, at the request of such person or a person with related rights or interests, issue a decision on annulment of the decision declaring the person dead.

2. The personal relations of the person who has been declared dead shall be restored when a court issues a decision on annulment of the decision which declared that such person was dead, except for the following cases:

a) If the wife or the husband of the person who has been declared dead was permitted by the Court for her or his divorce in accordance with the provisions of Clause 2 Article 68 of this Code, the decision granting the divorce shall remain legally effective;

b) If the wife or the husband of the person who has been declared dead has married to another person, such marriage shall remain legally effective.

3. A person who has been declared dead but is still alive shall have the right to claim his/her property from the persons who received that his/her inheritance and/or the value of the remaining property.

If the heir of a person whom a court has declared dead is aware that such person is still alive, but intentionally conceals such information for the purpose of enjoying the inheritance, he/she must return all of the property received, including any benefits and income derived; if any damage has been caused, he/she must also pay compensation therefor.

4. Property relations between spouses shall be dealt with in accordance with this Code and the Law on marriage and families.

5. The decision on annulment of a decision declaring a person dead issued by a court must be sent to the People's Committees of commune where the dead person resides for record as prescribed in law on civil status affairs.

## **Chapter IV**

### **JURIDICAL PERSONS**

#### **Article 74. Juridical persons**

1. An organization shall be recognized as a juridical person if it meets all of the following conditions:

- a) It is legally established as prescribed in this Code and relevant laws;
- b) It has an organizational structure prescribed in Article 83 of this Code;
- c) It has property independent from other natural and juridical persons and bears liability by recourse to its property;
- d) It participates independently in legal relations in its own name.

2. Every natural or juridical person has the right to establish a juridical person, otherwise provided for by law.

#### **Article 75. Commercial juridical persons**

1. Commercial juridical person means a juridical person whose primary purpose is seeking profits and its profits shall be distributed to its members.

2. Commercial juridical persons include enterprises and other business entities.

3. The establishment, operation and termination of commercial juridical person shall comply with regulations of this Code, Law on enterprises and other relevant laws.

#### **Article 76. Non-commercial juridical persons**

1. Non-commercial juridical person means a juridical person whose primary purpose is not seeking profits and its possible profits may not distributed to its members.

2. Commercial juridical persons include regulatory agencies, people's armed units, political organizations, socio-political organizations, political-socio-professional organizations, social organizations, socio-professional organizations, social funds, charitable funds, social enterprises and other non-commercial organizations.

3. The establishment, operation and termination of non-commercial juridical persons shall comply with regulations of this Code, laws on organizational structure of the state and other relevant laws.

#### **Article 77. Charters of juridical persons**

1. A juridical person must have a charter if it is required by law.
2. A charter of a juridical person must contain the following primary contents:
  - a) Name of juridical person;
  - b) Purpose and scope of its operation;
  - c) Head office; branches or representative offices (if any);
  - d) Charter capital (if any);
  - dd) Legal representative;
  - e) Organizational structure, the procedures for nomination, election, appointment, discharge from office and dismissal; duties and powers of the positions in the managing body and other bodies;
  - g) Membership requirements, if the judicial person has members;
  - h) Rights and obligations of the members, if the judicial person has members;
  - i) Procedures for ratifying decisions of the judicial person; rules for internal settlement of disputes;
  - k) Procedures for amending and supplementing the charter;
  - l) Conditions for consolidation, acquisition, total division, partial division or dissolution the juridical person.

#### **Article 78. Names of judicial persons**

1. Each judicial person's name must be in Vietnamese.
2. The name of a judicial person must clarify its type of organization and distinguish it from other judicial persons in the same field of activities.
3. Each juridical person must use its own name in civil transactions.
4. The name of a juridical person shall be recognized and protected by law.

#### **Article 79. Head offices of judicial persons**

1. The head-office of a juridical person is the place where its executive body is located.  
Any change of the judicial person's head office must be announced.
2. The contact address of a juridical person shall be the address of its head-office. The juridical person may select another place as its contact address.

#### **Article 80. Nationality of judicial persons**

Each juridical person established in accordance with Vietnamese law shall be a Vietnamese juridical person.

#### **Article 81. Property of judicial persons**

Property of a juridical person includes contributed capital of its owners, founders, members and other kinds of property that the juridical person has established its ownership as prescribed in this Code or relevant laws.

#### **Article 82. Establishment and registration of juridical persons**

1. A juridical person may be established on the initiative of an individual or another juridical person, or under a decision of a regulatory agency.
2. Registration of juridical person includes registration of establishment, modification to registration and other registration as prescribed by law.
3. The registration of juridical person must be announced.

#### **Article 83. Organizational structure of juridical persons**

1. Each juridical person must have an executive body. The organization, duties and powers of the executive body of a juridical person shall be stipulated in its charter or establishment decision.
2. Each juridical person may have other bodies as decided itself or as prescribed by law.

#### **Article 84. Branches and representative offices of juridical persons**

1. Each branch and/or representative office is an affiliate other than a juridical person.
2. Each branch shall perform all or part of the functions of the juridical person.
3. Each representative office shall perform its duties as authorized by the in accordance with within the authorized scope and for the juridical person's interests.
4. The establishment or termination of a branch or a representative office of a juridical person must be registered as prescribed by law and announced.
5. The head of each branch or representative office shall perform his/her duties as authorized by the juridical person within the authorized scope and for the authorized duration.
6. A juridical person shall have civil rights and obligations arising from civil transactions established and performed by its representative offices and/or branches.

#### **Article 85. Representatives of juridical persons**

The representative of a juridical person may be a legal representative or an authorized representative. The representative of a juridical person must comply with regulations on representation in Chapter IX of this Part.

#### **Article 86. Legal personality of juridical persons**

1. The legal personality of a juridical person is its capability to have civil rights and civil obligations.

The legal personality of a juridical person shall not be restricted, unless otherwise provided for in this Code or relevant laws.

2. The legal personality of a juridical person arises from it is established or authorized to establish by a competent authority; if a juridical person is required to register of operation, its legal personality shall arise from the time in which its name is included in a register book.

3. Legal personality of a juridical person terminates from the time of termination of such juridical person.

#### **Article 87. Civil liability of juridical persons**

1. Each juridical person must bear civil liability for the civil rights and obligations established and performed in the name of the juridical person by its representative.

The juridical person shall bear the civil liability for obligations assumed by its founder or founder's representative to establish and/or register the juridical person, unless otherwise agreed or prescribed by law.

2. Each juridical person must bear civil liability by recourse to its property; shall not bear civil liability for its members with respect to civil obligations established and performed by such members not in the name of the juridical person, unless otherwise prescribed by law.

3. A member of a juridical person shall not bear civil liability of the juridical person for the civil obligations established and performed by such juridical person, unless otherwise prescribed by law.

#### **Article 88. Consolidation of juridical persons**

1. Juridical persons may consolidate into a new juridical person.

2. After consolidation, the former juridical persons shall cease to exist from the time of establishment of the new juridical person; the civil rights and obligations of the former juridical persons shall be transferred to the new juridical person.

#### **Article 89. Acquisition of juridical persons**

1. A juridical person (hereinafter referred to as acquired juridical person) may be merged into another juridical person (hereinafter referred to as acquiring juridical person).

2. After acquisition, the acquired juridical person shall cease to exist; the civil rights and obligations of the acquired juridical person shall be transferred to the acquiring juridical person.

#### **Article 90. Total division of juridical persons**

1. A juridical person may be totally divided to multiple juridical persons.

2. After total division, the transferor juridical person shall cease to exist; the civil rights and obligations of the transferor juridical person shall be transferred to new juridical persons.

#### **Article 91. Partial division of juridical persons**

1. A juridical person may be partially divided to multiple juridical persons.

2. After partial division, the transferor juridical person and transferee juridical persons shall perform their civil rights and obligations in accordance with their own operation objectives.

#### **Article 92. Conversion of forms of juridical persons**

1. The form of a juridical person may be converted into another form.

2. After conversion of form, the converting juridical person shall cease to exist from the time of establishment of the converted juridical person, the civil rights and obligations of the converting juridical person shall be transferred to the converted juridical person.

### **Article 93. Dissolution of juridical persons**

1. A juridical person shall be dissolved in any of the following cases:

- a) In accordance with the provisions of its charter;
  - b) Pursuant to a decision of a competent authority;
  - c) Upon expiry of its term of operation as provided in its charter or in the decision of the competent authority;
  - d) Other cases as prescribed by law.
2. Prior to dissolution, a juridical person must fulfill all of its property obligations.

### **Article 94. Settlement of property of dissolved juridical persons**

1. The property of a dissolved juridical person shall be settled according to the following order:

- a) Dissolution expenses of the juridical person;
- b) Unpaid salaries, severance pay, social insurance, health insurance for employees as prescribed by law, other benefits of employees according to collective bargaining agreement and signed employment contracts;
- c) Tax debts and other debts.

2. After all debts and dissolution costs are paid, the remaining value shall be received by the juridical person's owner, capital contributors, except for the case prescribed in Clause 3 of this Article or otherwise prescribed by law.

3. In case a dissolved social fund or charity fund has paid fully dissolution expenses and other debts prescribed in Clause 1 of this Article, the remaining property shall be transferred to another fund with the same purpose.

If there is no fund with the same purpose that receives the property or the above fund is dissolved because of its violation against to prohibition of law or contrary to social ethics, its property shall vest in the State.

### **Article 95. Bankruptcy of juridical persons**

The bankruptcy of each juridical person shall comply with regulations of law on bankruptcy.

### **Article 96. Termination of juridical persons**

1. A juridical person shall terminate in any of the following cases:

- a) Consolidation, acquisition, total division, conversion of legal, or dissolution prescribed in Articles 88, 89, 90, 92 and 93 of this Code;
- b) Declaration of bankruptcy in accordance with law on bankruptcy.

2. A legal person shall terminate from the time its name is removed from the juridical person registry or as from the time stated in a decision of competent authority.

3. When a juridical person terminates, its property shall be resolved in accordance with this Code and relevant laws.

## **Chapter V**

## **THE SOCIALIST REPUBLIC OF VIETNAM, CENTRAL AND LOCAL REGULATORY AGENCIES IN CIVIL RELATIONS**

### **Article 97. The Socialist Republic of Vietnam, central and local regulatory agencies in civil relations**

When the Socialist Republic of Vietnam or a central or local regulatory agency engages in a civil relation, it shall have the equality with other entities and bear civil responsibility as prescribed in Article 99 and 100 of this Code.

### **Article 98. Representatives in civil relations**

The representation of the Socialist Republic of Vietnam or a central or local regulatory agency engaging in civil relations shall comply with regulations of law in terms of functions, tasks, powers and organizational structure of regulatory agencies. The representation by other natural or juridical persons may only be permitted in the cases and procedures prescribed by law.

### **Article 99. Liability for civil obligations**

1. The Socialist Republic of Vietnam, central and local regulatory agencies shall bear liability for their civil obligations by recourse to the property whose ownership for which they represent and take centralized management, other than the case that the property is transferred to the juridical person prescribed in Clause 2 of this Article.
2. The juridical persons established by the Socialist Republic of Vietnam, or a central or local regulatory agency shall not bear liability for civil obligations of the Socialist Republic of Vietnam, or such central or local regulatory agency.
3. The Socialist Republic of Vietnam, a central or local regulatory agency shall not bear liability for civil obligations of the juridical persons established themselves, including state-owned enterprises, unless the Socialist Republic of Vietnam or such central or local regulatory agency has acted as a guarantee for those juridical persons as prescribed by law.
4. A central or local regulatory agency shall not bear liability for civil obligations of the juridical persons of the Socialist Republic of Vietnam, or other central or local regulatory agencies, unless otherwise prescribed by law.

### **Article 100. Liability for civil obligations of the Socialist Republic of Vietnam, a central or local regulatory agency in civil relation in which a foreign state, natural or juridical person is a party**

1. The Socialist Republic of Vietnam, a central or local regulatory agency shall bear liability for its civil obligations arising from the following cases with a foreign state, natural or juridical person is a party:
  - a) An international agreement to which the Socialist Republic of Vietnam is a signatory has regulations on waiving immunity;
  - b) An agreement on waiving immunity concluded by the parties in such civil relation;
  - c) The Socialist Republic of Vietnam, the central or local regulatory agency waives the immunity.

2. The liability for civil obligations of a foreign state, natural or juridical person with the Socialist Republic of Vietnam, Vietnamese central or local regulatory agencies, natural or juridical persons shall apply Clause 1 of this Article.

## **Chapter VI**

### **HOUSEHOLDS, CO-OPERATIVE GROUPS AND OTHER NON-JURIDICAL PERSONS IN CIVIL RELATIONS**

#### **Article 101. Entities in civil relations with the participation of households, co-operative groups and other non-juridical persons**

1. In case a household, co-operative group or another non-juridical person engages in a civil relation, the entities establishing or performing civil transactions for such household, co-operative group or the other organization shall be its member or a representative authorized. The authorization must be made in writing, unless otherwise agreed. If there is any change of representative, it is required to keep the other party informed about the change.

If a member of a household, co-operative group or another non-juridical person, without authorization from other members to act as a representative, engages in a civil relation, he/she shall be the entity of such civil relation.

2. The entities of civil relations with the participation of households using land shall be determined as prescribed in the Law on land.

#### **Article 102. Common property of members of households, co-operative groups and other non-juridical persons**

1. Common property of members of a household and their rights and obligations to such property shall be determined as prescribed in Article 212 of this Code.

2. Common property of members of a co-operative group and their rights and obligations to such property shall be determined as prescribed in Article 506 of this Code.

3. Common property of members of another non-juridical person and their rights and obligations to such property shall be determined as agreed, unless otherwise prescribed by law.

#### **Article 103. Civil liability of members of households, co-operative groups and other non-juridical persons**

1. Civil obligations arising from the engaging in civil relations by households, co-operative groups, other organizations as non-juridical person shall be fulfilled by recourse their common property.

2. If all members have no property or not enough property to fulfill their common obligations, the obligee may request those members to fulfill the obligations as prescribed in Article 288 of this Code.

3. If the members have no agreement, co-operative contract or not otherwise prescribed by law, they must bear the civil liability as prescribed in Clause 1 and Clause 2 of this Article in proportion to each member's contribution, if it fails to determine particular proportions, each member shall have the same proportion.

#### **Article 104. Consequences of civil transactions established and/or performed by unauthorized persons or by representatives beyond scope of representation**

1. If an unauthorized member, on behalf of other members of a household, co-operative group or another non-juridical person, establish or perform a civil transaction, or a representative establish or perform a civil transaction beyond his/her scope of representation, the legal consequences of such transaction shall apply provisions of Articles 130, 142 and 143 of this Code.

2. If a civil transaction established and/or performed by an authorized member or by a representative beyond his/her scope of representation cause damage to other members of the household, co-operative group or the non-juridical persons or a third party, such person must compensate for the infringed person.

## **Chapter VII**

### **PROPERTY**

#### **Article 105. Property**

1. Property comprises objects, money, valuable papers and property rights.
2. Property includes immovable property and movable property. Immovable property and movable property may be existing property or off-plan property.

#### **Article 106. Registration of property**

1. Ownership and other rights to immovable property shall be registered in accordance with this Code and law on registration of property.
2. Ownership and other rights to movable property shall not be required to be registered, unless otherwise prescribed by law.
3. The registration of property must be public.

#### **Article 107. Immovable property and movable property**

1. Immovable property includes:
  - a) Land;
  - b) Houses and constructions attached to land;
  - c) Other property attached to land, houses and constructions;
  - d) Other property as prescribed by law.
2. Moveable property is property which is not immovable property.

#### **Article 108. Existing property and off-plan property**

1. Existing property means a property which is formed and to which an entity has established his/her ownership rights and other rights before or at the time of transaction establishment.
2. Off-plan property includes:
  - a) Non-formed property;
  - b) Formed property that the entity has established his/her ownership rights after the time of transaction establishment.

#### **Article 109. Yield and income**

1. Yield means natural products brought by property.

2. Income means a profit earned from the development of the property.

#### **Article 110. Primary objects and auxiliary objects**

1. A primary object is an independent object the utility of which can be exploited according to its functions.

2. An auxiliary object is an object which directly supports the exploitation of the utility of a primary object and which is part of the primary object but which may be separated from it.

3. Upon performance of an obligation to transfer a primary object, any auxiliary objects must also be transferred, unless otherwise agreed.

#### **Article 111. Divisible objects and indivisible objects**

1. A divisible object is an object which, after being divided, retains its original characteristics and usage.

2. An indivisible object is an object which, after being divided, is not able to retain its original characteristics and usage.

When an indivisible object needs to be divided, it must be valued in money for the purpose of division.

#### **Article 112. Consumable objects and non-consumable objects**

1. A consumable object is an object which, after being having been used once, loses or is not capable of retaining its original characteristics, appearance and usage.

A consumable object may not be the object of a lease contract or of a lending contract.

2. A non-consumable object is an object which, after being having been used many times, substantially retains its original characteristics, appearance and usage.

#### **Article 113. Fungible objects and distinctive objects**

1. Fungible objects are objects which have the same appearance, characteristics and usage and which can be determined by units of measurement.

Fungible objects of the same quality may be interchangeable.

2. A distinctive object is an object which is distinguishable from other objects by its own characteristics regarding markings, appearance, color, material, nature or position.

An obligation to transfer a distinctive object is only able to fulfill by transferring that particular distinctive object.

#### **Article 114. Integrated objects**

An integrated object is an object comprised of components or parts which fit together and are connected with each other to make up a complete from whereby one of the parts or components is missing, or if there is a part or component which is not of the right specification or category, it is not able to be used or its utility value is decreased.

An obligation to transfer an integrated object must be fulfilled by transferring all parts or components thereof, unless otherwise agreed.

#### **Article 115. Property rights**

Property rights are rights which are able to be valued in money, including property rights to subjects of intellectual property rights, right to use land and other property rights.

## **Chapter VIII**

### **CIVIL TRANSACTIONS**

#### **Article 116. Civil transactions**

Civil transaction is a contract or a unilateral legal act which gives rise to, changes or terminates civil rights and/or obligations.

#### **Article 117. Conditions for effective civil transactions**

1. A civil transaction shall be effective when it satisfies all of the following conditions:
  - a) Participants in the transaction have legal personality and/or legal capacity in conformity with such transaction;
  - b) Participants in the transaction act entirely voluntarily;
  - c) The purpose and contents of the transaction are not contrary to the law and/or social ethics.
2. The forms of civil transactions shall be the conditions for its effectiveness in cases where it is so provided for by law.

#### **Article 118. Objectives of civil transactions**

The objectives of a civil transaction are legitimate interests which the parties wish to achieve at the time when they enter into such transaction.

#### **Article 119. Forms of civil transactions**

1. A civil transaction shall be expressed verbally, in writing, or through specific acts.

Civil transactions by way of electronic means in form of data messages prescribed in law on electronic transactions shall be deemed to be written civil transactions.

2. In cases where it is provided for by law that a civil transaction must be expressed in writing, notarized, authenticated, registered or permitted, such provisions must be complied with.

#### **Article 120. Conditional civil transactions**

1. In cases where the parties have agreed on the conditions which shall give rise to or terminate a civil transaction, such civil transaction shall arise or be terminated upon the occurrence of such conditions.
2. In cases where the conditions which give rise to or terminate a civil transaction cannot occur due to the direct or indirect action of deliberate impeding of one party, such conditions shall be considered having occurred; if the direct or indirect efforts of one of the parties promotes deliberately promote the occurrence of conditions so as to give rise to or terminate the civil transaction, such conditions shall be deemed not to have occurred.

#### **Article 121. Interpretation of civil transactions**

1. In cases where a civil transaction may be understood in different ways, such transaction must be interpreted in the following order:

- a) In accordance with the real intention of the parties at the time when the transaction was entered into;
  - b) In a manner consistent with the objective of the transaction;
  - c) In accordance with the customary practice of the place where the transaction was entered into.
2. The interpretation of civil contracts shall comply with the provisions of Article 404 of this Code and the interpretation of the contents of testaments shall comply with the provisions of Article 648 of this Code.

#### **Article 122. Invalid civil transactions**

Civil transactions which fail to satisfy any one of the conditions specified in Article 117 of this Code shall be invalid.

#### **Article 123. Invalidity of civil transactions due to breach of legal prohibitions or contravention of social ethics**

Civil transactions with objectives and contents which breach legal prohibitions or which contravene social ethics shall be invalid.

Legal prohibitions mean provisions of law which do not permit entities to perform certain acts.

Social ethics are common standards of conduct as between persons in social life, which are recognized and respected by the community.

#### **Article 124. Invalidity of civil transactions due to falsification**

1. If the parties falsely enter into a civil transaction for the purpose of concealing another transaction, the false transaction shall be invalid and the concealed transaction remains valid, unless it is also invalid under the provisions of this Code or relevant laws.
2. If the parties enter into a civil transaction falsely for the purpose of evading responsibilities to a third person, such transaction shall be invalid.

#### **Article 125. Invalidity of civil transactions established and performed by minors or legally incapacitated persons or persons with limited cognition and behavior control or persons with limited legal capacity**

1. When a civil transaction is established or performed by a minor, a legally incapacitated person, a person with limited cognition and behavior control, or a person with limited legal capacity, a court shall, at the request of the representative of that person, declare such transaction invalid, if it is provided for by law that such transaction must be established and performed by or with the consent of the representative of that person, except for the cases prescribed in Clause 2 of this Article.
2. A civil transaction of a person prescribed in Clause 1 of this Article shall not be invalid in any of the following cases:
  - a) The civil transaction of a child less than 6 years of age or a legally incapacitated person established for his/her daily needs;
  - b) The civil transaction only either arising rights or exempting from obligations for the minor, the legally incapacitated person, the person with limited cognition and behavior control, the person with limited legal capacity and their contracting parties;

c) The civil transaction of which validity is recognized by the person established such transaction that become an adult or restore his/her legal capacity.

#### **Article 126. Invalidity of civil transactions due to misunderstanding**

1. If there is a misunderstanding in a civil transaction that make a party or the parties fails to meet the objectives of the transaction establishment, the mistaken party shall have the right to request a court to declare such transaction invalid, except for the case prescribed in Clause 2 of this Article.

2. A civil transaction having misunderstanding shall not be invalid if the parties may meet the objectives of the transaction establishment or the parties may correct the misunderstanding resulting in the achievement of the objectives of the transaction establishment.

#### **Article 127. Invalidity of civil transactions due to deception, threat or compulsion**

Any party entering into a civil transaction as a result of deception, threat or compulsion has the right to request a court to declare such transaction invalid.

Deception in a civil transaction means an intentional act of a party or a third person for the purpose of misleading the other party as to the subject, the nature of the entity or contents of the civil transaction which has caused the other party to enter into such transaction.

Threat or compulsion in a civil transaction means an intentional act of a party or a third person which compels the other party to conduct the civil transaction in order to avoid danger to the life, health, honor, reputation, dignity and/or property or that of its relatives.

#### **Article 128. Invalidity of civil transactions established by person lacking in cognition and behavior control**

A person who has legal capacity but has entered into a civil transaction at the time of he/she is lacking in cognition and behavior control shall have the right to request a court to declare such civil transaction invalid.

#### **Article 129. Invalidity of civil transactions due to non-compliance with form**

A civil transaction violating conditions for validity pertaining to form shall be invalid, except for any of the following cases:

1. If the form of a civil transaction, required to be established in writing, does not comply with regulations of law, but a party or the parties has/have fulfill at least two third of the obligations in the transaction, a court, at his/her/their request(s), shall issue a decision on recognition of the validity of such transaction.

2. If the form of a civil transaction, required to be established in writing, violates against regulations on notarizing or authorization, but a party or the parties has/have fulfill at least two third of the obligations in the transaction, a court, at his/her/their request(s), shall issue a decision on recognition of the validity of such transaction. In this case, the parties need not perform the notarizing or authorization.

#### **Article 130. Partially invalid civil transactions**

A civil transaction shall be partially invalid when one part of the transaction is invalid but such invalidity does not affect the validity of the remaining parts.

#### **Article 131. Legal consequences of invalid civil transactions**

1. An invalid civil transaction shall not give rise to, change or terminate any civil rights and obligations of the parties as from the time the transaction is entered into.
2. When a civil transaction is invalid, the parties shall restore everything to its original state and shall return to each other what they have received.  
If the restitution is not able to make in kind, it may be paid in money.
3. A bona fide person in receiving yield and/or income is not required to return such yield and/or income.
4. The party at fault which caused damage must compensate therefore.
5. The settlement of consequences of invalid civil transactions regarding personal rights shall be prescribed in this Code and relevant laws.

#### **Article 132. Time limit for requesting court to declare civil transactions invalid**

1. The time limit within which a request may be made to a court to declare a civil transaction invalid as specified in Articles 125 thru 129 of this Code shall be two years as from the date on which:
  - a) The representative of a minor, a legally incapacitated person, a person with limited cognition and behavior control or a person with limited legal capacity knows and should know the ward established and/or performed the transaction himself/herself.
  - b) The mistaken or cheated person in a transaction knows and should know that such transaction is established due to misunderstanding or cheating;
  - c) The person that threatened or compelled other persons in a transaction put an end to such acts;
  - d) The person lacking in cognition and behavior control establishes his/her transaction;
  - dd) The civil transaction is established in non-compliance with form.
2. After the time limit prescribed in Clause 1 of this Article, if there is still no request for declaring civil transaction invalid, such transaction still remains valid.
3. For civil transactions specified in Articles 123 and 124 of this Code, the time limit for requesting a court to declare such civil transactions invalid shall not be restricted.

#### **Article 133. Protection of the interests of bona fide third parties with regard to invalid civil transactions**

1. In cases where a civil transaction is invalid but the transacted property being a moveable property is not required to be registered and such property has already been transferred to a bona fide third party through another transaction, the transaction with the third party shall remain valid, except for the case specified in Article 167 of this Code.
2. In cases where a civil transaction is invalid but the transacted property is registered at a competent authority and such property has already been transferred to a bona fide third party through another transaction which is established according to that registration, such transaction shall remain valid.

In cases where the transacted property which is required to be registered has not been registered at a competent authority, the transaction with the third party shall be invalid, except for cases where the bona fide third party received such property through an auction or a transaction with another

party being the owner of such property pursuant to a judgment or decision of a competent authority but thereafter such person is not the owner of the property as a result of the judgment or decision being amended or annulled.

3. The owner of a property shall have no right to reclaim the property from the bona fide third party if the transaction with such party remains valid as prescribed in Clause 2 of this Article, but the owner may proceed against the party at fault to refund appropriate expenses and compensate for his/her damage.

## **Chapter IX**

### **REPRESENTATION**

#### **Article 134. Representation**

1. Representation means a person (hereinafter referred to as the representative) acting in the name and for the benefit of another person (hereinafter referred to as the principal) enters into and performs a civil transaction within the scope of representation.

2. Each natural or juridical person may enter into and/or perform civil transactions through a representative. A natural person may not allow another person to represent him/her; if the law provides for that they must personally enter into and perform such transaction.

3. The representative, if required by law, must have legal personality and/or legal capacity in accordance with the transactions that he/she enters into and performs.

#### **Article 135. Basis for establishment of representation rights**

Representation rights shall be established according to a power of attorney between a principal and a representative (hereinafter referred to as authorized representation); according to a decision of a competent authority, a charter of a juridical person or as prescribed by law (hereinafter referred to as legal representation).

#### **Article 136. Legal representatives of natural persons**

1. The father and/or mother with respect to a minor.

2. The guardian with respect to a ward. The guardian of a person with limited cognition and behavior control is a legal representative if appointed by a court.

3. The person appointed by a court in case where it is not able to determine the representative prescribed in Clause 1 and Clause 2 of this Article.

4. The person appointed by a court with respect to a person with limited legal capacity.

#### **Article 137. Legal representatives of juridical persons**

1. Legal representatives of juridical persons include:

a) The person appointed by the juridical person according to its charter;

b) The person competent to represent as prescribed by law;

c) The person appointed by a court during the proceedings at the court.

2. Each juridical person may have multiple legal representatives and each representative is entitled to represent the juridical person as prescribed in Articles 140 and 141 of this Code.

### **Article 138. Authorized representatives**

1. Each natural or juridical person may authorize another natural or juridical person to enter into and perform a civil transaction.
2. Members of a household, co-operative group or a non-juridical person may agree to authorize another natural or juridical person to enter into and perform a civil transaction related to their common property.
3. A person aged from fifteen years to below eighteen years may be an authorized representative, except where the law provides for that the civil transaction must be entered into and performed by a person who has reached eighteen years of age.

### **Article 139. Legal consequences of representative acts**

1. A civil transaction entered into and performed with a third person by a representative in accordance with his/her scope of authorization shall give rise to rights and obligations of the principal.
2. The representative is entitled to enter into and/or perform necessary acts to attain the objectives of the authorization.
3. In case where a representative still enters into or performs a civil transaction although he/she knew or should know the establishment of authorization due to misunderstanding, deception, threat or compulsion, such civil transaction shall not give rise to rights and obligations of the principal, except for the case that the principal knew or should know such misunderstanding, deception, threat or compulsion without any objection.

### **Article 140. Term of representation**

1. The term of representation shall be determined according to a power of attorney, a decision of a competent authority, and a charter of a juridical person or as prescribed by law.
2. If it fails to determine the term of representation prescribed in Clause 1 of this Article, the term of representation shall be determined as follows:
  - a) If the representation right is determined according to a specific civil transaction, the time limit for representation shall be determined until the time of termination of such civil transaction;
  - b) If the representation right is not determined according to a specific civil transaction, the term of representation is 1 year, from the time of arising representation right.
3. The authorized representation shall terminate in any of the following cases:
  - a) Upon an agreement;
  - b) Upon expiry of the term of authorization;
  - c) Upon completion of the authorized tasks;
  - d) The principal or the representative unilaterally revokes the authorization;
  - dd) The principal or the representative being natural person dies; the principal or the representative being juridical person ceases to exist;
  - e) The representative does not meet the conditions prescribed in Clause 3 Article 134 of this Code;

g) Upon another basis that causes the failure of the representation.

4. The legal representation shall terminate in any of the following cases:

a) The principal being natural person becomes an adult or has his/her legal capacity restored;

b) The principal being person dies;

c) The principal being juridical person ceases to exist;

d) Upon another basis as prescribed in this Code and relevant laws.

#### **Article 141. Scope of representation**

1. Each representative may only enter into and/or perform civil transactions within his/her scope of representation according to any of the following bases:

a) The decision of the competent authority;

b) The charter of the juridical person;

c) Contents of authorization;

d) Other regulations as prescribed by law.

2. If it fails to determine the specific scope authorization prescribed in Clause 1 of this Article, the legal representative has the right to enter into and perform all civil transactions in the interests of the principal, unless otherwise prescribed by law.

3. A natural or juridical person may represent multiple natural or juridical persons but he/she/it may not, on behalf of the principal, enter into and perform a civil transaction with him/her/it or with a third party that he/she/it also acts as a representative therefor, unless otherwise prescribed by law.

4. The representative must inform the parties of the scope of his/her representation.

#### **Article 142. Consequences of civil transactions entered into and performed by unauthorized persons**

1. A civil transaction entered into and performed by an unauthorized person representative shall not give rise to rights and obligations of the principal, except for any of the following cases:

a) The principal recognizes the transaction;

b) The principal knows it without any objection within an appropriate time limit;

c) It is the principal's fault that the other party does not know or is not able to know that the person entering into and performing the civil transaction therewith was unauthorized.

2. If a civil transaction entered into and performed by an unauthorized person does not give rise to rights and obligations with respect to the principal, the unauthorized person must fulfill the obligations to the person with which he/she transacted, unless such person knew or should have known that the representative was unauthorized.

3. A person having transacted with an unauthorized person has the right to terminate unilaterally the performance of or to terminate the civil transaction entered into and to demand compensation for any damage, except where such person knew or should have known that the representative was unauthorized or the case prescribed in Point a Clause 1 of this Article.

4. If the unauthorized person and the other party in a civil transaction deliberately enter into and perform such transaction and thereby cause damage to the principal, they must jointly compensate for the damage.

#### **Article 143. Consequences of civil transactions entered into and performed by representatives beyond scope of representation**

1. A civil transaction entered into and performed by a representative beyond his or her scope of representation shall not give rise to rights and obligations of the principal with respect to that part of the transaction which exceeded the scope of representation, except for any of the following cases:

a) The principal gives consent;

b) The principal knows it without any objection within an appropriate time limit;

c) It is the principal's fault that the other party does not know or is not able to know that the person entering into and performing the civil transaction therewith was beyond his/her scope of representation.

2. If a civil transaction entered into and performed by a representative beyond his/her scope of representation does not give rise to rights and obligations of the principal with respect to that part of the transaction, the representative must fulfill the obligations owing to the person with which he/she transacted in respect of the part of transaction which is beyond the scope of representation, unless such person knew or should have known that the scope of representation was exceeded.

3. A person having transacted with such representative has the right to terminate unilaterally the performance of or to terminate the civil transaction with respect to that part which is beyond the scope of representation or with respect to the entire transaction and to demand compensation for any damage, except where such person knew or should have known that the scope of representation was exceeded or the case prescribed in Point a Clause 1 of this Article.

4. Where a person and a representative enter into and perform a civil transaction deliberately beyond the scope of representation of the representative and thereby cause damage to the principal, they shall be jointly liable to compensate for the damage.

