

## **DRAFT OF THE CIVIL CODE OF CAMBODIA**

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This is a tentative English translation<sup>1 2</sup> prepared by the JICA Project Office in the Ministry of Justice of Cambodia. This has not been reviewed by the Working Group for drafting, and is subject to further revisions.

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<sup>1</sup> In this translation, square brackets (i.e., “[...]”) indicate words or phrases added during translation in order to clarify meaning or those that require further revision.

<sup>2</sup> The terms 'he' 'him' and 'his' are used herein for convenience only, and their use shall not be deemed to imply the existence of any gender-based distinctions in this Code.

“GENERAL RULES” (to come)

## **BOOK ONE “PERSONS”**

### **Chapter One Natural Persons**

#### Section I. Legal Capacity

1-1-1 (Principle of equality of legal capacity)

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

1-1-2 (Limitation on capacity of foreign nationals to acquire rights)

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

1-1-3 (Commencement/end of legal capacity)

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

1-1-4 (Fetus)

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

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

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

#### Section II. Personal Rights

1-2-1 (Concept of personal rights)

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

1-2-2 (Right to injunction)

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

1-2-3 (Right to demand elimination of effect of infringing act)

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

1-2-4 (Right to damages)

The provisions of Articles 1-2-2 and 1-2-3 shall not prevent a person who has suffered an infringement of a personal right from seeking damages for any harm suffered from such infringement in accordance with the provisions regarding tortious acts.

### Section III. Capacity

#### 1-3-1 (Lack of capacity)

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

#### 1-3-2 (Definition of act)

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

### Section IV. Capacity to Act

#### 1-4-1 (Definition of incompetent persons)

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

#### Sub-section I. Minors

#### 1-4-2 (Definition of minor)

Minors are persons under the age of eighteen.

#### 1-4-3 (Right to rescind act)

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

#### 1-4-4 (Disposal of property with permission of parental power holder or guardian)

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

#### 1-4-5 (Minor permitted to conduct business)

(1) A minor who is permitted by his parental power holder or guardian to conduct one or more kinds of business shall have the same capacity to act as an adult to the extent of the permitted business.

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

#### 1-4-6 (Requirements for emancipation)

(1) Where a minor who has reached the age of sixteen completely supports himself, the court may, upon a petition from the minor, declare the emancipation of the minor if such emancipation is

deemed in the minor's best interest. In such a case, the court shall hear the opinions of the parental power holder(s).

(2) A married minor shall be deemed emancipated without a declaration of the court.

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

1-4-7 (Effect of emancipation)

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

1-4-8 (Minor's labor contract)

(1) Notwithstanding the provisions of Articles \_\_\_ and \_\_\_, a parental power holder or guardian may not enter into a labor contract on behalf of a minor.

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

(3) A parental power holder, a guardian or the administrative authorities may, if the labor contract is deemed to be disadvantageous to the minor, terminate the contract.

#### Sub-section II. Adults in Guardianship

1-4-9 (Declaration of commencement of guardianship)

With respect to a person who remains in a habitual condition of lacking the ability to recognize and understand the legal consequences of his actions due to mental illness or disability, the court may declare the commencement of a guardianship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, the guardian's supervisor, the chief of the [commune] where the person's domicile is located, or a prosecutor.

1-4-10 (Meaning of adults in guardianship; and appointment of guardian)

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

1-4-11 (Right to rescind act)

An act conducted by an adult in guardianship may be rescinded. However, this shall not apply to an act necessary in the course of daily life.

1-4-12 (Revocation of declaration of commencement of guardianship)

When the grounds for the guardianship described in Article 1-4-9 cease to exist, the court shall revoke the declaration of commencement of guardianship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, the guardian's supervisor, the chief of the [commune] where the person's domicile is located, or a prosecutor.

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

1-4-13 (Declaration of commencement of curatorship)



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

1-4-14 (Meaning of a person under curatorship; appointment of partial guardian)

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

1-4-15 (Right to rescind act)

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

- (a) receiving or using principal;
- (b) incurring or guaranteeing a debt;
- (c) acting with the intent of obtaining or losing rights pertaining to an immovable or other valuable asset;
- (d) conducting an act of litigation;
- (e) donating [money or property], or entering into a settlement or arbitration agreement;
- (f) accepting or waiving succession, or dividing a legacy;
- (g) refusing a donation or bequest, or accepting a donation or bequest subject to a burden;
- (h) building, remodeling, expanding or conducting major repairs to a building or structure;
- (i) executing a lease agreement that exceeds three years for land, two years for a building, or six months for a movable; or
- (j) any other act that a court specifically declares, based on the application of a person listed in Article 1-4-13, a partial guardian, or a partial guardian's supervisor, requires the consent of the partial guardian.

1-4-16 (Revocation of declaration of commencement of curatorship)

When the grounds for curatorship described in Article 1-4-13 cease to exist, the court shall revoke the declaration of commencement of curatorship at the request of the person himself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian, a guardian's supervisor, the chief of the [commune] where the person's domicile is located, or a prosecutor.

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

1-4-17 (Right to demand)

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

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

(3) [The other party to an act conducted by a person under curatorship] may notify the person under curatorship and demand that such person obtain the ratification of the partial guardian within the

period set forth in paragraph (1). If the person under curatorship fails to dispatch a notice to the effect that ratification has been duly obtained within such period, the contract shall be deemed rescinded.

1-4-18 (Fraud by incompetent)

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

Section V. Permanent Residence

1-5-1 (Definition of permanent residence)

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

1-5-2 (Place of abode)

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

1-5-3 (Cases where no residence exists within Cambodia)

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

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

Sub-section V. Management of Property of Absentee

1-6-1 (Appointment of administrator by the court)

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

1-6-2 (Revocation of order to manage property)

In the case described in Article 1-6-1, if the absentee subsequently appoints an administrator, the court may revoke the order described therein upon the request of the administrator, any interested person, the chief of the [commune] where the person's residence is located or a public prosecutor.

1-6-3 (Replacement of administrator)

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

1-6-4 (Authority of administrator)

(1) A court-appointed administrator has the authority to conduct acts set forth in paragraph (2), Article 2-4-3 of Book Four. Where the administrator is required to conduct an act beyond the scope of

that authority, the administrator may conduct the act with the approval of the court.

(2) Where it is unknown whether the absentee is alive or dead, if the administrator needs to conduct an act beyond the scope of the authority specified by the absentee, the administrator may conduct such act with the approval of the court.

#### Sub-section VI. Declaration of Disappearance

##### 1-6-5 (Requirements for declaration of disappearance)

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

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

##### 1-6-6 (Notification by publication)

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

##### 1-6-7 (Effect of declaration of disappearance)

The absentee shall be deemed dead from the time, in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (1) of Article 1-6-5, when the period set forth therein expires, and in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (2) of the same Article, when the peril ceases to exist with respect to any legal relationship that exists at or around the permanent residence or the place of abode at such time.

##### 1-6-8 (Handling of absentee's return)

(1) If it is proven that the absentee is alive, or died at a time different from that set forth in paragraph (1) of Article 1-6-7, the court shall, upon the petition of the absentee or any interested person, revoke the judicial declaration of disappearance.

(2) A person who has acquired property directly from the absentee based on the effect of a judicial declaration of disappearance shall lose his right to the property upon the revocation of the declaration of disappearance. However, a person who was unaware when he acquired the property that the declaration of disappearance was in fact not in accordance with the truth is obligated to return such property only to the extent that the person continues to receive the benefits thereof.

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

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

## Section VII. Presumption of Simultaneous Death

### 1-7-1 (Presumption of simultaneous death)

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

## **Chapter Two Juristic Persons**

### Section I. General Provisions

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

##### 2-1-1 (Definition and types of juristic persons, principles of incorporation)

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

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

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

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

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

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

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

##### 2-1-2 (Name of non-profit juristic person)

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

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

##### 2-1-3 (Foreign juristic persons)

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

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

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

### Sub-section III. Registration of Incorporation

#### 2-1-4 (Registration of incorporation and time of formation)

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

(2) If a juristic person has a secondary office at the time of its incorporation, registration must [also] be effected at the registry having jurisdiction over the secondary office not later than one week after registration under Paragraph (1).

#### 2-1-5 (Particulars to be registered)

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

- (a) the objects;
- (b) the name;
- (c) the principal office and secondary office(s);
- (d) if grounds for dissolution have been provided in the articles of incorporation, such grounds;
- (e) the names and addresses of the directors and supervisor(s); provided that in the case of an unlimited liability incorporated association, the names and addresses of the members shall be stated;
- (f) if there are any directors who do not represent the juristic person, the name(s) of the director(s) who do represent the juristic person; and
- (g) if there is a provision for more than one director jointly to represent the juristic person, such provision.

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

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

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

#### 2-1-6 (Domicile of juristic person)

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

2-1-7 (Registration of relocation of office)

(1) If a juristic person relocates its principal office, then not later than two weeks following the relocation, such fact shall be registered at the registry having jurisdiction over its old location and the particulars provided in Article 2-1-5 (Particulars to be registered) shall be registered at the registry having jurisdiction over the new location. If a juristic person relocates an office other than the principal office, then such fact shall be registered at the registry having jurisdiction over its old location within three weeks and the particulars provided in Article 2-1-5 (Particulars to be registered) shall be registered at the registry having jurisdiction over the new location within four weeks.

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

2-1-8 (Registration of establishment of new office)

(1) Upon establishment of a new office, the particulars provided in Article 2-1-5 (Particulars to be registered) shall be registered not later than two weeks following said establishment at the registry having jurisdiction over the new office.

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

Sub-section V. Registration of Foreign Juristic Persons

2-1-9 (Registration of foreign juristic persons)

(1) The provisions of Articles 2-1-5 (Particulars to be registered), 2-1-7 (Registration of relocation of office) and 2-1-8 (Registration of establishment of new office) shall apply to the case where a foreign juristic person establishes an office in Cambodia.

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

Sub-section VI. Management and Administration of Juristic Persons

2-1-10 (Inventory and list of members)

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

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

2-1-11 (Number of directors and their selection, dismissal and duties)

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

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

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

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

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

#### 2-1-12 (Duties of directors)

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

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

#### 2-1-13 (Directors' right to represent the juristic person)

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

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

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

#### 2-1-14 (Restrictions on the right to represent the juristic person)

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

#### 2-1-15 (Provisional director)

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

#### 2-1-16 (Special representative)

A director shall have no right of representation in cases where the interests of the juristic person and the director's own interests conflict. In such a case, a special representative shall be appointed using the same procedures as those described in Article 2-1-15 (Provisional director).

#### 2-1-17 (Supervisors)

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

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

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

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

2-1-18 (The duties of supervisors, etc.)

(1) The supervisors shall examine the work of the juristic person.

(2) The supervisors may demand progress reports from the directors and employees of the juristic person concerning the juristic person's business, and may examine the status of the juristic person's business and assets.

(3) The supervisors shall examine proposals and documents that the directors intend to submit to the general meeting of members and meeting of directors. In such cases, if the supervisors find any matter to be in breach of any law or regulation, the articles of incorporation or the act of endowment, or to be seriously improper, they shall report to the general meeting of members or the meeting of directors.

(4) The supervisors may state their opinions concerning the appointment, dismissal and remuneration of supervisors at general meetings of members or meetings of directors.

(5) If they find that directors have engaged in conduct outside the scope of the objects of the juristic person or otherwise in breach of law or regulation or the articles of incorporation, or that there is a concern of any of the foregoing, the supervisors shall report this to the general meeting of members or the meeting of directors. In such a case, if this is necessary in order to make such a report, the supervisors may convene a meeting of the general meeting of members or meeting of directors. Furthermore, the supervisors of an incorporated foundation shall make the aforementioned report to the supervising authority not later than the time of making it to the meeting of directors.

(6) If directors engage in any conduct prescribed in Paragraph (5) or there is a concern that this will happen, and there is a concern that serious damage will ensue to the juristic person as a result of such conduct, the members may demand that such directors cease such conduct.

(7) If suit is filed by the juristic person against the director(s) or by the director(s) against the juristic person, the supervisors shall represent the juristic person in relation to such suit.

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

2-1-19 (Grounds for dissolution)

(1) A juristic person shall be dissolved for the following grounds:

- (a) the occurrence of a ground of dissolution prescribed in the articles of incorporation;
- (b) the conclusion of the undertaking that is the object of the juristic person, or the impossibility thereof;
- (c) bankruptcy; or
- (d) a judgment ordering dissolution.

(2) Apart from the grounds prescribed in Paragraph (1), an incorporated association shall be dissolved for the following grounds:

- (a) a resolution of the general meeting of members of a limited liability incorporated association or agreement by all the members of an unlimited liability incorporated association; or
- (b) the number of members being reduced to one



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

2-1-20 (Suit seeking dissolution)

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

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

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

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

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

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

2-1-21 (Cases where a juristic person should be liquidated and liquidators)

Where a juristic person is liquidated, except in cases under Article 2-1-19 (Grounds for dissolution) Paragraph (1) Item (c), it shall be liquidated in accordance with this Subsection 7. In such cases, for the purposes of liquidation, the juristic person shall be deemed to continue to exist until the liquidation is concluded.

2-1-22 (Reversion of surplus assets)

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

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

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

2-1-23 (Assumption of office by liquidators)

(1) If a juristic person is dissolved under Article 2.1.19 (Grounds for dissolution), Paragraph (1) Items (a) or (b) or Paragraph (2) Item (a), the persons listed below shall be the liquidators in the order indicated:

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

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

(3) If a juristic person is dissolved under Article 2-1-19 (Grounds for dissolution) Paragraph (1) Item (d) or Paragraph (2) Item (b), upon application by any interested person or by the Minister of Justice, or ex officio, the court may appoint liquidators.

2-1-24 (Dismissal of liquidators)

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

(2) In the case of incorporated associations, except for liquidators appointed by the court, liquidators of a limited liability incorporated association may be dismissed by a resolution of the general meeting of members and those of an unlimited liability incorporated association by the opinion of a majority of the members.

2-1-25 (Registration of liquidators and dissolution)

Except in cases of dissolution under 2-1-19 (Grounds for dissolution) Paragraph (1) Item (c), the liquidators shall register their names and addresses and the cause and date of dissolution at the registry having jurisdiction over the principal office not later than two weeks following dissolution and at other offices not later than three weeks following dissolution.

2-1-26 (Duties and powers of liquidators)

(1) the duties of the liquidators shall be as follows:

- (a) to conclude the current business of the juristic person;
- (b) to collect the claims of the juristic person and pay its debts; and
- (c) to deliver surplus assets.

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

(3) Article 2-1-13 (Directors' right to represent the juristic person) shall apply mutatis mutandis to liquidators; provided that where the court appoints multiple liquidators, it may appoint a sole or joint representative liquidators from among them.

2-1-27 (Duty to examine and report the juristic person's assets/assets)

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

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

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

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

2-1-28 (Notices to creditors)

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

(2) The notices described in Paragraph (1) shall included a statement that if creditors do not present their claims within the stipulated period, they shall be excluded from the liquidation.

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

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

2-1-29 (Settlement of claims within presentation period)

(1) The liquidators must not make payment to creditors within the period for presentation of claims prescribed in Article 2-1-28 (Notices to creditors); provided that the liquidators shall not hereby incur any liability for lateness in performance.

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

2-1-30 (Payment to excluded creditors)

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

2-1-31 (Payment of claims)

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

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

2-1-32 (Disposition of surplus assets)

The liquidators may not dispose of surplus assets in accordance with Article 2-1-22 (Reversion of surplus assets) until the juristic person's debts have been discharged; provided that the liquidators may dispose of surplus assets after retaining an amount deemed to be sufficient to discharge any claim in dispute.

2-1-33 (Bankruptcy during liquidation)

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

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

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

2-1-34 (Termination of liquidation)

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

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

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

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

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

2-1-35 (Registration of conclusion of liquidation)

When the procedures prescribed by Article 2.1.34 (Conclusion of liquidation) have been concluded, the liquidators shall register the conclusion of the liquidation not later than two weeks thereafter at the registry having jurisdiction over the principal office, and not later than three weeks thereafter at the registry of each other office.

2-1-36 (Preservation of documents)

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

## Section II. Incorporated Associations

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

#### 2-2-1 (Incorporation and articles of incorporation)

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

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

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

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

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

#### 2-2-2 (Minimum amount of asset base)

A limited liability juristic person shall have an asset base of not less than [ ] riels.

#### 2-2-3 (Appointment of directors and supervisors)

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

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

#### 2-2-4 (Inspection of asset base, etc.)

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

(2) If the articles of incorporation include an entry under the second sentence of Article 2.2.1 (Incorporation and articles of incorporation), Paragraph (2) Item (d), the directors shall request the court to appoint an inspector in order to inspect the particular items of entry without delay.

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

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

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

#### 2-2-5 (Inspection of incorporation procedures)

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

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

#### 2-2-6 (Particulars to be registered and period of registration)

(1) In the case of a limited liability incorporated association, in addition to the particulars stipulated in Article 2-1-5 (Particulars to be registered), the particulars set forth below shall be registered:

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

(2) Registration of incorporation of a limited liability incorporated association shall be effected not later than two weeks following the completion of the procedures prescribed in Article 2-2-4 (Inspection of asset base, etc.) and Article 2-2-5 (Inspection of incorporation procedures) at the registry having jurisdiction over the principal office.

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

#### 2-2-7 (Liability for warranty of contributions of asset base)

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

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

(3) If the value of assets prescribed in the second sentence of 2-2-1 (Incorporation and articles of incorporation), Paragraph (2), Item (d) is extremely short of the value noted in the articles of

incorporation at the time of formation of a limited liability incorporated association, the directors and members of such juristic person at that time shall be liable vis-à-vis the juristic person, jointly and severally, to pay the amount of said shortfall; provided that where there has been inspection by an inspector under Article 2-2-4 (Inspection of asset base, etc.), they shall be exempted from such liability unless they are a contributor in kind or an assignor of the assets in question.

2-2-8 (Rights and obligations of members)

- (1) The members shall be obliged to pay the expenses of the juristic person.
- (2) The members may exercise the right to vote at general meetings of members; provided that they may not exercise this right in respect of votes concerning the relations between themselves and the juristic person.
- (3) Each member shall have one vote; provided that the articles of incorporation may stipulate otherwise, taking account of the amount contributed.
- (4) Members who do not attend a general meeting of members shall vote in writing or by proxy; provided that if the articles of incorporation stipulate otherwise, such other stipulation shall be followed.

2-2-9 (Disqualification of members)

- (1) Members may resign at any time; provided that except in unavoidable circumstances, members wishing to resign shall give prior notice in accordance with the provision requiring prior notice in the articles of incorporation, if any.
- (2) The notice period described in Paragraph (1) may not exceed one year.
- (3) Apart from Paragraph (1), members shall be disqualified for the following grounds:
  - (a) the occurrence of any ground provided in the articles of incorporation;
  - (b) the agreement of all the members;
  - (c) death of the member or dissolution; or
  - (d) expulsion.