### **Chapter X**

#### **TIME LIMITS AND LIMITATION PERIODS**

##### **Section 1. TIME LIMITS**

##### **Article 144. Time limits**

1. Time-limit means a length of time calculated from one point of time to another point of time.

2. A time-limit may be calculated by reference to minutes, hours, days, weeks, months or years, or by reference to the happening of an event.

##### **Article 145. Methods for calculating time-limits**

1. The method for calculating a time-limit shall be apply in accordance with the provisions of this Code, unless otherwise agreed or otherwise provided by law.

2. A time-limit shall be calculated according to the solar calendar, unless otherwise agreed.

#### **Article 146. Detailed provisions on time-limits and point of time for calculating time-limits**

1. Where the parties have agreed on a time-limit which is one year, half of one year, one month, half of one month, one week, one day, one hour or one minute, but such length of time is not continuous, the time-limit shall be calculated as follows:

- a) One year shall be three hundred and sixty five (365) days;
- b) Half of one year shall be six months;
- c) One month shall be thirty (30) days;
- d) Half of one month shall be fifteen (15) days;
- dd) One week shall be seven days;
- e) One day shall be twenty four (24) hours;
- g) One hour shall be sixty (60) minutes;
- h) One minute shall be sixty (60) seconds.

2. Where the parties have agreed on a point of time which is at the beginning of a month, the middle of a month or the end of a month, such point of time shall be determined as follows:

- a) The beginning of a month shall be the first day of that month;
- b) The middle of a month shall be the fifteenth day of that month;
- c) The end of a month shall be the last day of that month.

3. Where the parties have agreed on a point of time which is at the beginning of the year, the middle of a year or the end of a year, such point of time shall be determined as follows:

- a) The beginning of a year shall be the first day of January;
- b) The middle of a year shall be the last day of June;
- c) The end of a year shall be the last day of December.

#### **Article 147. Commencement of time-limits**

1. Where a time-limit is stated by reference to minutes or hours, it shall commence from a defined moment of time.

2. Where a time-limit is stated by reference to days, weeks, months or years, the first day of the time-limit shall not be taken into account and the time-limit shall commence from the day following the defined date.

3. Where a time-limit is stated by reference to the happening of an event, the date on which the event happens shall not be taken into account and the time-limit shall commence from the day following the date on which the event happened.

#### **Article 148. End of time-limits**

1. Where a time-limit is stated by reference to days, the time-limit shall end at the last moment of the last day of the time limit.

2. Where a time-limit is stated by reference to weeks, the time-limit shall end at the last moment of the corresponding day of the last week of the time limit.

3. Where a time limit is stated by reference to months, the time-limit shall end at the last moment of the corresponding day of the last month of the time-limit. If the month in which the time-limit ends does not have a corresponding day, the time-limit shall end on the last day of such month.
4. Where a time-limit is stated by reference to years, the time-limit shall end at the last moment of the corresponding day and month of the last year of the time-limit.
5. Where the last day of a time-limit falls on a weekend or a public holiday, the time-limit shall end at the last moment of the next working day following such day.
6. The last moment of the last day of a time-limit shall be precisely twelve o'clock midnight on that day.

## **Section 2. LIMITATION PERIODS**

### **Article 149. Limitation periods**

1. Limitation period means a time-limit provided by law where, upon its expiry, a legal consequence arises as prescribed by law.

The limitation periods shall apply as prescribed in this Code and relevant laws.

2. A court only applies provisions in terms of limitation periods at the request of a party or the parties provided that such request is filed before the first trial court of first instance gives a judgment and/or a decision on settlement.

The person benefiting from the application of the limitation period may refuse to apply such limitation period, unless such refusal is aimed at evading his/her obligations.

### **Article 150. Types of limitation periods**

1. A limitation period for enjoying civil rights is the time limit where, upon its expiry, an entity enjoys civil rights.
2. A limitation period for a release from civil obligations is the time limit where, upon its expiry, a person with civil obligations is released from the fulfillment of those civil obligations.
3. A limitation period for initiating legal action is the time-limit within which an entity has the right to initiate legal action to request a court to resolve a civil case to protect the infringed legal rights or interests of the entity. When such time-limit expires, the right to initiate such legal action shall be lost.
4. A limitation period for requesting resolution of a civil case is the time-limit within which an entity has the right to request a court to resolve a civil case in order to protect the legal rights and interests of natural persons, juridical persons, public interest and/or the interest of the State. When such time-limit expires, the right to request shall be lost.

### **Article 151. Method for calculating limitation periods**

A limitation period shall be calculated from the first moment of time of the first day and shall end at the last moment of time of the last day of the period.

### **Article 152. Effectiveness of limitation periods for enjoyment of civil rights and release from civil obligations**

Where the law provides for that a subject may enjoy civil rights or be released from civil obligations by reference to a limitation period, the enjoyment of civil rights or the release from civil obligations shall take effect only upon expiry of the limitation period.

**Article 153. Continuity of limitation periods for enjoyment of civil rights and release from civil obligations**

1. The limitation period for enjoyment of civil rights or release from civil obligations shall continue uninterrupted from its beginning to its expiry. If there is an event causing an interruption, the limitation period shall recommence from the moment when the event causing the interruption ends.
2. The limitation period for enjoyment of civil rights or release from civil obligations shall be suspended upon occurrence of any of the following events:
  - a) A competent authority makes a resolution with respect to the civil rights and obligations which are the subject of the limitation period;
  - b) Civil rights or obligations which are the subject of a limitation period are disputed by a person with related rights or obligations and they are settled by an effective judgment or decision issued by a court.
3. The limitation period shall continue uninterrupted where the enjoyment of civil rights or the release from civil obligations or the right to initiate legal action is lawfully transferred to another person.

**Article 154. Commencement of limitation periods for initiating legal action for civil cases and limitation periods for requesting resolution of civil cases**

1. The commencement of the limitation period for initiating legal action for a civil case shall be calculated from the date on which the eligible person knows or should know that his/her legal rights or interests are infringed, unless otherwise provided by law.
2. The commencement of the limitation period for requesting resolution of a civil case shall be calculated from the date when the right to request arises, unless otherwise provided by law.

**Article 155. Non-applicability of limitation periods**

A limitation period for initiating legal action for a civil case shall not apply in any of the following cases:

1. Request for the protection of personal rights not associated with property;
2. Request for the protection of ownership rights, unless otherwise provided by this Code or relevant laws.
3. Dispute over land use right as prescribed in the Law on land;
4. Other cases as provided by law.

**Article 156. Time periods excluded from limitation periods for initiating legal action for civil cases and from limitation periods for requesting resolution of civil cases**

The time period during which one of the following events occurs shall be excluded from limitation periods for initiating legal action for civil cases and from limitation periods for requesting resolution of civil cases:

1. An event of force majeure or other objective hindrance which renders the person with the right to initiate legal action for a civil case or make the request not able to do so within the limitation period.

An event of force majeure is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken.

An objective hindrance is a hindrance which in an objective context results in a person with civil rights or obligations not knowing that his or her lawful rights and interests have been infringed or not being able to exercise his or her rights or fulfill his or her civil obligations;

2. The person with the right to initiate legal action for a civil case or to make the request is a minor or a legally incapacitated person, a person with limited cognition and behavior control or a person with limited legal capacity, and does not yet have a representative.

3. The representative of a minor or a legally incapacitated person, a person with limited cognition and behavior control or a person with limited legal capacity has not yet been replaced in any of the following cases:

a) The representative being natural person dies or the representative being juridical person ceases to exist;

b) The representative, for good reasons, cannot continue his/her representation.

#### **Article 157. Re-commencement of limitation period for initiating legal action for civil cases**

1. The limitation period for initiating legal action for a civil case shall re-commence in any of the following cases:

a) The obligor has acknowledged part or all of its obligations to the plaintiff;

b) The obligor has acknowledged or fulfilled part of its obligations to the plaintiff;

c) The parties have become reconciled.

2. The limitation period for initiating legal action for a civil case shall re-commence from the date following the date on which the event provided in clause 1 of this Article occurs.

### **PART TWO**

#### **OWNERSHIP RIGHTS AND OTHER PROPERTY-RELATED RIGHTS**

##### **Chapter XI**

#### **GENERAL PROVISIONS**

##### **Section 1. Rules for establishing and exercising ownership rights and other property-related rights**

###### **Article 158. Ownership rights**

Ownership rights comprise the rights of an owner to possess, use and dispose of the property of the owner in accordance with law.

###### **Article 159. Other property-related rights**

1. Other property-related rights mean rights of entities directly hold or control the property belonging to ownership rights of another entity.

2. Other property-related rights include:

a) Right to adjacent immovable property;

b) Usufruct right;

c) Surface rights.

### **Article 160. Rules for establishing and exercising ownership rights and other property-related rights**

1. Ownership rights and other property-related rights shall be established and exercised if they are prescribed in Code and relevant laws.

Other property-related rights shall remain valid although the ownership right have been transferred, otherwise provided by this Code or relevant laws.

2. Each owner is entitled to perform all acts on his willpower to the property but it is not contrary to the provisions of the law, damage or adversely affects national interests, ethnicity, public interests, rights and legitimate interests of other people.

3. Each holder of other property-related rights is entitled to perform all acts within the scope prescribed in this Code and relevant laws but it is not contrary to the provisions of the law, damage or adversely affects national interests, ethnicity, public interests, rights and legitimate interests of the owner or other people.

### **Article 161. Time of establishing ownership rights and other property-related rights**

1. The time of establishing ownership rights and other property-related rights shall be determined as prescribed in this Code and relevant laws; if there is no relevant regulations of law, the agreement of the parties shall prevail; if there is no either relevant regulations of law or agreement of the parties, the time of establishing ownership rights and other property-related rights shall be the time when the property is transferred.

The time when the property is transferred is the time when the obligee or his/her legal representative possesses the property.

2. In case where the property which has been not transferred arise yield or income, such yield or income shall belong to the transferor, unless otherwise agreed.

### **Article 162. Bearing risks of property**

1. Each owner shall bear all risks of the property under his/her ownership, unless otherwise agreed or unless otherwise prescribed by this Code or relevant laws.

2. Each holder of other property-related rights shall bear risks of the property within his/her right scope, unless otherwise agreed with the owner of the property or unless otherwise prescribed by this Code or relevant laws.

## **Section 2. PROTECTION OF OWNERSHIP RIGHTS AND OTHER PROPERTY-RELATED RIGHTS**

### **Article 163. Protection of ownership rights and other property-related rights**

1. No one may be illegally restricted in or deprived of his/her ownership rights or other property-related rights to his/her property.
2. In case of extreme necessity for reasons of national defense, security or national interests, the State shall affect a compulsory purchase or requisition with compensation of the property of organizations or individuals in accordance with the market prices.

#### **Article 164. Measures for protection of ownership rights and other property-related rights**

1. Each owner or holder of other property-related rights is entitled to self-protect and prevent anyone from infringing his/her rights by measures in accordance with regulations of law.
2. Each owner or holder of other property-related rights shall have the right to request a court or another competent authority to compel the person infringing upon their rights to return the property and terminate the acts of illegally obstructing the exercise of their ownership rights or other property-related rights, and to request compensation for any damage.

#### **Article 165. Possession with a legal basis**

1. Possession with a legal basis is the possession of a property in any of the following cases:
  - a) The owner possesses the property;
  - b) A person is authorized by the owner to manage the property;
  - c) A person to whom the right to possession has been transferred through a civil transaction in accordance with the provisions of law;
  - d) A person who discovers and keeps derelict property, property with unidentified owners, property which has been let drop on the ground, left over out of inadvertence, buried or sunken in accordance with this Code and/or relevant laws.
  - dd) A person who discovers and keeps stray domestic animals, poultry or raised aquatic animals in accordance with this Code and/or relevant laws;
  - e) Other cases as prescribed by law.
2. A possession of property which does not comply with the provisions of Clause 1 of this Article is a possession without a legal basis.

#### **Article 166. The right to reclaim property**

1. Owners and/or holders of other property-related rights shall have the right to request the persons possessing, using or receiving benefits from the property without a legal basis to return such property.
2. The owner of a property has no right to reclaim such property that is in the possession of a holder of other property-related rights.

#### **Article 167. The right to reclaim movable property not subject to ownership right registration from bona fide possessors**

Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemifiable contracts with persons who have no right to dispose of the property; in case of indemifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost or other cases of possession against the owners' will.

**Article 168. The right to reclaim movable property subject to ownership right registration or immovable property from bona fide possessors**

Owners may reclaim their movable property subject to ownership right registration and immovable property, except for cases prescribed in Clause 2 Article 133 of this Code.

**Article 169. The right to request the prevention of acts of illegally obstructing the exercise of ownership rights and other property-related rights**

When exercising their ownership rights or other property-related rights, the owners or holders shall have the right to request persons committing acts of illegally obstructing the exercise of their lawful ownership rights or possession rights to terminate such acts or request a court or another competent authority to compel such persons to terminate their violations.

**Article 170. The right to request compensation for damage**

Owners or holders of other property-related rights are entitled to request persons infringing upon their ownership rights or other property-related rights to compensate for any damage.

**Section 3. RESTRICTIONS ON PROTECTION OF OWNERSHIP RIGHTS AND OTHER PROPERTY-RELATED RIGHTS**

**Article 171. Rights and obligations of owners and holders of other property-related rights in emergency circumstances**

1. An emergency circumstance is a circumstance where in order to avert a danger actually and directly threatening the interests of the State or of a collective, or the legitimate rights or interests of their own or of other persons, a person has no alternative but to take an act which would cause lesser damage than the damage to be prevented.
2. In an emergency circumstance, the owner and holder of other property-related rights to a property must not hinder another person from using his/her own property or hinder another person from causing damage to such property in order to prevent or abate the greater danger or damage that threatens to happen.
3. The causing of damage in an emergency circumstance is not the act of infringing upon ownership rights or other property-related rights. The owner or the holder of other property-related rights shall be compensated for damage in accordance with the provisions of Article 595 of this Code.

**Article 172. Obligations to protection of the environment**

When exercising ownership rights and/or other property-related rights, the owner or the holder must comply with the provisions of law on environmental protection; if he/she causes environmental pollution, the owner shall have to terminate the acts which cause the pollution, to take measures to remedy the consequences and to compensate for damage.

**Article 173. Obligations to respect and ensure social order and safety**

When exercising ownership rights and/or other property-related rights, the owner or the holder must respect and ensure social order and safety and must not abuse his/her ownership rights to cause social disorder or unsafety, causing damage to the State interests, public interests or legitimate rights and interests of other persons.

**Article 174. Obligation to respect building regulations**

When constructing a project, the owners and holders of other property-related rights must comply with the law on construction, ensure safety. It may not build beyond the height and distance specified by the law on construction and infringes the legitimate rights and interests of owners of adjoining and surrounding immovable properties.

#### **Article 175. Boundaries between immovable properties**

1. The boundaries between adjoining immovable properties shall be determined in accordance with the agreement of the owners or in accordance with a decision of the competent authority.

The boundaries may also be determined in accordance with customary practice or according to boundaries which have existed for thirty (30) or more years without dispute.

The land user may not encroach upon the boundary or change the boundary markers, including boundaries being canals, irrigation ditches, trenches, gutters or boundaries of rice fields. Each entity must respect and maintain the common boundaries.

2. A person having land use rights may use the airspace and the sub-surface according to the vertical dimensions of the boundaries around the land as prescribed by law and may not interfere with the use by other persons of the adjoining land.

A land user may only plant trees and performs other activities within the area covered by its land use rights and according to the defined boundaries. If the roots and branches of trees extend beyond the boundaries, such person must clip and prune the parts of the trees beyond the boundaries, except as otherwise agreed.

#### **Article 176. Boundary markers separating immovable property**

1. An owner of adjoining immovable property may only erect boundary stakes and fences and build separating walls on the area covered by its land use rights.

2. Adjoining land users may agree to the erection of boundary stakes and fences, the building of separating walls and the planting of trees on the boundary for use as boundary markers between the immovable properties, and the boundary markers shall be under the multiple ownership of such persons.

Where a boundary marker is erected on the boundary by only one party with the consent of the owner of the adjoining immovable property, such boundary marker shall be multiple ownership property and the construction expenses shall be borne by the party having erected the marker, unless otherwise agreed. If the owner of the adjoining immovable property does not give consent and has legitimate reason, the owner having erected the boundary stake or fence or built the separating wall must remove it.

3. With respect to boundary markers which are common house walls, the owner of the adjoining immovable property may not cut out a window or air ventilating hole or drill the wall in order to install building structures, except with the consent of the owner of the adjoining property.

Where houses are separately built, but with adjoining walls, an owner may only drill and install building structures up to the space between the adjoining walls.

With respect to trees which are common boundary markers, the parties have equal obligations to protect the trees, and the fruits from the trees shall be distributed equally, unless otherwise agreed.

**Article 177. Safety guarantee with regard to trees or constructions posing risks of causing damage**

1. Where there is a danger that a tree or a construction will collapse onto an adjoining immovable property, the owner must cut down the tree or repair or demolish the construction at the request of the owners of adjoining immovable property or a competent authority. If such person does not cut down the tree or demolish the construction, the owner of an adjoining immovable property may request a competent authority to procure that the tree be cut down or the structure be demolished. The expenses for cutting down the tree or demolishing the construction shall be borne by the owner of the tree or the structure.

2. When digging a well or a pond or constructing underground structures, the owner of the project must do so at the distance away from the boundaries provided by the law on construction.

When constructing a hygiene construction work, a storehouse of hazardous materials and other construction works likely to cause environmental pollution, the owner of that property must build it a distance far from the markers and in reasonable location, ensure hygiene and safety and do not affect the owners of other immovable properties.

3. If damage is caused to the owners of adjoining or neighboring properties prescribed in Clauses 1 and 2 of this Article, compensation must be made.

**Article 178. Installing doors and windows opening onto adjacent immovable property**

1. A house owner may only install entry and exit doors and windows opening onto adjacent houses or opposite houses and common walkways in accordance with the law on construction.

2. The underside of awnings above entry and exit doors or the underside of awnings of windows opening onto common walkways must be at least two point five (2.5) meters above the ground.

**Chapter XII**

**POSSESSION**

**Article 179. Concept of possession**

1. Possession means that an entity holds and controls a property directly or indirectly as holder of rights to such property.

2. Possession includes possession of owners and possession of non-owners.

The possession of non-owners may not be the basis for establishment of ownership, except for the cases prescribed in Articles 228, 229, 230, 231, 232, 233 and 236 of this Code.

**Article 180. Possession in good faith**

Possession in good faith means the possession that the possessor has bases to believe that he/she has the right to the property under his/her possession.

**Article 181. Possession not in good faith**

Possession not in good faith means that the possession that the possessor knew or should have known that he/she has no right to the property under his/her possession.

**Article 182. Continuous possession**

1. Continuous possession of property is possession of property which occurs over a period of time without dispute relating to such property or with dispute but no effective judgment or decision on settlement of such dispute is issued, including the case when the property is delivered to another person for possession.

2. The non-continuous possession shall not be treated as the basis for presuming status and rights of possessors prescribed in Article 184 of this Code.

#### **Article 183. Overt possession**

1. Possession of property shall be deemed to be overt possession when it occurs in a transparent manner, without concealment; when property currently being possessed is used in accordance with its functions and usage and is preserved and retained by the possessor as if it were his or her own property.

2. The overt possession shall not be treated as the basis for presuming status and rights of possessors prescribed in Article 184 of this Code.

#### **Article 184. Presuming status and rights of possessors**

1. Each possessor shall be presumed in good faith. If a person believes that such possessor is not in good faith, he/she must prove it.

2. If there is a dispute over the rights to a property, the possessor of such property shall be presumed to have those rights. The disputing person must prove that the possessor have no right.

3. A person possessing in good faith, continuously and overtly shall be eligible for limitation periods for enjoying the rights and enjoy the yield and income derived from the property as prescribed in this Code and relevant laws.

#### **Article 185. Protection of possession**

When the possession is violated by another person, the possessor is entitled to, personally or through a court or a competent authority, compels the violator to terminate his/her violation, make restitution, return the property and compensate for any damage.

### **Chapter XIII**

## **OWNERSHIP RIGHTS**

### **Section 1. Contents of ownership rights**

#### **Sub-section 1. RIGHT TO POSSESS**

#### **Article 186. Right to possess of owners**

Where an owner possesses its own property, such owner may do all things to keep and manage the property in accordance with his or her wishes provided that it is not contrary to law or social morals to do so.

#### **Article 187. Right to possess of persons managing property under authorization of owner**

1. When an owner authorizes another person to manage his or her property, the authorized person shall exercise the right to possess such property within the scope, in the manner and for the duration determined by the owner.

2. A person authorized to manage property is not able to become the owner of the property delivered as prescribed in Article 236 of this Code.

**Article 188. Right to possess of persons to which property is delivered through civil transactions**

1. Where an owner delivers property to another person through a civil transaction which does not include the transfer of ownership rights, the person to whom the property is delivered must undertake the possession of such property in a manner consistent with the purpose and content of the transaction.

2. The person to which the property is delivered has the right to use such property and is entitled to transfer the right to possess and use the property to another person if the owner so agrees.

3. The person to whom the property is delivered is not able to become the owner of that property as prescribed in Article 236 of this Code.

**Sub-section 2. RIGHT TO USE**

**Article 189. Right to use**

Right to use means the right to exploit the usage of, and to enjoy the yield and income derived from, property.

The right to use may be transferred to another person upon an agreement or as prescribed by law.

**Article 190. Right to use of owners**

The owner has the right to use property in conformity with his/her wishes provided that this will not cause damage to or adversely affect the interests of the State or the public or the legal rights and interests of other persons.

**Article 191. Right to use of non-owners**

A non-owner shall have the right to use a property as agreed with the owner or as prescribed by law.

**Sub-section 3. RIGHT OF DISPOSAL**

**Article 192. Right of disposal**

Right of disposal means the right to transfer ownership rights, renounce ownership rights, right to use, or destruct the property.

**Article 193. Conditions for disposal**

Disposal of property must be performed by a person with legal capacity in accordance with law.

Where the law provides formalities and procedures for disposal of property, such formalities and procedures must be complied with.

**Article 194. Right of disposal of owners**

Owners shall have the right to sell, exchange, give, loan, bequeath, renounce or ownership rights, right to use, destruct or implement other forms of disposal in conformity with the law on property.

**Article 195. Right of disposal of non-owners**

A non-owner of property shall only have the right to dispose of the property pursuant to authorization from the owner or in accordance with provisions of the law.

#### **Article 196. Restrictions on right of disposal**

1. The right of disposal shall only be restricted in cases where the law so provides.
2. Where a property for sale is an historic or cultural relic as prescribed in law on cultural heritage, the State shall have the right of first refusal to purchase.

Where a natural or juridical person has the right of first refusal to purchase certain property in accordance with law, upon the sale of such property, the owner must grant such right of first refusal to purchase to such person.

### **Section 2. FORMS OF OWNERSHIP**

#### **Sub-section 1. THE PEOPLE'S OWNERSHIP**

##### **Article 197. Property under the people's ownership**

Land, water resources, mineral resources, resources in the waters, airspace and other natural resources and the assets invested and/or managed by the State belong to the entire people with the representation and centralized management of the State.

##### **Article 198. Exercise of right of owner with respect to the people-owned property**

1. The State of the Socialist Republic of Vietnam is a representative that exercises the rights of the owner with respect to the people-owned property.
2. The Government shall manage centrally and ensure the appropriate, efficient and economic use of the people-owned property.

##### **Article 199. Possession, use and disposal of the people-owned property**

The possession, use and disposal of the people-owned property shall be performed within the scope and in accordance with the procedures provided by law.

##### **Article 200. Exercise of the people ownership rights with respect to property invested in enterprises**

1. Where the people-owned property is invested in an enterprise, the State shall exercise the rights of the owner with respect to such property in accordance with the law on enterprises, management and use of state capital investing in business at enterprises and relevant laws.
2. Enterprises have the right to manage and use capital, land, natural resources and other property invested by the State in accordance with the relevant laws.

##### **Article 201. Exercise of the people ownership rights with respect to property allocated to regulatory agencies and units of armed forces**

1. Where property in the category of the people-owned property is allocated to a regulatory agency or unit of the armed forces, the State shall exercise the right to inspect the management and use of such property.
2. The regulatory agency or unit of the armed forces shall manage and use the property allocated by the State for the correct purpose in accordance with law.

**Article 202. Exercise of the people ownership rights with respect to property allocated to political organizations, socio-political organizations, and socio-political professional organizations, social organizations and socio-professional organizations**

1. Where property in the category of the people-owned property is allocated to a political organization, socio-political organization or socio-political professional organization, social organization or socio-professional organization, the State shall exercise the right to inspect the management and use of such property.
2. The political organization, socio-political organization or socio-political professional organization, social organization or socio-professional organization has the right to manage and use the property allocated to it by the State for the correct purpose, within the scope and in accordance with the methods and procedures provided by law, and consistent with the functions and duties of such organization as provided in its charter.

**Article 203. Rights of natural and juridical persons with respect to use of property in category of the people-owned property**

Natural and juridical persons may use land and extract aquatic resources, natural resources and other properties in the category of the people-owned property for the correct purpose and effectively and must fulfill all of their obligations to the State in accordance with law.

**Article 204. Property in category of the people-owned property not having been allocated to natural and juridical persons for management**

With respect to property in the category of the people-owned property which has not been allocated to a natural and juridical person for management, the Government shall organize protection, investigation and survey, and formulation of zoning in order to make such property available for use.

**Sub-section 2. PRIVATE OWNERSHIP**

**Article 205. Private ownership and property under private ownership**

1. Private ownership means the ownership by a natural person or a juridical person.
2. The quantity and value of a property under lawful private ownership shall not be restricted.

**Article 206. Possession, use and disposal of property under private ownership**

1. An owner has the right to possess, use and dispose of property under his or her ownership for the purpose of satisfying the needs of daily life, consumption or business activities and other purposes in accordance with law.
2. The possession, use and disposal of property under private ownership must not cause damage to or adversely affect the interests of the State or the public or the legal rights and interests of other persons.

**Sub-section 3. MULTIPLE OWNERSHIP**

**Article 207. Multiple ownership and types of multiple ownership**

1. Multiple ownership means ownership of property by more than one owner.
2. Multiple ownership comprises ownership in common and joint ownership.

**Article 208. Establishment of multiple ownership rights**

Multiple ownership rights shall be created as agreed by the owners or in accordance with provisions of the law or in accordance with customary practice.

#### **Article 209. Ownership in common**

1. Ownership in common is multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is specified.
2. Each of the owners in common has rights and obligations with respect to the multiple ownership property corresponding to its share of the ownership rights, unless otherwise agreed.

#### **Article 210. Joint ownership**

1. Joint ownership means multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is not specified.

Joint ownership includes divisible joint ownership and indivisible joint ownership.

2. Joint owners have equal rights and obligations with respect to the multiple ownership property.

#### **Article 211. Multiple ownership between communities**

1. Multiple ownership between a community is the ownership by a family line, hamlet, village, tribal village, mountainous hamlet, ethnic hamlet, religious community or other community of property which is formed in accordance with customary practice, which is jointly contributed to and raised by the members of the community or which was given to the whole community, and property which is obtained from other lawful sources for the purpose of satisfying the common lawful interests of the entire community.

2. Members of a community shall jointly manage, use and dispose of multiple ownership property in the interests of the community as agreed or in accordance with customary practice, but not inconsistent with the law or social morals.

3. Multiple ownership property by a community is indivisible joint property.

#### **Article 212. Multiple ownership between family members**

1. Property of family members living together includes property that they contributed or made together and other properties whose ownership rights are established in accordance with this Code and relevant laws.

2. The possession, use and disposal of multiple ownership property by family members shall be conducted as mutually agreed. With respect to disposal of an immovable property, a movable property required registration, or a property being the primary income of the family, the agreement between all family members being adults with full legal capacity is required, unless otherwise prescribed by law.

If there is no agreement, the regulations on ownership in common prescribed in this Code and relevant laws shall apply, except for the case prescribed in Article 213 of this Code.

#### **Article 213. Multiple ownership between husbands and wives**

1. Multiple ownership between a husband and wife is divisible joint ownership.
2. A husband and wife jointly create and develop their marital property through their efforts and have equal rights to possess, use and dispose of such property.

3. A husband and wife shall discuss, agree on or authorize each other in relation to the possession, use and disposal of the marital property.
4. The marital property may be divided as agreed or pursuant to a decision of a court.
5. If a husband and wife select the regulations on property under agreement as prescribed in law on marriage and families, the marital property shall apply those regulations.

#### **Article 214. Multiple ownership in apartment buildings**

1. The areas, equipment and furnishings which are for common use in an apartment building prescribed in the Law on Housing are under multiple ownership of all owners of the apartments in the apartment building and are indivisible, unless otherwise provided by law or unless all of the owners reach some other agreement.
2. The owners of the apartments in an apartment building have equal rights and obligations with respect to the management and use of common areas and equipment prescribed in Clause 1 of this Article, unless otherwise agreed or prescribed by law.
3. Where an apartment building is destroyed, the rights of the owners of the apartment building shall be exercised in accordance with law.

#### **Article 215. Mixed multiple ownership**

1. Mixed multiple ownership means ownership of property in respect of which owners from different economic sectors contribute capital for the purpose of conducting production and business for profit-making purposes.
2. Property which is formed from sources being capital contribution by owners, lawful profits derived from production and business activities or other lawful sources in accordance with law is mixed multiple ownership property.
3. The possession, use and disposal of property under mixed multiple ownership must comply with the provisions of Article 209 of this Code and other relevant laws relating to capital contribution; to the organization and operation of production and business activities; to the administration and management of property; and to the liability for property and distribution of profits.

#### **Article 216. Management of multiple ownership property**

The owners of multiple ownership property shall manage jointly such property in accordance with the principle of unanimity, unless otherwise agreed or otherwise provided by law.

#### **Article 217. Use of multiple ownership property**

1. Each owner in common has the right to exploit, and to enjoy the yield and income derived from, the multiple ownership property in proportion to its share of the ownership rights, unless otherwise agreed or otherwise provided by law.
2. Joint owners have equal rights to exploit and to enjoy the yield and income derived from, the multiple ownership property, unless otherwise agreed.

#### **Article 218. Disposal of multiple ownership property**

1. Each owner in common has the right to dispose of its share of the ownership rights.

2. Disposal of joint property shall be implemented as agreed by the owners of the property or as provided by law.

3. Where an owner of multiple ownership property sells its share of the ownership rights, the other owners of the property have the right of first refusal to purchase such share.

Such owner may sell such share to other persons if no other owner purchases within three months in the case of immovable property, or within one month in the case of moveable property, from the date on which the other owners received notice of the sale and the conditions of the sale. The notice must be made writing and conditions for sale applying to other owners in common shall be similar to those applying to non-owners in common.

In the case where there is a sale of a share of the multiple ownership rights in breach of this regulation on priority purchase right, within the time-limit of three months from the date of discovery of the breach, any one of the multiple owners has the right to request a court to transfer to it the rights and obligations of the purchaser; and the party at fault which caused damage shall be liable to compensate for damage.

4. Where one of the owners of immovable property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall belong to the State, except in the case of multiple ownership between communities where the share of ownership rights shall belong to the remaining members.

5. Where one of the owners of movable property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall belong to the remaining members.

6. Where all owners renounce their ownership rights with respect to multiple ownership property, the ownership rights shall be established as prescribed in Article 228 of this Code.

#### **Article 219. Division of multiple ownership property**

1. Where multiple ownership property is divisible, each owner has the right to request the property to be divided. If the property must be maintained within a certain period of time as agreed by all owners or as prescribed by law, each owner only has the right to request the property to be divided upon expiry of that period. Where the property is not able to be divided in kind, it shall be valued in terms of money for the purposes of division, unless otherwise agreed.

2. Where a person requests one of the owners of multiple ownership property to fulfill a payment obligation and such owner does not have private property or sufficient private property to make the payment, the requesting person has the right to request that the multiple ownership property be divided in order to receive monetary payment and such person shall be entitled to participate in the division of the property, unless otherwise provided by law.

If the shares of ownership rights are not able to be divided in kind or if such a division is opposed by the remaining owners, the requesting person has the right to request the owner with the obligation to sell to sell its share of ownership rights in order to fulfill the payment obligation.

#### **Article 220. Termination of multiple ownership**

Multiple ownership shall terminate in any of the following circumstances:

1. The multiple ownership property has been divided;

2. One of the owners of the multiple ownership property is entitled to enjoy the property in its entirety;
3. The multiple ownership property no longer exists;
4. Other cases as provided by law.

### **Section 3. CREATION AND TERMINATION OF OWNERSHIP RIGHTS**

#### **Sub-section 1. CREATION OF OWNERSHIP RIGHTS**

##### **Article 221. Basis for establishing ownership rights**

Ownership rights are created with respect to property in any of the following cases:

1. Through labour, lawful production and business activities, or creation of subjects of intellectual property rights;
2. Transfer of ownership rights as agreed or pursuant to a decision of a competent authority;
3. Receipt of yield and/or income;
4. Formation of new objects through merging, mixing or processing;
5. Inheritance of property;
6. Acquisition in accordance with law on objects of which owner is unidentified, buried or sunken objects; lost or mislaid objects, stray poultry or livestock or aquaculture stock.
7. Possession and gain from property prescribed in Article 236 of this Code;
8. Other cases as provided by law.

##### **Article 222. Establishment of ownership rights with respect to property earned from labour and lawful business and production activities or creation of subjects of intellectual property rights**

Workers and persons conducting lawful business and production activities have ownership rights with respect to property earned from labour and the lawful business and production activities from the time when such property is earned.

Person conducting creation activities has ownership rights to the property gained from those activities as prescribed in the Law on intellectual property.

##### **Article 223. Establishment of ownership rights under agreements**

A person to which property has been transferred through a contract of sale and purchase or by a gift, exchange or loan or another contract of transfer of ownership rights has the right to own such property as provided by law.

##### **Article 224. Establishment of ownership rights with respect to yield and income**

An owner or a user of property has ownership rights with respect to the yield and income derived from such property as agreed or in accordance with law from the time when such yield and income are derived.

##### **Article 225. Establishment of ownership rights in case of merger**

1. Where property of more than one owner is merged to form an indivisible object and it is not possible to determine whether the property which is merged is a primary object or an auxiliary object, the newly formed object shall be the multiple ownership property of such owners. If the property which is merged consists of a primary object and an auxiliary object, the newly formed object shall belong to the owner of the primary object from the time when the new object is formed. The owner of the new property must pay the value of the auxiliary object to its owner, unless otherwise agreed.

2. Where a person merges the moveable property of another person with his/her own moveable property, even though he/she knew or should have known that such property was not his/her own and he/she did not have the consent of the owner of the property which was merged, the owner of the property which is merged shall have one of the following rights:

a) Request the person having merged the property to deliver the new property to it and to pay the value of the property;

b) Request the person having merged the property to pay the value of the merged property and to compensate for any damage if the owner of the property which is merged does not wish to take the new property.

c) Other rights as provided by law.

3. Where a person merges the moveable property of another person with his/her own immovable property, even though he/she knew or should have known that such property was not his/her own and he/she did not have the consent of the owner of the property which was merged, the owner of the property which is merged shall have one of the following rights:

a) Request the person having merged the property to pay the value of the merged property and to compensate for any damage;

b) Other rights as provided by law.

4. Where a person merges the immovable property of another person with his/her own moveable property, the owner of the immovable property has the right to request such person to demolish the illegally merged property and compensate for any damage, or retain the property and pay the value of the merged property to such person, unless otherwise agreed.

#### **Article 226. Establishment of ownership rights in case of mixing**

1. Where the property of more than one owner is mixed to form a new indivisible object, the new object shall be the multiple ownership property of such owners from the moment of mixing.

2. Where a person has mixed the property of another person with its own property, even though it knew or should have known that such property is not its own and it does not have the consent of the owner of the property which has been mixed, the owner of the property which has been mixed may:

a) Request the person having mixed the property to deliver the new property to it and pay such person the value of the property of such person;

b) If the owner of the property which has been mixed does not wish to take the new property, request the person having mixed the property to pay the value of the property of the owner and to compensate for any damage.

### **Article 227. Establishment of ownership rights in case of processing**

1. An owner of raw materials which are processed to form a new object is also the owner of the newly formed object.
2. A person using raw materials under the ownership of another person for processing who acts in good faith shall become the owner of the new property, but must pay the value of the raw materials to the owner and compensate it for any damage.
3. Where a person processes raw materials not in good faith, the owner of the raw materials has the right to request that the new object be delivered to it. Where the raw materials are owned by more than one person, such persons shall become the owners of the newly formed object in proportion to the value of the raw materials owned by each person. The owners of the raw materials processed not in good faith may request the person carrying out the processing to compensate for any damage.

### **Article 228. Ownership rights are established with respect to abandoned objects and objects the owner of which is not able to be identified**

1. An abandoned object is an object in respect of which the owner has renounced its ownership rights.

A person finding an abandoned object which is moveable property shall have the right to own such property, unless otherwise prescribed by law. If the found object is immoveable property, it shall belong to the State.

2. A person finding an object the owner of which is not able to be identified must inform or deliver the object to the people's committee or police station of the nearest commune in order that a public announcement may be made notifying the owner to reclaim the object.

The delivery of the object must be recorded, specifying the surnames, given names and addresses of the finder and the receiver and the condition, quantity and volume of the property delivered.

The people's committee or police station of commune which received the object must notify the finder of the results of their inquiries in order to determine the owner.

Where the object, the owner of which is not able to be identified, is moveable property, if the owner of the object is still not able to be identified after one year from the date of the public announcement, such property shall be under the ownership of the finder in accordance with law.

Where the object is immoveable property, if the owner is still not able to be identified after five years from the date of the public announcement, such property shall belong to the State. The finder shall be entitled to enjoy a monetary reward in accordance with law.

### **Article 229. Establishment of ownership rights with respect to buried or sunken objects which are found**

1. A person finding an object which is buried or sunken must notify and return to the owner; if the owner is not able to be identified, he/she must inform or deliver the object to the people's committee or police station of the nearest commune or a competent authority in accordance with regulations of law.

2. Ownership rights with respect to a buried or sunken object which is found, but which has no owner or the owner of which is not able to be identified, shall be determined, after deducting search and maintenance expenses, as follows:

a) A found object which is an historic or cultural relic shall belong to the State as prescribed in Law on cultural heritage and the finder shall be entitled to enjoy a monetary reward in accordance with law.

b) A found object which is not an historic or cultural relic as prescribed in Law on cultural heritage, and which has a value equivalent up to ten-month base salary provided for by the State, shall belong to the finder; if the value of the found object is more than the equivalent of ten-month base salary provided for by the State, the finder shall be entitled to the value of ten-month base salary plus fifty (50) per cent of the remaining value of the object in excess of the ten-month base salary provided for by the State, with the remaining value belonging to the State.

### **Article 230. Establishment of ownership rights with respect to objects which other persons have lost or mislaid**

1. A person finding an object which another person has lost or mislaid and being aware of the address of the person having lost or mislaid the object must inform or return the object to such person. If the finder is not aware of the address of the person having lost or mislaid the object, it must inform or deliver the object to the people's committee or police station of the nearest commune in order that a public announcement may be made notifying the owner to reclaim the object.

The people's committee or police station of commune which received the object must notify the finder of the results of their inquiries in order to determine the owner.

2. If, after one year from the date of the public announcement of the object having being found, the owner of the object is still not able to be identified or the owner does not claim the object, the ownership rights with respect to such property shall be determined as follows:

a) If the value of lost or mislaid object is up to ten-month base salary provided for by the State, it shall belong to the finder as prescribed in this Code and relevant laws; if the value of the found object is more than the equivalent of ten-month base salary provided for by the State, the finder shall be entitled to the value of ten-month base salary, deducted from preservation expenses, and plus fifty (50) per cent of the remaining value of the object in excess of the ten-month base salary provided for by the State, with the remaining value belonging to the State.

b) A lost or mislaid object which is an historic or cultural relic as prescribed in the Law on cultural heritage shall belong to the State. The finder shall be entitled to enjoy a monetary reward in accordance with law.

### **Article 231. Establishment of ownership rights with respect to stray domestic livestock**

1. A person capturing a stray domestic livestock must take care of it and notify the people's committee of the commune in which such person resides in order that a public announcement may be made notifying the owner to reclaim the stray domestic livestock. After 6 months or after 1 year, with regard to domestic livestock allowed to roam according to customary practice, from the date of the public announcement, the ownership rights with respect to domestic livestock and any offspring born thereof shall belong to the capturer.

2. If the owner reclaims the stray domestic livestock, he/she must pay care remuneration and other expenses for the capturer. During the period of feeding and taking care of the stray domestic livestock, the capturer shall be entitled to half of or 50% of value any offspring born. Such person must compensate for any damage if it intentionally causes the death of the stray domestic livestock.

**Article 232. Establishment of ownership rights with respect to stray domestic poultry**

1. Where the domestic poultry of a person is lost and captured by another person, the person having captured the stray domestic poultry must make a public announcement notifying the owner to reclaim such poultry. If no one reclaims the stray domestic poultry after one month from the date of the public announcement, it shall be under the ownership of the person having captured it.

2. An owner reclaiming the stray poultry must remunerate the person having captured it for feeding and taking care of the stray domestic poultry and any other expenses incurred. During the period of feeding and taking care of the stray domestic poultry, the person having captured it shall enjoy the benefits from the stray domestic poultry. Such person must compensate for any damage if it intentionally causes the death of the stray domestic poultry.

**Article 233. Establishment of ownership rights with respect to aquaculture stock**

Where the aquaculture stock of a person moves naturally into the field, pond or lake of another person, the stock shall be under the ownership of the person having such field, pond or lake. Where the aquaculture stock has special marks which make it possible to determine that it is not under the ownership of the person having such field, pond or lake, such person must make a public announcement notifying the owner to reclaim the stock. If no one reclaims the stock after one month from the date of the public announcement, it shall be under the ownership of the person having such field, pond or lake.

**Article 234. Establishment of ownership rights due to inheritance**

An heir shall have ownership rights with respect to inherited property in accordance with Part Four of this Code.

**Article 235. Establishment of ownership rights in accordance with judgment or decision of court or in accordance with decision of another competent authority**

Ownership rights may also be created on the basis of an effective judgment or decision of a court or an effective decision of another competent authority.

**Article 236. Establishment of ownership rights resulting from limitation periods with respect to possession or deriving benefits from property unlawfully**

A person unlawfully but in good faith possessing, or deriving benefits from, property continuously and in an overt manner for ten (10) years with respect to moveable property, and for thirty (30) years with respect to immovable property, shall become the owner of such property from the moment of commencement of possession, unless otherwise prescribed by this Code and relevant laws.

**Sub-section 2. TERMINATION OF OWNERSHIP RIGHTS**

**Article 237. Bases for terminating ownership rights**

Ownership rights terminate in any of the following cases:

1. The owners transfers his or her ownership rights to another person;
2. The owner renounces his or her ownership rights;
3. The property is consumed or destroyed;
4. The property is realized in order to fulfill the obligations of the owner;
5. The property is requisitioned;
6. The property is confiscated;
7. Other persons have established ownership rights with respect to property in accordance with this Code;
8. Other bases as provided by law.

#### **Article 238. Transfer of ownership rights by owner**

Where an owner transfers its ownership rights to another person through a contract for sale and purchase, by exchange, gift or loan, or through inheritance, the ownership rights of the owner with respect to the property shall terminate from the time when the ownership rights of the transferee arise.

#### **Article 239. Renunciation of ownership rights**

An owner may terminate ownership rights with respect to its property by publicly declaring, or by performing certain acts evidencing, its renunciation of the right to possess, use and dispose of such property.

With respect to property the renunciation of which may harm social order or security or cause environmental pollution, the renunciation of ownership rights must comply with the law.

#### **Article 240. Property in respect of which other persons have established ownership rights**

When a person has, in accordance with Article 228 through 233 of this Code, lawfully established ownership rights with respect to an object the owner of which is not able to be identified; a buried or sunken objects; a lost or mislaid object or stray domestic livestock, poultry or aquaculture stock, the ownership rights of the person formerly having the property shall terminate.

When the ownership rights of a possessor or a person benefiting from property have been created in accordance with Article 236 of this Code, the ownership rights of the person who formally had the property shall terminate.

#### **Article 241. Realization of property in order to fulfill obligations of owner**

1. Ownership rights with respect to property shall terminate when such property is realized in order to fulfill the obligations of the owner pursuant to a decision of a court or another competent authority, unless otherwise provided by law.
2. Property which the law provides is not able to be seized may not be realized in order to fulfill the obligations of the owner.

3. The ownership rights with respect to property realized in order to fulfill the obligations of the owner shall terminate at the time when the ownership rights of the recipient of such property arise.

4. The realization of land use rights shall be carried out in accordance with the law on land.

#### **Article 242. Destroyed property**

When property is destroyed, the ownership rights with respect to such property shall terminate.

#### **Article 243. Property which is compulsorily acquired**

Where property is compulsorily acquired as prescribed by law, the ownership rights of the owner shall terminate from the time when the decision of the competent authority becomes legally effective.

#### **Article 244. Confiscated property**

Where property of an owner is confiscated and paid into the State Budget due to the owner committing a crime or an administrative offence, the ownership rights of the owner with respect to such property shall terminate from the time when the judgment or decision of the court or the decision of the competent authority becomes legally effective.

### **Chapter XIV**

#### **OTHER PROPERTY-RELATED RIGHTS**

##### **Section 1. Right to adjoining immovable property**

##### **Article 245. Right to adjoining immovable property**

Right to adjoining immovable property means a right to be exercised on an immovable property (hereinafter referred to as obliged immovable property) to serve the exploitation of another immovable property under ownership of another person (hereinafter referred to as entitled immovable property).

##### **Article 246. Bases for establishment of right to adjoining immovable property**

The right to adjoining immovable property shall be established according to natural terrain, as prescribed by law, according to agreement or will.

##### **Article 247. Effect of right to adjoining immovable property**

The right to adjoining immovable property shall take effect to every natural and juridical person and it is transferred concurrently with the transferred immovable property, unless otherwise prescribed by law.

##### **Article 248. Rules for exercising right to adjoining immovable property**

The right to adjoining immovable property shall be exercised as agreed by the parties. If the parties fail to agree, the rules below must be followed:

1. Ensure the appropriate exploitation of the entitled immovable property in conformity with the use purposes of both entitled and obliged immovable property;
2. Do not abuse the right to the obliged immovable property;
3. Do not obstruct or hassle the exercising of right to the entitled immovable property.

#### **Article 249. Change of exercising right to adjoining immovable property**

In case the change of use or exploitation of the obliged immovable property leading the change of exercising of right to the entitled immovable property, the owner of the former immovable property must notify the owner of the latter immovable property within an appropriate period. The owner of the obliged immovable property must enable the owner of the entitled immovable property to adapt to such change.

#### **Article 250. Obligation of owners relating to draining of rainwater**

An owner of house or construction works must install water drain pipes in order that the rainwater from its roof does not run onto any adjoining immovable properties.

#### **Article 251. Obligation of owners relating to draining of waste water**

An owner of house or construction work must install underground drains or water drainage channels to discharge waste water to the prescribed location in order that the waste water does not run and spill onto any adjoining immovable properties or onto public streets or public places.

#### **Article 252. Rights relating to supply and drainage of water through adjoining immovable property**

Where, due to the natural location of immovable property, the supply and drainage of water must pass through another immovable property, the owner of the immovable property through which the water flows must provide an appropriate channel for the supply and drainage of water and may not hinder or prevent the flow of water.

The person using the water supply and drainage channel must minimize to the lowest possible extent any damage to the owner of the immovable property through which the water flows when installing the water channel. If damage is caused, compensation must be made. Where water flows naturally from a higher position to a lower position and causes damage to the owner of the property through which the water flows, the person using the water supply and drainage channel shall not be liable to compensate for any damage.

#### **Article 253. Rights relating to irrigation and water drainage in cultivation**

A person having the right to use land for cultivation has the right to request neighboring land users to provide a reasonable and convenient water channel for irrigation and drainage. A person having been so requested has the obligation to grant such request. If the person using such water channel causes damage to neighboring land users, compensation must be made.

#### **Article 254. Right of passage**

1. An owner of immovable property which is surrounded by immovable properties of other owners such that there is no exit has the right to request one of the owners of adjoining immovable properties to provide it with a passage to a public road on their land.

The passage shall be opened in the adjoining immovable property which is deemed to be the most convenient and reasonable, taking into consideration the special characteristics of the location, the interests of the immovable property which does not have an exit, and what will cause the least damage to the immovable property through which the passage is created.

The owner of the immovable property eligible for the passage must compensate for the obliged immovable property, unless otherwise agreed.

2. The location and the length, width and height of the passage shall be agreed by the owners in order to ensure convenient passage and minimize inconvenience to the parties. If there are any disputes regarding the passage, the parties may request the authorized State body to resolve.

3. Where immovable property is divided into more than one portion for different owners or users, upon division, necessary passages must be provided, without compensation, to persons in the interior as provided in Clause 2 of this Article.

#### **Article 255. Right to install electricity transmission cables and communication cables through other immovable properties**

An owner of immovable property has the right to install electricity transmission cables and communication cables in a reasonable manner through the immovable property of other owners, but must ensure the safety and convenience of such owners. If damage is caused, compensation must be made.

#### **Article 256. Termination of easements over adjoining immovable property**

An easement over adjoining immovable property shall terminate in the following circumstances:

1. The entitled immovable property and the obliged immovable property belong to ownership rights of a person;
2. The use and exploitation of the immovable property do not arise the needs of enjoying rights;
3. Upon agreement of contracting parties;
4. Other bases as provided by law.

### **Section 2. USUFRUCT RIGHT**

#### **Article 257. Usufruct right**

Usufruct right means the right to use a property, under ownership of another entity, and enjoy its yield or income in a specific period of time.

#### **Article 258. Bases for establishment of usufruct right**

The usufruct right shall be established as prescribed by law, according to agreement or will.

#### **Article 259. Effect of usufruct right**

The usufruct right shall be established from the time of transfer of the property, unless otherwise agreed or otherwise prescribed by law.

The established usufruct right shall take effect to every natural and juridical person, unless otherwise prescribed by law.

#### **Article 260. Time limit of usufruct right**

1. The time limit of usufruct right shall be agreed by the parties or prescribed by law provided that its maximum length is the full life of the first usufructary being natural person or the period of time for which the first usufructary being juridical person exists as long as it does not exceed 30 years.

2. The usufructuary has the right to lease the usufruct right within a specific period of time prescribed in Clause 1 of this Article.

#### **Article 261. Rights of usufructary**

1. On his/her own or permit another person exploit, use and enjoy yield and/or income from the object of the usufruct right.

2. Request the owner of the property perform obligation to repair the property as prescribed in Clause 4 Article 263 of this Code; if the usufructary performs the obligation on behalf of the owner of property is entitled to request the owner to refund the expenses.

3. Lease the usufruct right to the property.

#### **Article 262. Obligations of usufructary**

1. Receive property under current conditions and register it if required by law.

2. Exploit the property for appropriate purposes.

3. Preserve property as if it is his/her own property.

4. Maintain and repair property periodically to ensure the normal use; restore the status of the property and remedy the bad consequences of property due to his/her poor performance of obligations in line with technical requirements or by custom of property preservation.

5. Return the property to the owner of the expiration of usufruct time limit.

#### **Article 263. Rights and obligations of property owner**

1. Dispose property without any change of the usufruct right which has been established.

2. Request a court to deprive usufruct right from a usufructary who seriously breaches his/her obligations.

3. Do not obstruct or hassle or otherwise violate the legitimate rights and interests of the usufructary.

4. Perform obligation to repair property to ensure that there is no significant decline leading the property cannot be used or lost all its utility and value.

#### **Article 264. Right to enjoy yield and income**

1. Each usufructary has ownership right to the yield and income derived from the property being the object of the usufruct right during its effective period of time.

2. If the usufruct right cease to exist before the harvest time of yields and income, the usufructary shall, upon the harvest time, be entitled to enjoy the value of yield and income received corresponding the time that person is entitled to such usufruct right.

#### **Article 265. Termination of usufruct right**

The usufruct right shall terminate in any of the following cases:

1. The time limit of usufruct right has expired;

2. As agreed by the parties;

3. The usufructary becomes the owner of the property being the subject of the usufruct right;

4. The usufructuary waives or fails to exercise the usufruct right during a time limit prescribed by law;
5. The property being subject of the usufruct right no longer exists;
6. Pursuant to a decision of a court;
7. Pursuant to other provisions of law.

#### **Article 266. Returning property upon termination of usufruct right**

The property being subject of usufruct right must be returned to the owner upon the termination of usufruct right, unless otherwise agreed or otherwise prescribed by law.

### **Section 3. SURFACE RIGHTS**

#### **Article 267. Surface rights**

Surface rights mean an entity's rights to the ground, water surface, space thereon and earth bowel of the land whose land use rights belong to another entity.

#### **Article 268. Bases for establishment of surface rights**

Surface rights shall be established by law, according to agreement or will.

#### **Article 269. Effect of surface rights**

Surface rights shall take effect from the point of time when the holder of land use rights transfer ground, water surface, space thereon and earth bowel of the land to the holder of surface rights, unless otherwise agreed or otherwise prescribed by law.

Surface rights shall take effect to every natural and juridical person, unless otherwise prescribed by relevant laws.

#### **Article 270. Time limit of surface rights**

1. The time limit of surface rights shall be established by law, according to agreement or will provided that it does not exceed the time limit of land use rights.
2. If the agreement or will does not mention the time limit of surface rights, each party is entitled to terminate any time provided that it provides a written notification to the other party within 6 months.

#### **Article 271. Contents of surface rights**

1. Each holder of surface rights has the right to exploit and use ground, water surface, space thereon, the water and the earth bowel of the land whose land use rights belong to another entity for construction, planting or cultivation provided that it is not contrary to the provisions of this Code, the law on land, construction, planning, resources, minerals and other provisions of relevant laws.
2. The holder of surface rights has the ownership rights to every property derived as prescribed in Clause 1 of this Article.
3. If part of the whole of surface rights is transferred, the transferee shall inherit the surface rights according to conditions and within the scope in proportion to the part or the whole transferred surface rights.

### **Article 272. Termination of surface rights**

The surface rights shall terminate in any of the following cases:

1. The time limit of surface rights has expired;
2. The holder of surface rights and the holder of land use rights shall be the same;
3. The holder of surface rights waives his/her rights;
4. Surface rights of land use rights are appropriated as prescribed in law on land;
5. As agreed by the parties or as prescribed by law.

### **Article 273. Realization of property upon termination of surface rights**

1. Upon the termination of surface rights, its holder must return ground, water surface, space thereon and earth bowel of the land to the holder of land use rights, unless otherwise agreed or otherwise prescribed by law.
2. The holder of surface rights must realize the property under ownership upon its termination, unless otherwise agreed.

If the holder of surface rights must realize the property under ownership upon its termination, the ownership of such property shall be transferred to the holder of land use rights from the termination time, unless the latter holder refuse such property.

If the holder of land use rights refuses the property while the property is required to be realized, the holder of surface rights must pay the property realization expenses.

## **PART THREE**

### **OBLIGATIONS AND CONTRACTS**

#### **Chapter XV.**

### **GENERAL PROVISIONS**

#### **Section 1. Bases for giving rise to and subject matter of obligations**

##### **Article 274. Obligations**

Obligations means acts whereby one or more entities (hereinafter referred to as obligors) must transfer objects, transfer rights, pay money or provide valuable papers, perform other acts or refrain from performing certain acts in the interests of one or more other subjects (hereinafter referred to as obligees).

##### **Article 275. Bases for giving rise to obligations**

Obligations arise from the following bases:

1. Contracts;
2. Unilateral legal acts;
3. Unauthorized performance of acts;
4. Unlawful possession or use of or receipt of benefits from property;
5. Causing damage through unlawful acts;

6. Other bases as provided by law.

### **Article 276. Subject matter of obligations**

1. The subject matter of an obligation may be property or acts which must be performed or acts which must not be performed.
2. The subject matter of an obligation must be defined precisely.

### **Section 2. Performance of obligations**

#### **Article 277. Places for performing obligations**

1. The place for performing an obligation shall be agreed by the parties.
2. Where the parties do not have an agreement, the place for performance of the obligation shall be:
  - a) The location of the immovable property, if the subject matter of the obligation is immovable property;
  - b) The place of residence or head office of the obligee, if the subject matter of the obligation is not immovable property.

Where the obligee changes its place of residence or head office, it must notify the obligor of the change and must bear any increase in expenses resulting from the change in residence or head office, unless otherwise agreed.

#### **Article 278. Time-limits for performing obligations**

1. The time-limit for performing an obligation shall be as agreed by the parties or as provided by law.
2. The obligor must perform the obligation strictly in accordance with the relevant time-limit, unless otherwise prescribed by this Code or relevant laws.

If the obligor performs the obligation prior to the time-limit and the obligee accepts such performance, the obligation shall be deemed to have been fulfilled on time.

3. Where the parties do not have an agreement and the time-limit for the performance of a civil obligation is not identifiable prescribed in Clause 1 of this Article, a party may fulfill the obligation or demand the fulfillment of the obligation as the case may be at any time, but must give reasonable prior notice to the other party.

#### **Article 279. Performance of obligations to deliver objects**

1. A person having the obligation to deliver an object must take care of and preserve the object until the time of delivery.
2. Where an object to be delivered is a distinctive object, the obligor must deliver that particular object in the same condition as agreed. If the object is a fungible object, it must be delivered in accordance with the quality and quantity agreed. If there is no agreement as to the quality, the object delivered must be of average quality. If the object is an integrated object, the whole integrated object must be delivered.
3. An obligor must bear all expenses related to the delivery of an object, unless otherwise agreed.

#### **Article 280. Performance of obligations to pay money**

1. An obligation to pay money shall be performed in full, strictly on time, at the place and by the method as agreed.
2. The obligation to pay money shall include the payment of interest on principal, unless otherwise agreed.

**Article 281. Performance of obligations to perform acts or not to perform acts**

1. Obligation to perform an act means an obligation whereby the obligor must perform that particular act.
2. Obligation not to perform an act means an obligation whereby the obligor must not perform that particular act.

**Article 282. Performance of obligations in stages**

An obligation may be performed in stages if so agreed or so provided by law or pursuant to a decision of a competent authority.

The late performance of one stage of an obligation shall be deemed to be late performance of the obligation.

**Article 283. Performance of obligations through third parties**

With the consent of the obligee, an obligor may authorize a third person to perform an obligation on behalf of the obligor provided that the obligor shall be liable to the obligee if the third person fails to perform or performs incorrectly the obligation.

**Article 284. Conditional performance of obligations**

1. Where the parties have agreed on conditions for the performance of a civil obligation or where the law provides certain conditions for the performance of an obligation, the obligor must perform the obligation when such conditions are satisfied.
2. If the conditions do not occur or occur resulting from the influence of a party, Clause 2 Article 120 of this Code shall apply.

**Article 285. Performance of obligations having optional subject matters**

1. Obligation having an optional subject matter means an obligation the subject matter of which is one of several different items of property or acts from which the obligor may select at its discretion, except where it is agreed or provided by law that the right to select is reserved to the obligee.
2. The obligor must notify the obligee of the property or act selected in order to perform the obligation. In the case where the obligee has fixed a time-limit for performance of the obligation with a selected subject matter, the obligor must fulfill the obligation on time.
3. Where there remains only one property or one act to select, the obligor must deliver that particular property or perform that particular act.

**Article 286. Performance of substitutable civil obligations**

Substitutable obligation means an obligation whereby if the obligor fails to perform the original obligation, it may perform a different obligation as agreed by the obligee as a substitute for the original obligation.

**Article 287. Performance of severable obligations**

Where more than one person jointly performs an obligation and each person has a clearly defined share of the obligation which is severable from that of the other person, each person must perform only its own share of the obligation.

**Article 288. Performance of joint obligations**

1. Joint obligation means an obligation which must be performed by more than one person and which the obligee may request any one of the obligors to perform in its entirety.
2. When one person has performed an obligation in its entirety, such person may require the other joint obligors to make payment for their respective shares of the joint obligation to such person.

3. Where an obligee designates one person from amongst the joint obligors to perform an entire obligation and later releases that person, the other obligors shall also be released from performing the obligation.

4. Where an obligee releases one of the joint obligors from its share of the joint obligation, the other obligors must, nevertheless, perform jointly their respective shares of the obligation.

#### **Article 289. Performance of obligations for joint obligees**

1. Civil obligation for joint obligees means an obligation whereby each joint obligee may require the obligor to perform the obligation in its entirety.

2. An obligor may perform its obligation with respect to any one of the joint obligees.

3. Where one of the joint obligees releases the obligor from performing the share of the obligation owed to such joint obligee, the obligor must, nevertheless, perform the remaining shares of the obligation owed to the other joint obligees.

#### **Article 290. Performance of divisible obligations**

1. Divisible obligation means an obligation the subject matter of which is a divisible object or an act which is able to be divided into portions for the purpose of performance.

2. An obligor may perform the obligation in stages, unless otherwise agreed.

#### **Article 291. Performance of indivisible obligations**

1. Indivisible obligation means an obligation the subject matter of which is an indivisible object or an act which must be performed in its entirety at the one time.

2. Where several persons must perform an indivisible obligation, they must perform the obligation in its entirety at the same time.

### **Section 3. SECURITY FOR PERFORMANCE OF OBLIGATIONS**

#### **Sub-section 1. GENERAL PROVISIONS**

#### **Article 292. Types of security for performance of obligations**

Types of security for the performance of obligations comprise the following:

1. Pledge of property;
2. Mortgage of property;
3. Deposit;
4. Security collateral;
5. Escrow deposit;
6. Title retention;
7. Guarantee;
8. Fidelity guarantees;
9. Lien on property.

#### **Article 293. Scope of security for performance of obligations**

1. An obligation may be fully or partly secured, as agreed or as provided by law. If there is no agreement on or if the law does not provide, the scope of the security, the obligation, including the obligation to pay interest and to compensate for any damage, shall be deemed to be fully secured.

2. Secured obligations may comprise current obligations, future obligations and conditional obligations.

3. With respect to a future obligation which is going to arise within a guaranteed time limit, it shall be the secured obligation, unless otherwise agreed.

**Article 294. Security for performance of future obligations**

1. With respect to a future obligation, the parties may agree on the scope of the secured obligation and the deadline by which the secured obligation must be performed, unless otherwise prescribed by law.
2. When the future obligation arises, the parties are not required to re-establish the security for such obligation.

**Article 295. Collateral**

1. Collateral must be under the ownership rights of the securing party, except for the cases of lien on property or title retention.
2. Collateral may be described generally but must be identified.
3. Collateral may be existing property or off-plan property.
4. The value of collateral may be greater, equal or smaller than the value of the secured obligation.

**Article 296. Single item of property used as security for performance of several obligations**

1. A single item of property may be used as security for performance of several obligations if, at the time of establishment of the security transaction, the value of such property is greater than the total aggregate value of the secured obligations, unless otherwise agreed or otherwise provided by law.
2. Where a single item of property is used as security for performance of several obligations, the securing party must notify the later secured party that the security property is being used as security for performance of other obligations. The provision of security on each occasion must be made in writing.
3. Where the security property must be realized in order to satisfy one obligation which has fallen due, the other obligations which have not yet fallen due shall also be deemed due and all secured parties shall be entitled to take part in the realization. The secured party which provided notice of realization of the property shall be responsible for realizing the property, unless otherwise agreed by the secured parties.

If the parties wish to continue to fulfill the obligations which have not yet fallen due, they may agree that the securing party will use other property as security for performance of the obligation which has fallen due.

**Article 297. Effectiveness against third parties**

1. Security shall take effect against a third party from the time of registration of such security or the secured party keeps or possess the collateral.
2. When the security takes effect against a third party, the secured party is entitled to reclaim the collateral and the payment prescribed in Article 308 of this Code and relevant laws.

**Article 298. Registration of security**

1. Security shall be registered as agreed by the parties or provided by law.

The registration shall be the condition for a secured transaction become valid only the case as prescribed by law.

2. A registered security shall take effect against third party from the time of registration.
3. The registration of security shall comply within regulations of law on registration of security.

**Article 299. Cases of realization of collateral**

1. An obligator fails to perform or perform not as agreed an obligation when it falls due.
2. An obligator must perform the secured obligation before time limit due to his/her violation against the obligation as agreed or prescribed by law.
3. Other cases as agreed by the parties or prescribed by law.

**Article 300. Notification of realization of collateral**

1. Before a collateral is realized, a secured party must notify the securing party and other secured parties of the realization of the collateral within a reasonable time limit.

If the collateral at risk of being damaged resulting in diminished value or lose the entire value, a secured party may realize it immediately and notify the securing party and other secured parties of the realization of such asset.

2. If the secured party does not notify the realization of collateral as prescribed in Clause 1 of this Article that cause damage to the securing party and/or other secured parties, compensation must be made.

#### **Article 301. Giving collateral for realization**

The holder of collateral is obliged to give it to the secured party for realization in any of the cases prescribed in Article 299 of this Code.

If the holder of collateral fails to give the asset, the secured party is entitled to request a court for settlement, unless otherwise prescribed by relevant laws.

#### **Article 302. Right to reclaim collateral**

The securing party may reclaim the collateral if, before the realization of the collateral, it completely performs its obligations and pay all expenses incurred for the late performance of obligations, unless otherwise prescribed by law.

#### **Article 303. Methods of realizing collateral**

1. The securing party and the secured party may agree any of the following methods of realizing collateral:

- a) Put collateral up for an auction;
- b) The secured party sells collateral itself;
- c) The secured party accepts the collateral as substitutions for the performance of obligations of the securing party;
- d) Other methods.

2. If there is no agreement on methods of realizing collateral as prescribed in Clause 1 of this Article, the collateral shall be put up for auction, unless otherwise prescribed by law.

#### **Article 304. Selling collateral**

1. The collateral shall be put up for auction as prescribed by law on property auction.

2. The collateral sold by the secured party must comply with the regulations on property sale in this Code and the regulations below:

- a) The payment amount derived from the realization of collateral shall comply with Article 307 of this Code;
- b) The owner of collateral and the person competent to realize the collateral, upon the completion of the sale, shall comply with procedures for transfer of ownership rights to the buyer.

#### **Article 305. Acceptance of the collateral as substitution for the performance of obligations of the securing party**

1. The secured party may accept the collateral as substitution for the performance of obligations of the securing party if agreed by the parties.

2. If there is no agreement prescribed in Clause 1 of this Article, the secured party may only accept the collateral as substitution for the performance of obligations of the securing party with the written consent of the securing party.

3. Where the value of the collateral is greater than the value of the secured obligation, the secured party must pay the difference amount to the securing party; where the value of the collateral is less than the value of the secured obligations then the unpaid obligations become unsecured obligations.