2-2-10 (Expulsion)

- (1) A member may be expelled by resolution of the general meeting of members, but only for legitimate reason. In such a case, the juristic person shall give the member in question not less than one week's prior notice of the general meeting, and shall afford the member the opportunity to defend himself at the meeting.
- (2) A resolution under Paragraph (1) shall require the affirmative vote of not less than one half of all the members moreover holding not less than three quarters of all the voting rights.
- (3) Expulsion shall only come into effect when notice thereof is given to the expelled member.

2-2-11 (Ordinary general meeting)

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

2-2-12 (Extraordinary general meeting)

- (1) The directors may convene an extraordinary general meeting of members whenever they deem it

necessary to do so.

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

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

#### 2-2-13 (Convening of general meetings)

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

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

#### 2-2-14 (Powers of general meeting)

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

(2) At general meetings of members, the directors and supervisors shall provide an explanation of matters in respect of which this is requested by members; provided that if such matter is not related to a matter on the agenda, the directors and/or supervisors need not give such explanation if giving it would cause serious damage to the common interests of members, such explanation would necessitate investigation, or for other legitimate reasons.

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

#### 2-2-15 (Matters that can be resolved by the general meeting)

Except where otherwise provided in the articles of incorporation, the general meeting may only pass resolutions in respect of matter of which prior notice has been given in accordance with Article 2-2-13 (Convening of general meetings).

#### 2-2-16 (Amendment of articles of incorporation)

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

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

#### 2-2-17 (Preparation and approval of accounting documents)

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



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

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

2-2-18 (Auditing of accounting documents)

(1) The directors shall submit the documents described in Paragraph 1 of Article 2-2-17 (Preparation and approval of accounting documents) for audit by the supervisors.

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

(3) The directors shall submit the documents described in Paragraph (1) of Article 2-2-17 to the supervisors at latest five weeks prior to the commencement of audit by the supervisors, and the schedules to said documents at latest three weeks prior to said commencement.

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

2-2-19 (Disclosure of accounting documents, etc.)

(1) A limited liability incorporated association shall maintain the documents described in Paragraph 1 of Article 2-2-17 (Preparation and approval of accounting documents) together with the audit report for a period of five years calculated from the submission of the audit report to the directors at the principal office and a copy thereof for a period of three years at other office(s).

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

Sub-section II. Unlimited liability Incorporated Associations

2-2-20 (Incorporation and articles of incorporation)

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

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

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

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

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

2-2-21 (Particulars to be registered and period of registration)

(1) In addition to the particulars prescribed in Article 2-1-5 (Particulars to be registered), in the case of an unlimited liability incorporated association the particulars described below shall be registered at the registry having jurisdiction over the principal office:

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

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

2-2-22 (Liability of members, etc.)

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

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

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

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

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

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

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

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

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

2-2-23 (Disqualification of members)

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

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

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

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

2-2-24 (Expulsion)

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

2-2-25 (Execution of business)

- (1) The members shall execute the business of an unlimited liability incorporated association.
- (2) Unless otherwise provided in the articles of incorporation, the business of an unlimited liability incorporated association shall be carried out in accordance with the decisions of a majority of the members.
- (3) If the articles of incorporation stipulate members who are to carry out the business of an unlimited liability incorporated association, such members shall execute the said business.
- (4) If more than one member is stipulated under Paragraph (3), then unless otherwise provided in the articles of incorporation, the business of the unlimited liability incorporated association shall be carried out in accordance with the decisions of a majority of such members.
- (5) Notwithstanding Paragraphs (2) and (4), any member can carry out routine business of an unlimited liability incorporated association. If there is a stipulation as described in Paragraph (3), only the members so stipulated may carry out routine business, except where another member states an objection prior to the completion of such routine business.

2-2-26 (Representation of the juristic person)

- (1) The members shall represent an unlimited liability incorporated association; provided that if a stipulation is made under Paragraph (3) of Article 2-2-25 (Execution of business), only the members so stipulated shall represent the juristic person.
- (2) If more than one member represents the juristic person under Paragraph (1), each of such members shall represent the juristic person; provided that provision may be made in the articles of incorporation or by agreement of all the members for certain members in particular to represent the juristic person.
- (3) Members who represent the juristic person shall be subject to the provisions governing directors.

2-2-27 (Reports and examinations)

- (1) Members may demand that other members report on the progress of execution of the business, or may themselves examine the condition of the business and assets of an unlimited liability incorporated association; provided that if a stipulation has been made under Paragraph (3) of Article 2.2.25 (Execution of business), such a demand for report or examination may only be made vis-à-vis the members so stipulated.

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

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

#### 2-2-28 (Amendment of articles of incorporation)

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

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

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

### Section III. Incorporated Foundations

#### 2-3-1 (Incorporation and articles of incorporation)

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

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

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

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

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

#### 2-3-2 (Minimum amount of asset base)

An incorporated foundation shall maintain an asset base of not less than [        ] riels.

#### 2-3-3 (Supplementation of articles of incorporation)

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

2-3-4 (Mutatis mutandis application of provisions governing gifts and testamentary gifts)

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

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

2-3-5 (Time of vesting of contributed assets)

(1) If a contribution of assets for the purpose of establishment of an incorporated foundation is made through a disposition inter vivos, the contributed assets shall vest in the juristic person at the time of registration prescribed in Article 2-1-4 (Registration of incorporation and time of formation).

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

2-3-6 (Particulars to be registered and time of registration)

(1) In addition to the particulars prescribed by Article 2-1-5 (Particulars to be registered), the following particulars shall be registered in respect of an incorporated foundation:

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

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

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

2-3-7 (Preparation and approval of accounting documents, etc.)

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

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

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

2-3-8 (Auditing of accounting documents)

(1) The directors shall submit the documents described in Paragraph (1) of Article 2-3-7 (Preparation and approval of accounting documents) for audit by the supervisors.

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

(3) The directors shall submit the documents described in Paragraph (1) of Article 2-3-7 (Preparation and approval of accounting documents) to the supervisors at latest five weeks prior to the commencement of audit by the supervisors, and the schedules to said documents at latest three weeks prior to said commencement.

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

2-3-9 (Disclosure of accounting documents, etc.)

(1) An incorporated foundation shall maintain the documents described in Paragraph 1 of 2-3-7 (Preparation and approval of accounting documents) together with the audit report for a period of five years calculated from the submission of the audit report to the directors at their principal office and a copy thereof for a period of three years at other office(s).

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

#### Section IV. Penal Provisions

2-4-1 (Special breach of trust by directors, etc.)

(1) Any director or supervisor of a limited liability incorporated association or incorporated foundation, or any person appointed by the court to effect the duties of any of the aforementioned persons in their place, or any employee who has been delegated to perform some kind of matter, or a specified matter relating to the business [of such juristic person], who commits any act that is in breach of his duties, for his own or a third person's benefit or in order to cause loss to the juristic person, and thereby causes pecuniary loss to the juristic person, shall be liable to a fine of up to [ ] riels, or to imprisonment for up to [ ] years, or to both fine and imprisonment as aforesaid.

(2) Any liquidator of a limited liability incorporated association or incorporated foundation, or person appointed by the court to effect the duties of a liquidator in place of the liquidator who commits any act described in Paragraph (1) and thereby causes property loss to the juristic person shall be treated in the same manner as under Paragraph (1).

(3) Attempts to carry out acts described in Paragraphs (1) and (2) shall also be punished.

2-4-2 (Crimes imperiling the juristic person's property)

If a person listed in Paragraph (1) of Article 2-4-1 (Special breach of trust by directors, etc.) or an inspector

- (a) makes a false statement to or hides a fact from the court in relation to the confirmation of contributors of asset base, the payment of contributions of asset base, any matter stated in Paragraph (2) Item (d) of Article 2-2-1 (Incorporation and articles of incorporation) or

any matter stipulated in a resolution for increase of asset base;

- (b) returns asset base contrary to any law or regulation or the articles of incorporation; or
- (c) disposes of property of the juristic person in a speculative transaction that is outside the scope of the objects of the limited liability incorporated association or incorporated foundation as the case may be, he shall be liable to imprisonment of up to [ ] years or a fine of up to [ ] riels or to both imprisonment and fine as aforesaid.

#### 2-4-3 (Crime of using document containing false statement)

If in the course of soliciting the asset base, a person listed in Article 2-4-1 (Special breach of trust by directors, etc.) Paragraph(1), a person commissioned to solicit the asset base, or if either of the aforementioned persons is a juristic person, the officer executing such business, uses an application form, public notice or other document relating to solicitation of the asset base that contains a false entry relating to an important matter, he shall be liable to imprisonment of up to [ ] years or a fine of up to [ ] riels or to both imprisonment and fine as aforesaid.

#### 2-4-4 (Offense of mutual deposit)

If a person listed in Article 2-4-1 (Special breach of trust by directors, etc.) Paragraph (1) arranges a so-called “mutual deposit”, i.e. if such person adopts the form of paying to the juristic person money that has been borrowed from the bank handling the payment, in order to disguise the nature of the payment of any contribution of asset base, and there is actually only a book entry, and moreover, such person promises that the juristic person will not demand return of the money paid in until the said borrowing is repaid in full, he shall be liable to imprisonment of up to [ ] years or a fine of up to [ ] riels or to both imprisonment and fine as aforesaid. The same shall apply to the other party to the mutual deposit.

#### 2-4-5 (Offense of corruption on part of directors, etc.)

(1) If a person listed in Article 2-4-1 (Special breach of trust by directors, etc.) Paragraphs (1) or (2) or an inspector accepting an illegal request receives a material benefit, or requests or promises any of the foregoing, he shall be liable to imprisonment of up to [ ] years or a fine of up to [ ] riels or to both imprisonment and fine as aforesaid.

(2) The same shall apply to any person who provides, offers or promises any benefit described in Paragraph (1).

(3) Any material benefit received under Paragraph (1) shall be confiscated. If such benefit cannot be confiscated in whole or part, the deficit shall be payable [by the person who had received the benefit].

#### 2-4-6 (Cases where directors, etc. are subject to non-penal fines)

Directors, supervisors, liquidators, members of an unlimited liability incorporated association, persons appointed to perform duties in lieu of any of the foregoing or inspectors who

- (a) neglect to effect a registration prescribed by this law;
- (b) neglect to give a public notice or notice prescribed by this law, or effect an illegal public notice or notice;
- (c) refuse to allow perusal or copying of documents, or to provide certified copies or extracts thereof, without

- legitimate reason, in breach of this law;
- (d) refuse, obstruct or evade any examination prescribed by this law;
  - (e) makes a false statement to, or hides a fact from, the supervising authority or the general meeting of members in relation to any matter prescribed by this law;
  - (f) fail to convene a general meeting of members in breach of 2-2-11 (Ordinary general meetings);
  - (g) being directors or supervisors, fail to provide an explanation of a matter requested by a member, in breach of Paragraphs (2) and (3) of Article 2-2-14 (Powers of general meeting);
  - (h) fail to carry out the selection procedures if the number of directors or supervisors has fallen below the number prescribed by this law or articles of incorporation;
  - (i) fail to make a required entry, or make a false entry, in any article of incorporation, members' register, minutes, balance sheet, profit and loss statement, business report (jigyo hokokusho), proposal for disposition of surplus or treatment of loss, audit report, accounting ledger, schedule to any accounting document, asset inventory, administrative report (jimu hokokusho) or report of closing of accounts;
  - (j) fail to maintain any document, in breach of Article 2-2-1 (Incorporation and articles of incorporation), Paragraph (4), Article 2-2-19 ((Disclosure of accounting documents, etc.), Paragraph (1), Article 2-2-20 (Incorporation and articles of incorporation), Paragraph (4), Article 2-3-1 (Incorporation and articles of incorporation), Paragraph (4), or Article 2-3-9 (Disclosure of accounting documents, etc.), Paragraph 1;
  - (k) fail to hand over the business to a liquidator appointed by the court;
  - (l) fail to make an application for bankruptcy in breach of Article 2-1-33 (Bankruptcy during liquidation);
  - (m) dispose of property of the juristic person in breach of Article 2-1-32 (Disposition of surplus assets);
  - (n) prescribe an unreasonable period under Paragraph (1) of Article 2-1-28 (Notices to creditors) with the object of delaying the conclusion of the liquidation; or
  - (o) settle an obligation in breach of Article 2-1-29 (Settlement of claims within presentation period) shall be subject to a non-penal fine of up to [ ] riels.

2-4-7 (Non-penal fine to be imposed on person using false name)

A person who breaches Article 2-1-2 (Name of non-profit juristic person) shall be liable to a non-penal fine of [ ] riels.



## BOOK TWO “REAL RIGHTS”

### Chapter One General Provisions

#### Section I. Things

##### 1-1-1 (Definition of thing)

Under this Code, a thing is a corporeal object or substance comprising a gas, liquid or solid.<sup>3</sup>

##### 1-1-2 (Movables and immovables)

- (1) Things are divided into movables and immovables.
- (2) An immovable comprises land or anything immovably fixed to land, such as a building or structure, crops, timber, etc.
- (3) A movable is any thing that is not an immovable.
- (4) Except as otherwise provided by special laws, the provisions pertaining to movables shall apply *mutatis mutandis* to intangible property that can be controlled.

##### 1-1-3 (Component of a thing)

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

##### 1-1-4 (Component of a land; principle rule)

Things attached to land or comprising a part thereof, particularly buildings or structures immovably constructed on land, or seeds planted in the ground, crops in the fields or timber growing on the land, are components of the land unless they are severed from the land, and may not, except as otherwise provided by law, be the subject of rights separate from those applicable to the land.

##### 1-1-5 (Component of a land; exceptional rule)

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

##### 1-1-5-1 (Ownership of building, etc. built based on exercise of right [to occupy or use] land owned by another)

For the purposes of Article 1-1-5, buildings and other structures built on land by a right-holder, as well as grown timber, plants, etc. shall be deemed components of the right [to occupy or use] the land of another.

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<sup>3</sup> In this translation, while the different terms such as ‘good’ and ‘property’ are used in different contexts to maintain consistency with standard English-language legal usage, they have the same meaning, and are substantively identical.

1-1-6 (Components of building)

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

1-1-7 (Principal thing and accessory thing)

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

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

1-1-8 (Definitions of source thing and fruits)

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

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

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

1-1-9 (Right to obtain fruits)

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

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

1-1-10 (Right to demand reimbursement of costs)

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

## Section II. Real Rights

1-2-1 (Definition of real right)

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

1-2-2 (Statutory nature of real right)

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

1-2-3 (Types of real rights)

The following real rights are established by this Code:

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

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

#### 1-3-1 (Creation, transfer and alternation of real rights by agreement)

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

#### 1-3-2 (Perfection)

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

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

#### 1-3-3 (Merger of rights)

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

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

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

#### 1-3-4 (Presumptions regarding registration)

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

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

## Chapter Two Ownership

## Section I. Nature and Scope of Ownership

### 2-1-1 (Definition of ownership)

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

### 2-1-2 (Scope of ownership of land)

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

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

### 2-1-3 (Injunction against nuisance)

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

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

### 2-1-4 (Discovery of cultural artifact or minerals in the ground)

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

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

### 2-1-5 (Right to cut trees growing across boundary)

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

## Section II. Relationship Between Neighboring Properties

### 2-2-1 (Right to use adjoining land)

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

### 2-2-2 (Right of way for enclosed land)

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

highway is termed 'enclosed land.'

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

(3) The right of way shall be created in principle along the direction or path that minimizes the distance from the enclosed land to the public highway. Notwithstanding the provisions of the first sentence, the right of way shall be located so as to minimize the burden on the owner of the neighboring property.

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

#### 2-2-3 (Obligation to accept naturally flowing water)

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

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

#### 2-2-4 (Right to use rainwater, etc.)

An owner of higher lying land is entitled to use and dispose of a water source existing on his property as well as rainwater falling on the property in accordance with the third sentence of paragraph (1) of Article 2-2-3.

#### 2-2-5 (Obligation to preserve flow of water)

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

#### 2-2-6 (Right to establish an irrigation channel)

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

#### 2-2-7 (Right to drain water after irrigation)

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

#### 2-2-8 (Right to drain water of flooded land)

The owner of a land, the whole or part of which is flooded, is entitled to drain detrimental water off his

land so far as it is allowed under sanitary laws and regulations.

2-2-9 (Right to install sluice, etc.)

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

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

2-2-10 (Nuisance)

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

2-2-11 (Duty to put blind on window, etc.)

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

2-2-12 (Trees planted near the boundary)

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

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

2-3-1 (Right to demand return based on ownership)

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

2-3-2 (Possessor and fruits)

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

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

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

2-3-3 (Responsibility for loss of or damage to a possessed thing)

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

2-3-4 (Possessor's right to demand reimbursement of expenditures)

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

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

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

2-3-5 (Right to demand abatement or prevention of hindrance to exercise of ownership)

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

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

Section IV. Acquisition of Ownership

Sub-section III. Acquisition of Ownership over Immovable

2-4-1 (Acquisition of ownership over immovable)

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

2-4-2 (Immovable without owner)

An immovable without an owner shall belong to the state.

2-4-3 (Prescriptive acquisition of ownership over immovable)

- (1) A person who peacefully and openly possesses an immovable for a period of 20 years with the intention of ownership shall acquire ownership thereof.
- (2) A person who peacefully and openly possesses an immovable for a period of 10 years with the intention of ownership shall acquire ownership thereof if the possession commenced in good faith and without negligence.

2-4-3-1 (Retroactive effect of prescriptive acquisition)

The effect of acquisition of ownership as set forth in Article 2-4-3 (Prescriptive acquisition of ownership over immovable) shall be retroactive to the date on which the period of prescription commenced. Fruits that come into existence after that date shall belong to the person acquiring ownership via prescription.

2-4-3-2 (Invocation of prescriptive acquisition)

- (1) A court may not issue a decision based on prescriptive acquisition unless a party invokes prescriptive acquisition.
- (2) Prescriptive acquisition may be invoked only by a prospective prescriptive acquirer, a person who has received a perpetual lease, usufruct, right of use/right of residence, servitude, leasehold, hypothec or pledge from a prospective prescriptive acquirer, or other person having a legal interest in the invocation of prescriptive acquisition.
- (3) Where a prospective prescriptive acquirer invokes prescriptive acquisition, third parties shall also receive the benefit thereof. Where a person other than a prospective prescriptive acquirer properly invokes prescriptive acquisition, such invocation is effective only as between the invoking person and the original owner.

2-4-3-3 (Renunciation of benefit of prescriptive acquisition)

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

2-4-3-4 (Persons affected by renunciation of benefit of prescriptive acquisition)

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

2-4-3-5 (Grounds for interruption of prescriptive acquisition)

Prescriptive acquisition shall be interrupted by any of the following:

- (i) loss of possession with the intention of ownership;
- (ii) the filing of a lawsuit or equivalent exercise of legal rights;
- (iii) an act of execution or preliminary injunction; or
- (iv) acknowledgment.