4. The securing party is obliged to follow the procedures for transfer of ownership rights to the secured party as prescribed by law.

#### **Article 306. Valuation of collateral**

1. The securing party and the secured party may agree on collateral prices or have the collateral valued by an asset valuation organization upon the realization of the collateral.

If there is no agreement mentioned above, the collateral shall be valued by an asset valuation organization.

2. The valuation of the collateral must be objective and in conformity with market price.

3. The asset valuation organization must compensate for any damage to the securing party and/or the secured party during the process of valuation due to its legal violations.

#### **Article 307. Payment of the sum of money obtained from the realization of collateral**

1. The sum of money obtained from the realization of the collateral after deducting from the cost of preservation, capture and realization of the collateral shall be paid in order of priority specified in Article 308 of this Code.

2. Where the sum of money obtained from the realization of the collateral, after deducting from the cost of preservation, seizure and realization of the collateral is greater than the value of secured obligations, the difference amount must be paid to the securing party.

3. Where the sum of money obtained from the realization of the collateral, after deducting from the cost of preservation, seizure and realization of the collateral is less than the value of secured obligations, part of the unpaid obligations are defined as unsecured obligations, unless the parties otherwise agree additional collateral. The secured party may request the obligor to perform the unpaid secured obligations.

#### **Article 308. Order of priority for payment between joint secured parties**

1. When an asset is used to secure the performance of many obligations, payment priority order between the joint secured parties shall be determined as follows:

a) If all types of security take effect against a third party, the order of priority for payment shall be determined according to the order of effect against the third party;

b) If there are some types of security take effect against a third party while some types of security do not take effect against the third party, the payment of obligations with security taking effect against the third party shall be given priority;

c) If all types of security do not take effect against a third party, the order of priority for payment shall be determined according to the order of establishment of types of security.

2. The order of priority for payment prescribed in Clause 1 of this Article may be changed as agreed by the parties. The subrogating party of the right to priority of payment shall only be given priority within the secured extent of the subrogated party.

#### **Sub-section 2. PLEDGE OF PROPERTY**

##### **Article 309. Pledge of property**

Pledge of property means the delivery by one party (hereinafter referred to as the pledgor) of property under its ownership to another party (hereinafter referred to as the pledgee) as security for the performance of an obligation.

##### **Article 310. Effectiveness of pledge of property**

1. Agreement on pledge of property shall take effect from the time of concluding, unless otherwise agreed or prescribed by law.

2. Pledge of property shall take effect against third party from the time at which the pledgee keeps the pledged property.

*If an immovable property is the subject of pledge as prescribed in law, the pledge on immovable property shall take effect against third party from the time of registration.*

**Article 311. Obligations of pledgors**

- 1. Deliver the pledged property to the pledgee as agreed.*
- 2. Notify the pledgee of any third person rights with respect to the pledged property. In the case of failure to provide such notice, the obligee shall have the right to cancel the contract of pledge of property and demand compensation for damage or the right to maintain the contract and agree on the rights of the third person with respect to the pledged property.*
- 3. Pay the pledgee reasonable expenses for taking care of and preserving the pledged property, unless otherwise agreed.*

**Article 312. Rights of pledgors**

- 1. Require the pledgee to suspend use of the pledged property in cases provided in Clause 3 of Article 314 of this Code if the pledged property is in danger of losing its value or depreciating in value as a result of such use.*
- 2. Require the pledgee to hold the pledged property to return the pledged property and related documents after the obligation secured by the pledge has been fulfilled.*
- 3. Require the pledgee to compensate for any damage caused to the pledged property.*
- 4. Sell, substitute, exchange, or give the pledged property to other property if so agreed by the pledgee or prescribed by law.*

**Article 313. Obligations of pledgees**

- 1. Take care of and preserve the pledged property; if the pledgee loses or damages the pledged property, the pledgee must compensate the pledgor for the damage.*
- 2. Do not sell, exchange, give or use the pledged property as security for the performance of another obligation.*
- 3. Do not lease, lend, exploit the yield or income derived from, the pledged property, unless otherwise agreed.*
- 4. Return the pledged property and related documents upon fulfillment of the secured obligation or where the pledge is substituted with another security.*

**Article 314. Rights of pledgees**

- 1. Require a person unlawfully possessing or using the pledged property to return the property.*
- 2. Demand the realization of the pledged property in accordance with the methods as agreed or as provided by law.*
- 3. Lease, lend, exploit, and to enjoy the yield and income derived from, the pledged property if so agreed.*
- 4. Receive reimbursement of reasonable expenses incurred in taking care of the pledged property upon returning the pledged property to the pledgor.*

**Article 315. Termination of pledges on property**

*A pledge of property shall terminate in any of the following cases:*

- 1. The obligation secured by the pledge has terminated;*
- 2. The pledge has been cancelled or substituted with another security;*
- 3. The pledged property has been realized;*
- 4. As agreed by the parties.*

**Article 316. Return of pledged property**

*Where a pledge of property is terminated in accordance with Clause 1 or Clause 2 of Article 315 of this Code or as agreed by parties, the pledged property and documents evidencing the ownership rights with respect to the property shall be returned to the pledgor. Any yield and income derived from the pledged property shall also be returned to the pledgor, unless otherwise agreed.*

### **Sub-section 3. MORTGAGES ON PROPERTY**

#### **Article 317. Mortgage of property**

- 1. Mortgage of property means the use by one party (hereinafter referred to as the mortgagor) of property under the ownership of the obligor as security for the performance of an obligation to the other party (hereinafter referred to as the mortgagee) without transferring such property to the mortgagee.*
- 2. The mortgaged property shall be held by the mortgagor. The parties may agree to deliver the mortgaged property to a third person to hold.*

#### **Article 318. Mortgaged property**

- 1. Where entire immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed.*
- 2. Where a portion of immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed by the parties.*
- 3. With respect to mortgage on land use rights that property on land is owned by the mortgagor, such property shall also part of the mortgaged property, unless otherwise agreed.*
- 4. Where mortgaged property is insured, the mortgagee must notify the insurer that the insured property is being mortgaged. The insurer shall pay the insured sum directly to the mortgagee upon occurrence of an insured event.*

*If the mortgagee failed to notify the insurer that the insured property was mortgaged, the insurer shall pay the insured sum in accordance with the insurance contract and the mortgagor shall be obliged to make payment to the mortgagee.*

#### **Article 319. Effectiveness of mortgage of property**

- 1. Agreement on mortgage of property shall take effect from the time of concluding, unless otherwise agreed or prescribed by law.*
- 2. The mortgage of property shall take effect against third party from the time of registration.*

#### **Article 320. Obligations of mortgagor**

- 1. Transfer documents related to the mortgaged property, unless otherwise agreed or prescribed by law.*
- 2. Take care of and preserve the mortgaged property.*
- 3. If the mortgaged property is in danger of losing its value or depreciating in value due to its exploitation, to take necessary remedial measures, including ceasing the exploitation of the mortgaged property.*
- 4. When the mortgaged property is damaged, the mortgagor is obligated to, within a reasonable period, repair or substitute another property with equivalent value, unless otherwise agreed.*
- 5. Provide information about the actual condition of the mortgaged property to for the mortgagee.*
- 6. Deliver the mortgaged property to the mortgagee for realization in one of the cases prescribed in Article 299 of this Code.*
- 7. Notify the mortgagee of any third person rights with respect to the mortgaged property (if any). In the case of failure to provide such notice, the mortgagee shall have the right to cancel the contract of mortgage of property and demand compensation for damage or the right to maintain the contract and agree on the rights of the third person with respect to the mortgaged property.*

8. Do not sell, exchange or give the mortgaged property, except in the cases provided in Clauses 4 and 5 of Article 321 of this Code.

### **Article 321. Rights of mortgagor**

1. Exploit, and to enjoy the yield and income derived from, the property, except where the yield and income also form part of the mortgaged property as agreed.
2. Invest in order to increase the value of the mortgaged property.
3. Recover the mortgaged property and related documents held by a third person when the obligation secured by the mortgage is terminated or is substituted by other security.
4. Sell or replace mortgaged property being goods rotating during the production and business process. In the case of a sale of mortgaged property being goods rotating during the production and business process, the right to require the purchaser to pay money, the proceeds received or the assets formed from the proceeds received shall form the mortgaged property in substitution for the property which was sold.

When a warehouse is mortgaged, the mortgagor may substitute goods in the warehouse but must ensure the value of the goods in the warehouse remains the value agreed.

5. Sell, exchange or give mortgaged property not being goods rotating during the production and business process with the consent of the mortgagee or as prescribed by law.
6. Lease or lend the mortgaged property provided that notice must be provided to the lessee and the borrower that the property is being mortgaged and that the mortgagee must also be notified that such notice has been provided.

### **Article 322. Obligations of mortgagees**

1. Where the parties agree that the mortgagee will hold the documents relating to the mortgaged property, to return to the mortgagor such documents upon termination of the mortgage.
2. Follow procedures for realization of mortgaged property in accordance with regulations of law.

### **Article 323. Rights of mortgagees**

1. Examine and inspect directly the mortgaged property provided that such examination and inspection does not hinder or cause difficulty to the use and exploitation of the mortgaged property.
2. Require the mortgagor to provide information on the current status of the mortgaged property.
3. Require the mortgagor to apply necessary measures to preserve the property and the value of the property if there is a danger that use and exploitation of the mortgaged property will cause loss of value or depreciation in value of the property.
4. Conduct the registration of mortgage as prescribed by law.
5. Require the mortgagor or a third person holding the mortgaged property to deliver it to the mortgagee for realization if, upon expiry of the term for fulfillment of the obligation, the obligor has failed to perform or performed incorrectly the obligation.
6. Hold documents related to mortgaged property as agreed by parties, unless otherwise prescribed by law
7. Follow procedures for realization of mortgaged property as prescribed in Article 299 of this Code.

### **Article 324. Rights and obligations of third parties holding mortgaged property**

1. A third person holding mortgaged property has the following rights:
  - a) Exploit the property if so agreed;
  - b) Receive remuneration and be reimbursed for expenses incurred in taking care of and preserving the mortgaged property, unless otherwise agreed.

2. A third person holding mortgaged property has the following obligations:

- a) Take care of and preserve the mortgaged property, and to compensate for any damage if the third person loses the mortgaged property or causes the mortgaged property to lose its value or depreciate in value;
- b) Cease the exploitation of the property if it is in danger of losing its value or depreciating in value;
- c) Return the mortgaged property to the mortgagee or mortgagor as agreed or prescribed by law.

**Article 325. Mortgage on land use rights without mortgage of property on land**

1. With respect to mortgage on land use rights without mortgage property on that land but the land user is also the owner of the property on land; such property shall also part of the realized property, unless otherwise agreed.

2. With respect to mortgage on land use rights that the land user is not also the owner of the property on land, such owner may keep using such land within his/her rights and obligations during the realization of the land use rights. The rights and obligations of the mortgagor in relation with the owner of the property on land shall be transferred to the transferee of the land use rights, unless otherwise agreed.

**Article 326. Mortgage of property on land without mortgage on land use rights**

1. With respect to mortgage of property on land without mortgage on land use rights but the owner of the property on land is also the land user, such land use rights shall also part of the realized property, unless otherwise agreed.

2. With respect to mortgage of property on land without mortgage on land use rights that the owner of the property on land is not also the land user, the transferee of property on land may keep using such property within the transferred rights and obligations from the owner of the property on land during the realization of the land use rights, unless otherwise agreed.

**Article 327. Termination of property mortgages**

A mortgage of property shall terminate in any of the following cases:

1. The obligation which is secured by the mortgage has terminated;
2. The mortgage of the property has been cancelled or substituted with another security;
3. The mortgaged property has been realized;
4. As agreed by the parties.

**Sub-section 4. DEPOSIT, SECURITY COLLATERAL, ESCROW DEPOSIT**

**Article 328. Deposit**

1. Deposit is an act whereby one party (hereinafter referred to as the depositor) transfers to another party (hereinafter referred to as the depositary) a sum of money or precious metals, gemstones or other valuable things (hereinafter referred to as the deposited property) for a period of time as security for the entering into or performance of a contract.

2. Upon a contract being entered into or performed, any deposited property shall be returned to the depositor, or deducted from the amount of an obligation to pay money. If the depositor refuses to enter into or perform the contract, the deposited property shall belong to the depositary. If the depositary refuses to enter into or perform the contract, it must return the deposited property and pay an amount equivalent to the value of the deposited property to the depositor, unless otherwise agreed.

**Article 329. Security collateral**

1. Security collateral is an act whereby a lessee of a movable property transfers a sum of money or precious metals, gems or other valuable things (hereinafter referred to as security collateral property) to the lessor for a specified time limit to secure the return of the leased property.

2. In cases where the leased property is returned, the lessee shall be entitled to reclaim the security collateral property after pay the rental; if the lessee does not return the leased property, the lessor shall be entitled to reclaim the leased property; if the leased property is no longer available for the return, the security collateral property shall belong to the lessor.

#### **Article 330. Escrow deposit**

1. Escrow deposit is an act whereby an obligor deposits a sum of money, precious metals, gems or valuable papers into an escrow account at a credit institution to secure the performance of an obligation.

2. In cases where the obligor has failed to perform or has improperly performed an obligation, the obligee shall be entitled to receive payment and compensation for damage caused by the obligor from the bank where the escrow deposit is affected, after deducting the bank service charges.

3. The procedures for making deposits and making payments shall be as provided by the law.

#### **Sub-section 5. TITLE RETENTION**

##### **Article 331. Title retention**

1. In a sale contract, the ownership of property of the seller may remain until the buyer pays the purchase price in full.

2. Title retention must be made in a separate document or included in the sale contract.

3. The title retention shall take effect against third party from the time of registration.

##### **Article 332. Right to reclaim property**

If the buyer fails to fulfill the payment obligation for the seller as agreed, the seller is entitled to reclaim the property. The seller shall refund the paid amount by the buyer deducted from the depreciated value due to use. Where the buyer lost or damaged property, the seller has the right to claim damages.

##### **Article 333. Rights and obligations of the buyer**

1. Using the property and enjoying the yield and income derived therefrom within the effective term of title retention.

2. Facing the risks of the property within the effective term of the title retention, unless otherwise agreed.

##### **Article 334. Termination of title retention**

The title retention shall terminate in any of the following cases:

1. Payment obligation fulfilled completely by the buyer;

2. The seller receives the property under title retention back;

3. As agreed by the parties.

## **Sub-section 6. GUARANTEES**

### **Article 335. Guarantees**

1. Guarantee means an undertaking made by a third person (hereinafter referred to as the guarantor) to an obligee (hereinafter referred to as the creditor) to perform an obligation on behalf of an obligor (hereinafter referred to as the principal debtor) if the obligation falls due and the principal fails to perform or performs incorrectly the obligation.
2. The parties may agree that the guarantor shall only be obliged to perform the obligation if the principal debtor is incapable of performing it.

### **Article 336. Scope of guarantees**

1. A guarantor may guarantee an obligation in whole or in part on behalf of a principal debtor.
2. A guaranteed obligation includes interest on the principal, penalties and compensation for any damage and interest on late payment, unless otherwise agreed.
3. The parties may agree on using security as property to secure the performance of guaranteed obligation.
4. If the obligation to guarantee is an obligation arising in the future, the scope of guarantee is exclusive of any obligations arising after the guarantor being natural person dies or the guarantor being juridical person ceases to exist.

### **Article 337. Remuneration**

The guarantor shall be entitled to receive remuneration if so agreed by the guarantor with the principal debtor.

### **Article 338. Joint guarantors**

When more than one person guarantee an obligation, those persons must perform jointly the guarantee, except where it is agreed or provided by law that the guarantee comprises separate portions. The obligee may require any of the joint guarantors to perform the obligation in its entirety.

Where one of the joint guarantors has performed the entire obligation on behalf of the principal debtor, the guarantor may require the other guarantors to perform their respective portions of the obligation with respect to that guarantor.

### **Article 339. Relationship between guarantors and creditors**

1. If the principal fails to perform or performs incorrectly the obligation, the creditor is entitled to request the guarantor to fulfill the guaranteed obligation, unless contracting parties has agreed that the guarantor only be required to perform the obligation on behalf of the principal debtor in case of the failure to perform obligation by the principal debtor.
2. A creditor may not require a guarantor to perform an obligation on behalf of the principal debtor until the obligation falls due.
3. Where a guarantor is able to offset an obligation with a principal debtor, a guarantor does not have to perform the guaranteed obligation.

### **Article 340. Rights to require of guarantors**

Each guarantor may require the principal debtor to indemnify the guarantor to the extent of the guarantee, unless otherwise agreed.

#### **Article 341. Discharge from guaranteed obligations**

1. Where the guarantor must perform the guaranteed obligation but the creditor discharges the guarantor from an obligation, the principal debtor is discharged from performance of the obligation with respect to the creditor, except where it is agreed or provided by law.
2. Where one person from amongst the joint guarantors is discharged from the performance of its portion of the guaranteed obligation, the other joint guarantors must, nevertheless, perform their portion of the guaranteed obligation.
3. Where one person from amongst the joint creditors discharge the guarantor from the performance of its portion of the guaranteed obligation, the guarantor must, nevertheless, perform their portion of the guaranteed obligation with respect to remaining joint creditors.

#### **Article 342. Civil liability of guarantor**

1. If the principal debtor fails to perform or perform incorrectly the obligation, the guarantor is obligated to perform such obligation.
2. If the guarantor performs incorrectly the guaranteed obligation, the creditor is entitled to request the guarantor to pay the value of the breached obligation and compensate for any damage.

#### **Article 343. Termination of guarantees**

A guarantee shall terminate in any of the following cases:

1. The obligation secured by the guarantee terminates;
2. The guarantee is cancelled or is substituted by another security;
3. The guarantor has satisfied the guaranteed obligation;
4. As agreed by the parties.

### **Sub-section 7. FIDELITY GUARANTEES**

#### **Article 344. Fidelity guarantees provided by socio-political organizations**

A socio-political organization at the grassroots level may provide a fidelity guarantee in order that poor individuals and households are able to borrow sums from banks or other credit institutions for purposes of production, business or provision of services in accordance with the regulations of law.

#### **Article 345. Formalities and contents of fidelity guarantees**

A loan guaranteed by a fidelity guarantee must be made in writing with certification of a socio-political organization in terms of conditions and circumstances of the borrower.

The agreement on fidelity guarantee must specify the loan amount, the purpose of loan, the term of loan, the interest rate, and the rights, obligations and responsibilities of the borrower, the lending bank or credit institution and the guarantor organization.

### **Sub-section 8. LIEN ON PROPERTY**

### **Article 346. Lien on property**

Lien on property means that the obligee (hereinafter referred to as the lienor) who is legally possessing the property being an object of a bilateral contract is entitled to retain the property when the obligor fails to perform the obligations or has performed the obligations not strictly as agreed upon.

### **Article 347. Establishment of lien on property**

1. Lien on property shall arise from the due time for performance of obligation that the obligor failed to perform or perform incorrectly the obligation.
2. Lien on property shall take effect against third party from the time of possession of the possessor.

### **Article 348. Rights of lienors**

1. Request the obligor to fulfill completely the obligations arising from a bilateral contract.
2. Require the obligor to pay expenses necessary for taking care of and keeping such property.
3. Exploit the property to obtain yield and income therefrom with the consent of the obligor.

The value of benefits from the exploitation of the property shall be offset against the value of the obligation of the obligor.

### **Article 349. Obligations of lienors**

1. Take care and preserve the property
2. Do not change the status of the property.
3. Do not transfer or use the property without the consent of the obligor.
4. Return the property upon the complete performance of the obligation.
5. Compensate for lost or damaged property.

### **Article 350. Termination of lien on property**

A lien on property shall terminate in any of the following cases:

1. The lienor actually no longer retains the property;
2. Contracting parties shall agree on another security instead of retain on property;
3. upon the complete performance of the obligation;
4. The property ceases to exist;
5. As agreed by the parties.

## **Section 4. CIVIL LIABILITY**

### **Article 351. Civil liability arising from breach of civil obligations**

1. An obligor which fails to perform or performs incorrectly an obligation has civil liability to the obligee.

Breach of obligations means that the obligor fails to perform the obligations on time, perform the obligations incompletely or incorrectly.

2. Where an obligor is not able to perform a civil obligation due to an event of force majeure, it shall not have civil liability, unless otherwise agreed or otherwise provided by law.

3. An obligor shall not have civil liability if it is able to prove that failure to perform an obligation is due entirely to the fault of the obligee.

#### **Article 352. Responsibility for continuing performing obligations**

When an obligor perform its obligations improperly, the obligee is entitled to request the obligor to continue perform such obligations.

#### **Article 353. Late performance of civil obligations**

1. Late performance of a civil obligation is the failure to have performed the civil obligation in whole or in part as at the expiry of the time-limit for the performance of such obligation.

2. The party being late in performance of a civil obligation must notify immediately the obligee about the failure to have performed the civil obligation in a timely manner.

#### **Article 354. Postponement of performance of civil obligations**

1. When it is not possible to perform a civil obligation on time, the obligor must inform immediately the obligee and may suggest postponement of performance of the civil obligation.

In the case of failure to notify the obligee, the obligor must compensate for any damage arising, unless otherwise agreed or unless it was impossible to provide notification due to objective reasons.

2. The obligor may postpone the performance of the obligation only if the obligee consents. The performance of the civil obligation in this case of postponement shall be deemed to be performance in a timely manner.

#### **Article 355. Late acceptance of performance of civil obligations**

1. The late acceptance of the performance of a civil obligation is where the time-limit for the fulfillment of the civil obligation has expired and the obligor has already fulfilled the civil obligation as agreed but the obligee does not accept the performance of such obligation.

2. When the subject matter of late acceptance of performance of a civil obligation is property, the obligor may hand over the property to a bailee must or take the necessary measures to take care of the property and is entitled to demand reimbursement of reasonable expenses. If the property is kept by a bailee, the obligor must notify the obligee.

3. The obligor has the right to sell property which is in danger of being damaged or of deteriorating, and shall pay the proceeds of sale of such property to the obligee after deducting necessary expenses for the preservation and sale of the property.

#### **Article 356. Civil liability for failure to perform obligations to deliver objects**

1. Where an obligor fails to deliver a distinctive object, the obligee has the right to require the obligor to deliver that particular object. If the object no longer exists or is damaged, the obligor must pay the value of the object.

2. Where an obligor fails to deliver a fungible object, the obligee has the right to require the obligor to deliver another fungible object. If there is no fungible object, the obligor must pay the value of the object.

3. Where an obligor fails to perform an obligation as provided in clauses 1 and 2 of this article and causes damage to the obligee, the obligor must compensate for any damage.

**Article 357. Liability for late performance of the obligation to pay**

1. Where the obligor makes late payment, then it must pay interest on the unpaid amount corresponding to the late period.
2. Interest arising from late payments shall be determined by agreement of the parties, but may not exceed the interest rate specified in paragraph 1 of Article 468 of this Code; if there no agreement mentioned above, the Clause 2 of Article 468 of this Code shall apply.

**Article 358. Civil liability for failure to perform obligations to perform acts or not to perform acts**

1. Where an obligor fails to perform an act which it must perform, the obligee has the right to request the obligor to perform the act, or the obligee may perform the act or assign the performance of the act to another person and to require the obligor pay reasonable expenses incurred and compensate for any damage.
2. Where a person has an obligation not to perform an act but, nevertheless, performs such act, the obligee has the right to require the obligor to cease performing the act, make restitution and compensate for any damage.

**Article 359. Liability for late acceptance of performance of civil obligations**

An obligee which is late in accepting the performance of a civil obligation, and thereby causes damage to the obligor, must compensate the obligor for any damage and shall accept all risks arising from the time when acceptance fell due, unless otherwise agreed or otherwise provided by law.

**Article 360. Liability for compensation due to breach of obligations**

With respect to damage caused by breach of an obligation, the obligor must compensate for the whole damage, unless otherwise agreed or prescribed by law.

**Article 361. Damage caused by breach of obligations**

1. Damage caused by breach of obligations comprises physical damage and spiritual damage.
2. The physical damage means those actual physical losses, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income.
3. Spiritual damage means losses related to life, health, honor, dignity or reputation and other personal benefits of an entity.

**Article 362. The obligation to prevent or limit damage**

The obligee must adopt the necessary and reasonable measures to prevent or limit its damage.

**Article 363. Compensation for damages in case of the aggrieved party at fault**

Where the breach of the obligations and damage incurred due to part of the fault of the aggrieved party, the violating party only be required to pay damages corresponding to its degree of fault.

**Article 364. Fault in civil liability**

Fault in civil liability includes intentional fault and unintentional fault.

Intentional fault means that a person is fully aware that its act will cause damage to another person but, nevertheless, performs the act and, irrespective of whether or not it so wishes, allows the damage to occur.

Unintentional means that a person does not foresee that its act is capable of causing damage, even though it knows or should know that the damage will occur, or where it does foresee that such act is capable of causing damage but believes that the damage will not occur or will be able to be prevented.

## **Section 5. TRANSFER OF RIGHT TO DEMAND AND TRANSFER OF CIVIL OBLIGATIONS**

### **Article 365. Transfer of right to demand**

1. A party having the right to demand the performance of a civil obligation may transfer such right to demand to a subrogee of the obligee as agreed, except in the following cases:

- a) The right is the right to demand support or the right to demand compensation for any damage resulting from harm to life, health, honor, dignity or reputation;
- b) The obligee and the obligor agree that the right to demand may not be transferred;

2. Where a person having a right to demand transfers such right to a subrogee, the subrogee of the obligee shall become the person having the right to demand. The transfer of right to demand does not require the consent of the obligor.

A person transferring a right must notify the obligor in writing of the transfer of the right to demand, unless otherwise agreed. If the person transferring the right fails to notify the obligor thereby the obligor incurs expenses, the person transferring the right must pay for those expenses.

### **Article 366. Obligation to provide information and documents**

1. A person transferring a right to demand must provide the necessary information and the relevant documents to the subrogee of the obligee.

2. A person transferring a right to demand and breaching the provisions in Clause 1 of this Article, thereby causing damage, must compensate for such damage.

### **Article 367. No liability after transfer of right to demand**

A person transferring a right to demand shall not be liable for the capability of the obligor to perform the obligation, unless otherwise agreed.

### **Article 368. Transfer of right to demand performance of secured civil obligations**

Where a right to demand the performance of a secured civil obligation is transferred, the transfer of the right to demand shall include the security.

### **Article 369. Right to refuse of obligors**

1. Where the obligor is not notified of the transfer of the right to demand or where the subrogee of the obligee does not prove the authenticity of the transfer of the right to demand, the obligor has the right to refuse to perform the obligation with respect to the subrogee of the obligee.

2. Where the obligor is not notified of the transfer of the right to demand and has already fulfilled the obligation with respect to the person having transferred the right to demand, the subrogee of the obligee may not demand the obligor to perform the obligation with respect to that subrogee.

#### **Article 370. Transfer of civil obligations**

1. An obligor may transfer a civil obligation to a subrogee of the obligor with the consent of the obligee, except where the obligation is personal to the obligor or where the law provides that the obligation may not be transferred.

2. Upon a transfer of the obligation, the subrogee of the obligor shall become the obligor.

#### **Article 371. Transfer of secured civil obligations**

Where a secured civil obligation is transferred, the security shall terminate, unless otherwise agreed.

### **Section 6. TERMINATION OF CIVIL OBLIGATIONS**

#### **Section 372. Termination of civil obligations**

A civil obligation shall terminate in any of the following cases:

1. The obligation is fulfilled;
2. The parties so agree;
3. The obligee waives performance of the obligation;
4. The obligation is substituted by another civil obligation;
5. The obligation is offset;
6. The obligee and the obligor merge;
7. The limitation period for a release from the civil obligation has expired;
8. The obligor being a natural person dies, or the obligor being a juridical person ceases to exist, and the obligation must be performed by that particular natural person or juridical person;
9. The obligee being a natural person dies and the right to demand does not form part of the bequeathed estate, or the obligee being a juridical person ceases to exist and the right to demand is not able to be transferred to another juridical person;
10. A distinctive object which is the subject matter of the civil obligation no longer exists and is substituted by another civil obligation.
11. Other cases as provided by law.

#### **Article 373. Fulfillment of civil obligations**

The civil obligation shall be deemed to have been fulfilled when the obligor has performed the obligation in its entirety, or has performed a portion of the obligation and the obligee waives any further performance.

#### **Article 374. Fulfillment of civil obligations where obligees are late in accepting subject matter of obligations**

When an obligee is late in accepting the subject matter of an obligation which is an object, the obligation to deliver an object shall be fulfilled at the moment when the object is deposited for bailment as prescribed in Clause 2 Article 355 of this Code.

**Article 375. Termination of civil obligations by agreement**

Parties may agree to terminate a civil obligation at any time but must not cause damage to the interests of the State or the public or the legal rights or interests of other persons.

**Article 376. Termination of civil obligations due to waiver**

1. A civil obligation shall terminate when the obligee waives the obligation of the obligor, unless otherwise provided by law.
2. When a secured civil obligation is waived, the security arrangement shall also terminate.

**Article 377. Termination of civil obligations by substitution**

1. Where parties agree to substitute an original civil obligation with another civil obligation, the original civil obligation shall terminate.
2. A civil obligation shall also terminate if the obligee has accepted another property or the performance of another act as a substitute for the property or act previously agreed.
3. Where a civil obligation is an obligation to support others or to compensate for any damage due to harm to life, health, honor, dignity or reputation, or another personal obligation which is not able to be transferred to other persons, such obligation may not be substituted with another obligation.

**Article 378. Termination of civil obligations where obligations are offset**

1. Where parties have reciprocal obligations with respect to fungible objects, when both obligations fall due, the parties shall not be required to perform their obligations to each other, and the obligations shall be deemed to have terminated, unless otherwise provided by law.
2. Where the values of properties or acts are not equivalent, the parties shall settle with each other the difference in value.
3. Objects having monetary value may be used to offset an obligation to pay money.

**Article 379. Cases where civil obligations may not be offset**

A civil obligation may not be offset in the following cases:

1. The civil obligation is in dispute;
2. The obligation is to compensate for harm to life, health, dignity, honor or reputation;
3. The obligation is to support others;
4. Other obligations as provided by law.

**Article 380. Termination of civil obligations upon merger of obligor and obligee**

A civil obligation of an obligor shall terminate when the obligor becomes the obligee with respect to that particular obligation.

**Article 381. Termination of civil obligations due to expiry of duration of waiver of civil obligation**

Upon expiry of the duration of waiver of a civil obligation, the obligation shall terminate.

**Article 382. Termination of civil obligations when obligor being natural person dies or when obligor being juridical person ceases to exist**

Where parties have agreed or the law provides that an obligation must be performed by a particular obligor, when such natural person dies or such juridical person ceases to exist, the obligation shall terminate.

**Article 383. Termination of civil obligations when distinctive objects no longer exist**

An obligation to deliver a distinctive object shall terminate when such distinctive object no longer exists.

Parties may agree on the substitution of such object with another object or on compensation for any damage.

**Article 384. Termination of civil obligations in cases of bankruptcy**

In cases of bankruptcy, civil obligations shall terminate in accordance with the Law on bankruptcy.

**Section 7. CONTRACTS**

**Sub-section 1. ENTERING INTO CIVIL CONTRACTS**

**Article 385. Definition of civil contract**

Civil contract means an agreement between parties in relation to the establishment, modification or termination of civil rights and obligations.

**Article 386. Offers to enter into civil contracts**

1. Offer to enter into a contract means a clear expression by the offeror of its intention to enter into a contract and to be bound by such offer made to another specific party or the public (hereinafter referred to as the offeree).
2. Where an offer to enter into a contract has specified the time for reply and the offeror enters into a contract with a third person during the time-limit for reply by the offeree, if the offeror fails to enter into the contract with the offeree and the offeree suffers damage, the offeror must compensate the offeree for such damage.

**Article 387. Information in entering into contracts**

1. Each party must notify the other party of any piece of information affecting the acceptance of offer to enter into the contract by the latter party.
2. When a party receives any secret information from the other party during the process of entering into the contract, it must protect that information and may not use it for its own purposes or other illegal purposes.
3. Any party violating Clause 1 or Clause 2 of this Article thereby causes damage must compensate for it.

**Article 388. Time-limit within which offer to enter into contract remains effective**

1. The time-limit within which an offer to enter into a contract remains effective shall be determined as follows:

- a) Where an offeror has specified such time-limit;
  - b) Where an offeror has not specified the time-limit, the offer to enter into the contract is effective as from the time the offeree receives the offer.
2. The following cases shall be deemed to be receipt of an offer to enter into a contract:
- a) The offer is delivered to the place of residence if the offeree is a natural person, or the offer is delivered to the head office if the offeree is a juridical person;
  - b) The offer is placed into the official information system of the offeree;
  - c) When the offeree knows about the offer to enter into a contract by way of other means.

#### **Article 389. Modification or withdrawal of offers to enter into contracts**

1. An offeror may modify or withdraw an offer to enter into a contract in the following cases:
- a) If the offeree receives notice of modification or withdrawal of the offer prior to or at the same time as receipt of the offer;
  - b) The offeror clearly specified the circumstances in which the offer could be modified or withdrawn and such circumstances have in fact arisen.
2. When the offeror modifies the contents of the offer, that offer shall be deemed to be a new offer.

#### **Article 390. Rescission of offers to enter into contracts**

If the offeror exercises the right to rescind the offer to enter into a contract on the ground that such right was specified in the offer, the offeror must notify the offeree and such notice shall only be effective if the offeree receives the notice prior to the offeree providing its acceptance of the offer to enter into the contract.

#### **Article 391. Termination of offers to enter into contracts**

An offer to enter into a civil contract shall terminate in the following cases:

1. The offeree replies that the offer is accepted.
2. The offeree replies that the offer is not accepted;
3. The time-limit for acceptance has expired;
4. When notice of modification or withdrawal of the offer becomes effective;
5. When notice of rescission of the offer becomes effective;
6. As agreed by the offeror and the offeree within the time-limit within which the offer to enter into a contract remains effective.

#### **Article 392. Amendment of offer proposed by offeree**

When an offeree accepts the offer to enter into a contract but specifies conditions or amendments to the offer, the offeree shall be deemed to have made a new offer.

#### **Article 393. Acceptance of offers to enter into contracts**

1. Acceptance of an offer to enter into a contract means a reply by the offeree to the offeror accepting the entire contents of the offer.

2. The silence of the offeree shall not mean an acceptance of the offer to enter into the contract, unless it is agreed upon or habit established by the parties.

#### **Article 394. Time-limits for acceptance of offers to enter into civil contracts**

1. Where an offeror has specified a time limit for reply, a reply accepting shall only be effective if it is made within that time limit. If the offeror receives an acceptance after the time-limit has expired, such acceptance shall be deemed to be a new offer from the party which is late in replying.

When the offeror does not specify the time limit for reply, the reply accepting shall only be effective if it is made within reasonable period.

2. If a notice of acceptance of an offer to enter into a contract arrives late for objective reasons which the offeror knows or should know, such notice shall still be effective, unless the offeror immediately replies that it does not agree with such acceptance by the offeree.

3. Where the parties communicate directly, including conversations by telephone or other means of communication, the offeree must reply immediately as to whether or not it will accept, except where there is an agreement on the time-limit for reply.

#### **Article 395. Cases where offeror dies or lacks of legal capacity or has limited cognition and behavior control**

Where the offeror dies or lacks of legal capacity or has limited cognition and behavior control after the offeree has replied accepting the offer, the offer to enter into a contract shall still be valid, unless the contents of contract is associated with the personal identity of the offeror.

#### **Article 396. Cases where offeree dies or lacks of legal capacity or has limited cognition and behavior control**

Where the offeree dies or lacks of legal capacity or has limited cognition and behavior control after the offeree has replied accepting the offer, the offer to enter into a contract shall still be valid, unless the contents of contract is associated with the personal identity of the offeror.

#### **Article 397. Withdrawal of notice of acceptance to enter into contract**

The offeree may withdraw notice of acceptance to enter into a contract if such notice arrives prior to or at the same time as the offeror receives the reply accepting the offer to enter into a contract.

#### **Article 398. Contents of contracts**

1. The contracting parties may agree on the contents of a contract.

2. A contract may have the following contents:

- a) Subject matter of the contract;
- b) Quantity and quality;
- c) Price and method of payment;
- d) Time-limit, place and method of performing the contract;
- dd) Rights and obligations of the parties;
- e) Liability for breach of contract;

g) Methods of settlement of disputes.

#### **Article 399. Places for entering into contracts**

The place where a contract is entered into shall be as agreed by the parties; if there is no agreement, such place shall be the residence of the individual, or the head office of the legal entity, having made the offer to enter into the contract.

#### **Article 400. Time when contracts are entered into**

1. A contract is entered into at the time when the offeror receives the reply accepting to enter into the contract.
2. If the parties have agreed that silence shall constitute an acceptance within a time limit, the contract shall also be deemed to be entered into when such time-limit has expired.
3. The time when an oral contract is entered into is the time when the parties have reached agreement on the contents of the contract.
4. The time when a written contract is entered into shall be the time when the last party signs the contract or by other forms of written acceptance.

If a contract is entered into orally and then it is made in writing, the time when the contract is entered into shall be determined as prescribed in Clause 3 of this Article.

#### **Article 401. Effectiveness of contracts**

1. A contract legally entered into shall take effect from the time when it is entered into, unless otherwise agreed or otherwise provided by law.
2. From the effective date of the contract, contracting parties must mutually exercise rights and perform obligations as agreed. A contract may be amended or terminated as agreed by the parties or prescribed by law.

#### **Article 402. Principal types of contracts**

Contracts comprise the following principal types:

1. A bilateral contract is a contract whereby each party has an obligation to the other;
2. A unilateral contract is a contract whereby only one party has an obligation;
3. A principal contract is a contract the effectiveness of which does not depend on another contract;
4. An ancillary contract is a contract the effectiveness of which depends on a principal contract;
5. A contract for the benefit of a third person is a contract whereby contracting parties must perform obligations for the benefit of a third person and the third person enjoys benefits from such performance;
6. A conditional contract is a contract the performance of which depends on the occurrence, modification or termination of a specified event.

#### **Article 403. Appendices to contracts**

1. Appendices providing details on certain terms and conditions of a contract may be attached to the contract. The appendices shall have the same effectiveness as the contract. The contents of the appendices shall not contradict the contents of the contract.

2. If the terms and conditions of the appendices contradict the terms and conditions of the contract, such terms and conditions of the appendices shall be ineffective, unless otherwise agreed. If the parties agree that the terms and conditions of the appendices contradict the terms and conditions of the contract, the terms and conditions of the contract which are contradicted shall be deemed to have been amended.

#### **Article 404. Interpretation of contracts**

1. Where a contract contains terms and conditions which are unclear, the interpretation of such terms and conditions shall be based not only on the wording of the contract but also on the mutual intentions of the parties during the process prior to and after the time of establishment and performance of the contract.

2. Where a term of a contract may be interpreted in different ways, it shall be interpreted in the way which, when effective, will best benefit the parties.

3. Where the wording of a contract may be interpreted in different ways, such wording shall be interpreted in the way most appropriate to the nature of the contract.

4. Where a contract contains a term or wording which is difficult to understand, such term or wording shall be interpreted in accordance with the customary practice of the place where the contract was entered into.

5. Where there is a conflict between the mutual intentions of the parties and the wording used in the contract, the mutual intentions of the parties shall be used in order to interpret the contract.

6. Where the party in a powerful position inserts into the contract contents which are disadvantageous to the party in a weak position, the contract shall be interpreted in a manner favoring the party in a weak position.

#### **Article 405. Standard form contracts**

1. Standard form contract means a contract containing terms and conditions which are prepared by a party based on a standard form requiring the other party to reply within a reasonable period of time. If the offeree accepts, it shall be deemed to have accepted the entire contract provided by the offeror.

The standard form contract must be public in order for the parties to know or should know the contents of the contract.

Procedures for announcement of standard form contract shall comply with regulations of law.

2. Where a standard form contract contains terms and conditions which are unclear, such terms and conditions shall be interpreted in a manner favoring the offeree.

3. Where a standard form contract contains provisions exempting the party providing such standard form contract from liability, or increasing the liability of or waiving legitimate interests of the other party, such provisions shall be ineffective, unless otherwise agreed.

#### **Article 406. General trading conditions in concluding contracts**

1. General trading conditions are stable terms announced by a party to apply to the offeree; if the offeree accepts the contract is then deemed to accept these terms.

2. General trading conditions shall be effective only with the parties as long as these conditions have been publicly in order for the parties to know or should know them.

The procedures for announcement of general trading conditions shall comply with regulations of law.

3. The general trading conditions must ensure equality between the parties. If the general trading conditions contain provisions on discharge of liability from the party giving the general trading conditions, increase of responsibility or removal of the legitimate interests of the other party, these provisions do not take effect, unless otherwise agreed.

#### **Article 407. Invalid civil contracts**

1. The provisions on invalid civil transactions in Articles 123 to 138 inclusive of this Code shall also govern invalid contracts.

2. Invalidity of a principal contract shall terminate an ancillary contract, unless the parties agree that the ancillary contract replaces the principal contract. This provision shall not apply with respect to security for the performance of civil obligations.

3. Invalidity of an ancillary contract shall not terminate the principal contract, unless the parties agree that the ancillary contract is an inseparable part of the principal contract.

#### **Article 408. Invalidity of civil contracts due to impossibility of performing subject matter**

1. If, immediately as from the time a contract is signed, it is impossible to perform the subject matter of the contract for objective reasons, the contract shall be invalid.

2. If, when entering into a contract, one party knew or should have known that it was impossible to perform the subject matter of the contract for objective reasons but failed to notify the other party which entered into the contract, the former party must compensate the latter party for damage, unless the latter party knew or should have known that it was impossible to perform the subject matter of the contract.

3. The provision in Clause 1 and Clause 2 of this Article shall also apply to a contract containing one or more parts with subject matter which is impossible to perform, but the remaining parts of the contract shall remain valid.

### **Sub-section 2. PERFORMANCE OF CONTRACTS**

#### **Article 409. Performance of unilateral contracts**

With respect to a unilateral contract, the obligor must perform the obligation strictly as agreed. The obligor may only perform the obligation prior to or after the time-limit with the consent of the obligee.

#### **Article 410. Performance of bilateral contracts**

1. With respect to a bilateral contract, where the parties have agreed on a time limit for the performance of an obligation, each party must perform its obligation when the obligation falls due. One party may not postpone performance by reason of the other party not having performed the obligations owed to the former party, except in the cases provided in Articles 411 and 413 of this Code.

2. Where the parties have no agreement on which party will perform its obligation first, the parties must perform their obligations concurrently; where obligations are not able to be performed concurrently, the obligation the performance of which will take longer shall be performed first.

#### **Article 411. Right to postpone performance of civil obligations in bilateral contracts**

1. The party which is required to perform its obligation first has the right to postpone the performance of such obligation, if the property of the other party has substantially decreased in value such that its obligation is not able to be performed as undertaken, until the other party is able to perform its obligation or has a guarantor.

2. The party which is required to perform its obligation last has the right to postpone the performance of such obligation when it falls due if the party which was required to perform its obligation first failed to do so when such obligation fell due.

#### **Article 412. Lien on property in bilateral contracts**

If the obligor fails to perform his/her obligations, the obligee shall establish the right to lien on property of the obligor as prescribed in Article 346 to Article 350 of this Code.

#### **Article 413. Obligations not able to be performed due to fault of obligee**

With respect to a bilateral contract, when one party is not able to perform its obligations due to the fault of the other party, the former party has the right to demand the latter party to continue to perform its obligation with respect to the former party or has the right to cancel the contract and demand compensation for damage.

#### **Article 414. Failure to perform obligations not due to fault of parties**

With respect to a bilateral contract, when one party is not able to perform its obligations but there is no fault of any party, the party not being able to perform does not have the right to demand the other party to perform its obligation with respect to the former party. When one party has performed part of its obligations, such party has the right to demand the other party to perform its corresponding obligation with respect to the former party.

#### **Article 415. Performance of contracts for benefit of third parties**

Where a contract is performed for the benefit of a third person, the third person has the right to demand personally the obligor to perform the obligations with respect to such third person. If there is a dispute between the parties over the performance of the contract, the third person does not have the right to demand performance until the dispute is resolved.

An obligee also has the right to demand the obligor perform a contract for the benefit of a third person.

#### **Article 416. Right to waive of third persons**

1. Where a third person waives its right to benefits prior to the performance of an obligation by an obligor, the obligor shall not be required to perform the obligation but must notify the obligee, the contract shall be deemed to be cancelled, and each party shall return anything it has received from the other party.

2. If a third person waives its [right to] benefits after the obligor has performed the obligation, the obligation shall be deemed to have been fulfilled and the obligee must perform its

undertakings with respect to the obligor. In this case, benefits derived from the contract shall be enjoyed by a party that should have been the beneficiary if the contract is performed for the interests of a third party, unless otherwise agreed.

**Article 417. No amendment or cancellation of contracts for benefit of third persons**

Where a third person has agreed to receive a benefit, the parties to the contract may not amend or cancel the contract, even where the contract is yet to be performed, except with the consent of the third person.

**Article 418. Agreements on fines against violations**

1. Agreements on fines for violations are reached by the parties to a contract which requires the violating party to pay a fine to the aggrieved party.
2. The fine levels shall be agreed among the parties, unless otherwise prescribed by relevant laws.
3. The parties may reach an agreement that the violating party has to pay only a fine for violations and is not liable to any compensation for damage, or has to pay both a fine for violations and a compensation for damage.

In case the parties have an agreement on fines against violation which does not specify that the violating party has to pay both a fine for violations and a compensation for damage, then the violating party has to pay only the fine for violations.

**Article 419. The damage to be compensated for breach of contract**

1. The damage to be compensated for breach of contractual obligations is determined in accordance with Clause 2 of this Article, Article 13 and Article 360 of this Code.
2. The obligee may demand compensation for damage to its supposed benefits that will be enjoyed by the contract offer. The obligee also may request the obligor to pay the costs incurred due to its non-fulfillment of contractual obligations which do not overlap with the compensation for damages for contractual benefits.
3. At the request of the obligee, a court may compel the obligor to pay spiritual damages to the obligee. The damages shall be decided by the court according to contents of case.

**Article 420. Performance of contract upon the basic change of circumstances**

1. The change of circumstances shall be deemed basic when it meets all following conditions:
  - a) The circumstances change due to objective reasons occurred after the conclusion of the contract;
  - b) At the time of concluding the contract, the parties could not foresee a change in circumstances;
  - c) The circumstances change such greatly that if the parties know in advance, the contract has not been concluded or are concluded, but with completely different content;
  - d) The continuation of the contract without the change in the contract would cause serious damage to one party;

dd) The party having interests adversely affected has adopted all the necessary measures in its ability, in accordance with the nature of the contract, cannot prevent or minimize the extent of effect.

2. In the case of basic circumstances change, the affected party may request the other party to the re-negotiate the contract in a reasonable period of time.

3. If the parties cannot reach an agreement on amending the contract within a reasonable period of time, any of the parties may request a court to:

a) Terminate the contract at a specific time;

b) Amend the contract to balance the lawful rights and interests of the parties due to basic change of circumstances.

The court may only decide to amend the contract in the event that the termination of the contract would cause greater damage than the cost to perform the contract if it is modified.

4. In the process of negotiating amendments and termination of the contract and the court handling the case, the parties must continue to perform its obligations under the contract, unless otherwise agreed.

### **Sub-section 3. AMENDMENT AND TERMINATION OF CONTRACTS**

#### **Article 421. Amendment to contracts**

1. Parties may agree to amend a contract.

2. Each contract may be amended as prescribed in Article 420 of this Code.

3. Each amended contract must also comply with the formalities of the initial contract.

#### **Article 422. Termination of contracts**

A civil contract shall terminate in any of the following cases:

1. The contract has been completed;

2. The parties so agree;

3. Where a contract is only able to be performed by a particular natural person or juridical person having entered into the contract, and that particular natural person dies or that juridical person ceases to exist.

4. The contract is cancelled or unilaterally terminated;

5. The contract is not able to be performed because the subject matter of the contract no longer exists;

6. The contract terminates as prescribed in Article 420 of this Code;

7. Others circumstances as provided by law.

#### **Article 423. Cancellation of contracts**

1. A party has the right to cancel a contract and shall not be liable to compensate for damage in any of the following cases:

a) A violation of contract by the other party gives rise to cancellation as agreed by the parties;

- b) The other party seriously violates the obligations in the contract;
- c) Others circumstances as provided by law.

2. Serious violation means the failure to fulfill obligations properly by a party leading the failure to achieve the purposes of entering into contract by the other party.

3. A party cancelling a contract must notify the other party immediately of the cancellation [and] must compensate if the failure to notify causes damage.

#### **Article 424. Cancellation of the contract due to late performance of obligations**

1. Where the obligor fails to perform the obligations that the obligee requests in a reasonable period of time but the obligor still fails to perform, the obligee may cancel the contract.

2. If, due to the nature of the contract or by the will of the parties, the contract will not achieve the objective if it is not performed within a certain time limit, but the obligor fails to perform that contract upon the expiry date of such time limit, the obligee has the right to cancel the contract without adherence to Clause 1 of this Article.

#### **Article 425. Cancellation of the contract due to inability to perform**

Where the obligor cannot perform part or all of its obligations to make the purpose of the obligee may not be reached, the obligee party can cancel the contract and claim damages.

#### **Article 426. Cancellation of the contract in the case of lost or damaged property**

Where a party losses or causes damage to property being the subject of a contract that cannot be refunded or compensated by other property or cannot be repaired or replaced with the same type of property, the other party may cancel contract.

The violating party shall compensate in cash equal to the value of lost or damaged property, unless otherwise agreed or stipulated in Clause 2, Clause 3, Article 351 and Article 363 of this Code.

#### **Article 427. Consequences of cancellation of contracts**

1. When a contract is canceled, the contract is void from the time of signing; the parties do not have to fulfill the obligations agreed upon, except for agreement on fines against violations, compensation and settlement of disputes.

2. The parties must return to each other what they have received after deducting from the reasonable costs of contract performance and cost of preservation and development of property.

The refund is made in kind. In case it cannot be returned in kind, it is worth the money to repay.

Where the parties are jointly obliged to refund, the refund must be made at the same time, unless otherwise agreed or otherwise provided by law.

3. The aggrieved party shall be compensated due to breach of obligations of the other party.

4. The settlement of the consequences of the cancellation of the contract relating to personal rights shall comply with this Code and other relevant law provisions.

5. In case of canceling the contract without grounds specified in Articles 423, 424, 425 and 426 of this Code, the cancellation of the contract is determined as the violating party to perform its

obligations and responsibilities to comply with its obligations under the provisions of this Code, other relevant laws.

#### **Article 428. Unilateral termination of performance of contracts**

1. A party has the right to terminate unilaterally the performance of a contract without any compensation for damage when a party violates its obligations seriously if so agreed by the parties or so provided by law.
2. A party terminating unilaterally the performance of a contract must notify the other party immediately of its termination of the contract and must compensate if the failure to notify causes damage.
3. Where the performance of a contract is terminated unilaterally, it shall terminate from the time when the other party is notified of the termination. In such case, the parties are not required to continue to perform their obligations, except for agreement on fines for violations, compensation for damage and settlement of disputes. A party which has already performed its obligation may demand the other party to make payment for the performed obligation.
4. The aggrieved party shall receive a compensation for damage caused by the improper performance of obligation by the violating party.
5. If a contract is terminated unilaterally without any basis prescribed in Clause 1 of this Article, the party terminating unilaterally the performance of the contract shall be deemed to be the violating party and must perform civil liability as prescribed in this Code and relevant laws.

#### **Article 429. Limitation period for initiating legal action with respect to contracts**

The limitation period for initiating legal action to request a court to resolve a dispute relating to a contract is three years from the date on which the party entitled to request knows or should know that their lawful rights and interests are infringed.

### **Chapter XVI**

## **COMMON CONTRACTS**

### **Section 1. SALE CONTRACTS OF PROPERTY**

#### **Article 430. Sale contract of property**

Sale contract means an agreement between parties whereby a seller is obligated to transfer the ownership rights of property to the purchaser and the purchaser is obligated to make a payment to the seller.

Sale contracts of houses or sale contracts of houses for other purposes shall comply with this Code, the Law on Housing and relevant laws.

#### **Article 431. Subject matter of sale contracts**

1. Each property prescribed in this Code may be the subject matter of a sale contract. If a property is banned or restricted from transfer as prescribed by laws, it shall become a subject matter of a sale contract if it complies with the regulations of such laws.
2. The property is under ownership of the seller and the seller has the right to sell it.

#### **Article 432. Quality of objects for sale**

1. The quality of an object for sale and purchase shall be as agreed by the parties.
2. Where the quality of an object has been proclaimed or is provided by a competent authority, the quality of the object agreed by the parties shall not be lower than the quality proclaimed standard or the stipulations of the competent authority.
3. Where parties have not agreed on or agree unclearly on the quality of the object for sale, its quality shall conform to requirements pertaining to quality of the object proclaimed or prescribed by a competent authority or by industry standards.

If there is no quality standard, regulations of a competent authority and industry standard in terms of an object for sale, its quality shall be determined according to normal standards or separate standards in conformity with the purposes of entering into contract and as prescribed in the Law on consumers' right protection.

#### **Article 433. Price and method of payment**

1. Price shall be as agreed by the parties or as determined by a third person at the request of the parties. With respect to property in a transaction for which a competent authority has provided price and method of payment, the parties shall reach an agreement in accordance with such regulations.
2. Where parties reach no agreement or reach an agreement with unclear terms about price and method of payment, the price shall be determined according to the market price and the method of payment shall be determined according to the customary practice at the time and place of entering into the contract.

#### **Article 434. Time limits for performance of sale contracts**

1. The time limit for performance of a sale contract shall be as agreed by the parties. The seller must deliver the property to the purchaser at the agreed time. The seller may only deliver the property prior to the time limit with the consent of the purchaser.
2. Where the parties have not agreed on a time limit for delivery of the property, the purchaser has the right to demand, at any time, the seller to deliver the property and the seller also has the right to demand, at any time, the purchaser to accept the property, but the parties must give an advanced reasonable notice to each other.
3. The purchaser shall make the payment according to the agreed time. Where the parties have no agreement or have an unclear agreement on the time-limit for payment, the purchaser must pay immediately upon receipt of the property or documents proving the ownership of the property.

#### **Article 435. Place for delivery of property**

The place for delivery of the property shall be as agreed by the parties. If there is no agreement, Clause 2 of Article 277 of this Code shall apply.

#### **Article 436. Method for delivery of property**

1. Property shall be delivered by the method as agreed by the parties. If there is no agreement on the method for delivery of the property, the property shall be delivered at one time directly to the purchaser.

2. If the parties agreed that the seller shall deliver property to the purchaser many times, but the seller violates obligation of delivery in a certain time, the purchaser may cancel the part of contract related to such violation and claim compensation.

#### **Article 437. Liability in respect of delivery of objects in incorrect quantities**

1. Where a seller delivers objects in a quantity which is more than that agreed, the purchaser has the right to accept or not to accept the excess. If it accepts the excess, payment shall be made in accordance with the agreement on the excess.

2. Where a seller delivers objects in a quantity which is less than that agreed, the purchaser has one of the following rights:

- a) Accept the amount delivered and set a time-limit for the seller to deliver the amount outstanding;
- b) Accept the amount delivered and demand compensation for damage;
- c) Cancel the contract and demand compensation for damage if the violation prevents the purchaser from achieving the purposes of enter into the contract.

#### **Article 438. Liability in respect of delivery of incomplete integrated objects**

1. Where an integrated object is delivered incomplete, thereby rendering the object unusable, the purchaser has one of the following rights:

- a) Accept the object and demand the seller to deliver the remaining parts, demand compensation for damage, and postpone payment in respect of the parts received until the missing parts are delivered;
- b) Cancel the contract and demand compensation for damage.

2. Where a purchaser has paid for, but not yet accepted, the delivery of an incomplete integrated object, the purchaser shall be paid interest on the amount pre-paid as agreed by the parties provided it does not exceed the interest rate prescribed in Clause 1 Article 468 of this Code. If the parties do not agree the interest rate, Clause 2 Article 468 of this Code shall apply and the purchaser may demand the seller to compensate for damage due to the delivery of the incomplete integrated object from the time when the contract is required to be performed to the time when the complete integrated object is delivered.

#### **Article 439. Liability in respect of delivery of objects of incorrect type**

Where an object delivered is of an incorrect type, the purchaser has one of the following rights:

1. Accept the object and pay the agreed price;
2. Demand delivery of an object of the correct type and compensation for damage;
3. c) Cancel the contract and demand compensation for damage if the delivery of incorrect type prevents the purchaser from achieving the purposes of enter into the contract.

With regard to an object including many types, if the seller fails to deliver it in conformity with the agreement, the purchaser may cancel the part of contract related to such object and claim compensation.

#### **Article 440. Obligation to make payment**

1. A purchaser must pay the full price at the agreed place and time.
2. If the parties only agree on time limit for delivery of object, the time limit for payment shall be determined equivalent to the time limit for delivery of object. If the parties do not agree on time limit for delivery of object and payment, the purchaser must make payment upon the receipt of the object.
3. If the purchaser fails to make payment, he/she/it must pay interest on the late payment as prescribed in Article 357 of this Code.

#### **Article 441. Transfer of risks**

1. The seller shall bear all risks of the property until the property is delivered to the purchaser, the purchaser shall bear all risks of the property from the time of acceptance of the property, unless otherwise agreed or prescribed by law.
2. Where the law requires that ownership rights with respect to property which is the subject matter of a contract for sale and purchase must be registered, the seller bear all risks until the completion of the registration procedures and the purchaser bear all risks from the completion of the registration procedures, unless otherwise agreed.

#### **Article 442. Transport costs and costs related to transfer of ownership rights**

1. Transport costs and costs related to transfer of ownership rights shall be agreed by the parties, unless otherwise prescribed by law.
2. Where the parties do not reach an agreement or reach an unclear agreement on transport costs and costs related to transfer of ownership rights, those costs shall be determined according to the costs proclaimed or prescribed by a competent authority or industry standards.
3. If there is no basis prescribed in Clause 1 and Clause 2 of this Article, the transport costs and costs related to transfer of ownership rights shall be determined according to normal standards or separate standards in conformity with the purposes of entering into contract.
4. Where the parties have not agreed on and the law does not provide transport costs and costs related to transfer of ownership rights, the seller shall be liable for the costs of transportation to the place of delivery of the property and the costs related to the transfer of the ownership rights.

#### **Article 443. Obligation to provide information and instructions for use**

A seller has the obligation to provide a purchaser with necessary information on the property for sale and instructions on the use of the property. If the seller fails to perform this obligation, the purchaser has the right to require the seller to perform such obligation within a reasonable time limit and, if the seller still fails to perform such obligation that prevents the purchaser from achieving the purposes of entering into the contract, the purchaser has the right to cancel the contract and demand compensation for damage.

#### **Article 444. Assurances as to ownership rights of purchasers with respect to purchased property**

1. A seller has the obligation to assure that the ownership rights with respect to the property sold to a purchaser are not disputed by a third person.
2. Where ownership rights with respect to property are disputed by a third person, the seller must support the purchaser in protecting the interests of the purchaser. If a third person has the

ownership rights with respect to all or part of the property for sale and purchase, the purchaser has the right to cancel the contract and require the seller to compensate for damage.

3. Where a purchaser knows or should know that property for sale and purchase is under the ownership of a third person but, nevertheless, purchases the property, the purchaser must return the property to the owner and does not have the right to demand compensation for damage.

#### **Article 445. Assurances as to quality of objects for sale**

1. A seller must assure the utility value or the characteristics of the object for sale and purchase. If, after having purchased an object, a purchaser discovers defects which cause the object to lose its value or diminish its utility value, the purchaser must notify the seller immediately of such defects and has the right to require the seller to repair or replace the defective object with another object, to reduce its price and to compensate for damage, unless otherwise agreed.

2. A seller must assure that an object for sale corresponds to descriptions on any package, to any trademark or to any sample selected by the purchaser.

3. A seller shall not be liable for any defect of an object in the following cases:

- a) Where the purchaser knew or should have known of the defect at the time of purchase;
- b) Where the object was sold at an auction or a second-hand shop;
- c) Where the purchaser was at fault for causing the defect.

#### **Article 446. Warranty obligation**

If agreed by parties or provided by law, a seller has the obligation to provide a warranty for the object for sale and purchase for a certain period, hereinafter referred to as the warranty period.

The warranty period shall be calculated from the time when the purchaser has the obligation to accept the object.

#### **Article 447. Right to claim on warranty**

If a purchaser discovers a defect in a purchased object during the warranty period, it has the right to require the seller to repair the object free of charge, or reduce its price or replace it with another object, or it has the right to return the object in exchange for a refund.

#### **Article 448. Repairs of objects during warranty periods**

1. A seller must repair a defective object and assure that it satisfies the quality standards or characteristics as undertaken.

2. A seller shall pay the costs for repairing a defective object and for transporting it from the place of residence or head office of the purchaser to the place of repair and vice versa.

3. A purchaser has the right to require the seller to complete the repairs within a time limit agreed by the parties or within a reasonable time. If the seller is not able to make or complete the repairs within such time, the purchaser has the right to demand a price reduction or replacement of the defective object with another object, or it has the right to return the object in exchange for a refund.

#### **Article 449. Compensation for damage during warranty periods**

1. In addition to demanding the performance of warranty obligations, a purchaser has the right to require the seller to compensate for damage caused during the warranty period due to technical defects of the object.
2. A seller shall not be liable to compensate for damage if it is able to prove that the damage was caused due to the fault of the purchaser. The seller shall be entitled to a reduction in the amount of compensation for the damage where the purchaser has failed to take all necessary measures available to it to mitigate the damage.

#### **Article 450. Sale of property rights**

1. Where property rights are sold, a seller must deliver the relevant documents and complete the procedures for transferring the ownership rights to the purchaser and the purchaser must pay the seller.
2. Where property rights are the right to demand payment of a debt and the seller has guaranteed the ability to pay of the debtor, the seller must be jointly liable for payment if the debt falls due and the debtor fails to pay.
3. The time when ownership rights with respect to property rights are transferred is the time when a purchaser receives documents evidencing the ownership rights with respect to the property rights, or the time when the transfer of the ownership rights is registered if so provided by law.

#### **Article 451. Auctions**

Property may be sold at an auction as required by the owner or as provided by law. A sale by auction of multiple ownership property must have the consent of all owners, unless otherwise agreed or otherwise provided by law.

The auction must be conducted in conformity of principles of objective, public and transparent, assurance of lawful rights and interests of the participants and in accordance with law on auction.

#### **Article 452. Purchases after trial use**

1. Parties may agree on the trial use of purchased property by the purchaser for a period, hereinafter referred to as the trial use period. During the trial use period, the purchaser may inform the seller whether or not the purchaser wishes to make the purchase. If the purchaser fails to inform the seller prior to the expiry of the trial use period, the purchaser shall be deemed to have accepted the purchase on the terms agreed prior to the property being received for trial use.

If the parties do not reach an agreement and reach an unclear agreement on the trial use period, such period shall be determined according to the customary practice of the transactions with the same subject matter.

2. During the trial use period, property shall remain under the ownership of the seller. The seller shall bear all risks of the property, unless otherwise agreed. During the trial use period, the seller may not sell, give, lease, exchange, mortgage or pledge the property until the purchaser informs the seller whether or not it wishes to make the purchase.

3. Where a prospective purchaser informs the seller that it does not wish to make the purchase, the prospective purchaser must return the property to the seller and must compensate the seller if the prospective purchaser loses or damages the trial property. The prospective purchaser shall not

be liable for normal wear and tear caused by the trial use and shall not have to return any yield derived from the trial use.

#### **Article 453. Purchases by deferred payment or payment in instalments**

1. Parties may agree that the purchaser may purchase by deferred payment or payment in instalments of the purchase price within a time limit after delivery of the purchased property. The seller has title retention of the property sold until the purchaser has paid the purchase price in full, unless otherwise agreed.
2. Contracts for purchase by deferred payment or payment in instalments shall be made in writing. The purchaser may use the property purchased by deferred payment or payment in instalments and bear all risks during the period of use, unless otherwise agreed.

#### **Article 454. Buy-back of property sold**

1. A seller and purchaser of property may agree that the seller has the right to buy-back the property within a period of time following the sale (hereinafter referred to as the buy-back period).

The buy-back period for property shall be as agreed by the parties but shall not exceed one year in respect of moveable property, and five years in respect of immovable property, from the time of delivery of the property, unless otherwise prescribed by law. During this period, the seller may buy back the property at any time provided that reasonable prior notice is given to the purchaser. The buy-back price shall be the market price at the time when and place where the buy-back occurs, unless otherwise agreed.

2. During the buy-back period, a purchaser may not sell, exchange, give, lease, mortgage or pledge the property, and shall bear all risks with respect to the property, unless otherwise agreed.

### **Section 2. CONTRACTS FOR EXCHANGE OF PROPERTY**

#### **Article 455. Contracts for exchange of property**

1. Contract for the exchange of property means an agreement between parties whereby they deliver property, and transfer the ownership rights thereto, to each other.
2. A contract for the exchange of property must be made in writing, and must be notarized, certified or registered if so provided by law.
3. Where one party exchanges with another party property which it does not own or property in respect of which it has no authorization from the owner, the other party may cancel the contract and demand compensation for damage.
4. Each party shall be deemed to be the seller of the property delivered to the other party and the purchaser of the property delivered to it. The provisions on contracts for sale and purchase in articles 430 to 439 inclusive and articles 449 to 454 inclusive of this Code shall also apply to contracts for the exchange of property.

#### **Article 456. Settlement of differences in value**

Where exchanged property differs in value, the parties must settle that difference between themselves, unless otherwise agreed or otherwise provided by law.

### **Section 3. CONTRACTS FOR GIFTS OF PROPERTY**

#### **Article 457. Contracts for gifts of property**

Contract for a gift of property means an agreement between parties whereby the giver delivers its property and transfers its ownership rights to the recipient without requiring compensation and the recipient agrees to accept the gift.

#### **Article 458. Gifts of moveable property**

1. A contract for a gift of moveable property shall take effect when the recipient accepts the property, unless otherwise agreed.
2. Where the law requires the ownership rights with respect to such moveable property to be registered, the contract shall take effect from the time of registration.

#### **Article 459. Gifts of immovable property**

1. A gift of immovable property must be recorded in writing and notarized or certified, and must be registered if the law on immovable property requires registration of ownership.
2. A contract for a gift of immovable property shall take effect from the time of registration. In the case of immovable property for which no registration of ownership rights is required, the gift contract shall take effect from the time when the property is delivered.