2-4-3-6 (Persons affected by interruption of prescriptive acquisition)



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

2-4-3-7 (Loss of possession with intention of ownership)

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

2-4-3-8 (Lawsuit)

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

2-4-3-9 (Rescission of act of execution or act of preliminary injunction)

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

2-4-3-10 (Running of prescriptive acquisition period following interruption)

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

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

2-4-3-11 (Suspension upon demand)

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

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

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

2-4-3-12 (Suspension of period for prescriptive acquisition against minor or adult in guardianship)

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

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

2-4-3-13 (Suspension of period for prescriptive acquisition between minor or adult in guardianship and legal representative)

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

2-4-3-14 (Suspension of period for prescriptive acquisition between spouses)

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

2-4-3-15 (Suspension of period for prescriptive acquisition in case of natural disaster)

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

2-4-3-16 (Prescriptive acquisition of rights regarding immovable)

(1) A person who peacefully and openly exercises a right regarding an immovable such as a perpetual lease, usufruct, right of use/right of residence, servitude, leasehold or pledge for his own benefit shall obtain such right after either 10 years or 20 years, in accordance with the classifications set forth in Article 2-4-3.

(2) The provisions of Articles 2-4-3-1 through 2-4-3-15 shall apply *mutatis mutandis* to prescriptive acquisition of the rights specified in paragraph (1).

2-4-4 (Ownership of alluvial deposit)

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

2-4-5 (Ownership of alluvial deposit)

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

2-4-6 (Ownership of land removed by water flow)

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

2-4-7 (Ownership of island or alluvial bed in the middle of river)

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

2-4-8 (Ownership of island or alluvial bed in the middle of river)

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

2-4-9 (Ownership of island)

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

2-4-10 (Ownership of old riverbed after creation of new channel)

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

2-4-11 (Affixture of movable to immovable)

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

Sub-section IV. Acquisition of Ownership over Movable

2-4-12 (Acquisition of ownership over movable)

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

2-4-13 (Ownership of movable without owner)

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

2-4-14 (Ownership of escaped animals, etc.)

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

2-4-15 (Ownership of fish living in pond, etc.)

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

2-4-16 (Ownership of lost article)

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

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

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

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

2-4-17 (Ownership of buried treasure)

The provisions of 2-4-16 shall apply *mutatis mutandis* to buried treasure, except as set forth in Article 2-1-4. However, where buried treasure that is not identified by its owner is discovered among things belonging to another, ownership of such treasure shall be split evenly between the discoverer and the owner of the other things.

2-4-18 (Bona fide acquisition of ownership of movable)

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

2-4-19 (Transfer of stolen or lost property)

(1) In the case described in Article 2-4-18, if the transferred thing comprises stolen or lost property, the injured party or owner of the lost property may demand the return of the property from the transferee within two years of its theft or loss.

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

compensation for the price paid by him.

2-4-20 (Prescriptive acquisition of ownership over movable)

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

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

2-4-20-1 (Prescriptive acquisition of rights regarding movable and other property rights)

A person who peacefully and openly exercises for his own benefit a pledge, leasehold or other right regarding movable or other property right<sup>4</sup> shall obtain such right after either 10 years or 20 years, in accordance with the classifications set forth in Article 2-4-20.

2-4-20-2 (*Mutatis mutandis* application of provisions regarding prescriptive acquisition of immovables)

The provisions of Articles 2-4-3-1 through 2-4-3-15 shall apply *mutatis mutandis* to the cases described in Articles 2-4-20 (Prescriptive acquisition of ownership over movable) and 2-4-20-1 (Prescriptive acquisition of rights regarding movable property and other property rights).

2-4-21 (Attachment, mixture, consolidation of movables)

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

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

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

2-4-22 (Processing of movable)

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

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

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<sup>4</sup> As used in this translation, the term 'property right' shall include rights over property (*rights in rem*), rights arising from an obligational relationship (*rights in personam*), intellectual property rights, shares in a company, etc., and can be contrasted with 'non-property rights' such as personal rights or other rights purely inherent to one's identity or status.

2-4-23 (Effect of attachment of movable)

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

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

2-4-24 (Attachment and compensation therefor)

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

## Section V. Co-ownership

2-5-1 (Definition of co-ownership)

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

2-5-2 (Equality of shares of co-owners)

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

2-5-3 (Disposal of co-ownership)

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

2-5-4 (Use of co-owned thing)

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

2-5-5 (Preservation of co-owned thing)

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

2-5-6 (Change in use of co-owned thing)

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

2-5-7 (Administration of co-owned thing)

Except as provided in Articles 2-5-5 and 2-5-6, all matters relating to the administration of a co-owned thing shall be determined by a majority in value of the co-owners.

2-5-8 (Burdens of co-owned thing)

(1) Each co-owner shall bear expenses of administration, taxes and other charges in relation to

the co-owned thing in proportion to his share thereto.

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

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

#### 2-5-9 (Renunciation, etc. of co-ownership)

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

#### 2-5-10 (Demand for partition of co-owned thing)

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

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

#### 2-5-11 (Method of partition of co-owned thing)

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

#### 2-5-12 (Claim regarding co-ownership)

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

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

#### 2-5-13 (Quasi-co-ownership)

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

## Section VI. Indivisible Joint Ownership

#### 2-6-1 (Definition of indivisible joint ownership)

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

2-6-2 (Indivisible joint ownership of partition wall)

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

2-6-3 (Repair and improvement of indivisibly and jointly owned partition wall)

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

2-6-4 (Use of indivisibly and jointly owned partition wall)

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

2-6-5 (Structure against indivisibly and jointly owned partition wall)

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

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

(3) In the case described in paragraph (2), the court may grant a judgment that will be substituted for the other indivisible joint owner's agreement in exchange for reasonable security.

2-6-6 (Placing partition wall previously not indivisibly and jointly owned into indivisible joint ownership)

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

2-6-7 (Increasing height of indivisibly and jointly owned partition wall)

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

2-6-8 (Improvement, etc. of indivisibly and jointly owned partition wall)

(1) Where the partition wall to be increased in height cannot withstand such increase, the person



desiring the increase in height may rebuild the entire partition wall at his own expense. However, where the thickness of the partition wall is to be increased, such increase shall occur on the side of the rebuilding owner.

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

2-6-9 (Indivisible and joint ownership of enclosure)

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

2-6-10 (Expenses for preservation of enclosure)

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

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

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

2-6-11 (Enclosure not indivisibly and jointly owned)

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

2-6-12 (Indivisibly and jointly owned hedge, etc.)

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

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

**Chapter Three Possessory Rights (to come)**

**Chapter Four Perpetual Lease (to come)**

**Chapter Five Usufruct (to come)**

**Chapter Six Right of Use and Right of Residence (to come)**

**Chapter Seven Servitude (to come)**

**Chapter Eight Ownership and Other Real Rights of State, Buddhism Temples,  
Indigenous People, and other Communities (to come)**

**Chapter Nine Rights Accrued from Concession of Land (to come)**

**BOOK THREE “OBLIGATIONS”**

## Chapter One General Provisions

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

#### 1-1-1 (Definition of obligation)

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

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

(3) An obligee shall possess those rights corresponding to the duty owed by the obligor. [These rights are collectively referred to in this translation as a 'claim'<sup>5</sup>.]

#### 1-1-2 (Causes of obligation)

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

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

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

#### 1-1-3 (Definition of declaration of intention)

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

#### 1-1-4 (Definition of contract)

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

#### 1-1-5 (Definition of unilateral legal act)

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

(2) The provisions set forth in Sections II through IV of Chapter Two of this Book shall apply *mutatis mutandis* to unilateral legal acts.

### Section II. Types and States of Obligations

#### 1-2-1 (Types of obligations)

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<sup>5</sup> While the term 'claim' generally refers to an action or demand deriving from a legal right, in this translation it refers to any substantial right that corresponds to an obligation owed by an obligor and is vested in an obligee.

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

1-2-2 (Obligation to deliver specific property)

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

1-2-3 (Obligation to deliver property in species)

(1) Where the property to be delivered under an obligation is described only with reference to its class or type, if different levels of quality exist with regard to such property to be delivered, the obligor shall be obligated to deliver property of the quality that was designated by the parties. If there is no such designation of the quality of the property to be delivered, the obligor shall be obligated to deliver property of medium quality.

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

1-2-4 (Monetary debt)

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

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

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

1-2-5 (Monetary debt in foreign currency)

Even if the amount of a debt is established in a foreign currency, the obligor may effect payment in Cambodian currency at the exchange rate current at the place of performance and when the debt becomes due. Where the obligor's [tender of] payment is delayed, the obligee may demand that the obligor calculate the amount of the payment based on the currency exchange rate in effect when the payment is actually made. However, if the obligee and the obligor agree otherwise, such agreement shall prevail.

1-2-6 (Legal interest rate)

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

1-2-7 (Interest on interest)

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

1-2-8 (Choice of obligation)

If the subject matter of an obligation is to be determined by choosing from among two or more acts of performance, the right to choose shall belong to the obligor. However, the obligor may grant the right to choose to the obligee or to a third party by specific agreement.

1-2-9 (Exercise of right to choose)

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

1-2-10 (Transfer of right to choose)

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

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

1-2-11 (Determination of choice of obligation when performance impossible)

(1) If, among the acts of performance that form the subject matter of an obligation subject to choice, one or more of such acts have either been impossible from inception or have subsequently become impossible for a reason not attributable to either party, the subject matter of the obligation shall comprise the remaining acts of performance.

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

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

(4) If any act of performance has become impossible due to a reason attributable to the party who holds the right to choose, the right to choose shall be deemed transferred to the other party.

1-2-12 (Retroactive effect of choice)

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

### Section III. Conditions, Time and Period

#### Sub-section V. Conditions

1-3-1 (Meaning of conditions)

(1) One or both parties to a contract or unilateral legal act may impose conditions on the

obligation created thereby.

(2) Conditions are events, the occurrence of which is uncertain.

(3) If an obligation is subject to a condition precedent, the obligation shall become effective upon the fulfillment of the condition. If an obligation is subject to a condition subsequent, the obligation shall cease to be effective upon the fulfillment of the condition.

1-3-2 (Disposition of right subject to condition)

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

1-3-3 (Impairment of pending benefit)

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

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

1-3-4 (Constructive fulfillment of conditions)

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

#### Sub-section VI. Time

1-3-5 (Meaning of time)

(1) If an obligation is subject to a commencement time, its performance may not be demanded until such time has arrived.

(2) If an obligation is subject to a termination time, it shall cease to be valid when such time arrives.

1-3-6 (Benefit of time)

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

(2) The benefit of time may be waived. However, if the other party suffered damages due to the waiver, the waiving party shall be liable for such damages.

1-3-7 (Forfeiture of benefit of time)

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

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

#### Sub-section VII. Period

1-3-8 (Designation of period)

A period may be designated in terms of hours, minutes or seconds, or in terms of days, weeks, months or years.

1-3-9 (Calculation of period established in terms of seconds, minutes or hours)

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

1-3-10 (Calculation of period established in terms of days, weeks, months or years)

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

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

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

1-3-11 (Calculation of period by solar calendar)

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

(2) If a period does not commence at the beginning of a week, month or year, such period shall terminate on the day in the last week, month or year preceding the day corresponding to that on which it commenced. However, if the period has been fixed in terms of months or years and there is no corresponding day in the last month or year, the last day of the month shall be the day of termination.

## **Chapter Two Declaration of Intention and Contract**

### Section I. Formation of Contract

2-1-1 (Formation of contract via offer and acceptance)

A contract is formed when an offer and an acceptance thereof conform to each other.

2-1-2 (Definition of offer)

(1) An offer is an invitation to enter into a contract based on the offeror's intention to be legally bound by the other party's acceptance thereof.

(2) An offer shall take effect when it reaches the other party. However, an offer shall not take effect if a notice of revocation has reached the other party simultaneously with or prior to the offer.

2-1-3 (Offer with acceptance period; revocation)

(1) An offer may be made subject to an acceptance period.

(2) An offer that specifies an acceptance period cannot be revoked.

(3) If the offeror does not receive notice of acceptance within the specified acceptance period, the offer shall automatically lapse upon the expiration of the acceptance period. The offer shall lapse if a notice of refusal from the other party reaches the offeror, even where such notice is received within the specified acceptance period.

2-1-4 (Offer with no acceptance period; revocation)

(1) An offer that states no acceptance period and is made *inter praesentes* where the offeree can respond at once shall lapse unless it is accepted forthwith by the offeree.

(2) An offer that states no acceptance period and is made *inter absentes* cannot be revoked by the offeror within a reasonable period of time.

(3) A revocation of an offer shall take effect when notice thereof reaches the offeree, provided that such notice reaches the offeree prior to the offeree's dispatch of a notice of acceptance.

2-1-5 (Formation of contract on receipt of acceptance)

A contract shall be formed when the notice of acceptance is received by the offeror.

2-1-6 (Delayed acceptance)

An acceptance that reaches the offeror after the expiration of the acceptance period shall be deemed a new offer.

2-1-7 (Acceptance of offer with modification)

(1) If the acceptor attaches a condition or any other modification to the acceptance, such purported acceptance shall be deemed a new offer. A contract shall be formed when the original offeror accepts such new offer.

(2) If the condition or modification attached to the acceptance does not substantially change the original offer, the intended acceptance shall serve as an acceptance of the original offer. The contents of the contract shall incorporate the condition or modification contained in the intended acceptance unless the offeror raises an objection to the condition or modification immediately after receipt of the acceptance.

2-1-8 (Formation of contract by acts recognized as acceptance)

In the event that a notice of acceptance is not required under the intention of the offeror or under applicable trade customs, the contract shall be formed when the act that is recognized as an acceptance is performed.

2-1-9 (Revocation of offer made to unspecified party)

An offer made to unspecified parties made through advertising or other method may be revoked only using the same method employed to make the offer.

## Section II. Validity of Declaration of Intention and Contract

2-2-1 (Nullity of declaration of intention)

A declaration of intention shall be void in the following cases:

(a) where the declaration of intention is fictitious as described in Article 2-2-4;

- (b) where the declaration of intention is given subject to a mental reservation as defined in Article 2-2-5; or
- (c) where the party otherwise lacks a true intent to create a legal effect.

2-2-2 (Rescission of declaration of intention)

In the following cases, a declaration of intention may be rescinded as a defective declaration pursuant to provisions set forth in this Section II and Section III:

- (a) where the declaration of intention is given as the result of mistake;
- (b) where the declaration of intention is given as the result of the other party's fraud, duress or misrepresentation; or
- (c) where the declaration of intention is given as the result of the other party's act that aims to obtain excessive profits and exploits the surrounding situation.

2-2-3 (Extinction of effect of contract due to nullity or rescission of declaration of intention)

A contract formed by the matching of an offer and an acceptance shall lose effect upon the nullity or rescission of the declaration of intention [on which either the offer or the acceptance was based].

2-2-4 (Fictitious declaration of intention)

- (1) A fictitious declaration of intention given in collusion with the other party shall be void.
- (2) The invalidity of the declaration of intention described in paragraph (1) cannot be asserted against a bona fide third party.

2-2-5 (Mental reservation)

A declaration of intention given with the knowledge that it does not reflect the true intention of the declarant shall not be void. However, if the other party is aware that such declaration does not reflect the true intention of the declarant, the declarant can assert the invalidity of the declaration against such other party.

2-2-6 (Mistake)

- (1) Where a party gives a declaration of intention based on a mistake with regard to a material aspect of the contract, if the other party could have been aware of such mistake, such party may rescind the declaration of intention.
- (2) Where a party gives a declaration of intention based on a mistake with regard to a particular matter in the contract which such party deems important, if the other party could have been easily aware of the importance of the particular matter for such party as well as of the mistake, such party may rescind the declaration of intention.
- (3) Where both parties have made declarations of intention based on mistakes with regard to a material aspect of the contract, each party may rescind the declaration of intention even though the other party could not have been aware of such mistake.
- (4) The effect of the rescission of a declaration of intention by reason of mistake may not be asserted against a third party other than the other party and his general successor if the third party is ignorant of the mistake and such ignorance was not the result of the third party's negligence.

2-2-7 (Fraud)



(1) A person whose declaration of intention is induced by the fraudulent conduct of the other party may rescind such declaration with respect to such other party.

(2) A declaration of intention that is based on the fraudulent conduct of a third party may be rescinded only if the other party knew or could have known of the fraudulent conduct.

(3) A rescission of a declaration of intention may be asserted against the other party, his successor in interest or other third parties. However, if the successor in interest or another third party has acted in good faith and without negligence, the rescission of the declaration of intention may not be asserted against such successor in interest or party.

2-2-8 (Misrepresentation)

(1) Where a fact asserted by the other party in the course of entering into a contract is not in accord with the truth, a party who gave declaration of intention believing in the truth of the asserted fact may rescind the declaration of intention if such party would not have given such declaration of intention if the party had known that the asserted fact was untrue.

(2) If the person making the misrepresentation was negligent, paragraph (1) shall not preclude the other party who gave the declaration of intention from seeking damages.

2-2-9 (Duress)

(1) A person who gives a declaration of intention while under duress exerted by the other party or a third party may rescind such declaration of intention.

(2) If, in the course of entering into a contract, a party to the contract took advantage of an economically or socially superior position or otherwise unfairly took advantage of a situation in which it was difficult for the other party to oppose such party, the other party may rescind the declaration of intention.

(3) The rescission of declaration of intention referred to in paragraph (2) may not be asserted against a third party who is ignorant of the defect in the declaration of intention and such ignorance is not the result of the third party's negligence.

2-2-10 (Conduct resulting in excessive benefits)

If a party enters into a contract while taking advantage of the other party's financial difficulties, ignorance or inexperience, and thereby obtains excessive profits or benefits, the other party may rescind the declaration of intention.

2-2-11 (Contract in violation of laws or public order and good morals)

(1) Even where the declarations of intention of both parties are given of the parties' own free will, the contract shall be null and void in the following cases:

- (a) where the contents of the contract violate a mandatory provision of law; or
- (b) where the contents of the contract contravene public order and good morals.

(2) If a part of a contract violates a mandatory provision of law or public order and good morals, where to uphold the remainder of the contract would not contravene the reasonable expectations of the parties, only the part of the contract in violation of provision of law or public order and good morals shall be void.

2-2-12 (Initial impossibility)

(1) Even where it was impossible to implement the content of a contract at the time of its execution, the contract shall not be void as a result. However, this shall not preclude either party to the contract from rescinding declaration of intention based on mistake if the requirements for mistake are met.

(2) A party to the contract who should have known that the implementation of the content of the contract was impossible at inception shall be liable to the other party for damages in accordance with the provisions of Article 4-3-1 et seq. regarding non-performance if the other party suffered any damages due to the execution of the contract.

### Section III. Invalidity and Rescission

#### 2-3-1 (Ratification of void act)

(1) An 'act' shall mean a declaration of intention, contract or unilateral legal act for the purposes of this Section III.

(2) A void act shall become a valid act when it is ratified by the actor once the ground for its invalidity ceases to exist.

#### 2-3-2 (Voidable act)

(1) A voidable act is valid until it is rescinded by a person having the right to rescind such act.

(2) Where a voidable act is rescinded by a person having the right to rescind such act, the act shall be void from its inception.