#### **Article 460. Liability in respect of intentional gift of property not under one's ownership**

Where a giver intentionally gives property which is not under its ownership and the recipient does not know or is not able to know, such giver must reimburse the recipient for expenses incurred by the recipient in increasing the value of the property at such time as it is reclaimed by the owner.

#### **Article 461. Disclosure of defects in gifts**

A giver has the obligation to notify the recipient of any defects in a gift. If the giver knows about defects in a gift but fails to provide notice thereof, the giver must be liable to compensate for damage caused to the recipient; but if the giver does not know about defects in a gift, the giver shall not be liable to compensate for damage.

#### **Article 462. Conditional gifts of property**

1. A giver may require a recipient to perform one or several civil obligations prior to or after the giving of a gift. The conditions for giving a gift must not contravene the law or social morals.
2. Where a recipient performs an obligation required to be performed as a condition to the giving of a gift and the giver fails to deliver the gift, the giver must pay for the obligation already performed by the recipient.
3. Where a recipient fails to perform an obligation required to be performed after the giving of a gift, the giver may reclaim the gift and demand compensation for damage.

### **Section 4. CONTRACTS FOR LOAN OF PROPERTY**

#### **Section 463. Contracts for loan of property**

Contract for the loan of property means an agreement between parties whereby a lender delivers property to a borrower. When the loan falls due, the borrower must repay the lender property of the same type in accordance with the correct quantity and quality, and must pay interest if so agreed or so provided by law.

#### **Article 464. Ownership rights with respect to property lent**

A borrower shall become the owner of borrowed property from the time of delivery of the property.

#### **Article 465. Obligations of lenders**

1. Deliver the property to the borrower in full, strictly in accordance with the quality and quantity, and at the time and place, agreed.
2. Compensate the borrower for any damage where the lender knows that the property is not of the agreed quality but fails to notify the borrower, unless the borrower accepts the property with knowledge that the property is not of the agreed quality.
3. Do not demand the borrower to return the property prior to the due date, except in the cases provided in article 470 of this Code or relevant laws.

#### **Article 466. Obligations of borrowers to repay loans**

1. Where the property lent is a sum of money, the borrower must repay the lender the loan in full when due. If the property is an object, the borrower must deliver to the lender an object of the same type, quantity and quality, unless otherwise agreed.
2. Where a borrower is not able to deliver an object, it may, with the consent of the lender, repay the value of the borrowed object, in cash, as at the time and place of delivery.
3. The place for repayment of a loan shall be the place of residence or head office of the lender, unless otherwise agreed.
4. If a borrower fails to repay all or any instalment of an interest-free loan, in whole or in part, when payment falls due, the borrower must, if the parties so agree, pay interest on the overdue amount from the due date until the date on which payment is made, at the basic interest rate prescribed in Clause 2 Article 468 of this Code, unless otherwise agreed or otherwise prescribed by law.
5. If a borrower fails to repay, in whole or in part, a loan with interest, the borrower must pay:
  - a) Interest on the principal as agreed in proportion to the overdue loan term and interest at the rate prescribed in Clause 2 Article 468 in case of late payment;
  - b) Overdue interest on the principal equals one hundred and fifty (150) per cent of the interest rate in proportion to the late payment period, unless otherwise agreed.

#### **Article 467. Use of borrowed property**

Parties may agree that borrowed property may only be used for the agreed purpose of the loan. The lender may check the use of the property and may demand its early return if, despite warning, the borrower continues to use the property contrary to the agreed purpose.

#### **Article 478. Interest rates**

1. The rate of interest for a loan shall be as agreed by the parties.

The rate of interest for a loan agreed by the parties may not exceed 20% per year, unless otherwise prescribed by law. According to actual conditions and at the proposal of the Government, the Standing Committee of National Assembly shall adjust the above interest and send report to the National Assembly at the latest session.

If the agreed interest exceeds the maximum interest prescribed in this Clause, the agreed interest shall become invalid.

2. Where parties agree that interest will be payable but fail to specify the interest rate, or where there is a dispute as to the interest rate, the interest rate for the duration of the loan shall equal 50% of the maximum interest prescribed in Clause 1 of this Article at the repayment time.

#### **Article 469. Performance of contracts for loans without fixed term**

1. With respect to a contract for an interest-free loan without a fixed term, the lender may reclaim the property, and the borrower may repay the debt, at any time provided that each party gives reasonable prior notice to the other party, unless otherwise agreed.

2. With respect to a contract for a loan with interest without a fixed term, the lender may reclaim the property at any time, subject to giving reasonable prior notice to the borrower, and shall be paid interest until the time when the property is returned. The borrower may also return the property at any time, subject to giving reasonable prior notice to the lender, in which case the borrower shall pay interest only up to the date on which repayment is made.

#### **Article 470. Performance of contracts for fixed term loans**

1. With respect to a contract for a fixed term interest-free loan, the borrower may return the property at any time, subject to giving reasonable prior notice to the lender. The lender may reclaim the property prior to the due date, subject to the consent of the borrower.

2. With respect to a contract for a fixed term loan with interest, the borrower may return the property prior to the due date, but must pay interest for the entire term, unless otherwise agreed or otherwise prescribed by law.

#### **Article 471. "Họ, hội, biêu, phường"**

1. "Họ, hội, biêu, phường" (hereinafter referred to as "ho") means a form of transaction regarding property in accordance with customary practice on the basis of an agreement reached by a group of people who assemble together and jointly determine the number of people, the term, the amount of money or other property, the form of contribution and payment of "ho", and the rights and obligations of the members of the group.

2. "Ho" is aimed at mutual assistance of citizens and shall be implemented in accordance with law.

3. If "ho" is organized with interest, it shall comply with this Code.

4. It shall be strictly prohibited to organize "ho" in the form of lending at high interest rates.

### **Section 5. CONTRACTS FOR LEASE OF PROPERTY**

#### **Sub-section 1. GENERAL PROVISIONS ON CONTRACTS FOR LEASE OF PROPERTY**

##### **Article 472. Contracts for lease of property**

Contract for lease of property means an agreement between parties whereby a lessor delivers property to a lessee for use during a fixed term and the lessee is required to pay rent.

Lease contracts of houses or lease contracts of houses for other purposes shall comply with this Code, the Law on Housing and relevant laws.

### **Article 473. Rent**

1. Rent for a lease of property shall be as agreed by the parties or determined by a third party at the request of the parties, unless otherwise prescribed by law.
2. Where parties reach no agreement or reach an agreement with unclear terms about the rent, it shall be determined according to the market price at the time and place of entering into the contract.

### **Article 474. Lease term**

1. The term of a lease shall be as agreed by the parties. If there is no agreement, the term of the lease shall be determined according to the purpose of the lease.
2. Where parties have not agreed on the term of a lease or where the term of a lease is not able to be determined according to the purpose of the lease, the lease shall terminate when the lessee has achieved the purpose of the lease.

### **Article 475. Sub-leases**

A lessee may sub-lease leased property with the consent of the lessor.

### **Article 476. Delivery of leased property**

1. A lessor must deliver property to the lessee strictly in accordance with the agreed quantity, quality, type and condition and at the agreed place and time, and must provide information necessary for use of the property.
2. Where a lessor is late in delivering property, the lessee may extend the time for the delivery of the property or may cancel the contract and demand compensation for damage. If the leased property is not of the quality agreed, the lessee has the right to require the lessor to repair the property or reduce the rent, or to cancel the contract and demand compensation for damage.

### **Article 477. Obligation to assure utility value of leased property**

1. A lessor must assure that leased property is in the condition agreed and is suitable for the purpose of the lease contract for the entire term of the lease. The lessor must repair any damage to or defect in the leased property, with the exception of minor damage which the lessee must repair in accordance with customary practice.
2. Where the utility value of leased property decreases otherwise than due to the fault of the lessor, the lessee has the right to demand the lessor:
  - a) Repair the property;
  - b) Reduce the rent;
  - c) Replace the property or, if the leased property is beyond repair and the purpose of the lease is not able to be achieved as a result or if the property has defects which the lessee did not know of, the lessee may terminate unilaterally the performance of the contract and demand compensation for damage.
3. Where a lessee demands repair but the lessor fails to repair in time or at all, provided that the lessee informs the lessor, the lessee has the right to repair personally the leased property and has the right to require the lessor to reimburse the costs of repair.

### **Article 478. Obligation to assure right of lessees to use property**

1. A lessor must assure the right of a lessee to uninterfered use of the property.
2. In the event of a dispute as to the ownership rights with respect to leased property, which interferes with use of that property by the lessee, the lessee has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

#### **Article 479. Obligation to take care of leased property**

1. A lessee shall take care of leased property as if it were its own and shall carry out minor repairs and maintenance. If the lessee causes any loss of or damage to the property, it must compensate the lessor.

The lessee shall not be liable for normal wear and tear due to the use of the leased property.

2. A lessee may, with the consent of the lessor, carry out repairs and improvements to leased property which increase its value and may require reimbursement from the lessor for reasonable costs incurred.

#### **Article 480. Obligation to use leased property strictly in accordance with utility and purpose**

1. A lessee must use leased property strictly in accordance with its utility and the agreed purpose.
2. Where a lessee fails to use leased property strictly in accordance with its utility and purpose, the lessor has the right to terminate unilaterally the performance of the contract and to demand compensation for damage.

#### **Article 481. Payment of rent**

1. A lessee must pay rent in full and on time as agreed. If there is no agreement on the time for payment of rent, the time shall be determined in accordance with the customary practice at the place of payment. If it is not possible to determine the time of payment in accordance with such customary practice, the lessee must make payment when the lessee returns the leased property.

2. Where the parties have agreed on payment of rent in instalments, if the lessee fails to make payment for three consecutive instalments, the lessor has the right to terminate unilaterally the performance of the lease contract, unless otherwise agreed or otherwise provided by law.

#### **Article 482. Return of leased property**

1. A lessee must return leased property in the same condition in which it was received, normal wear and tear excepted, or in the condition agreed. If the value of the leased property has decreased in comparison with its condition at the time it was received, the lessor has the right to demand compensation for any damage, normal wear and tear excepted.

2. Where leased property is moveable property, the place for returning the leased property shall be the place of residence or head office of the lessor, unless otherwise agreed.

3. Where leased property is livestock, the lessee must return both the leased livestock and any offspring born during the term of the lease, unless otherwise agreed. The lessor must reimburse the lessee for expenses incurred in caring for the offspring.

4. Where a lessee is late in returning leased property, the lessor has the right to require the lessee to return the leased property and to pay rent for the period of delay and the lessee must compensate for damage. The lessee must pay a penalty for the late return of the leased property if so agreed.

5. The lessee must bear the risk in relation to the leased property during the period of delay.

## **Sub-section 2. CONTRACTS FOR "THUE KHOAN" OF PROPERTY**

### **Article 483. Contracts for "thue khoan" of property**

Contract for "thue khoan" of property means an agreement between parties whereby a "thue khoan" lessor delivers the property to a "thue khoan" lessee for the exploitation of its utility and for the enjoyment of the yield and income derived from such property and the lessee has the obligation to pay rent.

### **Article 484. Subject matter of contracts for "thue khoan" of property**

The subject matter of a contract for "thue khoan" may be land, forest, and water surfaces which have not been exploited, livestock, production and business facilities, and other means of production together with the equipment required to exploit the utility of such property and to enjoy the benefits and income derived therefrom, unless otherwise provided by law.

### **Article 485. Terms of "thue khoan"**

The term of a "thue khoan" shall be agreed by parties. If the parties do not reach an agreement and reach an unclear agreement on the term of "thue khoan", such period shall be determined according to the production or business cycle appropriate to the nature of the subject matter of the "thue khoan".

### **Article 486. Rent in respect of "thue khoan"**

Rent in respect of a "thue khoan" shall be as agreed by the parties. If a "thue khoan" is awarded by tender, the rent in respect of such "thue khoan" shall be determined in the bidding process.

### **Article 487. Delivery of "thue khoan" property**

Upon delivery of "thue khoan" property, parties must record their assessment of the condition and value of the property.

If the parties are not able to determine the value, a third person shall be invited to determine the value. Such determination shall be made in writing.

### **Article 488. Payment of "thue khoan" rent and method of payment**

1. "Thue khoan" rent may be paid in kind or money, or by performance of acts.
2. A "thue khoan" lessee must pay "thue khoan" rent in full even where the lessee does not exploit the utility of the "thue khoan" property.
3. When entering into a contract for "thue khoan", parties may agree on conditions for a reduction in rent. If at least one third of the benefits or income is lost due to an event of force majeure, a "thue khoan" lessee may demand a reduction of or exemption from rent, unless otherwise agreed.
4. Where a "thue khoan" lessee must pay in kind according to the season or cycle in the exploitation of the utility of the "thue khoan" property, payment must be made at the end of such season or cycle, unless otherwise agreed.
5. Where a "thue khoan" lessee is required to perform an act, the "thue khoan" lessee must perform that particular act.

6. Repayment term of “thue khoan” shall be agreed by the parties. If the parties have no agreement, the lessee has to pay on the last day of each month; in case the “thue khoan” follows the business cycle, the payment must be made at the end of the business cycle at the latest.

#### **Article 489. Exploitation of "thue khoan" property**

A "thue khoan" lessee must exploit "thue khoan" property strictly in accordance with the agreed purpose and must inform the "thue khoan" lessor periodically of its condition and its exploitation. If the "thue khoan" lessor demands or requires information at any other time, the "thue khoan" lessee must provide such information promptly. If the "thue khoan" lessee does not exploit the "thue khoan" property strictly in accordance with the agreed purpose, the "thue khoan" lessor has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

#### **Article 490. Taking care, maintenance and disposal of "thue khoan" property**

1. During the period of exploitation of the "thue khoan" property, the "thue khoan" lessee must take care of and preserve the "thue khoan" property and any related equipment at its own expense, unless otherwise agreed. If the "thue khoan" lessee loses or damages the "thue khoan" property or causes any loss or reduction in its value, the "thue khoan" lessee must compensate for damage. The "thue khoan" lessee shall not be liable for normal wear and tear due to the use of the "thue khoan" property.

2. A "thue khoan" lessee may replace or improve "thue khoan" property if the parties so agree, but must preserve its value.

A "thue khoan" lessor must reimburse a "thue khoan" lessee for the reasonable expenses incurred in replacing or improving the "thue khoan" property as agreed.

3. A "thue khoan" lessee may not sub-lease "thue khoan" property without the consent of the "thue khoan" lessor.

#### **Article 491. Enjoyment of benefits and liability for damage with respect to "thue khoan" livestock**

During the term of a "thue khoan" of livestock, the "thue khoan" lessee shall be entitled to enjoy half of the number of offspring born and shall be liable for half of any damage of the "thue khoan" livestock caused by an event of force majeure, unless otherwise agreed.

#### **Article 492. Unilateral termination of performance of contracts for "thue khoan"**

1. Where a party terminates unilaterally the performance of a "thue khoan" contract, that party must give reasonable prior notice to the other party. If the "thue khoan" is based on a season or cycle of exploitation, the period of prior notice must conform to such season or cycle.

2. Where a "thue khoan" lessee breaches an obligation and the exploitation of the "thue khoan" property is the sole means of livelihood of the lessee and continuation of the "thue khoan" would not seriously affect the interests of the "thue khoan" lessor, the "thue khoan" lessor may not terminate unilaterally the performance of the contract. In such case, the "thue khoan" lessee must undertake to the "thue khoan" lessor not to commit further breaches of the contract.

#### **Article 493. Return of "thue khoan" property**

Upon termination of a "thue khoan" contract, the "thue khoan" lessee must return the "thue khoan" property in a condition which takes into account the agreed depreciation. If the "thue khoan" lessee has caused any reduction in the value of the "thue khoan" property, the "thue khoan" lessee must compensate for damage.

## **Section 6. CONTRACTS FOR BORROWING PROPERTY**

### **Article 494. Contracts for borrowing property**

Contract for borrowing property means an agreement between parties whereby a lender delivers property to a borrower for use free of charge for a period of time and the borrower returns the property at the end of the period of time or when the purpose of the borrowing has been achieved.

### **Article 495. Subject matter of contracts for borrowing property**

Any non-consumable object may be the subject matter of a contract for borrowing property.

### **Article 496. Obligation of borrowers of property**

1. Take care of and preserve the borrowed property and not to change the condition thereof at the volition of the borrower. The borrower must repair any normal damage to the property.
2. Do not on-lend the property to any other person without the consent of the lender.
3. Return the borrowed property on the due date. If there is no agreement on the time for returning the property, the borrower must return the property immediately after the purpose of the borrowing has been achieved.
4. Compensate for damage where the borrower causes damage to or loss of the borrowed property.
5. The borrower must bear the risk in relation to the borrowed property during the period of late return.

### **Article 497. Rights of borrowers of property**

1. Use the borrowed property strictly in accordance with its utility and agreed purpose.
2. Require the lender to reimburse reasonable expenses incurred in carrying out repairs or improvements to the borrowed property which increase its value if so agreed.
3. Do not bear liability for normal wear and tear of the borrowed property.

### **Article 498. Obligations of lenders of property**

1. Provide necessary information on the use of the property and its defects, if any.
2. Reimburse the borrower for expenses incurred in carrying out repairs or improvements to the borrowed property which increase its value if so agreed.
3. Where the lender knows but fails to notify the borrower of a defect in the property which results in damage to the borrower, to compensate the borrower for such damage, except where the borrower knows or should know of such defect.

### **Article 499. Rights of lenders of property**

1. Reclaim the property immediately after the borrower has achieved its purpose where there is no agreement on the borrowing period. If the lender suddenly and urgently needs to use the borrowed property, the lender may reclaim it upon giving reasonable prior notice to the borrower, even if the borrower has not yet achieved its purpose.
2. Reclaim the property where the borrower fails to use it strictly in accordance with the agreed purpose, utility, or method or where the borrower on-lends the property without the consent of the lender.
3. Demand compensation for damage to the property caused by the borrower.

## **Section 7. CONTRACTS OF LAND USE RIGHTS**

### **Article 500. Contract of land use rights**

The contract of land use rights means the agreement between the parties that the land user convert, transfer, lease, sublease, donate, mortgage and contribute land use rights as capital or exercise other rights to the other party as prescribed in the Law on land; and the other party shall exercise rights and perform obligations according to the contract to the land user.

### **Article 501. Contents of contract of land use rights**

1. General provisions on contracts and the content of common contracts related in this Code shall also apply to contracts on land use rights, unless otherwise provided by law.
2. Contents of the contract of land use rights are not contrary to the provisions of the purpose of use, the duration of land use, zoning, land use planning and the rights and obligations stipulated by law on land and other provisions of relevant laws.

### **Article 502. Forms and procedures for performing contract of land use rights**

1. Contracts relating to land use rights must be made in writing in the form consistent with the provisions of this Code, the law on land and other provisions of relevant laws.
2. The performance of the contract for the land use rights must follow the procedures prescribed by the law of the land and other provisions of relevant laws.

### **Article 503. Effect of the transfer of land use rights**

The transfer of land use rights shall be effect from the date of registration under the provisions of the law on land.

## **Section 8. COOPERATION CONTRACT**

### **Article 504. Cooperation contract**

1. A cooperation contract means an agreement between natural and/or juridical persons regarding the property contribution, effort to perform certain jobs, the same benefit and mutual responsibility.
2. Each cooperation contract must be made in writing.

### **Article 505. Contents of cooperation contract**

Each cooperation contract shall contain the major contents below:

1. Purpose and duration of cooperation;

2. Full name and place of residence of natural person; name and headquarters of juridical person;
3. Contributed property (if any);
4. Contributed labor (if any);
5. Method of distributing the yield and/or income;
6. Rights and obligations of cooperative members;
7. Rights and obligations of representatives (if any);
8. Conditions for participation and withdrawal from the cooperation contract (if any);
9. Conditions for termination of cooperation.

#### **Article 506. Common property of the cooperative members**

1. Property contributed and created by the members and other property as prescribed by law shall be considered as common property part of the cooperative members.

Where there is agreement on the contribution that members fail to contribute money on schedule, they must pay interest on the unpaid portion of the money under the provisions of Article 357 of this Code and must pay damages.

2. The disposition of the property is land use rights, housing, factories, other production materials must have a written agreement of all the members; the disposal of other property shall be decided by the representatives of the members, unless otherwise agreed.

3. The common property may not be divided before the termination of the cooperation contract, unless otherwise agreed by all members.

The division of common property shall not change or terminate the rights and obligations established before the division time.

#### **Article 507. Rights and obligations of cooperative members**

1. Enjoy the yield and income gained from cooperation activities.
2. Participate in decisions involving issues of performance of cooperation contract and co-operation monitoring.
3. Compensate for damages to other cooperative members caused by their faults.
4. Perform other rights and obligations under the contract.

#### **Article 508. Establishing and performing civil transactions**

1. Where the cooperative members appoint representatives, they shall establish and perform civil transactions.

2. Where the cooperative members do not appoint any representative, they shall jointly establish and perform civil transactions, unless otherwise agreed.

3. Civil transactions that are established and performed by entities specified in Clauses 1 and 2 of this Article shall give rise to rights and obligations of all cooperative members.

#### **Article 509. Civil liability of cooperative members**

The cooperative members are responsible for general civil liability by their common property; if the common property is insufficient to fulfill the obligation, the members shall be held responsible by their own property corresponding to its contribution, unless otherwise specified by the cooperation contract or otherwise prescribed by law.

#### **Article 510. Withdrawal from the cooperation contract**

1. A member has the right to withdraw from the cooperation contract in any of the following cases:

- a) Satisfy the conditions specified in the cooperation contract;
- b) There is a good reason and the consent of more than half the total cooperative members.

2. The member withdrawing from the cooperation contract has the right to reclaim contributed property, divided part of the property in the common property and must pay all obligations under the agreement. Where the division of property in kind affects the cooperation activities, the property are worth the money to divide.

The withdrawal of a member from the cooperation contract does not terminate his/her rights and obligations that are established or performed before the withdrawal time.

3. The withdrawal of a member from the contract in a case other than Clause 1 of this Article shall be defined as the breach of contract and should execute the civil liability as prescribed in this Code and other relevant laws.

#### **Article 511. Joining cooperation contract**

Unless the cooperation contract otherwise specifies, a natural or juridical person shall become a new member of the contract with the consent of more than half the total cooperative members.

#### **Article 512. Termination of cooperation contract**

1. A cooperation contract shall terminate in any of the following cases:

- a) As agreed by cooperative members;
- b) The time limit mentioned in the cooperation contract has expired;
- c) The purpose of cooperation has been achieved;
- d) Pursuant to a decision of a competent authority;
- dd) Other cases prescribed in this Code or other relevant laws.

2. Upon the termination of the cooperation contract, the debts arising from the contract must be paid; if the common property is insufficient to repay it to private assets of cooperative members to pay under the provisions of Article 509 of this Code.

Where the debt was repaid and the common property still exists, it shall be divided by the cooperative members in proportion to the contribution of each person, unless otherwise agreed.

### **Section 9. CONTRACTS FOR SERVICES**

#### **Article 513. Contracts for services**

Contract for services means an agreement between parties whereby a service provider performs an act for a client which pays a fee for that act.

#### **Article 514. Subject matter of contracts for services**

The subject matter of a contract for services must be an act which is capable of being performed, which is not prohibited by law and which does not contravene social morals.

#### **Article 515. Obligations of clients**

1. Supply the service provider with the information, documentation and facilities necessary for the performance of the act if so agreed or required for the performance of the act.
2. Pay a fee to the service provider as agreed.

#### **Article 516. Rights of clients**

1. Require the service provider to perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Where a service provider commits a serious breach of its obligations, the client may terminate unilaterally performance of the contract and demand compensation for damage.

#### **Article 517. Obligation of service providers**

1. Perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Do not assign the act to another person for performance on its behalf without the consent of the client.
3. Take care of, and to return to the client after completion of the act, the documents and facilities provided to it.
4. Notify the client promptly of any inadequacy in the information or documents and any failure of the facilities to satisfy the quality required for the completion of the act.
5. Keep confidential any information of which it has had knowledge during the period of providing the service as agreed or as provided by law.
6. Compensate the client for damage where the service provider causes any loss of or damage to the documents or facilities supplied or discloses confidential information.

#### **Article 518. Rights of service providers**

1. Require the client to provide information, documents and facilities.
2. Amend the terms of service in the interests of the client without necessarily asking for the opinion of the client where waiting for such opinion would cause damage to the client provided that the service provider promptly informs the client thereof.
3. Require the client to pay the fee.

#### **Article 519. Payment of fees**

1. A client must pay the agreed fee for services.
2. If, upon entering a contract, there is no agreement on the service fee rate or on the method for fixing the fee for services and there are no other instructions on fees, the service fee rate shall be fixed on the basis of market fees for services of the same type at the time when and place where the contract was entered into.

3. A client must pay the fee for services at the place where the service is provided and at the time of its completion, unless otherwise agreed.
4. Where the services provided fail to meet the terms of the agreement or the act is not completed in time, the client has the right to reduce the fee for services and demand compensation for damage.

#### **Article 520. Unilateral termination of performance of contracts for services**

1. Where the continued provision of services does not benefit the client, the client has the right to terminate unilaterally the performance of the contract but must provide reasonable prior notice to the service provider, in which case the client must pay a fee according to the portion of services already provided and [must] compensate for damage.
2. Where the client fails to perform its obligations or performs its obligations not as agreed, the service provider has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

#### **Article 521. Continuation of contracts for services**

If, after the expiry of the agreed period for the provision of services, the act has not been completed and the service provider continues its performance and the client is aware of this but does not object, the performance of the contract for services shall automatically be deemed to continue in accordance with the agreed terms until the act is completed.

### **Section 10. TRANSPORT CONTRACTS**

#### **Sub-section 1. Transport contracts**

#### **Article 522. Contracts for transport of passengers**

Contract for transport of passengers means an agreement between parties whereby a carrier transports passengers and luggage to an agreed destination and the passengers must pay transport fares.

#### **Article 523. Formalities for contracts for transport of passengers**

1. A contract for transport of passengers may be made in writing or orally.
2. A ticket is evidence of the entry into a contract for transport of passengers by the parties.

#### **Article 524. Obligations of carriers**

1. Carry the passengers safely from the place of departure to the agreed destination on time, in a civilized and courteous manner, by the means agreed and on the agreed route; to ensure that there are sufficient seats for the passengers and that the transport capacity of the carrier is not exceeded.
2. Purchase civil liability insurance for the passengers, as provided by law.
3. Ensure that the departure time is adhered to as notified or agreed.
4. Carry and return the luggage to the passenger or person entitled to receive the luggage in accordance with the agreed destination, time and route.
5. Refund the transport fare to any passenger as agreed or as prescribed by law.

#### **Article 525. Rights of carriers**

1. Require the passengers to pay in full the passenger transport fares and fares for the transport of personal luggage in excess of the prescribed limit.

2. Refuse to carry a passenger in the following cases:

a) Where the passenger fails to follow the regulations of the carrier, where the acts of the passenger disturb public order, obstruct the work of the carrier, or pose a threat to life, health or property of other persons, or where a passenger commits other acts which make it impossible to ensure safety during the journey. In this case, the passenger shall not receive a refund of the passenger transport fare, and must pay a fine if so provided by the transport regulations;

b) Where the health of the passenger is such that it is obvious to the carrier that the transport [of such person] will endanger the passenger or other persons during the journey;

c) In order to prevent the spread of contagious diseases.

#### **Article 526. Obligations of passengers**

1. Pay in full the passenger transport fare and fares for the transport of luggage in excess of the prescribed limit, and to take care of his or her hand-luggage.

2. Present at the place of departure at the agreed time.

3. Respect and comply strictly with the regulations of the carrier and all other regulations ensuring traffic safety.

#### **Article 527. Rights of passengers**

1. Request to be transported by the agreed means of transport, in the class commensurate with the value of the ticket and in accordance with the agreed route.

2. Be exempt from transport fares for check-in luggage and hand-luggage within the limits as agreed or as provided by law.

3. Demand reimbursement of expenses incurred or compensation for any damage if the carrier is at fault in failing to transport according to the agreed time schedule and destination.

4. Receive a refund of all or part of the transport fare in the cases provided for in Points b and c Clauses 2 of Article 525 of this Code and in other cases as agreed or as provided by law.

5. Receive the luggage at the agreed destination in accordance with the agreed time and route.

6. Request temporary interruption of the journey for the duration and in accordance with the procedures provided by law.

#### **Article 528. Liability to compensate for damage**

1. In case of loss of life or damage to the health or luggage of a passenger, the carrier must compensate for any damage in accordance with law.

2. Unless otherwise provided by law, a carrier shall not be liable to compensate for loss of life or damage to the health and luggage of a passenger in the case where such loss or damage is entirely due to the fault of the passenger, unless otherwise prescribed by law.

3. A passenger which breaches the agreed terms for transport or the transport regulations, thereby causing damage to the carrier or a third person, must compensate.

#### **Article 529. Unilateral termination of contracts for transport of passengers**

1. A carrier has the right to terminate unilaterally the performance of a contract in the cases provided in Clause 2 of Article 525 of this Code.

2. A passenger has the right to terminate unilaterally the performance of a contract where the carrier breaches the obligations provided in Clauses 1, 3 and 4 of article 524 of this Code.

## **Sub-section 2. CONTRACTS FOR TRANSPORT OF PROPERTY**

### **Article 530. Contracts for transport of property**

Contract for transport of property means an agreement between parties whereby a carrier has the obligation to transport property to an agreed destination and to deliver it to the authorized recipient, and the customer has the obligation to pay the freight charges.

### **Article 531. Formalities for contracts for transport of property**

1. A contract for transport of property may be entered into orally or in writing or a specific act.

2. A bill of lading or equivalent source document of transport shall be evidence of the entering into of a contract by the parties.

### **Article 532. Delivery of property to carriers**

1. A customer has the obligation to deliver property to a carrier at the agreed time and place and pack the property in accordance with the agreed specifications. The customer must bear the costs of loading the property onto and unloading the property from the means of transport, unless otherwise agreed.

2. Where a customer is late in delivering property to the agreed place, the customer must reimburse the carrier for the costs associated with the delay and pay the freight charges for transporting the property to the place agreed in the contract, or must pay a penalty for breach of the contract.

If the carrier is late in accepting the property at the agreed at the agreed place, it shall be liable for the costs incurred due to such late acceptance.

### **Article 533. Freight charges**

1. The rate of freight charges shall be as agreed by the parties. If the law regulates freight charges, charges shall apply as regulated.

2. A customer must pay freight charges in full after the property is loaded onto the means of transport, unless otherwise agreed.

### **Article 534. Obligations of carriers**

1. Transport the property in its entirety and safely to the agreed destination at the agreed time.

2. Deliver the property to the person entitled to receive it.

3. Bear all costs related to the transport of the property, unless otherwise agreed.

4. Purchase civil liability insurance as required by law.

5. Compensate the customer for damage where the loss of or damage to the property is caused by the fault of the carrier, unless otherwise agreed or otherwise provided by law.

### **Article 535. Rights of carriers**

1. Check the authenticity of the property and the bill of lading or equivalent source document of transport.
2. Refuse to transport property which is different from that agreed in the contract.
3. Demand the full and timely payment of the freight charges by the customer.
4. Refuse to transport property if the carrier knows or should know that the transacting of such property is prohibited or the property is of a dangerous or toxic nature.

#### **Article 536. Obligations of customers**

1. Pay in full the freight charges to the carrier, at the time and by the method of payment as agreed.
2. Provide necessary information about the transported property to ensure its safety.
3. Take care of the property during transport if so agreed. Where the customer takes care of the property and it is lost or damaged, the customer shall not be entitled to compensation.

#### **Article 537. Rights of customers**

1. Demand the carrier to transport the property to the agreed destination at the agreed time.
2. Receive directly the property which has been transported, or appoint a third person to receive it.

#### **Article 538. Delivery of property to recipients**

1. A recipient of property may be the customer or a third person appointed by the customer to receive the property.
2. A carrier must deliver the property to a recipient in full, at the time and place and by the method as agreed.
3. Where property has been delivered to the point of delivery on time but there is no recipient of the property, the carrier may deposit such property at a place of bailment and must notify immediately the customer or the recipient of the property. The customer or recipient of the property must bear the reasonable expenses incurred in relation to the bailment of the property.

The obligation to deliver property shall be completed upon bailment of the property in compliance with the agreed terms and when the customer or the recipient of the property has been notified about the bailment.

#### **Article 539. Obligation of recipients of property**

1. Produce to the carrier the bill of lading or other equivalent source document of transport, and to receive the property at the agreed time and place.
2. Bear the costs for loading and unloading the transported property, unless otherwise agreed or otherwise provided by law.
3. Reimburse the carrier for reasonable costs incurred due to late acceptance of the property.
4. Notify the customer of the acceptance of the property and provide other necessary information required by the customer if the recipient is a third party appointed by the customer.

#### **Article 540. Rights of recipients of property**

1. Verify the quantity and quality of the delivered property.
2. Accept the delivered property.
3. Require the carrier to reimburse reasonable costs incurred due to any delay by the carrier in delivering the property.
4. Require the carrier compensate for loss of or damage to the property.

#### **Article 541. Liability to compensate for damage**

1. Where a carrier is responsible for the loss of or damage to property, the carrier must compensate the customer for damage, except in the case provided in Clause 3 of Article 536 of this Code.
2. A customer must compensate a carrier and any third parties for damage caused by the transport of dangerous or toxic property which is not safely packaged or the safety of which is not otherwise ensured.
3. A carrier shall not be liable to compensate for damage in the event of force majeure causing loss or deterioration of or damage to the property during transport, unless otherwise agreed or otherwise provided by law.