(3) Where a voidable act is ratified by a person having the right to rescind such act, the act is conclusively valid.

#### 2-3-3 (Person entitled to rescind act)

(1) Where a voidable act is to be rescinded on the ground of a defective declaration of intention, the rescission may be effected by the person that gave the defective declaration of intention or by his legal representative. An heir or other person who has succeeded to the contractual position of the person giving the defective declaration of intention may also exercise the right of rescission.

(2) A rescission based on minor status or other limitation on the capacity to act may be carried out by the incompetent person or by such person's legal representative. The heir or legatee of such person may also exercise the right of rescission.

#### 2-3-4 (Method of rescission or ratification)

Where the other party to a voidable act is identified, rescission or ratification shall be carried out with notification to the other party. The rescission or ratification shall be effectuated when the notification thereof reaches the other party.

#### 2-3-5 (Ratifying persons, conditions of ratification)

(1) Ratification may be carried out by a person having a right of rescission. However, where the rescission was based on a defective declaration of intention, the ratification may be carried out after the person having a right of rescission learns of the cause of rescission, and where the rescission was based on an act performed by an incompetent person, the ratification may be carried out after the

circumstances giving rise to the rescission no longer exist.

(2) The provisions of paragraph (1) shall not apply where the ratification is carried out by the legal representative of an incompetent person.

2-3-6 (Constructive ratification)

A voidable act shall be deemed ratified where any of the following facts occurs after the time that ratification may be carried out pursuant to the provisions of Article 2-3-5:

- (a) full or partial performance of an obligation arising due to a voidable act or the giving of security for such obligation;
- (b) the exercise of a right obtained through a voidable act or a demand for performance by the other party; or
- (c) a total or partial transfer or other disposition of a right obtained through a voidable act.

However, this shall not apply where it is specifically stated at the time such fact occurs that ratification shall not be carried out.

2-3-7 (Extinctive prescription of right of rescission)

(1) A right of rescission, as well as the right to demand the return of unjust enrichment that accompanies the exercise of a right of rescission, shall be extinguished if it is not exercised within three years of the date on which ratification may be performed. The provisions regarding interruption of prescription shall not apply to this period.

(2) Notwithstanding the provisions of paragraph (1), a right of rescission, as well as the right to demand the return of unjust enrichment, shall be extinguished upon the expiration of ten years from the date of the act subject to rescission.

(3) Where multiple persons have a right of rescission regarding the same act, the provisions of paragraphs (1) and (2) above shall apply to each such person's right of rescission.

## Section IV. Agency

2-4-1 (Definition of agency)

Agency is defined as a relationship wherein where a representative enters into a contract with another party by stating that he is acting on behalf of a principal within the scope of the agency authorization, the effects of the contract are imputed directly to the principal.

2-4-2 (Creation of agency authorization)

An agency authorization can be created by contract between the principal and the agent or by law.

2-4-3 (Scope of agency authorization)

(1) The scope of an agency authorization is established in the contract that confers the agency authorization on the agent. Where an agency authorization is established by law, the scope of the agency authorization is established by the provisions of such law.

(2) Where there is no provision regarding the scope of the agency authorization, an agent is entitled to conduct acts to preserve or improve [the thing or right comprising the subject-matter of the agency.] However, this shall not apply to acts of improvement that would alter the nature of such thing or right.

2-4-4 (Limitations on agency authorization)

- (1) An agent is not entitled to conduct acts with respect to which the interests of the principal conflict with the interests of the agent, even where such acts are otherwise within the scope of the agency authorization. However, this shall not apply where the principal consents thereto.
- (2) Dealings between the agent and the principal are presumed to involve conflicting interests between the principal and the agent.
- (3) Where an agent represents both a principal and a third party, paragraphs (1) and (2) shall apply *mutatis mutandis* to acts that give rise to conflicting interests between the principal and the third party.

2-4-5 (Grounds for extinction of agency authorization)

- (1) An agency authorization conferred by a principal via contract is extinguished by any of the following:
  - (a) the death, bankruptcy or dissolution of the principal;
  - (b) the death or bankruptcy of the agent, or a restriction on the agent's capacity to act; or
  - (c) the termination of the trust, employment or other legal relationship that gave rise to the agency authorization.
- (2) A agency created by law is extinguished for reasons specified by law.

2-4-6 (Agency without authorization)

Where a person conducts an act as agent for another without having an agency authorization, the effects of that act shall not be attributable to the putative principal. However, this shall not apply where the act is ratified by the putative principal.

2-4-7 (Ratification of act performed without agency authorization)

- (1) The effect of ratification cannot be asserted against the other party unless such ratification is exercised against the other party.
- (2) An act conducted without agency authorization that is subsequently ratified is valid retroactively from the time it is conducted. However, where rights accrue to a third party between the time that act is conducted and the time of ratification, such rights may not be infringed.
- (3) The other party to an act conducted without agency authorization may demand that the putative principal indicate within a reasonable period of time designated by the other party whether the putative principal ratifies such act. If the putative principal does not respond within the established period of time, ratification shall be deemed to have been rejected.
- (4) The other party to a contract executed without agency authorization may rescind the contract until it is ratified by the putative principal. A putative principal may not ratify an act conducted without agency authorization after rescission by the other party.

2-4-8 (Liability of person acting without agency authorization)

Where a person who executes a contract as agent for another cannot establish the existence of an agency authorization or obtain ratification from the putative principal, such person is responsible for either performing under the contract or paying damages, at the election of the other party. However,

where the other party knew of the lack of an agency authorization [when the contract was executed], the person acting without agency authorization shall be exempted from such liability. Where the person acting without agency authorization acted without negligence in regard to the absence of agency authorization, and the other party's ignorance of the lack of agency authorization was due to negligence, such person shall not be liable under the provisions of this Article.

2-4-9 (Agency by estoppel)

(1) Where an agent executes a contract outside the scope of the agency authorization, and the other party believed without negligence that the agent was authorized to enter into the contract, the principal is responsible for performing under the contract.

(2) Where, after the extinction of an agency authorization, the former agent enters into a contract with another party as the agent of the former principal, the former principal is responsible for performing under the contract. However, this shall not apply where the other party knew of the extinction of the agency authorization, or where the other party's ignorance of such extinction was due to the other party's negligence.

(3) Where, despite the absence of an agency authorization, a putative principal gives the impression that an agency authorization has been conferred on another, or allows another person to give the impression that he has received an agency authorization, the putative principal is obligated to the other party to make performance under the contract.

2-4-10 (Anonymous acts of agency)

Where an agent engages in a transaction with the intent of acting on behalf of a principal without disclosing such intent, the other party has the election of treating the contract as executed between such party and the principal or as executed between such party and the agent. However, where the other party knew [when the contract was executed] that the agent was acting on behalf of the principal, the other party can treat the contract as executed only between such party and the principal.

2-4-11 (Defective act of agency)

(1) Where the validity of a declaration of intention may be affected on the grounds of mistake, fraud, or duress, or the knowledge or negligent ignorance of certain circumstances, the existence of facts giving rise to such grounds shall be determined with respect to the agent.

(2) When applying paragraph (1), where the principal has authorized the agent to execute a particular contract, the principal cannot assert the agent's ignorance of facts if they were known to the principal, or of facts of which the principal was ignorant due to the principal's own negligence.

2-4-12 (Capacity of agent)

A principal can confer an agency authorization on a person who has a limited capacity to engage in legal acts. In this case, a contract executed between an agent having a limited capacity to act and another party cannot be rescinded by the principal on account of the agent's limited capacity.

2-4-13 (Sub-agency)

A person authorized as an agent pursuant to a contract with a principal may not appoint a sub-agent. However, this shall not apply where the principal consents or circumstances exist that make such sub-agency unavoidable.

2-4-14 (Liability of agent where sub-agent has been appointed)

(1) Where an agent appoints a sub-agent in the circumstances described in the second sentence of Article 2-4-13, the agent is responsible to the principal in connection with the appointment and supervision of the sub-agent.

(2) Where an agent appoints a sub-agent on the instructions of the principal, the agent is not responsible for the conduct of the sub-agent unless the agent knew that the sub-agent was unfit or untrustworthy and the agent failed to either notify the principal of such fact or remove the sub-agent.

(3) Where an agent appoints a sub-agent under circumstances other than those described in Article 2-4-13, the acts of the sub-agent shall not be imputed to the principal. However, where the other party [to a contract entered into by the sub-agent] is unaware of the sub-agent's lack of authority, and such lack of knowledge is not the result of his negligence, the other party may demand that the agent perform [under the contract] or pay damages.

#### 2-4-15 (Status of sub-agent)

(1) An act that is conducted by a sub-agent within the sub-agent's authority and is accompanied by the sub-agent's express statement that the act is conducted on behalf of the principal is binding on the principal.

(2) A sub-agent has the same rights and obligations as an agent with respect to the principal.

(3) The provisions of this Section IV shall apply *mutatis mutandis* to the relationship between a principal and a sub-agent, who shall be deemed an agent for purposes hereof.

### Section V. Contract for the Benefit of a Third Party

#### 2-5-1 (Definition)

(1) The parties to a contract can agree to confer a right or benefit arising under the contract upon a third party. In this case, the person who is to perform a duty under the contract for the third party is termed the contract donor, and the other party to the contract is termed the contract donee. The person to receive the right or benefit is termed a third-party beneficiary.

(2) A third-party beneficiary is entitled to make a direct demand on the contract donor for performance.

#### 2-5-2 (Third-party beneficiary)

The third-party beneficiary need not exist when the promise to confer the right or benefit is made if the standards for determining the third-party beneficiary's identity are clear. However, where a third-party beneficiary does not exist at the scheduled time for performance of the duty by the contract donor and cannot be identified, the promise to perform the contract for the benefit of a third party loses its effect, and the contract donor shall be discharged from the contract upon performance of his duties with respect to the contract donee.

#### 2-5-3 (Declaration of intention to receive right or benefit)

(1) A contract donee may, at any time prior to an intended third-party beneficiary's declaration of intention to accept the right or benefit, extinguish the third-party beneficiary's right to receive the right or benefit via notification to the contract donor and the third-party beneficiary.

(2) Where the third-party beneficiary declares an intention to accept the right or benefit, the

parties to the contract may not thereafter alter or extinguish the third-party beneficiary's right.

2-5-4 (Defense of contract donor)

A contract donor under a contract to confer a right or benefit on a third party may assert against the third-party beneficiary any defenses arising under the contract.

2-5-5 (Invalidity, rescission or termination of contract)

(1) Where grounds for invalidity or rescission of the contract exist between the contract donee and contract donor, either party may assert the invalidity of or seek to rescind the contract in accordance with the provisions of Section III or Chapter Two of this Book concerning invalidity and rescission, notwithstanding the existence of a provision in the contract conferring a right or benefit on a third party.

(2) A contract donor may terminate the contract on the ground of the contract donee's breach thereof. Where the contract donor's breach is grounds for termination, and the third-party beneficiary has already declared an intention to accept the right or benefit, the contract donee can terminate the contract only with the consent of the third-party beneficiary.

### **Chapter Three Performance of Contract**

3-1-1 (Obligor's duty to perform obligation)

(1) An obligor shall perform its contractual obligations in accordance with the purpose of the contract and the principle of good faith.

(2) The obligation of a party is extinguished by a performance that complies with the standard established in paragraph (1).

3-1-2 (Right to demand performance of obligation)

(1) An obligee is entitled to demand that the obligor perform the obligation either with or without filing a lawsuit.

(2) Notwithstanding the provisions of paragraph (1), an obligee may not file a lawsuit demanding performance where the parties to the contract have agreed not to seek judicial enforcement of performance.

(3) Even where a lawsuit seeking judicial enforcement of performance is barred under paragraph (2), if the obligor carries out such performance voluntarily, the obligee may receive and retain the benefits thereof.

3-1-3 (Defense of simultaneous performance)

Each party to a bilateral contract may refuse to perform its own obligation until the other party tenders the performance of its obligation. However, this shall not apply where the time for performance of the other party's obligation has not arrived.

3-1-4 (Defense of insecurity)

A party to a bilateral contract who is required to perform an obligation in advance of the other party may refuse to perform the obligation if there is a significant risk that the other party will not substantially perform its obligation in accordance with its intended purpose. However, this shall not

apply where the other party provides security or otherwise takes a measure that extinguishes the existing risk.

3-1-5 (Application of provisions relating to performance as a ground for extinction of obligation)

In addition to the provisions of this Chapter Three, the provisions of Section I of Chapter Seven of this Book regarding performance as a ground for extinction of obligation shall also apply to 'performance of contract.'

## **Chapter Four Remedies for Breach of Contract**

### Section I. General Rules Concerning Non-Performance

4-1-1 (Definition and types of non-performance)

'Non-performance' is defined as an obligor's failure to perform an obligation arising under a contract. The types of 'non-performance' are as follows:

- (i) cases in which performance cannot be carried out by the established time for performance due to a delay in performance;
- (ii) cases in which performance is impossible;
- (iii) cases in which full and complete performance in accordance with the intended purpose of the obligation is not carried out; and
- (iv) other cases in which performance is not carried out in accordance with the intended purpose.

4-1-2 (Remedies for non-performance)

Where an obligor fails to perform an obligation, the obligee may demand specific performance, damages, or termination of the contract, in accordance with the provisions set forth in Sections II through IV of this Chapter IV.

4-1-3 (Delayed performance)

An obligor shall be liable for delayed performance if he fails to perform the obligation at the time described below:

- (a) where performance is to occur at a time certain, when such time has arrived;
- (b) where performance is to occur at a time that is uncertain, when the obligor knows that such time has arrived; or
- (c) where no time for performance is specified, when the obligor receives a demand for performance.

4-1-4 (Impossibility of performance)

(1) Where it is physically impossible to perform the obligation, the performance is deemed impossible. Performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint.

(2) Where it is established prior to the time for performance that the performance of an obligation will be impossible at the time for performance, the performance shall be deemed impossible when such impossibility is established.

4-1-5 (Incomplete performance)

Incomplete performance refers to cases where an obligation has been performed but the act of performance was not complete, where only partial performance was carried out, or where for any other



reason complete performance in accordance with the intended purpose of the obligation was not carried out.

4-1-6 (Other non-performance)

In addition to the types of non-performance described in Articles 4-1-3 through 4-1-5, where there is a breach of any other duty arising under the contract, the contract shall be deemed non-performed.

4-1-7 (Multiple remedies)

Where multiple remedies are available to the obligee, the obligee may select any or all of such remedies so long as they are not in mutual conflict.

## Section II. Specific Performance

4-2-1 (Court order for specific performance)

Where an obligor does not voluntarily perform an obligation, the obligee may seek an order of specific performance from the court, except where the nature of the obligation is not suitable for specific performance. The provisions set forth in the Civil Enforcement Law shall apply to the proceedings of specific performance.

4-2-2 (Relationship to demand for performance and other remedies)

Where the obligor fails to perform an obligation, the obligee may demand damages either instead of performance or together with performance so long as there is no conflict between these two demands.

## Section III. Damages

4-3-1 (Requirements for damages)

(1) Where an obligation is not performed, the obligee may demand damages from the obligor for any resulting harm. However, if the obligor proves that the non-performance was not the fault of the obligor, the obligor is not liable for damages.

(2) Where an obligor uses another person as an assistant to assist in carrying out performance of the obligation, the obligor may not avoid liability unless the obligor proves that the obligor was not negligent in the selection of and supervision over the assistant and that the assistant was not at fault.

4-3-2 (Special rules for monetary obligations)

(1) Where the subject matter of the obligation is the payment of money, the obligor is not exempted from payment of interest for delay even where the obligor proves that the delay in payment was the result of force majeure. The interest for delay shall be calculated based on the legal rate of interest. Where an agreed-upon interest rate exceeds the legal interest rate, the agreed-upon interest rate shall be applied.

(2) The obligor shall be exempted from liability for damages beyond interest for delay if the obligor proves that the obligor was not at fault for the non-performance.

4-3-3 (Concept of damages)

(1) The obligee may demand as damages (a) compensation for the benefit of performance that would have been received under the contract, as well as (b) expenditures that were wasted due to the

non-performance to the extent that such expenditures do not duplicate amounts received as benefit of performance damages, and (c) additional expenditures or burdens resulting from non-performance.

(2) The court may, based on a demand from the obligee, order payment of damages for mental harm. The amount of damages payable for mental harm shall be determined by the court after consideration of the surrounding circumstances.

#### 4-3-4 (Scope of damages)

The obligor shall provide compensation for the following types of damages:

- (a) Normally occurring damages suffered by the obligee due to non-performance;
- (b) Regarding special damages suffered by the obligee due to special circumstances, [such damages shall be compensated] where the occurrence of such special damages could have been anticipated by the parties when the contract was executed. However, this shall not apply where the parties did not take the possible occurrence of special damages into consideration when the contract was executed; and
- (c) Notwithstanding subparagraphs (a) and (b), where the non-performance is the result of [the obligor's] malicious intent or bad faith conduct, the court may, based on the obligee's demand for damages, order that the obligor pay to the obligee as damages the profit or benefit obtained by the obligor from the conduct comprising the non-performance.

#### 4-3-5 (Grounds for reduction of damages)

(1) Where the obligee's negligence or fault contributed to the occurrence of non-performance or damages, the court may reduce the amount of damages to be paid by the obligor to the extent that the obligee's conduct contributed thereto.

(2) Where damages have been expanded due to the obligee's negligent failure to mitigate damages, the court may reduce the amount to be paid by the obligor in proportion to the amount of the damages that could have been mitigated by the obligee.

#### 4-3-6 (Liquidated damages, etc.)

(1) The obligor and obligee may separately and in advance establish conditions for the payment of damages and an amount to be paid.

(2) A special agreement exempting the obligor from liability for non-performance that is intentional or the result of gross negligence is void.

(3) Where the parties agree on the amount of damages, the court may not increase or reduce the agreed-upon amount. However, where the amount fixed by the parties as liquidated damages is either grossly higher or grossly lower than the amount of damages calculated in accordance with the provisions of Article 4-3-4, the court may increase or decrease the liquidated damages amount fixed by the parties.

(4) The liquidation of damages does not obstruct a claim for performance or for termination of the contract. An amount fixed and agreed to by the parties as damages for delay shall not be binding on the parties where the obligee seeks termination of the contract and compensation for damages as a substitute for [the delivery of] the property comprising the subject matter of the contract.

(5) A penalty for breach of contract shall be presumed to constitute liquidated damages.

#### 4-3-7 (Compensation in money)

Compensation for damages for non-performance shall be made by the obligor in money. However, this shall not apply where the parties separately agree otherwise.

4-3-8 (Subrogation by compensation)

Where an obligee has received as damages compensation for the value of the property or right comprising the subject matter of the obligation, the obligor shall be automatically subrogated to the position of the obligee in regard to that property or right.

4-3-9 (Extinctive prescription)

The period of extinctive prescription applicable to the right to demand compensation for damages based on non-performance is five years from the time when the damages occurred.

## Section IV. Termination of Contract

4-4-1 (Termination for non-performance)

Where one of the parties to a bilateral contract commits a material breach of the contract, the other party may terminate the contract immediately.

4-4-2 (Material breach of contract)

(1) A material breach of contract occurs where, as a result of one party's breach of a contract, the purpose of the contract for the other party cannot be achieved, and shall be deemed to occur in any of the following situations:

- (a) where after a failure to perform at the specified time, the other party demands that the non-performing party perform the obligation by establishing a period of performance of reasonable length, and the obligation is not performed within such period;
- (b) where a party fails to perform at the specified time, and the purpose of the contract cannot be achieved if performance is not made at the specified time;
- (c) where it is impossible to carry out the essential act of performance; and
- (d) where the magnitude of the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

(2) The non-performing party may not prevent termination of the contract based on the reasons set forth in paragraph (1) on the ground that the non-performance occurred without fault on his part.

4-4-3 (Method of exercise of right of termination)

(1) A party having the right to terminate a contract may terminate the contract by expressing an intention to terminate to the other party. Such an intention may be expressed by means other than a lawsuit.

(2) An expression of an intention to terminate may not be revoked or withdrawn.

(3) An expression of an intention to terminate may be subject to a condition precedent.

4-4-4 (Termination in cases of multiple parties)

(1) Where one of the parties comprises multiple persons, termination of the contract must be effected by all of such persons to the other party or by the other party to all of such persons.

(2) In the case described in paragraph (1), where the right of termination is extinguished as to

one person, it is extinguished as to all persons.

4-4-5 (Effect of termination)

- (1) Termination of a contract relieves both parties of their duties under the contract except for the duty to pay damages.
- (2) Upon termination, a party that has received all or part of a performance under the contract shall return those items received as performance to the other party and return the other party to the other party's original state. Where both parties are required to return the other party to the party's original state, these duties shall be carried out simultaneously.
- (3) A party required to return money as a result of termination shall return the money with interest computed from the date on which the money was received. A party required to return property or other benefit due to termination shall return any benefit received thereby.
- (4) The legitimate interests of third parties may not be prejudiced by a termination.

4-4-6 (Right of termination when subject matter is destroyed)

- (1) Where due to the intentional act of a person having a right of termination a thing comprising the subject-matter of a contract is lost, destroyed or rendered incapable of being returned, or where such thing is changed into a thing of a different type due to processing or reworking, the right of termination shall be extinguished.
- (2) Where a right of termination is exercised by a person who is incapable of returning the thing in the case described in paragraph (1), the value of the thing shall be paid in money, such value not to exceed the actual price thereof [as fixed in the contract].
- (3) Where a thing has been destroyed or rendered incapable of being returned due to the negligence of or any other reason attributable to the other party, the person possessing a right of termination is not obligated to return the price of the thing pursuant to the provisions of Paragraph (2).

4-4-7 (Extinctive prescription)

The period of extinctive prescription of the right of termination based on non-performance as well as the right to demand actions to return to the original state that existed prior to the execution of the contract is five years from the time when the non-performance occurred.

4-4-8 (Agreed-upon right of termination and termination by agreement)

- (1) The parties to a contract may agree under the contract that either one or both of the parties shall be given a right of termination. The provisions of Article 4-4-3 through 4-4-6 pertaining to termination granted by law shall apply *mutatis mutandis* to the method and effect of an agreed-upon right of termination unless the parties agree otherwise.
- (2) Even in the absence of a contractual provision regarding a right of termination, the parties to a contract may agree to terminate the contract. However, the legitimate interests of third parties may not be prejudiced thereby.

## **Chapter Five Burden of Risk**

5-1-1 (Extinction of obligation in case of impossibility of performance)

If performance of an obligation has become impossible without the fault of the obligor, the obligation shall be extinguished and the obligee may not demand performance thereof.

5-1-2 (Burden of risk in a contract to transfer title to specific property)

(1) Where the subject matter of a bilateral contract is to transfer title to specific property and the property is destroyed, lost or damaged without the faults of either party, the obligor shall bear the risk thereof, and may not demand counter-performance.

(2) The risk of destruction, loss or damage of the property comprising the subject matter of the contract shall be transferred to the obligee upon any of the following events unless otherwise provided for in the contract:

- (a) when the obligor delivers the property or transfers the registration of the title thereto to the obligee, or substantial control over the property is otherwise judged to be shifted to the obligee;
- (b) when the obligor has made a proper tender of performance; or
- (c) when the obligee has unreasonably refused to accept the performance of the obligor.

5-1-3 (Burden of risk associated with other types of rights)

The provisions of Article 5-1-2 shall apply *mutatis mutandis* to the establishment or transfer of rights *in rem* other than ownership, claims or other rights.

5-1-4 (Burden of risk where the subject matter of contract constitutes unspecified property)

(1) Where the subject matter of a bilateral contract constitutes the transfer of title to non-specific property and the property to be delivered has not yet been specified, even if the property which the obligor was preparing for a tender of performance was destroyed or lost without the fault of the obligor, the obligation shall not be extinguished, and the obligor remains obligated to perform under the contract.

(2) The provisions of Article 5-1-2 shall apply *mutatis mutandis* after the property to be delivered has been specified.

5-1-5 (Contract subject to condition precedent)

Where the property comprising the subject matter of a bilateral contract subject to a condition precedent is destroyed, lost or damaged prior to fulfillment of the condition without the fault of the obligor, the risk of such destruction, loss or damage shall be borne by the obligor. The provisions of Article 5-1-1 shall apply *mutatis mutandis* after the condition has been fulfilled.

5-1-6 (Burden of risk in bilateral contract involving commission or omission of act)

Where one of the parties to a bilateral contract has an obligation to perform or not perform a certain act and the carrying out of this obligation becomes impossible without the faults of both parties, the obligation shall be extinguished. In such a case, the obligor may not demand counter-performance.

5-1-7 (Impossibility due to fault of obligee)

Where the performance of an obligation in a bilateral contract becomes impossible without the fault of the obligor but due to the fault of the obligee, the obligor does not lose the right to demand counter-performance. However, where the obligor receives a benefit from being exempted from his obligation, he must deliver such benefit to the obligee.

## **Chapter Six Effect of Obligation Against Third Parties**

### **Section I. Subrogation by the Obligee**

#### 6-1-1 (Obligee's right of subrogation)

(1) An obligee may, where necessary to preserve his claim, exercise a right held by the obligor in place of the obligor. However, this shall not apply to a right that is personal to the obligor, a right the exercise of which is entrusted to the complete discretion of the obligor, or a right that may not be made the subject of attachment.

(2) An obligee may, where necessary to receive satisfaction of a claim held by the obligee, exercise via subrogation a right possessed by an obligor having a close connection to such claim.

#### 6-1-2 (Requirements for exercise of right of subrogation)

(1) In order for an obligee to exercise the right provided for in Article 6-1-1, the obligor himself may not have previously exercised such right.

(2) An obligee may not exercise via subrogation a right possessed by the obligor before the obligee's own claim has ripened without the permission of the court. However, this shall not apply to an act of preservation.

#### 6-1-3 (Defense of third-party obligor)

A third-party obligor facing the exercise of an obligee's right of subrogation may assert against the subrogating obligee any defenses possessed by the third-party obligor against his own obligee.

#### 6-1-4 (Relationship between subrogating obligee and obligor)

Where the obligor is notified of the obligee's exercise of the obligor's rights via subrogation, the obligor may not exercise such rights once more against a third-party obligor. However, this shall not preclude the obligor from accepting performance made by the third-party obligor.

#### 6-1-5 (Effect of obligee's right of subrogation)

(1) The effect of an obligee's exercise of a right of subrogation regarding a right held by the obligor shall inure directly to the obligor.

(2) Where the obligor cannot accept performance from a third party obligor, an obligee who exercises a right of subrogation can demand that the third-party obligor tender performance directly to the obligee.

#### 6-1-6 (Effect of exercise of right of subrogation and other obligees)

Where performance is received by a subrogating obligee from a third-party obligor due to exercise of a right of subrogation by the obligee, the thing delivered as such performance shall be preserved for the benefit of all obligees until it is delivered to the obligor. However, this shall not apply to cases described in paragraph (2) of Article 6-1-1.

### **Section II. Avoidance of Fraudulent Act**

#### 6-2-1 (Requirements for avoidance of fraudulent act)

(1) An obligee may petition the court to order that an act conducted by the obligor with the knowledge that the act would infringe on the obligee's claim be rescinded, and that a person who receives a benefit from the act of the obligor return the thing delivered or make restitution for the value thereof.

(2) The rescission referred to in paragraph (1) shall be denied if the person who received a benefit from the obligor's act or a subsequent acquirer was not aware of the infringement of the obligee's claim at the time of the obligor's act or at the time of the subsequent acquisition. However, the obligee may seek rescission against a benefiting person or subsequent acquirer who paid no consideration for the benefit or the acquisition even if such person did not know of the infringement of the obligee's claim.

(3) The provisions of paragraphs (1) and (2) shall not apply to acts that were not intended to acquire a property right<sup>6</sup>.

6-2-2 (Claims to be preserved)

The provisions of Article 6-2-1 shall also apply to an obligee having a non-monetary claim. However, the claim must be transformed into a monetary claim by the end of oral argument proceedings on which a judgment of rescission is based.

6-2-3 (Method of rescission of fraudulent act)

Where no other appropriate method exists to achieve restitution by a person receiving a benefit from the obligor's act or a subsequent acquirer, an obligee who exercises a right of rescission may demand that the benefiting person or subsequent acquirer deposit the thing obtained with an authorized depository office.

6-2-4 (Effect of rescission of fraudulent act)

A rescission conducted pursuant to the provisions of Article 6-2-1 shall inure to the benefit of all obligees.

6-2-5 (Period for exercise of right of rescission of fraudulent act)

(1) The right of rescission established in Article 6-2-1 shall expire if it is not exercised within one year of the time that the ground for rescission is first discovered by the obligee, or within three years of the occurrence of the act giving rise thereto.

(2) The provisions of law pertaining to interruption of a period of prescription shall not apply to the expiration period of a right of rescission as provided in paragraph (1).

## **Chapter Seven Extinction of Obligation**

7-0-1 (Grounds for extinction of obligation)

Obligations shall be extinguished on the following grounds:

- (a) by performance, set-off, release, novation or merger as provided in Sections I through V of this Chapter Seven;
- (b) by impossibility of performance without the fault of the obligor as provided in Chapter Five of this Book;

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<sup>6</sup> See the footnote to Article 2-4-20-1 of Book Three for the explanation of 'property right.'

- (c) by the fulfillment of a condition subsequent as provided in Section III of Chapter One, or by termination of the contract as provided in Section IV of Chapter Four;
- (d) by extinctive prescription as provided in Chapter Eight; or
- (e) by the exercise of a right of rescission pursuant to the provisions of Section III of Chapter Two.

## Section I. Performance

### Sub-section VIII. General provisions regarding performance

#### 7-1-1 (Performing person)

- (1) An obligation may be performed by a third party as well as by the obligor.
- (2) If the purpose of the obligation cannot be achieved by the performance of a third party, the third party may not perform the obligation unless the obligee consents.
- (3) The obligor and the obligee may agree not to allow performance by a third party.

#### 7-1-2 (Authority of disposition of performing person)

- (1) A performance made by a person who neither owns the property delivered for the purpose of performance nor has the authority to dispose of it shall not be a valid performance.
- (2) Where the person making performance did not own the property delivered for the purpose of performance, he cannot recover such property until valid performance is made. However, the owner of such property may recover the property from the person receiving the invalid performance.
- (3) Where a person carrying out performance lacks capacity to dispose of the property delivered for the purpose of performance, such person may rescind the act of performance. Paragraph (2) shall apply *mutatis mutandis* to the return of the property delivered for the purpose of performance.

#### 7-1-3 (Good faith consumption, transfer or acquisition by bona-fide obligee)

- (1) In the cases described in paragraphs (2) and (3) of Article 7-1-2, where the property delivered for the purpose of performance constituted movable property and the obligee has consumed or transferred in good faith the items received as performance, such performance shall be deemed valid and the performing person may not demand the return of such property.
- (2) In the case described in paragraph (1), the owner of the property delivered for the purpose of performance may demand reimbursement for such property from the receiver of performance, unless such receiver acquired ownership of the property in accordance with the provisions set forth in Article 2-4-18 of Book Three regarding good faith acquisition. However, an obligee that has compensated the owner of the property delivered for the purpose of performance may demand reimbursement for such amount from the obligor.

#### 7-1-4 (Power to accept performance)

- (1) Performance is invalid unless it is carried out for the obligee or other person authorized to receive the performance.
- (2) Where the obligor performs his obligation for a person who does not have power to receive performance, the obligor must perform once more for the obligee at the obligee's request. However, the person who made performance may demand that the unauthorized receiver of the performance



return the property delivered for the purpose of the performance.

7-1-5 (Restriction of power to accept performance)

(1) Where a claim held by an obligee has been subject to attachment by an order of the court, the obligee shall not have the power to accept performance made by the obligor, and the obligor may not make performance to the obligee.

(2) Paragraph (2) of Article 7-1-4 shall apply *mutatis mutandis* to the case in which an obligor that has been barred from making payment makes performance to his obligee.

7-1-6 (Performance to quasi-holder of claim)

(1) A performance made to a person who appears to be the obligee but who in fact is not the true obligee shall be treated as valid if the performing party believed the receiver to be the true obligee and such belief was not the result of gross negligence.

(2) In cases described in paragraph (1), the true obligee may not demand that the obligor perform again. However, the true obligee may demand that the person receiving the performance return the property delivered for the purpose of the performance.

7-1-7 (Manner of performance)

An obligor shall perform the obligation in accordance with the purpose of the obligation and in good faith.

7-1-8 (Partial performance)

An obligee is not required to accept partial performance. However, where an obligee accepts a performance knowing that it is partial, the performance is effective to the extent it is accepted.

7-1-9 (Performance with substitute property)

(1) Where with the consent of the obligee an obligor makes a substitute act of performance that differs from the originally intended act of performance, it shall have the same effect as a valid performance.

(2) An obligee and obligor can agree that a substitute act of performance be made in place of the originally intended act of performance. In such a case the obligor may choose to perform either the originally intended act of performance or the agreed substitute act of performance, except where the right to choose has been given to the obligee.

7-1-10 (Time of performance, performance before set time)

(1) An obligor shall perform the obligation at the time for performance as determined in each of the sub-paragraphs of Article 4-1-3.

(2) A performance may be made before it is due except where early performance would harm the interests of the obligee.

7-1-11 (Hours of performance)

An obligor shall effect performance during regular business hours in accordance with prevailing customs and in good faith.

7-1-12 (Place of performance)

Where the place of performance is not agreed to between the parties, performance of an obligation to deliver specific property shall be made at the place where the property was located at the time the obligation arose. For other obligations, the performance shall be made at the current residence of the obligee.

7-1-13 (Costs of performance)

In the absence of an agreement regarding the costs of performance, such costs shall be borne by the obligor. However, if an increase in the costs of performance is due to a change in the residence of the obligee or to some other act of the obligee, such increase shall be borne by the obligee.

7-1-14 (Delivery of receipt)

The performing party may demand a receipt from the person accepting the performance.

7-1-15 (Return of documents)

If documents evidencing the obligation exist, the performing party may demand the return of such documents when the entire obligation has been performed.

Sub-section IX. Assignment of Performance

7-1-16 (Assignment via designation)

(1) Where an obligor owes to the same obligee multiple obligations of the same type, if a tender of performance is not sufficient to discharge all of the obligations, the performing party may at the time of performance designate the obligation to which the performance shall be assigned.

(2) If the performing party does not make the designation described in paragraph (1), the party accepting the performance may make the assignment when performance is accepted. However, the [provisions of] statutory assignment shall apply if the performing party makes an immediate objection to such assignment.

(3) The assignment described in paragraphs (1) and (2) shall be made via notice to the other party.

7-1-17 (Statutory assignment)

If neither the performing party nor the party receiving performance make an assignment of performance, the performance shall be assigned according to the following rules.

- (a) Between the obligations that are due and those that are not due, the former shall have priority.
- (b) Where all of the obligations are either due or not due, the obligation as to which discharge would confer the greatest benefit on the obligor shall have priority.
- (c) If the obligor would benefit equally from the discharge of all obligations, the obligation which first became due or will become due shall have priority.
- (d) Among multiple obligations that are equal in regard to the benefit of discharge for the obligor and that become due at the same time, the performance shall be assigned in proportion to the amount of each obligation.

7-1-18 (Order of assignment among costs, interests and principal)

If an obligor as to one or more obligations is obligated to pay interest and costs in addition to principal, a performance that is insufficient to discharge all of these shall be assigned in the order of costs, interest and principal. However, if the obligor and the obligee have agreed otherwise, such agreement shall prevail.

7-1-19 (Performance for two or more obligees)

The provisions of Articles 7-1-16 and 7-1-17 shall apply *mutatis mutandis* where the obligor owes multiple obligations to different obligees and the obligation as to which the obligor's performance was directed cannot be determined.

Sub-section X. Tender and Deposit

7-1-20 (Meaning and basic effect of tender of performance)

(1) Tender of performance shall mean that the obligor has completed preparations for an act of performance and has asked the obligee to accept such performance.

(2) Even where the obligor has made a tender of performance, if an obligee does not take the actions necessary to accept the performance, the obligor is relieved of liability for non-performance.

(3) Where the obligor who owes a monetary obligation with interest accruing thereon makes a tender of performance, if the obligee does not accept the performance, the obligor shall subsequently not be required to pay interest thereon.

7-1-21 (Method of tender)

A tender of performance must constitute an actual tender of performance in accordance with the intended purpose of the obligation. However, where the obligee has refused in advance to accept the tender of performance, or an act on the part of the obligee is necessary for performance of the obligation, it is sufficient for the obligor to give notice to the obligee that preparations for performance have been completed and demand the obligee's acceptance of performance.

7-1-22 (Effect of tender)

Where an obligee does not accept a tender of performance, the following effects shall occur, in addition to the effect described in Article 7-1-20:

- (a) where the obligor bears the risk in a bilateral contract, the risk shall be transferred to the obligee;
- (b) the obligee shall lose the defense of simultaneous performance in a bilateral contract; and
- (c) the obligor may be exempted from the obligation by carrying out deposit.

7-1-23 (Delayed receipt)

(1) Where the obligee has in advance refused to accept performance, or where tender of performance has been made to the obligee, if performance is not accepted due to the obligee's fault, the obligor may demand damages from the obligee for any injury caused by such non-acceptance.

(2) Where the obligee's non-acceptance of a tender of performance constitutes a material breach of the obligee's contractual duties, the obligor may terminate the contract.

7-1-24 (Deposit)

- (1) An obligor may discharge the obligation by depositing the property comprising the subject matter of the obligation with an authorized depository office in the following situations:
  - (a) where the performing party has made a tender of performance, but the obligee refuses to accept or cannot accept the performance; or
  - (b) where the identity of the obligee cannot be determined without any fault of the obligor.
- (2) The performing party may recover the property deposited until the obligee has accepted the deposit or a judgment declaring the deposit valid has become final and binding. In such a case, the deposit shall be deemed not to have occurred. However, this shall not apply where a pledge or hypothec has been extinguished as a result of the deposit.
- (3) The details and procedures governing deposit shall be prescribed in the [Official Deposit Act].