### **Section 11. PROCESSING CONTRACTS**

#### **Article 542. Processing contracts**

Processing contract means an agreement between parties whereby a processor carries out work to create products at the request of a supplier, and the supplier receives the products and pays fees.

#### **Article 543. Subject matter of processing contracts**

The subject matter of a processing contract shall be items which are specified by samples, the standard of which is agreed by the parties or provided by law.

#### **Article 544. Obligation of suppliers**

1. Supply raw materials to the processor strictly in accordance with the agreed quantity, quality, time and place, unless otherwise agreed by the parties; and to provide necessary documents relating to the processing.
2. Provide the processor with instructions as to how to perform the contract.
3. Pay agreed fees.

#### **Article 545. Rights of suppliers**

1. Accept the processed products in accordance with the agreed quantity, quality, manner, time and place.
2. Terminate unilaterally performance of the contract and demand compensation for damage if the processor commits a serious breach of the contract.
3. Where the products are not of the agreed quality and the supplier accepts the products but requests repairs, but the processor is not able to perform the repairs within the agreed time, the supplier has the right to cancel the contract and demand compensation for damage.

#### **Article 546. Obligations of processors**

1. Take care of the raw materials supplied by the supplier.
2. Notify the supplier to replace any raw materials supplied which are not of the agreed quality; to refuse to perform the processing if the use of the raw materials may create products which pose a danger to society.
3. Deliver the products to the supplier strictly in accordance with the agreed quantity, quality, method, time and place.
4. Keep confidential all information relating to the processing and the products.
5. Bear liability for the quality of the products, unless the lack of quality is due to the raw materials supplied by the supplier or due to the unreasonable instructions of the supplier.
6. Return any leftover raw materials to the supplier after completing performance of the contract.

#### **Article 547. Rights of processors**

1. Require the supplier to deliver the raw materials strictly in accordance with the agreed quality, quantity, time and place.
2. Refuse to comply with unreasonable instructions of the supplier where the processor is of the view that [compliance with] such instructions could decrease the quality of the products provided that the processor immediately informs the supplier.
3. Require the supplier to make payment of the fees in full, at the time and by the method as agreed.

#### **Article 548. Liability for risk**

Unless otherwise agreed, the owner of the raw materials shall bear all risks with respect to such materials and the products processed therefrom until the products are delivered to the supplier.

If the supplier is late in accepting the products, it shall bear all risks during the period of delayed acceptance, including where the products are processed from the raw materials of the processor, unless otherwise agreed.

If the processor delays delivery of the products and the delay damages the processed property, the processor must compensate for damage suffered by the supplier.

#### **Article 549. Delivery and acceptance of processed products**

A processor must deliver, and the supplier must accept, products at the agreed time and place.

#### **Article 550. Late delivery and acceptance of processed products**

1. Where the processor is late in delivering processed products, the supplier may extend the time of delivery. If, upon expiry of such extension, the processor still has not delivered the products, the supplier has the right to terminate unilaterally the performance of the contract and demand compensation for damage.
2. Where the supplier is late in accepting the products, the processor may deposit the products at a place of bailment and must notify the supplier immediately. The obligation to deliver the products shall be fulfilled when the agreed terms are satisfied and the supplier has been notified. The supplier must bear all costs incurred for bailment.

#### **Article 551. Unilateral termination of performance of processing contracts**

1. Unless otherwise agreed or otherwise provided by law, each party has the right to terminate unilaterally the performance of a processing contract if continued performance would not benefit that party but must give reasonable prior notice to the other party.
2. If the supplier terminates unilaterally the performance of the contract, the supplier must pay fees for the work already performed, unless otherwise agreed. If the processor terminates unilaterally the performance of the contract, it shall not be paid fees, unless otherwise agreed.
3. A party which unilaterally terminates the performance of a contract and thereby causes damage to the other party must compensate.

#### **Article 552. Payment of fees**

1. Unless otherwise agreed, the supplier must pay fees in full at the time of accepting the products.
2. If there is no agreement on the rate of fees, the applicable rate shall be the average rate charged for the production of products of the same type at the place of processing at the time of payment.
3. If the products fail to meet the agreed quality due to the raw materials supplied or the unreasonable instructions provided by the supplier, the supplier does not have the right to reduce the fees.

#### **Article 553. Dealing with leftover raw materials**

Unless otherwise agreed, the processor must return leftover raw materials to the supplier upon termination of the processing contract.

### **Section 12. CONTRACTS FOR BAILMENT OF PROPERTY**

#### **Article 554. Contracts for bailment of property**

Contract for bailment of property means an agreement between parties whereby a bailee accepts the property of a bailor for safekeeping, for return to the bailor upon expiry of the duration of the contract, and the bailor must pay a fee to the bailee, except where the bailment is free of charge.

#### **Article 555. Obligation of bailors of property**

1. Inform the bailee of the condition of the property and the appropriate safekeeping measures upon delivery of the property; if the bailor fails to inform the bailee, and the property is destroyed or damaged as a result of inappropriate safekeeping, the bailor must be liable itself for such destruction of or damage to the bailed property and must compensate for other damage caused.
2. Pay the bailment fees in full, at the time and by the method as agreed.

#### **Article 556. Rights of bailors of property**

1. Reclaim the property at any time subject to giving reasonable prior notice to the bailee if the bailment contract does not specify a period of time.
2. Demand compensation for loss of or damage to the bailed property caused by the bailee, except in the case of an event of force majeure.

#### **Article 557. Obligation of bailees of property**

1. Take care of the property as agreed and return it to the bailor in the same condition in which the bailee received it.
2. Change the method for safekeeping of the property only where such change is necessary for better safekeeping of such property and provided that the bailor is notified immediately of the change.
3. Notify promptly the bailor in writing and request the bailor to advise, within a certain period of time, a solution where, due to its nature, the bailed property is in danger of being damaged or destroyed. If the bailor fails to reply within such period of time, the bailee has the right to take all necessary measures to take care of the property and to require the bailor to reimburse the costs incurred.
4. Compensate for damage where the bailee causes any loss of or damage to the bailed property, except in the case of an event of force majeure.

#### **Article 558. Rights of bailees of property**

1. Require the bailor to pay the agreed bailment fees.
2. Require the bailor to pay the reasonable costs of taking care of the property where the bailment is free of charge.
3. Request, at any time, the bailor to take back the property subject to giving reasonable prior notice to the bailor where the bailment is for an indefinite period of time.
4. Sell the property in the interests of the bailor where the bailed property is in danger of being damaged or destroyed, inform the bailor thereof and pay the proceeds of the sale to the bailor after deduction of reasonable expenses incurred for the sale of the property.

#### **Article 559. Return of bailed property**

1. A bailee must return the same property that was received, including any benefits derived therefrom, unless otherwise agreed.

The bailed property shall be returned to the bailor at the place where it was delivered. If the bailor wishes to have the property returned at another place, the bailor must bear the transport costs to such place, unless otherwise agreed.

2. A bailee must return property at the agreed time and only has the right to request the bailor take back the property prior to such time for a legitimate reason.

#### **Article 560. Late taking back of bailed property**

If a bailee is late in returning the property, the bailee may not require the bailor to pay bailment fees and costs for taking care of the property incurred from the agreed time for return of the property to the time it is actually returned and bears the risk with respect to the property during such period.

Where a bailor is late in taking back property, the bailor must pay all costs for taking care of the property and the bailment fees to the bailee during the period for which the bailor is late.

#### **Article 561. Payment of fees**

1. A bailor must pay bailment fees in full when taking back the bailed property, unless otherwise agreed.

2. Where the parties have no agreement on the rate of bailment fees, the applicable rate shall be the average rate of bailment fees at the time when and place where the bailment fee is paid.
3. Notwithstanding that the bailor takes back the property prior to the agreed time, the bailor must pay the bailment fees in full and must pay the necessary costs which the bailee incurs due to the return of the property by the bailee prior to the agreed time, unless otherwise agreed.
4. Where a bailee requests a bailor to take back the property prior to the agreed time, the bailee shall not be entitled to be paid bailment fees and must compensate for any damage to the bailor, unless otherwise agreed.

## **Section 13. AUTHORIZATION CONTRACTS**

### **Article 562. Authorization contracts**

Authorization contract means an agreement between parties whereby an attorney has the obligation to perform an act in the name of a principal. The principal shall only be required to pay remuneration if so agreed or so provided by law.

### **Article 563. Duration of authorization**

The duration of the authorization shall be as agreed by the parties or as provided by law. If there is no agreement and the duration is not provided by law, the authorization contract shall be effective for one year from the date on which the authorization is made.

### **Article 564. Sub-authorization**

1. An attorney may only sub-authorize its authorization to a third person in any of the following cases:
  - a) With the consent of the principal;
  - b) Due to force majeure events that if the sub-authorization does not apply, the purposes of entering into a civil transaction for the interests of the principal is unachievable.
2. A sub-authorization shall not exceed the scope of the original authorization.
3. The formalities of the sub-authorization contract must conform to the formalities of the original authorization contract.

### **Article 565. Obligation of attorneys**

1. Perform the act in accordance with the authorization and inform the principal of such performance.
2. Notify any third parties involved in the performance of the authorized act of the duration and scope of the authorization and of any amendments of or additions to such scope.
3. Take care of and preserve documents and facilities provided for the performance of the authorized act.
4. Keep all information confidential which the attorney comes to know during the performance of the authorized act.
5. Return to the principal any property received and benefits derived during the performance of the authorized act as agreed or as provided by law.
6. Compensate for damage caused by a breach of any of the obligations provided in this Article.

### **Article 566. Rights of attorneys**

1. Require the principal to provide the information, documentation and facilities necessary for performance of the authorized act.
2. Receive remuneration and be reimbursed for reasonable expenses incurred in the performance of the authorized act.

### **Article 567. Obligation of principals**

1. Provide the information, documentation and facilities necessary for the attorney to perform the authorized act.
2. Be liable for undertakings given by the attorney within the scope of the authorization.
3. Reimburse the attorney for reasonable expenses incurred by the attorney in the performance of the authorized act and pay any agreed remuneration to the attorney.

### **Article 568. Rights of principals**

1. Require the attorney to report fully on the performance of the authorized act.
2. Require the attorney to return any property and benefits derived from the performance of the authorized act, unless otherwise agreed.
3. Compensate for damage caused by a breach of any of the obligations provided in Article 565 of this Code.

### **Article 569. Unilateral termination of performance of authorization contracts**

1. Where an authorization involves payment of remuneration, the principal has the right, at any time, to terminate unilaterally the performance of the contract but must remunerate the attorney in proportion to the acts performed and compensate for damage. If the authorization does not involve payment of remuneration, the principal has the right, at any time, to terminate the performance of the contract, subject to giving reasonable prior notice to the attorney.

A principal must notify any third person in writing of the termination of the performance of the contract by the principal. If the principal fails to do so, any contract with any such third person shall remain in effect, unless such third person knows or should know of the termination of the performance of the contract.

2. Where an authorization does not involve payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract, subject to giving reasonable prior notice to the principal. If the authorization involves payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract and must compensate for any damage caused to the principal.

## ***Chapter XVII***

### ***PROMISES OF REWARDS AND PRIZE COMPETITIONS***

#### **Article 570. Promises of rewards**

1. A person having made a public promise of a reward must pay that reward to a person having performed the act requested by the promissor.

2. An act for which a reward is promised must be specific and capable of being performed and must not be prohibited by law nor contravene social morals.

#### **Article 571. Withdrawal of promises of rewards**

A promissor may withdraw its promise of a reward at any time prior to the commencement of the performance of the act. A withdrawal of a promise of reward must be made in the same manner and by the same media in which the promise of reward was announced.

#### **Article 572. Payment of rewards**

1. Where a person performs an act for which a reward is promised, that person shall be given the reward upon completion of the act.
2. Where several persons perform an act for which a reward is promised, concurrently but independently, the person having first completed the act shall be given the reward.
3. Where more than one person complete, at the same time, an act for which a reward is promised, the reward shall be distributed in equal shares amongst such persons.
4. Where more than one person co-operate with each other to perform, at the request of the promissor, an act for which a reward is promised, each person shall receive a share of the reward in proportion to its contribution.

#### **Article 573. Prize competitions**

1. Organization of a cultural, artistic, sports, scientific, technical or other competition shall not violate prohibitions of law and contravene social morals.
2. A person organizing the competition must announce publicly the terms of participation, the scale of marks, the prizes and the value of each prize.

Any alteration of the terms of participation must be announced in the manner in which the competition was announced, within a reasonable period of time prior to the competition being conducted.

3. A winner of a prize has the right to demand the organizer of a competition give a prize of the value announced.

### **Chapter XVIII**

## **PERFORMANCE OF ACTS WITHOUT AUTHORIZATION**

#### **Article 574. Performance of acts without authorization**

Performance of acts without authorization means the voluntary performance of acts by a person being under no obligation to perform the act, solely for the benefit of a beneficiary, without the knowledge of the beneficiary, or with its knowledge but without the beneficiary raising any objection.

#### **Article 575. Obligation to perform acts without authorization**

1. A person performing an act without authorization has the obligation to do so in accordance with its capabilities and conditions.

2. A person performing an act without authorization must do so as if such person were performing such act for its own benefit. If such person knows or is able to guess the wishes of the beneficiary, such person must perform the act in accordance with such wishes.
3. A person performing an act without authorization must, if requested, notify the beneficiary of the progress and results of the performance, unless the beneficiary already knows such information or the person performing the act without authorization does not know the place of residence of the beneficiary.
4. If a beneficiary being natural person dies or a beneficiary being juridical person ceases to exist, the person performing an act without authorization must continue to perform the act until the heir or representative of the beneficiary takes over the act.
5. Where a person performing an act without authorization has legitimate reasons for not being able to continue performance, such person must notify the beneficiary, or the representative or close relatives of the beneficiary, or may ask another person to perform the act on its behalf.

**Article 576. Obligation of beneficiary to pay for acts performed without authorization**

1. A beneficiary of an act performed without authorization must accept the results of the act when it is handed over to the beneficiary by the person having performed the act and [must] reimburse that person for reasonable expenses incurred in performing such act, even where the performance has failed to achieve the results desired by the beneficiary.
2. If a person has performed an act properly for the benefit of a beneficiary, the beneficiary must remunerate the person having performed the act, unless the person having performed the act refuses to accept the remuneration.

**Article 577. Obligation to compensate for damage**

1. If a person performing an act without authorization intentionally causes damage to the beneficiary while performing the act, such person must compensate for such damage.
2. If a person performing an act without authorization unintentionally causes damage to the beneficiary while performing the act, the compensation by such person may be reduced on the basis of the circumstances in which the act was performed.

**Article 578. Termination of performance of acts without authorization**

The performance of acts without authorization shall terminate in the following cases:

1. The beneficiary so requests;
2. The beneficiary, or its heir or representative, takes over the acts;
3. The person performing the acts without authorization becomes not able to continue performance in accordance with Clause 5 Article 575 of this Code;
4. The person performing the acts without authorization dies with regard to natural person or juridical person ceases to exist with regard to juridical person.

**Chapter XIX**

**OBLIGATIONS TO RETURN PROPERTY DUE TO UNLAWFUL POSSESSION OR USE OF PROPERTY OR DERIVING OF BENEFITS FROM PROPERTY**

**Article 579. Obligation to return property**

1. A person possessing or using property of another unlawfully must return the property to its owners and holders of other property-related rights. If the lawful owners and holders of other property-related rights of such property are not able to be found, the property must be delivered to a competent authority, except in the case provided in article 236 of this Code.
2. A person deriving benefits from property unlawfully, thereby causing damage to another person, must give such benefits to such other person, except in the case provided in Article 236 of this Code.

#### **Article 580. Property to be returned**

1. A person possessing or using property unlawfully must return the whole of such property.
2. Where the property to be returned is a distinctive object, that particular object must be returned and, if such distinctive object is lost or damaged, monetary compensation must be paid, unless otherwise agreed.
3. If the property to be returned is a fungible object which has been lost or damaged, an object of the same type must be returned or monetary compensation must be paid, unless otherwise agreed.
4. A person deriving benefits from property unlawfully must return, either in kind or in money, the benefits derived from the property to any person having suffered loss of such benefits.

#### **Article 581. Obligation to return yield and income**

1. A person possessing or using property, or a person deriving benefits from property, unlawfully and not in good faith, must return yield and income derived from the property during the time of unlawful possession or use of, or deriving benefits from, the property.
2. A person possessing or using property, or a person deriving benefits from property, unlawfully but in good faith, must return any yield and income derived from the property from the time when it knew or should have known that the possession or use of, or deriving benefits from, the property was unlawful, except in the case provided in Article 236 of this Code.

#### **Article 582. Right to require third person to return property**

Where a person unlawfully possessing or using property transfers the property to a third person, the third person must return the property if so demanded by the owner and holders of other property-related rights, unless this Code contains some other provision. If money or compensation has been paid for such property, the third person has the right to demand the party having transferred the property to the third person to compensate for damage.

#### **Article 583. Obligation to pay**

Upon taking back property, an owner or holders of other property-related rights or an aggrieved person must reimburse the person having taken possession of or used the property, or having derived benefits from the property, unlawfully but in good faith, for the necessary expenses such person has incurred for taking care of the property and increasing its value.

## Chapter XX

### LIABILITY FOR COMPENSATION FOR NON-CONTRACTUAL DAMAGES

#### **Section 1. GENERAL PROVISIONS**

#### **Article 584. Grounds giving rise to liability to compensate for damage**

1. A person intentionally or unintentionally harming the life, health, honor, dignity, reputation, property, or other legal rights or interests of a person, must compensate for such damage, unless otherwise prescribed in this Code or relevant laws.
2. The person who causes damage shall be discharged from liability for compensation in case where the damage incurs due to force majeure events or at entire fault of the aggrieved person, unless otherwise agreed or otherwise prescribed by law.
3. If a property causes damage, its owner or possessor must compensate for the damage, except for the damage prescribed in Clause 2 of this Article.

#### **Article 585. Principles of compensation for damage**

1. Actual damage must be compensated in full and promptly. Unless otherwise provided by law, parties may agree on the amount of compensation; on the form of compensation, which may be money, in kind or the performance of an act; lump sum payment or payment in instalments; and on the method of compensation.
2. The compensation payable by a person having caused damage may be reduced if such damage was caused unintentionally and is very large in comparison to the financial positions of such person.
3. If the amount of compensation determined becomes unrealistic, the aggrieved person, or the person having caused damage, has the right to request a court or another competent authority to change the amount of compensation.
4. If the aggrieved party is partly his/her fault for causing the damage, that part of damage shall not be compensated.
5. The party having rights and interests infringed shall not be compensated if such damage incurs due to his/her failure to adopt necessary measures to prevent the damage.

#### **Article 586. Capacity of individuals for liability to compensate for damage**

1. A person of eighteen years of age or older who causes damage shall be personally liable to compensate.
2. Where a minor under fifteen years of age causes damage, his or her parents, if any, must compensate for the total damage. If the parents have insufficient property to compensate and the minor who has caused the damage has property of his or her own, such property shall be used to satisfy the outstanding amount of compensation, except in the cases provided in Article 599 of this Code.

Where a person who is between fifteen and eighteen years of age causes damage, such person must compensate by recourse to his or her own property. If such person has insufficient property to compensate, the parents of such person must satisfy the outstanding amount by recourse to their own property.

3. Where a minor, legally incapacitated person, person with limited cognition and behavior control, causes damage but there is a guardian, such guardian shall use the property of the ward to compensate. If the ward has no or insufficient property to compensate, the guardian must do so by recourse to the property of the guardian. If the guardian is able to prove that he or she was not at fault with respect to guardianship, the guardian shall not be required to use its property to compensate.

#### **Article 587. Compensation for damage caused jointly by several persons**

Where several persons jointly cause damage, they must jointly compensate any aggrieved person. Liability for compensation of each person having jointly caused the damage shall be determined in proportion to the degree of fault of each person. If the degree of fault is not able to be determined, the persons causing damage must compensate in equal shares.

#### **Article 588. Limitation period for initiating legal action claiming compensation for damage**

The limitation period for initiating legal action claiming compensation for damage shall be two years from the date on which the legal rights or interests of an individual, legal entity or other subject were infringed.

### **Section 2. ASSESSMENT OF DAMAGE**

#### **Article 589. Damage caused by infringement of property**

In the event of an infringement of property, the compensable damage shall comprise:

1. Property which was lost, destroyed or damaged;
2. Interests associated with the use and exploitation of the property was lost or declined;
3. Reasonable costs for the prevention, mitigation and remedy of the damage;
4. Other damage as prescribed by law.

#### **Article 590. Damage caused by harm to health**

1. Damage caused by harm to health shall comprise:

- a) Reasonable costs for treating, nursing and rehabilitating health, and functional losses and impairment of the aggrieved person;
- b) Loss of or reduction in the actual income of the aggrieved person. If the actual income of the aggrieved person is irregular and is not able to be determined, the average income level for the type of work performed by the aggrieved person shall be applied;
- c) Reasonable costs and actual income losses of the carers of the aggrieved person during the period of treatment. If the aggrieved person loses his or her ability to work and requires a permanent carer, the damage shall also include reasonable costs for taking care of the aggrieved person.
- d) Other damage as prescribed by law.

2. A person causing harm to the health of another person must pay the items provided in Clause 1 of this Article together with an amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed fifty-month base salary prescribed by the State.

### **Article 591. Damage caused by harm to life**

1. Damage caused by harm to life shall comprise:

- a) Damage caused by harm to life prescribed in Article 590 of this Code;
- b) Reasonable funeral costs;
- c) Support for the dependants of the aggrieved person;
- d) Other damage as prescribed by law.

2. A person causing death to another person must pay compensation for damage as provided in Clause 1 of this Article together with an amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who were directly reared by the deceased or to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed one-hundred-month base salary prescribed in by the State.

### **Article 592. Damage caused by harm to honor, dignity or reputation**

1. Damage caused by harm to the honor, dignity or reputation shall comprise:

- a) Reasonable costs for mitigating and remedying the damage;
- b) Loss of or reduction in actual income;
- c) Other damage as prescribed by law.

2. A person causing harm to the honor, dignity or reputation of another person must pay compensation for damage as provided in Clause 1 of this Article together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed ten-month base salary prescribed by the State.

### **Article 593. Period of entitlement to compensation for damage caused by harm to health or resulting from loss of life**

1. Where an aggrieved person loses totally the ability to work, the aggrieved person shall receive compensation until the time of his or her death, unless otherwise agreed.

2. Where the aggrieved person dies, his or her dependants shall be entitled to receive support for the following durations:

- a) A child of the deceased, whether living or conceived prior to his or her death, shall be entitled to compensation until the age of eighteen years, except a child between fifteen and eighteen years of age who is employed and earns sufficient income to look after himself or herself;
- b) An adult who is not able to work shall be entitled to receive support until his or her death.

3. With regard to the conceived child of the deceased, the compensation shall be paid from the time he/she is born and alive.

## **Section 3. COMPENSATION FOR DAMAGE IN A NUMBER OF SPECIFIC CASES**

### **Article 594. Compensation for damage by persons exceeding limits of reasonable self-defense**

A person causing damage while acting in reasonable self-defense shall not be liable to compensate any aggrieved person.

A person causing damage while not acting in reasonable self-defense must compensate any aggrieved person.

**Article 595. Compensation for damage by persons exceeding requirements of emergency situation**

1. A person causing damage as a result of exceeding the requirements of an emergency situation must compensate any aggrieved person for that part of the damage which resulted from exceeding the requirements of an emergency situation.

2. A person creating an emergency situation which leads to damage being caused must compensate any aggrieved person.

**Article 596. Compensation for damage caused by persons using stimulants**

1. A person who, due to the consumption of alcohol or the use of other stimulants, becomes incapable of being aware of or controlling his or her acts, thereby causing damage to another person, must compensate such person.

2. A person who intentionally causes another person to take alcohol or stimulants, thereby causing such person to become incapable of being aware of or controlling his or her acts, must compensate any person aggrieved thereby.

**Article 597. Compensation for damage caused by persons belonging to juridical persons**

A juridical person must compensate for any damage caused by any person belonging to the juridical person during the performance of duties assigned by it to such person. If a juridical person has compensated for any damage, it has the right to demand the person at fault for causing the damage to reimburse it an amount of money in accordance with law.

**Article 598. Compensation for damage caused by law enforcers**

The State must compensate for damage caused by law enforcers as prescribed in the Law on compensation liability of the State.

**Article 599. Compensation for damage caused by persons under fifteen years of age or persons having lost capacity for civil acts and under direct supervision of school, hospital or other organization**

1. Where a person under fifteen years of age causes damage during school hours, the school must compensate for the damage.

2. If a legally incapacitated person causes damage to another person while under the direct supervision of a hospital or another juridical person, such hospital or the juridical person must compensate for the damage.

3. If, in the cases provided in Clauses 1 and 2 of this Article, the school, hospital or another juridical person proves that it was not at fault with respect to supervision, the parents or guardian of the person under fifteen years of age or of the legally incapacitated person must compensate.

**Article 600. Compensation for damage caused workers and trainees**

A natural person or juridical person must compensate for any damage caused by any worker or trainee belonging to it during the performance by the employee or trainee of his or her assigned duties. The natural person or juridical person has the right to demand such worker or trainee reimburse it an amount of money in accordance with law.

#### **Article 601. Compensation for damage caused by sources of extreme danger**

1. Sources of extreme danger comprise motorized means of transport, power transmission systems, operating industrial plants, weapons, explosives, inflammable substances, toxic substances, radioactive substances, dangerous animals and other sources of extreme danger as provided by law.

An owner of a source of extreme danger must comply strictly with the regulations on taking care of, preserving, transporting and using sources of extreme danger in accordance with law.

2. An owner of a source of extreme danger must compensate for damage caused by such source. If the owner has transferred possession or use of the source of extreme danger to another person, such other person must compensate [for the damage], unless otherwise agreed.

3. An owner, or person to which an owner has transferred the possession or use, of a source of extreme danger must compensate for damage caused by such source, even where such owner or person is not at fault, except in either of the following cases:

a) The aggrieved person is entirely at fault for intentionally causing the damage;

b) The damage occurred due to an event of force majeure or in an emergency situation, unless otherwise provided by law.

4. Where a source of extreme danger is taken into possession or used unlawfully, the person possessing or using [it] unlawfully must compensate for damage.

Where an owner, or a person to which an owner has transferred possession or use, of a source of extreme danger is at fault by allowing the unlawful possession or use of the source of extreme danger, the owner, or the person to which the owner has transferred possession or use, of the source of extreme danger as the case may be must compensate jointly for the damage.

#### **Article 602. Compensation for damage caused by environmental pollution**

Any entity polluting the environment, thereby causing damage, must compensate in accordance with the law, including when the entity polluting the environment was not at fault.

#### **Article 603. Compensation for damage caused by livestock**

1. An owner of livestock must compensate for damage caused to another person by such livestock. The possessor or user of livestock must compensate during the period of possession or using, unless otherwise agreed.

2. Where a third person is entirely at fault in causing livestock to cause damage to another person, the third person must compensate for the damage. If both the third person and the owner are at fault, both of them must compensate jointly for the damage.

3. Where livestock which is possessed or used unlawfully causes damage, the unlawful possessor or user must compensate for the damage. When the owner, possessor or user of livestock is at fault leading the livestock is possessed or used unlawfully thereby causes damage, they must jointly compensate for damage.

4. Where livestock which is allowed to roam according to customary practice causes damage, its owner must compensate according to customary practice provided that such compensation does not contravene the law or social morals.

**Article 604. Compensation for damage caused by trees**

An owner, a possessor or a person in charge of trees must compensate for damage caused by the trees.

**Article 605. Compensation for damage caused by houses and other construction works or buildings**

An owner or a possessor of a house or another construction work, or a person to which the owner has assigned the management or use thereof, must compensate for damage if such house or construction causes damage to another person.

If the executor of the house or construction work is partly fault that such house or construction work causes damage, he/she must jointly compensate for such damage.

**Article 606. Compensation for damage caused by infringement of corpses**

1. Each natural person or juridical causing damage to a corpse must compensate.
2. Damage caused by infringement of a corpse shall include reasonable costs for mitigating and remedying the damage.
3. A person causing damage to a corpse must pay an amount of money as provided in Clause 2 of this Article together with another amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed thirty-month base salary prescribed by the State.

**Article 607. Compensation for damage caused by infringement of graves**

1. Each natural person or juridical person causing damage to the grave of another must compensate.
2. Damage caused by infringement of a grave shall include reasonable costs for mitigating and remedying the damage.
3. A person causing damage to a grave must pay an amount of money as provided in Clause 2 of this Article together with another amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum for each damaged grave shall not exceed ten-month base salary prescribed by the State.

**Article 608. Compensation for damage caused by infringement of consumer interests**

A natural person or juridical person carrying out production or business and failing to ensure the quality of goods, thereby causing damage to consumers, must compensate for such damage.

## **PART FOUR**

### **INHERITANCE**

#### **Chapter XXI**

#### **GENERAL PROVISIONS**

##### **Article 609. Rights of inheritance**

A natural person may make a will to dispose of his or her estate, may leave his or her property to an heir in accordance with law, or may inherit an estate left to him or her under a will or in accordance with law.

An heir not being natural person has the right to inherit estate under a will.

##### **Article 610. Equality of individuals with respect to rights of inheritance**

All natural persons are equal with respect to rights to bequeath their property to others and to inherit estates under wills or in accordance with law.

##### **Article 611. Time and place of commencing inheritance**

1. The time of commencement of an inheritance shall be the time when the deceased dies. Where a court declares that a person is dead, the time of commencement of the inheritance shall be the date provided in Clause 2 of Article 81 of this Code.

2. The place of commencement of the inheritance shall be the last place of residence of the owner of the estate. If the last place of residence is not able to be determined, the place of commencement of the inheritance shall be the place at which all or most of the estate is located.

##### **Article 612. Estates**

An estate comprises property which the deceased owned and property which the deceased jointly owned with other persons.

##### **Article 613. Heirs**

If an heir is an individual, such person must be alive at the time of commencement of the inheritance or, if such person is born and alive after the commencement of inheritance, must have been conceived prior to the time when the deceased dies. Where an heir under a will is a body or organization, it must be in existence at the time of commencement of the inheritance.

##### **Article 614. Time when rights and obligations of heirs arise**

From the time of commencement of an inheritance, the heirs have the property rights and obligations left by the deceased.

##### **Article 615. Performance of property obligations left by deceased**

1. A person entitled to an inheritance has the responsibility to perform the property obligations within the scope of the estate left by the deceased, unless otherwise agreed.

2. Where an estate has not yet been divided, the property obligations left by the deceased shall be performed by the administrator of the estate as agreed by the heirs.

3. Where an estate has already been divided, each heir shall perform those property obligations left by the deceased corresponding to, but not exceeding, that part of the estate that the heir has inherited, unless otherwise agreed.

4. Where the heir inheriting an estate under a will is not a natural person, it must perform the property obligations left by the deceased in like manner as a natural person.

#### **Article 616. Administrators of estates**

1. Administrator of an estate means the person who is appointed in the will or by agreement of the heirs.

2. Where a will fails to appoint, and the heirs have not yet appointed, an administrator, any person currently possessing, using or managing property within the estate at the time of the commencement of the inheritance shall continue its administration until the heirs have appointed an administrator.

3. Where an heir has not yet been determined and there is not yet an administrator of the estate as prescribed in Clauses 1 and 2 of this Article, the estate shall be administered by a competent authority.

#### **Article 617. Obligations of administrators of estates**

1. An administrator of an estate as provided in Clauses 1 and 3 of article 616 of this Code has the following obligations:

a) Make a list of the property within the estate and collect any property belonging to the estate of the deceased which is possessed by others, unless otherwise provided by law;

b) Take care of the estate and do not sell, exchange, give, pledge, mortgage or otherwise dispose of property within the estate without the written consent of the heirs;

c) Notify the heirs of the estate;

d) Compensate for any damage if the administrator breaches any of its obligations, thereby causing damage;

dd) Deliver back the estate at the request of the heirs.

2. A person possessing, using or managing property within an estate as provided in Clause 2 of Article 638 of this Code has the following obligations:

a) Take care of the estate and do not sell, exchange, give, pledge, mortgage or otherwise dispose of property within the estate;

b) Notify the heirs of the estate;

c) Compensate for any damage if the administrator breaches any of its obligations, thereby causing damage;

d) Deliver back the estate as agreed with the deceased in a contract or at the request of the heirs.

#### **Article 618. Rights of administrators of estates**

1. An administrator of an estate as provided in clauses 1 and 3 of article 616 of this Code has the following rights:

a) Represent the heirs in dealings with any third parties in relation to the estate of inheritance;

b) Receive remuneration as agreed with the heirs;

c) Receive payment of costs of estate preservation.

2. A person possessing, using or managing property within an estate as provided in Clause 2 of Article 616 of this Code has the following rights:

- a) Continue to use the estate as agreed with the deceased in a contract or with the consent of the heirs;
- b) Receive remuneration as agreed with the heirs;
- c) Receive payment of costs of estate preservation.

3. If the estate administrator fails to reach an agreement on the remuneration with the heirs, he/she shall be entitled to receive an appropriate remuneration.

#### **Article 619. Inheritance by persons entitled to inherit each other's estate but dead at same time**

Where persons who are entitled to inherit each other's estate die at the same time or are deemed to have died at the same time because it is impossible to determine who of them died first (hereinafter referred to as simultaneous death), they do not have the right to inherit each other's estate and the estate of each of the deceased shall be inherited by their respective heirs, except in the case of inheritance pursuant to Article 652 of this Code.