7-1-25 (Obligor's right to sell)

If the property comprising the subject matter of the obligation is not suitable for official deposit, or is in danger of perishing or being damaged, the obligor may, with the permission of the court, sell the property via public auction and deposit the proceeds with an authorized depository office. The same applies where the cost of preserving the property is prohibitive.

Sub-section XI. Subrogation by performance

7-1-26 (Subrogation by performance)

- (1) A person who has procured a discharge through his own performance or other expenditure and thereby obtains the right to demand indemnification from the obligor may exercise via subrogation the claim held by the obligee and all other rights associated therewith.
- (2) The provisions of Article 9-1-3 shall apply *mutatis mutandis* to the situation described in paragraph (1).
- (3) The notification described in Articles 7-3-3 and 8-3-2 of Book Six may be substituted for the notification described in paragraph (2). However, where a date-certified instrument is demanded in connection with provisions as to which paragraph (2) hereof applies *mutatis mutandis*, the notification described in this paragraph shall also be provided by means of a date-certified instrument.

7-1-27 (Scope of subrogation; relationships among subrogees)

- (1) A person who has been subrogated to the position of an obligee through the operation of Article 7-1-26 may exercise, within the scope of indemnification that can be demanded based on his own right, any and all rights that were possessed by the obligee by virtue of the automatic effect of the principal claim or that derive from a security interest. However, this shall not apply to rights that directly accompany the contractual position of the obligee under the contract.
- (2) The following conditions shall apply to a subrogee.
  - (a) Unless the existence of a subrogation is entered in the registration of a preferential right, pledge of immovable or hypothec that is created over any of the obligor's property, a guarantor or third party security provider cannot assert his subrogation to the position of an obligee against a third-party acquirer who acquires an immovable comprising the object of such preferential right, pledge or hypothec.
  - (b) A third-party acquirer who acquires a thing comprising the object of any security interest from an obligor shall not be subrogated to the position of an obligee with respect to a guarantor.

- (c) A third-party acquirer who acquires a thing comprising the object of any security interest from an obligor shall be subrogated to the position of an obligee with respect to other third-party acquirers who acquire the objects of other security interests from such obligor in proportion to their respective values of the acquired things.
- (d) The provisions of sub-paragraph (c) shall apply *mutatis mutandis* to the relationship between third party security providers as described in 1-0-1 of Book Six.
- (e) As between guarantors and third party security providers, subrogation to the position of the obligee shall be made in accordance with the number of persons of each group. However, where there are multiple third-party security providers, subrogation to the position of the obligee shall be made in accordance with the respective prices of the things [provided for security by each third-party security provider] with regard to the portion of the obligation remaining after subtracting the portion for which [a group of] guarantors is responsible.

7-1-28 (Partial subrogation)

(1) Where subrogated performance of a part of an obligation has been made, a subrogee shall exercise the rights of the obligee together with the obligee to the extent of the partial performance. However, where the subrogee seeks to execute these rights, the obligee's consent must be obtained. Furthermore, at the request of the obligee, such rights or ranking shall be transferred to the obligee at no cost to the extent of the remaining obligation.

(2) In the case described in paragraph (1), only the obligee may terminate the contract on the ground of non-performance. However, the subrogee shall be compensated to the extent of the subrogee's performance and interest thereon.

7-1-29 (Subrogated performance by a third party and certificate of claim/object of security)

(1) An obligee who has received full performance via subrogated performance shall deliver to the subrogee a certificate of claim and any object of security possessed by the obligee.

(2) Where subrogated performance has been made with respect to a portion of the claim, the obligee shall indicate on the claim instrument that subrogation has been carried out and shall ensure that the subrogee supervises the preservation of the object of security possessed by the obligee.

7-1-30 (Obligation to preserve security for benefit of subrogee)

Where a person exists who could be subrogated to the position of an obligee pursuant to the provisions of Article 7-1-26, and the security has been lost or diminished due to the intentional or negligent act of the obligee, a person qualified to invoke such subrogation may be exempted from his own responsibility or seek damages to the extent that such person is no longer able to receive indemnification due to such loss or diminution.

## Section II. Set-off

7-2-1 (Meaning and conditions of statutory set-off and set-off contract)

(1) A set-off means, where two persons owe each other obligations having the identical subject-matter, the extinction of both obligations to the extent that their respective amounts are equal.

(2) In order to exercise a set-off, both obligations must be due for performance.

(3) The parties may enter into a set-off contract whereby obligations not having an identical subject-matter shall be extinguished. However, the right of a third party who is ignorant of such contract may not be infringed thereby.

7-2-2 (Method of set-off)

(1) A set-off shall be effected by a party's declaration of an intention to set-off against the other party.

(2) A party may declare a set-off subject to a condition precedent, but may not declare a set-off subject to a condition subsequent or to a time fixed.

7-2-3 (Timing of effect of set-off)

Where the requirements for a set-off are satisfied, if a party declares a set-off, the set-off shall have effect of retroactively extinguishing the two obligations as of the time that the obligations became suitable for a set-off.

7-2-4 (Limitations on set-off)

(1) If either or both of the obligations are not suitable for a set-off in light of the nature of the obligation(s), a set-off may not be executed.

(2) If there is an agreement between the parties not to declare a set-off, neither party may declare a set-off. However, such an agreement may not be asserted against a bona fide third party.

7-2-5 (Set-off when the counter-obligation is subject to defense)

(1) A party may not execute a set-off if [the counter-obligation owed by the other party] is subject to any defense exercisable by the other party.

(2) An obligation as to which the period of prescription or the period for exercise has elapsed may be set off by the obligee where the requirements for a set-off were met prior to the elapsing of such period.

7-2-6 (Set-off of obligation arising out of tort)

An obligor who owes an obligation arising out of tort may not assert the extinction of such obligation based on a set-off.

7-2-7 (Obligation prohibited from being attached)

Where attachment of an obligation [by the obligee's creditors] is prohibited, the obligor may not assert the extinction of such obligation based on a set-off.

7-2-8 (Obligation under attachment order)

(1) Where an obligation is under an order of attachment initiated by a third party, the obligor may set off the obligation only against a counter-obligation owed by the other party and obtained prior to such attachment, and when the counter-obligation becomes due. However, this shall not apply to cases where such counter-obligation will become due later than the obligation owed and to be set off by the obligor.

(2) The second sentence of paragraph (1) shall not apply if there is an agreement between the parties allowing a set-off of obligations irrespective of the time for performance thereof.

7-2-9 (Assignment in case of set-off)

If one or both of the parties to a set-off owe more than one obligation suitable for set-off, the party declaring a set-off may designate the obligations which are to be extinguished by the set-off. If a set-off is declared without the designation described in the first sentence of this Article, the provisions regarding assignment of performance shall apply *mutatis mutandis*.

### Section III. Release

7-3-1 (Release as unilateral legal act)

An obligation is extinguished when an obligee expresses to the obligor an intention to release the obligor from the obligation.

7-3-2 (Partial release)

An obligee may declare a partial release from an obligation.

7-3-3 (Limitation on release)

If an obligation is under attachment by a third party or the power of the obligee to dispose of the obligation is restricted for any other reason, the obligee may not release the obligor from the obligation.

### Section IV. Novation

7-4-1 (Meaning of novation)

(1) A novation shall refer to a contract that extinguishes the original obligation and creates a new obligation in its place as between the same obligee and obligor.

(2) The original obligation is extinguished at the moment that the novation contract described in paragraph (1) becomes effective.

7-4-2 (Non-extinction of original obligation)

If an obligation created by a novation contract is not effective due to an illegal cause or an unexpected reason, or has been rescinded, the original obligation is not extinguished.

7-4-3 (Transfer of security right)

(1) If so agreed to between the parties to the novation contract, a pledge, hypothec or other security interest established in regard to the original obligation may be transferred to a new obligation to the extent that it falls within the scope of the original obligation. However, a security interest provided by a third party shall not be transferred without the third party's consent.

(2) With regard to a quasi-loan for consumption, the agreement mentioned in the first sentence of paragraph (1) shall be presumed to exist.

### Section V. Merger

7-5-1 (Merger of claim and obligation)

(1) Where an obligation and a claim [corresponding to such obligation] belong to one and the same person, such obligation and claim shall be extinguished via merger.

(2) If the claim mentioned in paragraph (1) comprises the object of a right possessed by a third party, such claim is not extinguished by merger.

## **Chapter Eight Extinctive Prescription Regarding Claims**

8-0-1 (Definition of extinctive prescription regarding claim)

Extinctive prescription regarding a claim refers to the extinction of a claim based on an obligee's continuous failure to exercise the claim for a certain period of time.

8-0-2 (Commencement of extinctive prescription period for claim)

Extinctive prescription regarding a claim runs from the time that the claim is capable of being exercised.

8-0-3 (Extinctive prescription period for general claim)

The extinctive prescription period for claims is five years, except as otherwise provided in this Code or in other laws or ordinances.

8-0-4 (Short extinctive prescription period)

The extinctive prescription period for a claim pertaining to the price of a product or service sold or provided by a manufacturer or merchant to a non-merchant is two years.

8-0-5 (Extinctive prescription period for established claim)

(1) The extinctive prescription period for a claim that is definitively established through a final and binding judgment, a judicial settlement, or other determination having the effect of a final and binding judgment shall be five years from the time when it is definitively established, even where a prescription period of less than five years is otherwise established by law.

(2) The provisions of paragraph (1) shall not apply where the time for performance has not occurred as of the time that the claim is definitively established.

8-0-6 (Retroactive effect of extinctive prescription regarding claim)

The effect of extinctive prescription of a claim is retroactive from the date of commencement of the period thereof.

8-0-7 (Invocation of extinctive prescription regarding claim)

(1) A court cannot render a judgment based on extinctive prescription regarding a claim unless extinctive prescription is invoked by a party.

(2) Extinctive prescription regarding a claim may be invoked only by an obligor, a joint obligor, a guarantor, a third party security provider and a third party acquirer as specified in Article 1-0-1 of Book Six, or other person possessing a legally recognized interest in the invocation of extinctive prescription.



(3) Where extinctive prescription regarding a claim is invoked by an obligor, third parties shall also receive the benefit of the extinctive prescription. Where extinctive prescription regarding a claim is invoked by a person having a right to do so other than the obligor, the invocation is effective only as between such person and the obligee.

8-0-8 (Renunciation of benefit of extinctive prescription regarding claim)

The benefit of extinctive prescription cannot be renounced in advance. The benefit of an extinctive prescription the period for which has already been completed can be renounced.

8-0-9 (Scope of persons to whom effect of renunciation of benefit of extinctive prescription regarding claim extends)

A renunciation of the benefit of extinctive prescription of a claim is effective only as between the obligee and the renouncing party having the right to invoke extinctive prescription.

8-0-10 (Grounds for interruption of extinctive prescription of claims)

Extinctive prescription regarding a claim is interrupted by the occurrence of any of the following events:

- (a) filing of a lawsuit, participation in a bankruptcy proceeding, or the equivalent exercise of a claim;
- (b) an act of execution or issuance of a preliminary injunction; or
- (b) partial repayment, payment of interest, provision of security or acknowledgement of the existence of the claim by some other method.

8-0-11 (Effect of interruption of extinctive prescription regarding claim; scope of persons)

Where extinctive prescription regarding a claim is interrupted as against an obligor, other persons may not contest the effect of that interruption. Where extinctive prescription regarding a claim is interrupted against a person who is not the obligor and has a right to invoke extinctive prescription, the interruption is effective only between the obligee and such person entitled to invoke extinctive prescription.

8-0-12 (Lawsuit)

A judicial action does not interrupt extinctive prescription where the action is dismissed without prejudice or discontinued.

8-0-13 (Rescission of act of execution or preliminary injunction)

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

8-0-14 (Act of execution or preliminary injunction conducted as against person other than obligor)

An act of execution or preliminary injunction conducted as against a person other than the obligor interrupts extinctive prescription as to the obligor only where the obligor is notified of such act.

8-0-15 (Running of extinctive prescription period regarding claim following interruption)

- (1) An extinctive prescription period that was interrupted shall begin anew from the time that

the ground for interruption no longer exists.

(2) An extinctive prescription period that was interrupted due to the filing of a lawsuit shall begin anew from the time that the decision resolving the lawsuit becomes final and binding.

8-0-16 (Suspension of completion of extinctive prescription period upon demand with or without filing of lawsuit)

(1) Where a right-holder demands satisfaction of such right within six months of the completion of an extinctive prescription period, the extinctive prescription period is not completed as against such person until six months elapses after the time of the demand. However, a subsequent demand for satisfaction by the right-holder shall not delay the completion of the extinctive prescription.

(2) Even where a lawsuit does not have the effect of interrupting the extinctive prescription period due to the dismissal without prejudice or discontinuation of the lawsuit, a demand shall be deemed to have been provided continuously from the time the complaint was filed until the time the lawsuit was dismissed or discontinued. In this case, the extinctive prescription period is not completed as against the person who brought the lawsuit until six months have elapsed from the date of dismissal or discontinuation.

(3) Where the right-holder asserts his right as a defendant in litigation, such assertion shall be deemed a continuous demand during the pendency of the lawsuit from the time at which it is made. In this case, the extinctive prescription period is not completed as against such person until six months have elapsed from the date on which the judgment in the case becomes final and binding.

8-0-17 (Suspension of completion of extinctive prescription period regarding rights pertaining to minors or incompetent persons)

Where there is no legal representative for a minor or incompetent person within six months prior to the completion of an extinctive prescription period, the extinctive prescription period for claims is not perfected as against such person until six months elapses after the time such person attains the age of majority or a legal representative is retained on the person's behalf.

8-0-18 (Suspension of completion of extinctive prescription regarding rights between spouses)

Where one spouse possesses a right with respect to the other, extinctive prescription regarding such right is not completed until six months elapses after the marriage is dissolved.

8-0-19 (Suspension of completion of extinctive prescription due to natural disaster)

Where a right-holder is unable to interrupt extinctive prescription within six months prior to the completion of the extinctive prescription period due to natural disaster or other *force majeure*, extinctive prescription is not completed until six months elapses after the time that such *force majeure* ceases to exist.

8-0-20 (Performance in order to satisfy right subject to extinctive prescription)

A person who provides a performance in order to satisfy a right subject to completed extinctive prescription may not thereafter seek repayment, even where the performance is provided without knowledge of the fact that such right was subject to completed extinctive prescription.

8-0-21 (Extinctive prescription for property rights other than claims and ownership)

Except as otherwise provided in this Code or in other laws or ordinances, the period for extinctive

prescription regarding property rights other than claims and ownership shall be 15 years. The provisions pertaining to extinctive prescription regarding claims shall apply *mutatis mutandis* to extinctive prescription for property rights other than claims and ownership.

## **Chapter Nine Assignment of Claims and Assumption of Obligations**

### Section I. Assignment of Claims

#### 9-1-1 (Assignability of claims, special agreement prohibiting assignment)

(1) A claim may be assigned unless the nature of the claim is inconsistent with such an assignment. In such a case, the assignee shall become a new obligee.

(2) Assignment of a claim can be prohibited by a declaration of intention by the partie(s), even where the nature of the claim is not inconsistent therewith.

(3) The declaration of intention referred to in paragraph (2) cannot be asserted against a third party having no knowledge thereof. However, this shall not apply where the third party's lack of knowledge is the result of the third party's gross negligence.

#### 9-1-2 (Establishment of assignment of claim)

The assignment of a claim shall take effect only through agreement between the obligee seeking to assign the claim and the assignee. However, in order to assert the assignment of a claim against the obligor or a third party, the conditions established in Article 9-1-3 must be met.

#### 9-1-3 (Conditions for asserting assignment of claim belonging to specified person)

(1) The assignment of a claim belonging to a specified person cannot be asserted as against the obligor or any third party unless the assignor has given notice thereof to the obligor or the obligor has consented thereto to the assignor or the assignee.

(2) The notice or consent described in paragraph (1) cannot be asserted against a third party other than the obligor unless they are given in a date certified writing.

#### 9-1-4 (Priority among multiple assignments)

(1) Where one claim has been assigned multiple times, the priority among such assignments shall be determined based on the chronological order of the times at which the competing written and date-certified notifications thereof reach the obligor, or of the times at which the obligor gives written and date-certified consents thereto. In this case, the obligor must perform the obligation owed to the obligee having the priority position.

(2) In the situation described in paragraph (1), where the priority among the notifications or consents cannot be clearly determined, they shall be deemed to have arrived or been given at the same time. In this case, each assignee may demand performance from the obligor for the entirety of the assigned obligation. Where the obligor performs the obligation to one obligee, the obligation is extinguished.

(3) In the case described in paragraph (2), the obligor can be relieved of the obligation by making a deposit of the thing comprising the subject-matter of the obligation.

#### 9-1-5 (Effect of notification and consent)

(1) If the obligor has given the consent described in Article 9-1-3 without raising any objection, he

cannot assert against the assignee any defenses that he could have asserted against the assignor. However, if the obligor has made payment or incurred a new obligation to the assignor in order to discharge the original obligation, he may recover such payment or treat such new obligation as if it had not been incurred.

(2) Where the assignor has merely given notice of the assignment, the obligor may assert against the assignee any defenses that came into being against the assignor prior to the receipt of the notice.

#### 9-1-6 (Assignment of negotiable claim)

The conditions governing assignment of a claim payable to order or other claim regarding which an instrument representing such claim has been issued shall be established separately by special law.

### Section II. Assumption of Obligations

#### 9-2-1 (Possibility of assumption of obligation)

(1) An obligation that can be performed by a third party other than the obligor can be assumed by a third party.

(2) The assumption of an obligation may be prohibited through a declaration of intention by partie(s).

#### 9-2-2 (Establishment of assumption of obligation)

The assumption of an obligation takes effect based on agreement between the obligor and the person assuming the obligation or between the obligee and such person.

#### 9-2-3 (Rights of obligee)

(1) An obligee's rights against the obligor are not extinguished by an assumption of the obligation. In this case, the obligor and the party assuming the obligation are jointly and severally responsible with respect to the obligee.

(2) A party who assumes an obligation may exempt the obligor with the consent of the obligee.

#### 9-2-4 (Defenses after obligation is assumed)

Where an obligation is assumed, the assuming party may assert against the obligee any defenses possessed by the obligor up to the time that the assumption came into existence.

#### 9-2-5 (Assumption of performance)

Where a person assumes responsibility for performance of an obligation based on agreement between the obligor and the assuming party without assuming the obligation itself, the obligee may not demand performance from the assuming party.

### Section III. Assignment of Contractual Position

#### 9-3-1 (Assignment of contractual position)

(1) A person who has executed a contract with another person may assign to a third party his position under the contract. However, this shall not apply where assignment is inconsistent with the nature of the contract. Moreover, assignment of a party's contractual position may be prohibited by the agreement of the parties. In this case, the provisions of paragraph (3) of Article 9-1-1 pertaining to

assignment of obligations shall apply *mutatis mutandis*.