#### **Article 620. Disclaimer of inheritance**

1. An heir may disclaim an inheritance, unless such disclaimer is for the purpose of avoiding the performance of its property obligations to other persons.
2. A disclaimer of an inheritance must be made in writing. A person disclaiming must notify the other heirs and the person authorized to distribute the estate.
3. The disclaimer of an estate must be expressed before the time of inherit distribution.

#### **Article 621. Persons not entitled to inherit**

1. The following persons are not entitled to inherit:
  - a) Persons convicted of having intentionally caused the death of or harmed the health of the deceased, of having seriously mistreated or tortured the deceased, or of having harmed the honor or dignity of the deceased;
  - b) Persons having seriously breached their duty to support the deceased;
  - c) Persons convicted of having intentionally caused the death of another heir in order to obtain all or part of the entitlement of such other heir to the estate;
  - d) Persons deceiving, coercing or obstructing the deceased with respect to the making of the will, or forging, altering or destroying the will in order to obtain all or part of the estate contrary to the wishes of the deceased.
2. Persons provided in Clause 1 of this Article may, nevertheless, inherit the estate if the deceased was aware of such acts but, nevertheless, allowed them to inherit the estate under the will.

#### **Article 622. Estates which no one inherits**

Where there is no heir under a will and at law, or where there is an heir but such heir is not entitled to inherit the estate or disclaims the inheritance of the estate, the residual estate for which there is no heir shall, after fulfillment of property obligations, belong to the State.

#### **Article 623. Limitation periods with respect to inheritance**

1. The limitation period with respect to a claim of an heir for distribution of an estate shall be thirty years regarding immovable property or ten years regarding movable property from the time of commencement of the inheritance. Upon the expiry date of the aforesaid period, the estate shall belong to the estate administrator. In case where there is no estate administrator, the estate shall be dealt with as follows:

- a) It shall belong to the person possessing it as prescribed in Article 236 of this Code;
- b) It shall belong the State if there is no possessor prescribed in Point a of this Clause.

2. The limitation period with respect to a claim of an heir for a declaration of right of inheritance of the requester or to disallow the claim to inheritance of another shall be ten years from the time of commencement of the inheritance.

3. The limitation period with respect to a claim for an heir to fulfill property obligations of the deceased shall be three years from the time of commencement of the inheritance.

#### **Chapter XXII**

### **INHERITANCE UNDER WILLS**

#### **Article 624. Wills**

Will means an expression of the wishes of a natural person, made in order to bequeath his or her property to others after his or her death.

#### **Article 625. Testators**

1. An adult satisfying conditions prescribed in Point a Clause 2 Article 630 of this Code may make a will to dispose his/her property.

2. A person who is between fifteen and eighteen years of age may make a will with the consent of his or her parents or guardian.

#### **Article 626. Rights of testators**

A testator has the following rights:

1. Appoint heirs or to deprive an heir of the right to inherit the estate;
2. Determine those parts of the estate which each heir is entitled to;
3. Reserve part of the estate as a gift or for worship purposes;
4. Designate heirs to perform obligations;
5. Appoint a custodian of the will, an administrator of the estate, and a distributor of the estate.

#### **Article 627. Formalities for wills**

A will must be made in writing. If it is not able to be made in writing, it may be made orally.

#### **Article 628. Written wills**

Written wills comprise:

1. Unwitnessed written wills;
2. Witnessed written wills;
3. Written wills which are notarized;
4. Written wills which are certified.

**Article 629. Oral wills**

1. Where a person is likely to die due to illness or any other reason and it is not possible for him or her to make a written will, such person may make an oral will.
2. If the testator is alive and is of sound mind three months after he or she has made an oral will, such will shall automatically become invalid.

**Article 630. Lawful wills**

1. A will must satisfy the following requirements in order to be lawful:
  - a) The testator was of sound mind when he or she made the will; and he or she was not deceived, threatened or coerced into making the will;
  - b) The contents of the will are not contrary to law or social morals and the will complies with legal formalities.
2. A will made by a person between fifteen and eighteen years of age must be made in writing and with the consent of the parents or guardian of such person.
3. A will made by a person who is incapacitated or illiterate must be made in writing by a witness and must be notarized or certified.
4. A written will which is not notarized or certified shall be deemed lawful only if it satisfies the requirements provided in Clause 1 of this Article.
5. An oral will shall be deemed lawful only if the testator orally expressed his or her last wishes before at least two witnesses who immediately thereafter recorded those wishes in writing and signed or fingerprinted the document. Such will must be notarized or certified within five working days of the date on which the testator orally expressed his or her last wishes.

**Article 631. Contents of written wills**

1. A will must specify clearly the following:
  - a) The date on which the will is made;
  - b) The full name and place of residence of the testator;
  - c) The full names of the persons and the bodies or organizations entitled to inherit the estate;
  - d) The estate to be bequeathed and its location.
2. Apart from the contents prescribed in Clause 1 of this Article, the will may have other contents.
3. A will may not be written using abbreviations or other symbols. If a will consists of several pages, each page must be numbered and bear the signature or fingerprint of the testator.

Where a will has erasure or correction, the testator or the testament witness must sign beside erasing and corrected place.

#### **Article 632. Witnesses to making of will**

Any person may act as a witness to the making of a will, except the following persons:

1. Persons who are heirs of the testator under the will or at law;
2. Persons with property rights or obligations which relate to the will;
3. Minors, legally incapacitated persons, persons with limited cognition and behavior control.

#### **Article 633. Unwitnessed written wills**

A testator must write a will by his or her own hand and must sign it.

The drawing up of a written will without witnesses must comply with article 631 of this Code.

#### **Article 634. Witnessed written wills**

Where a testator is not able to write a will by his or her own hand, the testator may request another person to write the will, but there must be at least two witnesses. The testator must sign or fingerprint the will in the presence of the witnesses; the witnesses shall acknowledge the signature or fingerprint of the testator and sign the will.

The will must be made in compliance with articles 631 and 632 of this Code.

#### **Article 635. Wills which are notarized or certified**

A testator may request that the will be notarized or certified.

#### **Article 636. Procedures for preparation of wills at notary office or people's committee of commune**

The preparation of a will at a notary office or the people's committee of the commune must comply with the following procedures:

1. The testator shall declare the contents of his or her will to a notary public officer or a member of the people's committee of the commune who has the authority to certify it. The notary public officer or the person having the authority to certify must record the wishes stated by the testator. The testator shall sign or fingerprint the will after acknowledging that it has been recorded accurately and that it expresses faithfully the intentions of the testator. Thereafter, the notary public officer or the member of the people's committee of the commune shall sign the will;
2. Where the testator is not able to read or hear the will or not able to sign or fingerprint it, there must be a witness who must acknowledge the will by signing it before a notary public officer or a member of the people's committee of the commune who has the authority to certify it. The notary public officer shall notarize the will, or the member of the people's committee of the commune who has the authority to certify the will shall certify it, in the presence of the testator and the witnesses.

#### **Article 637. Persons not permitted to notarize or certify wills**

A notary public officer or a member of the people's committee of the commune who has authority shall not be permitted to notarize or certify a will if such person is:

1. An heir of the testator under the will or at law;

2. A person whose father, mother, wife, husband or child is an heir under the will or at law;
3. A person having property rights or obligations relating to the will.

**Article 638. Written wills valid as though notarized or certified**

1. A written will made by a serving soldier who is not able to request a notarization or certification of his or her will provided that such will is certified by the head of his or her unit having the rank of a company commander or higher.
2. A written will made by a person travelling on a seagoing vessel or aircraft provided that the will is certified by the captain of the vessel or aircraft.
3. A written will made by a person undergoing medical treatment in a hospital or other medical establishment or sanatorium provided that the will is certified by the person in charge of such hospital or establishment or sanatorium.
4. A written will made by a person conducting surveys, explorations or research in mountainous areas, forests or offshore islands provided that the will is certified by the person in charge of the unit.
5. A written will made by a Vietnamese citizen residing abroad provided that the will is certified by a Vietnamese consular or diplomatic representative mission in that country.
6. A written will made by a person held in temporary detention, serving a prison sentence or administrative penalty, or at an educational or medical facility provided that the will is certified by the person in charge of such facility.

**Article 639. Wills prepared by notary public officers at places of residence of testators**

1. A testator may request a notary public officer to visit his or her place of residence in order to prepare a will.
2. Such will shall be prepared in accordance with the procedures for the preparation of wills at a State notary public provided in article 636 of this Code.

**Article 640. Amendment of, addition to, replacement or revocation of wills**

1. A testator may amend, add to, replace or revoke his or her will at any time.
2. If a testator adds to his or her will, the original will and the codicil shall have equal validity. If a part of the original will and the codicil conflict with each other, the codicil shall prevail.
3. Where a testator replaces a will with a new will, the previous will shall be deemed to have been revoked.

**Article 641. Custody of wills**

1. A testator may request a notary office or another person to keep custody of the will of the testator.
2. Where a will is kept in custody by a notary office, it must be taken care of and looked after in accordance with the law on notaries.
3. An individual keeping custody of a will has the following obligations:
  - a) Keep the contents of the will confidential;

- b) Take care of and look after the will. If the will is lost or damaged, the person must notify immediately the testator;
- c) Upon the death of the testator, to deliver the will to his or her heirs or to the person authorized to announce the will. The delivery of the will must be recorded in writing and signed by the person delivering the will, and by the person receiving it, in the presence of two witnesses.

#### **Article 642. Loss and damage of wills**

1. If, from the commencement of the inheritance, the will is lost or damaged to the extent that it is incapable of indicating clearly the wishes of the testator and there is no evidence of the true wishes of the testator, it shall be deemed that no will exists and inheritance at law shall apply.
2. Where the will is found prior to distribution of the estate, the estate shall be distributed according to the will.
3. Within the limitation periods for requesting estate distribution, if a will is found after the distribution of the estate, the estate shall be distributed according to the will at the request of the heir under will.

#### **Article 643. Legal effectiveness of wills**

1. A will shall become legally effective from the time of commencement of the inheritance.
2. All or part of a will shall be legally ineffective in any of the following cases:
  - a) An heir under the will dies prior to or at the same time as the testator dying;
  - b) A body or organization named as an heir no longer exists at the time of commencement of the inheritance.

Where there are several heirs under a will and one of them dies prior to or at the same time as the death of the testator or one of the bodies or organizations named as an heir under the will no longer exists at the time of commencement of the inheritance, only that part of the will which relates to the individual, body or organization no longer existing shall be legally ineffective.

3. A will shall not be legally effective if the estate left to the heirs no longer exists at the time of commencement of the inheritance. If only part of the estate left to the heirs remains, only that part of the will which relates to such part of the estate shall be legally effective.
4. Where a will contains provisions which are unlawful but such provisions do not affect the effectiveness of the remainder of the will, only such provisions shall be legally ineffective.
5. Where a person leaves behind more than one will with respect to certain property, only the most recent of such wills shall be legally effective.

#### **Article 644. Heirs notwithstanding contents of wills**

1. Where a testator does not grant any of the following persons an inheritance, or grants any such person an inheritance which is less than two-thirds of the share that person would have received if the estate had been distributed according to law, such person shall be entitled to a share of the estate equivalent to two-thirds of the share that he or she would have received if the estate had been distributed in accordance with law:
  - a) Children who are minors, father, mother, wife or husband of the testator;
  - b) Children who are adults but who are incapable of working.

2. Clause 1 of this Article shall not apply to persons who have disclaimed their inheritance as prescribed in Article 620 or person who are not entitled to inherit as prescribed in Clause 1 Article 621 of this Code.

#### **Article 645. Estates used for worship purposes**

1. Where a testator designates part of his or her estate for worship purposes, such part of the estate shall not be distributed among the heirs and shall be delivered to the person appointed in the will to manage for worship purposes. If such appointee fails to implement strictly the will or the agreement of the heirs, the heirs have the right to appoint another person to manage for worship purposes.

Where the testator fails to appoint a person to manage that part of his or her estate which is designated for worship purposes, the heirs shall appoint a person to manage such part of the estate.

Where all heirs under a will have died, that part of the estate which is designated for worship purposes shall belong to the person managing that part of the estate for worship purposes provided that he or she is an heir at law.

2. Where the entire estate of the deceased is insufficient to satisfy all property obligations of the deceased, no part of the estate may be designated for worship purposes.

#### **Article 646. Testamentary gifts**

1. A testator may designate part of his or her estate as a testamentary gift to another person. The testamentary gift must be expressly stated in the will.

2. The grantee of the testamentary gift must be alive at the time of commencement of the inheritance or he/she must bear and alive after the time of commencement of the inheritance he/she must be conceived before the death of the estate leaver. If the grantee of the testamentary gift is not a natural person, it must exist at the time of commencement of the inheritance.

3. The grantee of a gift shall not be required to fulfill property obligations with respect to that part of the estate granted as a gift, unless the whole estate is insufficient to satisfy all property obligations of the grantor, in which case the part of the estate granted as a gift shall also be applied towards satisfying the remainder of the obligations of the grantor.

#### **Article 647. Announcement of wills**

1. Where a written will is kept by a notary office, the notary officer shall be the person announcing the will.

2. Where a testator has appointed a person to announce the will, such person shall announce the will. If the testator fails to appoint a person or has appointed a person but the appointee refuses to announce the will, the heirs shall agree on the appointment of a person to announce the will.

3. After the time of commencement of an inheritance, the person announcing the will must send copies of the will to all persons with an interest in the contents of the will.

4. A recipient of a copy of a will has the right to verify the copy against the original.

5. Where a will has been prepared in a foreign language, it must be translated into Vietnamese and notarized.

#### **Article 648. Interpretation of contents of wills**

Where the contents of a will are unclear and may be interpreted in different ways, the person announcing the will and the heirs must interpret jointly the contents of the will based on the true wishes of the deceased, taking into consideration the relationship of the deceased with the heirs under the will. If such persons fail to agree on the interpretation of the contents of the will, they have the right to request a court for settlement.

Where part of the contents of a will is not able to be interpreted but the remainder of the will is not affected, only that part which is not able to be interpreted shall not be legally effective.

## **Chapter XXIII**

### **INHERITANCE AT LAW**

#### **Article 649. Inheritance at law**

Inheritance at law means inheritance in accordance with the order of priority of inheritance and the conditions and procedures of inheritance provided by law.

#### **Article 650. Cases of inheritance at law**

1. Inheritance at law shall apply in the following cases:

- a) There is no will;
- b) The will is unlawful;
- c) All heirs under the will died prior to or at the same time as the testator dying, or the bodies or organizations which are entitled to inherit under the will no longer exist at the time of commencement of the inheritance;
- d) The persons appointed as heirs under the will do not have the right to inherit or disclaimed the right to inherit.

2. Inheritance at law shall also apply to the following parts of an estate:

- a) Parts of an estate in respect of which no disposition has been made in the will;
- b) Parts of an estate related to an ineffective part of the will;
- c) Parts of an estate related to heirs under the will not having the right to inherit, having disclaimed the right to inherit, or having died prior to or at the same time as the testator dying; and parts of an estate related to bodies or organizations entitled to inherit under the will but no longer existing at the time of commencement of the inheritance.

#### **Article 651. Heirs at law**

1. Heirs at law are categorized in the following order of priority:

- a) The first level of heirs comprises: spouses, biological parents, adoptive parents, offspring and adopted children of the deceased;
- b) The second level of heirs comprises: grandparents and siblings of the deceased; and biological grandchildren of the deceased;
- c) The third level of heirs comprises: biological great-grandparents of the deceased, biological uncles and aunts of the deceased and biological nephews and nieces of the deceased.

2. Heirs at the same level shall be entitled to equal shares of the estate.

3. Heirs at a lower level shall be entitled to inherit where there are no heirs at a higher level because such heirs have died, or because they are not entitled to inherit, have been deprived of the right to inherit or have disclaimed the right to inherit.

#### **Article 652. Succeeding heirs**

Where a child of a testator died prior to or at the same time as the testator, the grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such father or mother still been alive. If the grandchildren also died prior to or at the same time as the testator, the great-grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such father or mother still been alive.

#### **Article 653. Inheritance relations between adopted children and their adoptive parents and biological parents**

An adopted child and his or her adoptive parents may inherit each other's estates and may also inherit in accordance with articles 651 and 652 of this Code.

#### **Article 654. Inheritance relations between stepchildren and their stepparents**

If a stepchild and his or her stepparents care for and support each other as though they were biologically related, they may inherit each other's estates and may also inherit in accordance with articles 652 and 653 of this Code.

#### **Article 655. Inheritance where wives and husbands have divided multiple ownership property, have applied for divorce or have remarried**

1. Where a wife and husband have divided their multiple ownership property while they are still married and one of them subsequently dies, the surviving spouse shall still be entitled to inherit the estate of the deceased.
2. Where a wife and husband have applied for but not yet obtained a legally effective divorce pursuant to a judgment or decision of a court, or they have obtained such a divorce but the judgment or decision of the court is not yet effective, and one of them dies, the surviving spouse shall, nevertheless, be entitled to inherit the estate of the deceased.
3. A person who is the wife or husband of the deceased at the time when his or her spouse dies shall be entitled to inherit the estate of the deceased even if that person subsequently remarries.

### **Chapter XXIV**

## **SETTLEMENT AND DISTRIBUTION OF ESTATES**

#### **Article 656. Meeting of heirs**

1. After being notified of the commencement of an inheritance, or after a will has been announced, the heirs may meet to agree on the following matters:
  - a) If the testator has failed to appoint an administrator of the estate or a distributor of the estate, or has not determined the powers and obligations of such persons, the appointment of such persons and the determination of their powers and obligations, as the case may be;
  - b) Method of distributing the estate.
2. All agreements by the heirs must be made in writing.

### **Article 657. Distributors of estates**

1. A distributor of an estate may also be the administrator of the estate appointed in the will or by agreement of the heirs.
2. A distributor of an estate must distribute it strictly in accordance with the will or the agreement of the heirs at law.
3. A distributor of the estate may receive remuneration if so allowed by the testator in the will or if so agreed by the heirs.

### **Article 658. Order of priority of payment**

Property obligations and expenses related to an inheritance shall be paid in the following order of priority:

1. Reasonable funeral expenses in accordance with customary practice;
2. Outstanding support payments;
3. Expenditures on preservation of estate;
4. Allowances for dependants of the deceased;
5. Wages;
6. Monetary compensation for any damage;
7. Taxes and other liabilities owed to the State;
8. Other liabilities owed to other natural persons or juridical persons;
9. Fines;
10. Other expenses.

### **Article 659. Distribution of estates in accordance with wills**

1. An estate shall be distributed in accordance with the wishes of the testator. If the will fails to specify the share of each heir, the estate shall be divided equally between the persons named in the will, unless otherwise agreed.
2. Where a will provides for the distribution in kind of an estate, each of the heirs shall be entitled to receive his or her share in kind, plus the benefits and income derived therefrom, or must bear the depreciation in value of such share in kind up to the time when the estate is distributed. If the property which is the subject of a share in kind has been destroyed due to the fault of another person, the heir has the right to demand compensation for damage.
3. Where a will provides for the distribution of an estate according to certain proportions of the total value of the estate, such proportions shall be calculated on the basis of the value of the estate at the time of distribution.

### **Article 660. Distribution of estates in accordance with law**

1. If, at the time of distribution, an heir has been conceived but not yet born, a part of the estate equal to the share of another heir at the same level of heirs shall be set aside for the unborn heir. If the heir is born alive, he or she shall inherit such part of the estate. If the heir does not survive his or her birth, the other heirs at the same level of heirs shall be entitled to his or her share.

2. The heirs have the right to demand the estate to be distributed in kind. If the estate is not able to be equally distributed in kind, the heirs may agree that the property shall be valued and may agree on which heirs shall be entitled to receive which particular items of property. Failing such agreement, the assets in kind shall be sold for distribution.

#### **Article 661. Limited distribution of estates**

Where it was the wish of a testator, or where the heirs agree, that an estate is to be distributed only after a certain period of time, it shall be distributed only after such period of time has expired.

If there is a request to distribute an estate but such distribution will seriously and adversely affect the life of the remaining wife or husband and family, such spouse has the right to request a court to fix the share of the estate to which other heirs are entitled but not to allow distribution of the estate during a certain period of time. Such period shall not exceed three years from the date of commencement of inheritance. When such period fixed by the court has expired or such remaining spouse has remarried, the other heirs have the right to request the court to permit distribution of the estate.

#### **Article 662. Distribution of estates where new heir or where right of heir to inherit has been disallowed**

1. Where a new heir appears after an estate has been distributed, the estate shall not be re-distributed in kind but the heirs which have received [a share of] the estate must pay the new heir a sum equivalent to the share of the estate of such [new heir] at the time of distribution of the estate in proportion to the [respective] share of the estate already received [by each heir], unless otherwise agreed.

2. Where the right of an heir to inherit is disallowed after an estate has been distributed, such heir must return the inheritance or pay to the other heirs a sum equivalent to the value of the inheritance received at the time of distribution of the estate, unless otherwise agreed.

### **PART FIVE**

## **CIVIL RELATIONS INVOLVING FOREIGN ELEMENTS**

### **Chapter XXV**

#### **GENERAL PROVISIONS**

#### **Article 663. Scope**

1. This Part provides for applied law to civil relations involving foreign elements.

If any regulation of law providing for applied law to civil relations involving foreign elements complies with Article 664 through Article 671 of this Code, it shall prevail; if it does not comply with those Articles, Part Five of this Code shall prevail.

2. Civil relation involving a foreign element means any of the following civil relations:

- a) There is at least one of the participating parties is a foreign natural person or juridical person;
- b) The participating parties are Vietnamese natural persons or juridical persons but the basis for the establishment, modification or termination of such relation arose in a foreign country;

c) The participating parties are Vietnamese natural persons or juridical persons but the subject matter of such civil relation is located in a foreign country.

#### **Article 664. Determination of law applying to civil relations involving foreign elements**

1. The international agreements to which the Socialist Republic of Vietnam is a signatory or Vietnamese law shall apply to civil relations involving foreign elements.
2. In case the international agreements to which the Socialist Republic of Vietnam is a signatory or a Vietnamese law stipulates that contracting parties have the right to select applied law, the law applied to civil relations involving foreign elements shall be determined according to the selection of the contracting parties.
3. If it fails to determine the applied law as prescribed in Clause 1 and Clause 2 of this Article, the applied law is the law of the country that closely associates with the civil relations involving foreign elements.

#### **Article 665. Application of international treaty in terms of civil relations involving foreign elements**

1. In case an international treaty to which the Socialist Republic of Vietnam is a signatory contains regulations on rights and obligations of contracting participants in the civil relations involving foreign elements, such international treaty shall prevail.
2. In case an international treaty to which the Socialist Republic of Vietnam is a signatory contains provisions different from those in this Code and other laws in terms of applied law on civil relations involving foreign elements, such international treaty shall prevail.

#### **Article 666. Application of international customary practices**

Contracting parties may select international customary practices in the case prescribed in Clause 2 Article 664 of this Code. If the application of such international customary practices is contrary to the basic principles of the laws of the Socialist Republic of Vietnam, Vietnamese laws shall prevail.

#### **Article 667. Application of foreign laws**

Where foreign law applies to a civil relation with different interpretations, the application must follow the interpretation of the competent authority in that country.

#### **Article 668. Scope of the law to be referred to**

1. The law to be referred to include regulations on determination of applied law and regulations on rights and obligations of participants in civil relations, other than the case prescribed in Clause 4 of this Article.
2. Where the Vietnamese law is referred to, regulations of Vietnamese law on rights and obligations of participants of a civil relation shall apply.
3. Where law of a third country is referred to, regulations of that law on rights and obligations of participants of a civil relation shall apply.
4. With respect to regulations on Clause 2 Article 664 of this Code, the law selected by the contracting parties shall include rights and obligations of participants of the civil relation, and not include regulations on applied law.

### **Article 669. Application of law of countries having multiple legal systems**

If the law of a country having multiple legal systems is referred to, the applied law shall be determined according to the rules prescribed by such country's law.

### **Article 670. Non-application of foreign laws**

1. The foreign law, notwithstanding being referred to, shall not apply in any of the following cases:

a) The consequences of its application are not inconsistent with the fundamental principles of the law of the Socialist Republic of Vietnam;

b) The contents of foreign law are not identifiable regardless of the adoption of necessary measures prescribed by procedural law.

2. In case the foreign law is not applied as prescribed in Clause 1 of this Article, Vietnamese law shall apply.

### **Article 671. Limitation periods**

Limitation periods for civil relations involving foreign elements shall be determined according to the law applying to such civil relations.

## **Chapter XXVI**

### **THE LAW APPLIED TO NATURAL PERSONS AND JURIDICAL PERSONS**

#### **Article 672. Bases for choice of law applicable to stateless persons and to foreigners with multiple foreign nationalities**

1. Where the law referred to is the law of a country of which a foreigner is a citizen but he/she is a stateless person, the applied law shall be the law of the country of residence of such person at the time when the civil relations involving foreign elements were established. If that person has multiple residences or his residence is unidentifiable at the time of establishing the civil relation involving foreign elements, the applied law shall be the law of the country with which such person closely associates.

2. Where the law referred to is the law of a country of which a foreigner is a citizen but he/she has multiple foreign nationalities, the applied law shall be the law of which he/she holds nationality and where he/she resided at the time when the civil relations involving foreign elements were established. If that person has multiple residences or his residence is unidentifiable or his/her residence is different from the country of which he/she holds nationality at the time when the civil relations involving foreign elements were established, the applied law shall be the law of the country with which such person closely associates.

Where the law referred to is the law of a country of which a foreigner is a citizen but he/she has multiple foreign nationalities, including Vietnamese nationality, the applied law shall be Vietnamese law.

#### **Article 673. Legal personality of natural persons**

1. Legal personality of a natural person shall be determined according to the law of the country of which he/she holds nationality.

2. A foreigner in Vietnam shall have legal personality in the same manner as a Vietnamese citizen, unless otherwise provided by the law of Vietnam.

#### **Article 674. Legal capacity of natural persons**

1. Legal capacity of a natural person shall be determined according to the law of the country of which he/she holds nationality, other than the case prescribed in Clause 2 of this Article.
2. Where a foreigner establishes or performs civil transactions in Vietnam, his/her legal capacity shall be determined in accordance with the law of Vietnam.
3. The determination of a legally incapacitated person, a person with limited cognition or behavior control or a person with limited legal capacity in Vietnam shall be in accordance with the law of Vietnam.

#### **Article 675. Determination of persons disappeared or died**

1. A determination that a person has disappeared or died must comply with the law of the country of which such person held nationality at the point of time prior to the last information about such disappearance or death, except for the case prescribed in Clause 2 of this Article.
2. The determination of a disappeared or dead person in Vietnam shall be in accordance with the law of Vietnam.

#### **Article 676. Juridical persons**

1. The nationality of a juridical person shall be determined according to the law of the country in which such juridical person was established.
2. Legal personality, name, legal representatives, organization, restructuring, dissolution of a juridical person; relations between a juridical person and its members; responsibilities of a juridical person and its members pertaining to its obligations shall be determined in accordance with the law of the country of which such juridical person holds nationality, other than the case prescribed in Clause 3 of this Article.
3. Where a foreign juridical person establishes or performs civil transactions in Vietnam, its legal personality shall be determined in accordance with the law of Vietnam.

### **Chapter XXVII**

#### **THE LAW APPLIED TO PROPERTY RELATIONS AND PERSONAL RELATIONS**

##### **Article 677. Classification of property**

The classification between moveable and immovable property shall be made in accordance with the laws of the country in which such property is located.

##### **Article 678. Ownership rights and other property-related rights**

1. The establishment, exercise, operation and termination of ownership rights and other property-related rights shall be determined in accordance with the laws of the country in which the property is located, except in the cases provided in Clause 2 of this Article.
2. Ownership rights with respect to moveable property in transit shall be determined in accordance with the law of the country of destination, unless otherwise agreed.

##### **Article 679. Intellectual property rights**

The intellectual property rights shall be determined in accordance with the laws of the country in which the objects of the intellectual property rights are required to be protected.

#### **Article 680. Inheritance**

1. Inheritance must comply with the law of the country of which the person who bequeathed the assets held nationality prior to his or her death.
2. The right to inherit immovable property must comply with the law of the country where such immovable property is located.

#### **Article 681. Wills**

1. The capacity to create a will, and to alter or rescind a will, must comply with the law of the country of which the testator is a citizen.
2. The form of a will must comply with the law of the country in the place where the will is created. The form of a will shall be also recognized in Vietnam if it complies with the laws of any of the following countries:
  - a) The country in which the testator resides at the time when the will is created or the testator dies;
  - b) The country of which the testator holds nationality at the time when the will is created or the testator dies;
  - c) The country where the inheritance being immovable property is located.

#### **Article 682. Guardianship**

The guardianship shall be determined in accordance with the law of the country where the ward resides.

#### **Article 683. Contracts**

1. Contracting parties in a contract may agree to select the applied law for the contract, other than regulations of Clauses 4, 5 and 6 of this Article. In case the contracting parties fail to agree the applied law, the law of the country with which such contract closely associates shall apply.
2. The laws of any of the following countries shall be treated as the law of the country with which such contract closely associates:
  - a) The law of the country where the seller being natural person resides or the seller being juridical person is established in terms of sale contracts;
  - b) The law of the country where the provider being natural person resides or the provider being juridical person is established in terms of service contracts;
  - c) The law of the country where the transferee being natural person resides or the seller being juridical person is established in terms of contracts of transferring rights to use or intellectual property rights;
  - d) The law of the country where employees frequently perform do jobs in terms of labor contracts. If an employee frequently does jobs in multiple countries or the country in which the employee frequently does his/her job is unidentifiable, the law of the country with which his/her labor contract closely associates shall be the law of the country where the employer being natural person resides or the employer being juridical person is established.

dd) The law of the country where consumers resides in terms of consume contract.

3. If there is evident that the law of a country other than the country prescribed in Clause 2 of this Article associates with the contract more closely than the latter, the law of the former country shall prevail.

4. If the object of a contract is an immovable property, the law applied to transfer of its ownership rights and/or other property-related rights, lease of immovable property or using the immovable property as the guarantee for performance of obligations shall be the law of the country where the immovable property is located.

5. If the applied law selected by contracting parties in a labor contract or a consume contract affects adversely minimum interests of employees or consumers as prescribed in the law of Vietnam, the law of Vietnam shall prevail.

6. Contracting parties in a contract may agree to change the applied law provided that such change does not affect adversely lawful rights and interests of a third party before changing, otherwise agreed by the third party.

7. Form of a contract shall be determined in accordance with the law applied to such type of contract. In case where the form of a contract does not comply with the form of the law applied to such contract but it comply with the form of the law of the country where the contract is entered into or the law of Vietnam, such form of contract shall be recognized in Vietnam.

#### **Article 684. Unilateral acts**

The law applied to unilateral acts of a person shall be determined in accordance with the law of the country of residence with regard to natural person or the law of the country of establishment with regard to juridical person.

#### **Article 685. Obligation to refund property possessed, used or derived unlawfully**

The obligation to refund property possessed, used or derived unlawfully shall be determined according to the law of the country where the property is possessed, used or derived unlawfully.

#### **Article 686. Performance of acts without authorization**

Contracting parties may agree to select the law applied to the performance of acts without authorization. If the contracting parties fail to agree to select the applied law, the law of the country where the acts without authorization are performed shall prevail.

#### **Article 687. Compensation for non-contractual damage**

1. Contracting parties may agree to select the law applied to the compensation for non-contractual damage, except for the case prescribed in Clause 2 of this Article. If the contracting parties fail to agree to select the applied law, the law of the country where the consequences of such acts arise shall prevail.

2. Where the party causing damage and the aggrieved party being natural persons have residence or being juridical person place of establishment in the same country, the law of such country shall prevail.

## **PART SIX**

### **IMPLEMENTATION**

#### **Article 688. Transitional regulations**

1. With respect to civil transactions established before the effective date of this Code, the law shall be implemented as follows:

a) The parties of non-performed civil transactions whose contents and forms are different from this Code shall keep complying with regulations of the Civil Code No. 33/2005/QH11 and legislative documents on guidelines for the Civil Code No. 33/2005/QH11, unless the parties agree to amend the contents or forms of the transactions in accordance with this Code.

a) The parties of being-performed civil transactions whose contents and forms are different from this Code shall keep complying with regulations of the Civil Code No. 33/2005/QH11 and legislative documents on guidelines for the Civil Code No. 33/2005/QH11;

b) The parties of non-performed or being-performed civil transactions whose contents and forms are conformable to this Code shall comply with regulations of this Code;

c) The parties of civil transactions that are completely performed before the effective date of this Code but arise dispute shall keep complying with regulations of the Civil Code No. 33/2005/QH11 and legislative documents on guidelines for the Civil Code No. 33/2005/QH11;

d) Limitation periods shall comply with this Code.

2. This Code shall not apply to a case settled by a court in accordance with law on civil before the effective date of such Code for the purpose of appeal under cassation procedures.

#### **Article 689. Effect**

This Code comes into force from January 1, 2017.

The Civil Code No. 33/2005/QH11 shall be annulled from the effective date of this Code.

This Code is passed by the 13th National Assembly of Socialist Republic of Vietnam during the 10th session on November 24, 2015.

**PRESIDENT OF NATIONAL ASSEMBLY**

**Nguyen Sinh Hung**