(2) Where the assignment of a contractual position is substantially disadvantageous to the other party to the contract, the party seeking to assign the contractual position shall obtain the approval of the other party to the contract to the assignment.

9-3-2 (Establishment of assignment of contractual position)

The assignment of a contractual position shall take effect only upon the agreement of the assignee and the party to the contract who is seeking to assign the contractual position. However, in order to assert the assignment against the other party to the contract or a third party, the conditions for assertion set forth in Article 9-1-3 pertaining to assignment of obligations must be met.

9-3-3 (Effect of assignment of contractual position)

Where a contractual position has been assigned, all of the rights and obligations possessed by the assignor shall be transferred to the assignee unless a specific declaration of intention is made to the contrary. In this case, the provisions of Article 9-1-5 pertaining to assignment of claims and of Article 9-2-4 pertaining to the assumption of obligations shall apply *mutatis mutandis*.

## **BOOK FOUR “PARTICULAR TYPES OF CONTRACTS / TORTS”**

### **Chapter One Sale**

#### **Section I. General Provisions**

1-1-1 (Nature of sale)

A sale is a contract whereby one party, called the ‘seller’, is obligated to transfer ownership or other property rights<sup>7</sup> to the other party, called the ‘buyer,’ and the buyer is obligated to pay the purchase price to the seller.

1-1-2 (Formation of sale contract)

A sale contract is formed based only on the agreement of the parties thereto unless otherwise provided by law. However, the parties may require as a condition for the formation of the contract the execution of a notarial instrument or a written instrument signed by the parties in their individual capacities.

1-1-3 (Unilateral promise to sell or purchase)

(1) Where a promise is made with respect to either a sale or a purchase, the sale shall become effective from the time that the promisee expresses to the promisor an intention to complete the sale.

(2) Where no period is fixed for the expression of intention described in paragraph (1), the promisor may issue a notification to the promisee demanding the expression of intention within a fixed period of reasonable length regarding whether the promisee intends to complete the sale. If the promisee fails to provide the expression of intention within such period, the promise shall lapse.

1-1-4 (Earnest money)

Where the buyer has paid earnest money to the seller, the buyer may rescind the contract by giving up

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<sup>7</sup> See the footnote to Article 2-4-20-1 of Book Three for the explanation of ‘property right.’

his earnest money, and the seller may rescind the contract by refunding twice the amount thereof. However, neither party may rescind the contract after the other party has commenced performance thereof.

1-1-5 (Sale after tasting)

(1) A sale of goods<sup>8</sup> of a type that are customarily tasted before purchase shall be formed when the [prospective] buyer accepts the sale after carrying out such tasting.

(2) Where no period is fixed for the [prospective] buyer's acceptance, the seller may issue a notification to the [prospective] buyer demanding a definite answer within a fixed period of reasonable length regarding whether the [prospective] buyer accepts the sale. If the [prospective] buyer fails to provide an answer within such period, the [prospective] buyer shall be deemed to have refused to enter into the sale.

1-1-6 (Trial sale)

(1) A trial sale shall become effective when the [prospective] buyer accepts the sale within the trial period or when the trial period has lapsed without the [prospective] buyer's expression of any intention in regard to sale. If the [prospective] buyer refuses to receive the delivery of the goods, the sale contract shall be deemed not formed.

(2) Where no period is fixed for trial, the [prospective] seller may issue a notification to the [prospective] buyer demanding a definite answer within a fixed period of reasonable length regarding whether the [prospective] buyer accepts the sale. If the [prospective] buyer continues to use the goods without providing an answer within that period, the [prospective] buyer shall be deemed to have accepted the sale.

1-1-7 (Sale price)

(1) The parties to a sale shall fix under the contract the amount of the sale price or establish a formula to determine such amount.

(2) The amount of the sale price may be determined in accordance with the present or future market price of certain merchandise or based on the appraisal of a third party who is appointed by a method designated by the parties. Where an appraisal by a third party is based on mistake, or where the appraisal appears to violate principles of fairness, the contract party that would be harmed as a result may object to such appraisal.

(3) The parties to the contract may fix the sale price at a certain definite amount or based on indefinite or lifetime installment payments. However, where a third party is to appraise the sale price in accordance with the provisions of paragraph (2), the sale price shall be fixed as a certain definite amount, except where the parties have explicitly authorized the third party [to fix the sale price based on indefinite or lifetime installment payments].

1-1-8 (Sales Expenses)

Unless otherwise agreed to between the parties, the cost of preparing written instruments and other expenses incurred in connection with the execution of a contract of sale shall be borne equally by both parties.

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<sup>8</sup> See the footnote to Article 1-1-1 of Book Three for the explanation on the usage of 'goods.'

1-1-9 (*Mutatis mutandis* application to other types of contract in which either or both parties provide consideration)

The provisions of this Chapter One shall apply *mutatis mutandis* to contracts, other than sale contracts, in which either or both parties provide consideration.

## Section II. Parties to and Goods Covered by Sale Contract

1-2-1 (Parties to sale contract)

Any natural or juridical person may sell or purchase [goods or rights] except where prohibited by law.

1-2-2 (Persons who may not be buyers (1))

(1) An administrator appointed by law, court order or contract may not be a buyer, either directly or through a third party, of goods that the administrator has been entrusted to sell.

(2) Paragraph (1) shall apply *mutatis mutandis* to government officials responsible for the execution or administration of compulsory sale.

(3) Where a sale is conducted in violation of the provisions of paragraphs (1) and (2), such sale may be rescinded only by the person who owned the goods prior to the sale or by the heir of such person or such person's successor in interest.

1-2-3 (Persons who may not be buyers (2))

(1) A judge, prosecutor, court clerk or other court official may not be a buyer, either directly or through a third party, of goods or rights as to which civil actions are pending before the court at which such person works or practices.

(2) Paragraph (1) shall apply *mutatis mutandis* to lawyers and notaries public becoming buyers of goods or rights involved in actions in which they are retained.

(3) Where a sale is conducted in violation of paragraphs (1) and (2), such sale may be rescinded only by the seller, the opposing party in a civil action involving the goods or rights, or their respective heirs or successors in interest.

1-2-4 (Goods that may be sold)

Any good or right, including one that comes into existence in the future, may be the object of a contract of sale, except for goods or rights that are not transferable by their nature, or those as to which transfer is prohibited by law.

## Section III. Effect of Sale Contract

1-3-1 (Transfer of title)

With respect to the transfer of title to the goods under a contract of sale, the general rules provided for in Articles 1-3-1, 1-3-2, 2-4-1 and 2-4-12 of Book Three shall apply to contracts of sale.

### Sub-section XII. Obligations of Seller

1-3-2 (Seller's duty to provide explanation)

A seller is required to provide the buyer with a clear explanation concerning (i) the contents of the obligations to be assumed by the buyer, and (ii) the legal circumstances surrounding the goods or rights comprising the object of a sale, particularly, in the case of a sale of immovable property, the state of the title, encumbrances, boundaries, etc.

1-3-3 (General obligations of seller)

The seller owes to the buyer, in accordance with the terms of the contract and the provisions of this Code, (i) an obligation to transfer the property right sold [in the goods], (ii) an obligation to deliver the goods, (iii) an obligation to preserve such goods until they are delivered, and (iv) an obligation to deliver all instruments required to evidence proof of title thereto.

1-3-4 (Obligation and warranty liability of seller that sells the right of another person)

(1) In the event that a right belonging to a third party is the object of a sale, the seller is obligated to acquire such right and thereafter transfer it to the buyer.

(2) If, in the case described in paragraph (1), the seller cannot acquire the right and thereafter transfer it to the buyer, the buyer may rescind the contract. In such a case, if the buyer was not aware at the time the contract was executed that the right did not belong to the seller, the buyer may also demand compensation for damages.

1-3-5 (Rescission of contract by seller who sells right of another person)

(1) Where a seller is unaware when a contract is executed that the right to be sold does not belong to the seller, and if the seller is subsequently unable to acquire the right and transfer it to the buyer, the seller may rescind the contract by compensating the buyer for any damages [incurred by the buyer in connection with the attempted sale].

(2) In the case described in paragraph (1), if the buyer was aware when the contract was executed that the right to be sold did not belong to the seller, the seller may rescind the contract without compensating the buyer for damages.

1-3-6 (Warranty liability of seller when part of right sold belongs to another person)

(1) If part of a right comprising the object of a sale belongs to a third party and the seller cannot subsequently acquire that part and transfer it to the buyer, the buyer may demand a reduction of the purchase price proportional to the percentage of that part.

(2) In the case described in paragraph (1), the buyer may terminate the contract if the buyer was unaware when the contract was executed that the part of the right did not belong to the seller and it is judged that the buyer would not have purchased the right if the object of the sale comprised the remaining part only.

(3) In case described in paragraphs (1) and (2), if the buyer was not aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, the buyer may also demand compensation for damages.

(4) Where the buyer was not aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, the buyer's rights as provided for in paragraphs (1), (2) and (3) must be exercised within one year from the date that the buyer became aware of such fact. Where the buyer was aware when the contract was executed that part of the right comprising the object of the sale did not belong to the seller, these buyer's rights must be exercised



within one year from the date of execution of the contract.

1-3-7 (Seller's warranty liability when encumbrance exists)

(1) Where goods comprising the object of a sale are subject to a perpetual lease, usufruct, right of use, right of residence, servitude, leasehold, right of retention or pledge, and due to such encumbrance the buyer cannot enjoy the use of all or a part of such goods or receive profits therefrom, the buyer may demand compensation for damages from the seller if the buyer was not aware of the existence of such encumbrance when the contract was executed.

(2) In the case described in paragraph (1), if the purpose of the buyer's execution of the contract cannot be achieved due to the existence of the encumbrance, the buyer may also terminate the contract if the buyer was not aware of the existence of the encumbrance when the contract was executed.

(3) The rules set forth in paragraphs (1) and (2) shall also apply to cases where a servitude that was represented as existing with regard to immovable property comprising the object of the sale does not in fact exist.

(4) In the case described in paragraphs (1), (2) and (3), the buyer's rights to terminate the contract and to demand compensation for damages must be exercised within one year from the date that the buyer learned of such fact.

1-3-8 (Seller's warranty liability when real security exists)

(1) Where the immovable property to be sold under the sale contract is subject to a preferential right, a pledge that bars the obligee from using or receiving benefits from the property, or a hypothec, if the buyer has lost ownership due to the exercise of such security interest, the buyer may terminate the contract.

(2) If any costs or expenses are incurred by the buyer to preserve ownership, the buyer may demand reimbursement of such costs and expenses from the seller.

(3) In either of the cases mentioned in paragraphs (1) and (2), the buyer may demand compensation for any damages sustained.

1-3-9 (Seller's warranty liability in case of compulsory sale by public auction)

(1) In the case of a compulsory sale, the buyer may, in accordance with the provisions of Articles 1-3-4 through 1-3-8, either rescind the contract or demand a reduction of the purchase price from the obligor.

(2) In the case described in paragraph (1), if the obligor is insolvent, the buyer may demand from any obligee to whom any share of the proceeds has been distributed the return of some or all of such proceeds.

(3) In the case described in paragraphs (1) and (2), if the obligor was aware of non-existence of the right [to be sold] and nevertheless failed to disclose it to the auctioning body or if the obligee was aware of such non-existence and nonetheless demanded a compulsory sale, the buyer may demand damages from such parties.

1-3-10 (Warranty by seller of a claim)

(1) The seller of a claim shall be liable as to the existence of that claim.

(2) Where the seller of a claim warrants the solvency of the obligor, such seller is presumed to have warranted the obligor's solvency as at the time the contract was executed.

(3) Where the seller of a claim that has not yet become due warrants the future solvency of the obligor, such seller is presumed to have warranted the obligor's solvency as on the date on which the obligation is to be performed.

1-3-11 (Agreement regarding discharge from or limitation of warranty liability)

Even if it is agreed between the seller and the buyer that the seller's liability arising from the warranties set forth in Articles 1-3-4 through 1-3-10 are discharged or limited, the seller may not be relieved of liability in regard to any fact of which the seller was aware and nevertheless failed to disclose, or in regard to any right that the seller created in favor of, or assigned to, a third party.

1-3-12 (Obligation to deliver conforming goods)

(1) The seller has an obligation to deliver to the buyer goods that conform to the contract.

(2) Except where the parties have agreed otherwise, the goods delivered to the buyer shall be deemed nonconforming goods in any of the following situations:

- (a) where the goods do not conform to the quantity, quality and description required by the contract;
- (b) where the goods differ from those that the seller held out to the buyer as a sample or model in terms of their quantity, quality or description;
- (c) where the goods are not fit for a particular purpose expressly or impliedly made known to the buyer when the contract was executed;
- (d) where the goods are not fit for the purposes for which goods of the same description would ordinarily be used; or
- (e) where the goods are not contained or packaged in the manner usual for such goods or in a manner adequate to preserve and protect the goods.

1-3-13 (Conforming Goods Warranty Liability)

(1) Where the goods are nonconforming in any respect at the time that the risk passes to the buyer, even if the existence of such nonconformance becomes apparent after the passage of such risk, the buyer may, in accordance with in the terms of the contract and the provisions of this Code, demand that substitute goods be delivered or that such nonconformance be remedied, terminate the contract or reduce the purchase price as against the seller<sup>9</sup>.

(2) The seller shall owe the Conforming Goods Warranty Liability described in paragraph (1) in regard to any nonconformance that occurs due to a breach of any of the seller's obligations, including any nonconformance that occurs after the time indicated in paragraph (1).

(3) Where the seller warrants that for a certain period of time after delivery the goods will remain fit for their ordinary purpose or for some particular purpose, or will retain specified qualities or characteristics, if there is a breach of such warranty, the seller shall owe the same Conforming Goods

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<sup>9</sup> The seller's liability covered under Article 1-3-13 shall be referred to as 'Conforming Goods Warranty Liability' in this translation.

Warranty Liability.

(4) If when the contract was executed the buyer was aware that the goods were nonconforming in any respect, or was unaware of such nonconformance as a result of gross negligence, the seller shall not owe the Conforming Goods Warranty Liability with respect to such nonconformance.

1-3-14 (Seller's right to remedy nonconformance)

(1) If the seller has delivered goods before the date for delivery, he may, up to that date, remedy any nonconformance in the goods delivered so long as the buyer's interests are not unfairly prejudiced thereby. However, the buyer shall not be precluded from exercising the right to demand compensation for damages.

(2) The seller may, even after the date for delivery, remedy at his own expense any nonconformance in the goods so long as the buyer's interests are not unfairly prejudiced thereby. However, the buyer shall not be precluded from exercising the right to terminate the contract and the right to demand compensation for damages.

1-3-15 (Right to demand complete performance)

(1) The buyer may demand that the seller [fully and completely] perform its obligations. However, this shall not apply where the buyer has resorted to a remedy that is inconsistent with such demand.

(2) Where the goods are nonconforming in any respect, the buyer may demand that the seller deliver substitute conforming goods. However, this shall not apply where supplying goods of the same description would cause undue burden to the seller in consideration of the surrounding circumstances.

(3) Where the goods are nonconforming in any respect, the buyer may demand that the seller remedy the nonconformance. However, this shall not apply where remedying the goods would cause undue burden to the seller in consideration of the surrounding circumstances.

(4) The buyer may fix an additional period of time of reasonable length for the seller's performance of its obligations. Unless the buyer has received notice from the seller that the seller does not intend to perform within such period, the buyer may not resort to any remedy for breach of contract during such period. However, the buyer is not deprived thereby of the right to demand compensation for damages incurred due to the delayed performance.

1-3-16 (Buyer's right to terminate)

If the goods delivered are nonconforming in any respect and such nonconformance prevents the achievement of the buyer's purpose for entering into the contract, the buyer may terminate the contract.

1-3-17 (Right to demand price reduction)

Where the goods delivered are nonconforming in any respect, regardless of whether or not the price has already been paid, the buyer may demand reduction of the price by a percentage that reflects the difference between the value of the goods actually delivered and the value that conforming goods would have had at the time of delivery. However, where the seller has remedied the nonconformance in accordance with Article 1-3-15, or where the buyer has refused to accept an offer by the seller to remedy the nonconformance without good cause, the buyer may not demand a reduction of the price.

1-3-18 (Buyer's right to demand damages)

The buyer may demand compensation for damages, in accordance with the provisions set forth in Section III, Chapter Four of Book Four, independently of or together with any remedies provided for in Articles 1-3-15 through 1-3-17.

1-3-19 (Special provisions regarding excess or deficiency in area of land)

(1) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area is less than the indicated area, the buyer may demand, in accordance with the provisions set forth in Articles 1-3-15 through 1-3-18, (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency or (iii) termination of the contract, and/or (iv) compensation for damages, unless otherwise agreed to between the parties.

(2) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area exceeds the indicated area, if the seller was unaware of such excess without negligence on his part, the seller may demand an increase in the purchase price reflecting the excess amount of land, unless otherwise agreed to between the parties.

(3) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, even if the actual area is less than the indicated area, the buyer may not demand (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency, (iii) termination of the contract or (iv) compensation for damages. However, this shall not apply to cases where (i) the seller knew of the deficiency of the actual area, (ii) the seller guaranteed the accuracy of the indicated size of the area, or (iii) the deficiency exceeds five percent of the indicated area.

(4) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, the seller may not demand an increase in the purchase price even if the actual area exceeds the indicated area. However, this shall not apply where the excess area exceeds five percent of the indicated area, and the seller was ignorant of such fact without negligence on his part.

(5) In a case in which the seller demands an increase in the purchase price based on the provisions of paragraphs (2) or (4), the buyer may terminate the contract.

1-3-20 (Period for exercise of rights)

(1) The rights provided for in Articles 1-3-15 through 1-3-17 and Article 1-3-19 must be exercised within one year. However, the provisions of Article 8-0-3 shall apply to the right to demand damages described in paragraph (1) and in the second sentence of paragraph (2) of Article 1-3-19.

(2) The period described in the first sentence of paragraph (1) shall be computed from the dates identified below:

- (a) for the buyer, the date that the buyer knew or should have known of the existence of the nonconformance or damage; and
- (b) for the seller, the date of execution of the contract.

3-1-21 (Special provisions regarding discharge from or limitation on Conforming Goods Warranty Liability)

Even if the seller and the buyer agree to discharge or limit the seller's Conforming Goods Warranty Liability arising from the provisions set forth in Articles 1-3-13 et seq, the seller may not be relieved of liability in regard to any nonconformance regarding which the seller had knowledge and nevertheless failed to disclose.

3-1-22 (Obligation to deliver goods)

- (1) The seller is obligated to deliver the goods to the buyer at the time and the place provided for in the contract.
- (2) When the delivery date is not provided for in the contract, the seller is obligated to deliver the goods immediately after the buyer demands the delivery thereof.
- (3) If the place of delivery is not provided for in the contract, the seller shall effect the delivery, in the case of the sale of a specified good, at the place where such specified good was located at the time of execution of the contract, and in other cases, at the domicile of the buyer.
- (4) The costs of delivery shall be borne by the seller unless otherwise agreed to by the parties. However, any increase in the costs of delivery attributable to a change in the buyer's address, etc. shall be borne by the buyer.

1-3-23 (Manner of Delivery)

Delivery of property shall be effected through actual delivery, delivery by declaration, transfer by direction, or constitutum possessorium in accordance with the provisions described in Article 3-1-3 (Transfer of possession) of Book Three. The delivery of an immovable may be effected through the actual delivery of the keys to the structures comprising or residing on such immovable or of the documents evidencing title thereto.

1-3-24 (Defenses of simultaneous performance, insecurity)

- (1) The seller may refuse to deliver the goods until the buyer tenders payment of the purchase price. However, this shall not apply where the buyer's obligation has not yet become due or where it is agreed that the obligation to deliver the goods is to be performed prior to payment of the purchase price.
- (2) Even where the seller has granted the buyer a grace period for the payment of the purchase price, if the buyer becomes bankrupt or insolvent after the execution of the contract, or has concealed his insolvency prior to execution of the contract, the seller may refuse to deliver the goods. However, this shall not apply where the buyer has provided the seller with security or has otherwise taken a measure that has extinguished such insecurity.

1-3-25 (Obligation to preserve goods)

- (1) The seller of a specified good shall preserve such good with the care of a good manager until it is delivered. The same rule shall apply with respect to the seller of a fungible good after specification thereof.
- (2) If a good is destroyed, lost or damaged due to the seller's failure to conform to the duty of care set forth in paragraph (1), the seller shall be liable to the buyer in accordance with the terms of the contract and the provisions of Section III, Chapter Four of Book Four of this Code.

1-3-26 (Right to acquire fruits)

If a good comprising the object of a sale produces natural fruits before it is delivered to the buyer, such fruits shall belong to the seller unless otherwise agreed to between the parties. The same rule shall apply where the good produces rent or other legal fruits.

### Sub-section XIII. Obligations of Buyer

#### 1-3-27 (General obligations of buyer)

The buyer is obligated to pay the purchase price to the seller, and to receive the goods that the buyer has purchased.

#### 1-3-28 (Obligation to pay purchase price)

(1) The buyer is obligated to pay the purchase price agreed upon in the contract at the time and place agreed upon in the contract.

(2) If a time for the delivery of goods is provided for in the contract, such time is presumed to apply to the payment of the purchase price.

(3) If the contract does not provide for either a time for delivery or a time for the payment of the purchase price, the buyer is obligated to pay the purchase price immediately after the seller's demand for payment.

(4) Where the place to effect payment of the purchase price is not provided for in the contract, if the purchase price is to be paid simultaneously with the delivery of the goods, payment shall be effected at the place of the delivery.

#### 1-3-29 (Damages for delayed payment)

Even where payment of the purchase price is delayed, the buyer need not pay damages for the delayed performance until he receives delivery of the goods.

#### 1-3-30 (Right to refuse payment when third party claims interest in goods)

(1) Where a third party claims an interest in the goods comprising the object of the sale, thereby resulting in a risk to the buyer of the loss of all or part of the right purchased by the buyer, the buyer may refuse to pay the purchase price in proportion to the extent of such risk. However, this shall not apply where the seller has provided the buyer with adequate security.

(2) In the cases described in paragraph (1), the seller may demand that the buyer deposit the amount of the purchase price with an authorized depository office.

#### 1-3-31 (Defenses of simultaneous performance, insecurity)

(1) The buyer may refuse to pay the purchase price until the seller tenders performance of his obligation. However, this shall not apply when the seller's obligation has not yet become due or where it is agreed that the obligation to pay the purchase price shall be performed prior to the seller's performance.

(2) Even where the buyer has granted the seller a grace period for performance, if there is a significant risk of the seller's non-performance, the buyer may refuse to pay the purchase price. However, this shall not apply where the seller has provided the buyer with security or has otherwise taken a measure that has extinguished such insecurity.

#### 1-3-32 (Delayed Receipt)

(1) In the event of a delay in the performance of the buyer's obligation to receive the goods, the seller may demand compensation for damages or terminate the contract in accordance with the

provisions set forth in Sections III and IV, Chapter Four of Book Four.

(2) In the case described in paragraph (1), if the goods is destroyed, lost or damaged due to any reason other than the seller's negligence, the buyer shall assume the risk of such destruction, loss or damage.

(3) If the buyer refuses to receive delivery of the goods even though the seller has tendered delivery thereof, the seller may deposit the goods with the official depository office or sell them in accordance with the provisions of Articles 7-1-24 and 7-1-25 of Book Four.

#### Section IV. Termination of Contract By Exercise of Repurchase Right

##### 1-4-1 (Special agreement for repurchase)

(1) The seller may, based on a special agreement for repurchase that is clearly provided for in the written contract of sale, terminate the contract by returning the purchase price paid by the buyer and the costs described in Article 1-4-6.

(2) A contract of sale that includes a special agreement for repurchase shall not be effective unless the written instrument is attested.

##### 1-4-2 (Period for repurchase)

(1) No period for repurchase shall exceed five years with respect to immovable property and two years with respect to movable property. If a longer period has been fixed, it shall automatically be reduced to five years with respect to immovable property or two years with respect to movable property.

(2) If a period has been once fixed for repurchase, it cannot subsequently be extended.

(3) If no period has been fixed for repurchase, the seller must exercise the right of repurchase within the period set forth in paragraph (1) of this article.

##### 1-4-3 (Perfection of special agreement for repurchase against third parties)

(1) The buyer may exercise any and all rights associated with the owner. However, if such exercise contravenes the purpose of special agreement for repurchase, the buyer shall be liable for breach of the contract.

(2) The special agreement for repurchase shall be effective even against third parties only if it is registered simultaneously with the execution of the sale contract.

##### 1-4-4 (Exercise of Repurchase)

(1) The seller may not repurchase the goods sold unless he tenders the purchase price and all costs incurred in connection with [the execution of] the contract within the period of repurchase.

(2) Where the buyer or a subsequent transferee has made expenditures in connection with the good, if they are necessary expenditures, the seller shall provide reimbursement for the entire amount thereof, while if they are merely useful expenditures, the seller must provide reimbursement of, at the seller's election, either the amount of such expenditures or the increase in the value of the goods attributable to such expenditures to the extent that such increase in value continues to exist.

##### 1-4-5 (Sale including special agreement for repurchase of co-owned good)

(1) Where co-owners sell all of a co-owned good by entering into a single contract that includes a special agreement for repurchase, if one of the co-owners demands repurchase either of his share only or of the entire co-owned good, the buyer need not respond to such demand.

(2) Where all co-owners sell their respective shares of the co-owned good by entering into separate contracts that include a special agreement for repurchase, each co-owner may repurchase his respective share separately from the other co-owners.

1-4-6 (Effect of non-exercise of right of repurchase)

Where a seller does not exercise a right of repurchase within a period fixed in accordance with Article 1-4-2, the right of repurchase shall be extinguished, and the buyer's ownership shall not thereafter be subject to a demand for restitution.

**Chapter Two Exchange (to come)**  
**Chapter Three Gift (to come)**  
**Chapter Four Loan for Consumption (to come)**  
**Chapter Five Lease (to come)**  
**Chapter Six Loan for Use (to come)**  
**Chapter Seven Mandate (to come)**  
**Chapter Eight Contract for Work (to come)**  
**Chapter Nine Labor Contracts (to come)**  
**Chapter Ten Bailment (to come)**  
**Chapter Eleven Partnership (to come)**  
**Chapter Twelve Life Annuity (to come)**  
**Chapter Thirteen Compromise (to come)**  
**Chapter Fourteen Management of Affairs without Mandate (to come)**  
**Chapter Fifteen Unjust Enrichment (to come)**  
**Chapter Sixteen Torts**

16-0-1 (Definitions of intent and negligence)

For the purposes of this Chapter, an intentional or negligent act is either of the following types of act:

- (a) an act that harms another where the actor has foreseen that a particular result would occur but accepted the occurrence of such result; or
- (b) an act with respect to which (i) a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from the act, but the actor failed to foresee the result due to an absence of care, and (ii) the actor owes a duty to avoid the occurrence of such result but neglected to fulfill such duty.

16-0-2 (Elements of general tort and burden of proof)

- (1) A person who intentionally or negligently infringes on the rights or benefits of another in violation of law is liable for the payment of damages for any harm occurring as a result.
- (2) Paragraph (1) shall apply *mutatis mutandis* to cases where a harm has occurred due to non-performance of a certain act with respect to which the actor owes a duty to perform such act.
- (3) Except as otherwise provided in this Code or in other laws, the person seeking damages must prove the intent or negligence of the tortious actor, the causal relationship between the actions of



the tortious actor and the harm that occurred, and the harm suffered by the injured party.

16-0-3 (Damages for non-economic harm)

The person liable under the provisions of Article 16-0-2 must also pay damages for non-economic harm.

16-0-4 (Lack of competence to assume liability)

- (1) A minor under the age of 14 cannot be held liable in tort.
- (2) A person who due to mental defect or other reason lacks the capacity to understand the legal ramifications of their actions when committing a tortious act cannot be held liable in tort. However, this shall not apply where the person's condition was invited through intent or negligence.

16-0-5 (Liability of persons having a duty to supervise)

- (1) A person who has a legal duty to supervise a minor under the age of 14 or a person who due to mental defect lacks the capacity to understand the legal ramifications of their actions is liable for damages for any harm caused to others by the actions of the minor or person lacking capacity.
- (2) A person who has a legal duty to supervise a minor 14 years old or older is jointly liable with the minor for damages for any harm caused to others by the actions of the minor.
- (3) A person under a duty of supervision who is liable for damages pursuant to paragraph (2) can avoid liability by proving that he had fulfilled his duty to provide regular and consistent supervision.

16-0-6 (Employer's liability)

- (1) A person who uses an employee to perform work is liable for damages caused in violation of law to another in the performance of that work by the employee through the employee's intent or negligence.
- (2) A person who is charged with performing supervision of the employee in place of the employer bears the same liability as the employer. However, this shall not apply where supervision was properly performed.
- (3) An employer or substitute supervisor may demand compensation from the employee in proportion to their degree of negligence.

16-0-7 (Tortious act of juridical person)

- (1) Where a director or other legal representative of a juridical person intentionally or negligently causes harm to another in violation of law in the exercise of such person's duties, the juridical person is liable for the payment of damages.
- (2) A juridical person that pays damages in accordance with paragraph (1) may demand compensation from the representative who committed the tortious act.

16-0-8 (Tortious act of public official)

- (1) Where a public official who exercises the public authority possessed by the national

government or a governmental entity intentionally or negligently harms another in violation of law in the course of his public duties, the national government or governmental entity is liable for the payment of damages.

(2) In the case described in paragraph (1), the national government or governmental entity may demand compensation from the public official if the official's act constituted a serious breach of the official's duty to avoid the occurrence of the result..

16-0-9 (Liability of animal possessor)

The possessor of an animal is liable for damages for any harm caused to another by the possessed animal.

16-0-10 (Product liability)

(1) Where an unreasonably dangerous defect exists in a manufactured movable and harm results to another due to such defect, the manufacturer of the movable is liable for damages. However, this shall not apply where the defect could not have been discovered based on the scientific standards existing at the time of manufacture.

(2) The manufacturer of a movable that incorporates a defective part or material is also liable for damages as a manufacturer.

(3) For the purposes of this Article, the importer of an imported movable shall be deemed the manufacturer.

(4) For the purposes of this Article, a person who affixes his name on a movable as a manufacturer or distributor shall be deemed the manufacturer.

16-0-11 (Liability for dangerous item)

A person who owns or manages an automobile or other transportation apparatus, an explosive item, a radioactive substance, a toxic chemical, a toxic organism or any other highly dangerous item is liable for damages for any harm caused to another thereby. However, this shall not apply where the harm occurred due to an unavoidable force, or where there was no failure in the person's management of the dangerous item and the harm was caused by the act of the injured party or a third party.

16-0-12 (Liability for structure affixed to land)

(1) Where harm results to another due to a failure in the installation or control of a structure affixed to or appurtenant to land, the person who manages the structure and the owner of the structure are jointly liable for damages. However, the person who manages the structure shall be exempted from liability if he proves that he exercised proper control over the structure.

(2) The relative proportions of liability between the person who managed the structure and the owner of the structure shall be determined in accordance with their relative contributions to the failure in the installation or control of the structure.

16-0-13 (Joint tort)

(1) Where harm is caused jointly by the acts of several persons, each actor is jointly liable for the resulting harm.

(2) In the case described in paragraph (1), where a joint tortfeasor proves his individual percentage contribution to the harm, such actor shall be liable only for that percentage of the total harm. However, this shall not apply where it is determined that the actors engaged in a conspiracy or otherwise colluded in causing the harm.

(3) Where a joint tortfeasor voluntarily pays the entire amount of damages, the joint tortfeasor may demand indemnification from the other jointfeasors in accordance with their respective contributions to the harm.

16-0-14 (Definitions of justifiable self-defense and emergency escape)

(1) An act of justifiable self-defense is a harmful act that is made against an unlawful harmful conduct but is necessary in order to defend the physical well-being or the property of oneself or another from such conduct, and involves a situation in which the harmful conduct and the act of self-defense are closely related in time and there is no disparity in the means of self-defense employed and the severity of the harmful conduct [to be prevented thereby].

(2) An act of emergency escape is an act that causes harm to another but was necessary in order to defend the physical well-being or the property of oneself or another from a present or impending danger, and involves a situation in which there is no disparity in the means of emergency escape and the severity of the danger [to be avoided thereby].

16-0-15 (Grounds for excuse from illegality or responsibility)

(1) A tortfeasor shall be excused from responsibility for harm caused by the tortfeasor where the injured party consented to or assumed the risk of such harm. However, this shall not apply where such consent or assumption of risk contravenes prevalent social standards.

(2) A person who causes harm while engaged in justifiable self-defense or emergency escape shall not be held responsible for harm that results therefrom. In this case, the person committing the unlawful conduct that gave rise to such justifiable self-defense or emergency escape shall be held responsible for the resulting harm.

(3) A person who commits an act that is deemed reasonable and acceptable under prevalent social standards shall not be held responsible for the harm caused thereby.

16-0-16 (Principle of monetary damages; exceptions)

(1) Damages shall be paid in money in principle.

(2) Where money would not provide an appropriate remedy, the injured party may demand restitution or injunctive relief.

(3) A person who suffers harm to their honor or reputation may demand, in addition to damages, that the tortfeasor take measures to restore the injured party's honor or reputation, such as a published apology.

16-0-17 (Calculation of damages)

(1) When calculating the economic loss caused by a tortious act, the difference between the economic situation that would be presumed to exist had the tortious act not occurred and the actual economic situation after the tortious act occurred shall be calculated using statistics and other materials to the extent possible.

(2) When calculating the mental or emotional distress caused by a tortious act, [the amount of damages] shall be determined taking into account such factors as the degree of culpability of the tortious actor, the type and degree of harm, and the tortious actor's conduct after committing the tortious act.

16-0-18 (Damages for harm caused by loss or destruction of a thing)

Where a thing is destroyed or damaged by a tortious act, the injured party may seek compensation for the price of the damaged or destroyed thing, the cost of repair, etc.

16-0-19 (Damages for wrongful death)

(1) Where the injured party dies as the result of a tortious act, such injured party shall acquire a right to demand damages for economic harm and emotional distress suffered prior to death. As used herein, 'economic harm' includes medical expenses which have already been paid or which the injured party is obligated to pay from the date of the tortious act until the date of death, as well as other expenditures, income which the injured party was unable to receive between the date of the tortious act and the date of death, etc.

(2) Where a person who is obligated by law, custom or contract to provide support to a dependent dies as the result of a tortious act, the dependent may demand damages for economic harm suffered as a result of the injured party's death. As used herein, economic harm includes support that the dependent was unable to receive as a result of the injured party's death, expenditures made in place of the injured party, funeral expenses, etc.

(3) Where the injured party dies as the result of a tortious act, the injured party's spouse, relatives within the first degree of consanguinity and relatives living in the same household as the injured party may demand damages for emotional distress they have suffered due to the injured party's death.

16-0-20 (Damages for bodily harm)

Where an injured party suffers bodily harm as the result of a tortious act, the injured party may demand damages for economic harm and emotional distress suffered thereby. As used herein, economic harm includes medical expenses already paid or expected to be paid in the future, loss of income while receiving medical treatment, future income that cannot be received due to the residual effects of the injury, etc. As used herein, emotional distress includes emotional distress suffered while receiving medical treatment, future emotional distress, etc.

16-0-21 (Damages for mental or emotional distress caused by injury to honor or reputation)

Where one's honor or reputation is damaged by a tortious act, the injured party may seek damages for mental or emotional distress accompanying the drop in one's social standing.

16-0-22 (Set-off of losses and benefits)

Where an injured party receives a gain or benefit from the result of a tortious act, the amount of such gain or benefit shall be deducted from the amount of recoverable damages when such damages are calculated.

16-0-23 (Set-off for contributory negligence)

Where the negligence of the injured party or that of a person under a duty to supervise the injured party contributed to the occurrence or aggravation of the injury, the court may take the degree of

contribution of such negligence into account when calculating the amount of recoverable damages.

16-0-24 (Extinctive prescription)

The right to demand damages on account of a tortious act shall be extinguished by prescription upon the expiration of three years from the time that the injured party or such party's legal representative becomes aware that he is entitled to seek damages against the tortious actor, or ten years from the time that the tortious act occurred.

## BOOK FIVE “SECURITY”<sup>10</sup>

### Chapter One General Provisions

1-0-1 (Definition of security provider and third party acquirer)

(1) A person who creates a real security right over his own property so as to secure the debt of another shall be called a 'third party security provider'.

(2) A person who receives the assignment of the object of a real security right created by the debtor to secure his own debt shall be called a 'third party acquirer.'**[To check whether to cover an acquirer of the object provided by a third party security provider]**

1-0-2 (Types of real security rights)

(1) The types of real security rights are limited to those established in the Civil Code or in special laws, and no other type of real security may be created.

(2) The five types of real security rights established in the Civil Code are (i) rights of retention, (ii) preferential rights, (iii) pledge, (iv) hypothec and (v) security right by way of transfer of title.

1-0-3 (Object of real security right)

A thing or right which cannot be transferred cannot comprise the object of a real security right. However, the lack of transferability of a thing shall not prevent the creation of a right of retention with regard thereto.

1-0-4 (Subordinate nature of real security right)

(1) A real security right is established in order to secure an existing debt. A real security right may also be established in order to secure a debt to be incurred in the future if it can be specified.

(2) Where a debt is not formed due to the absence of the necessary elements thereof, real security is not formed as well.

(3) Where a debt is void or rescinded due to a defective declaration of intention or other reason,

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<sup>10</sup> In the translation of this Book, the terms 'debt,' 'debtor,' and 'creditor' are used in lieu of 'obligation,' 'obligor' and 'obligee' (the terms used in the Khmer original). Because it is assumed that cases to which this Book will apply will typically involve monetary obligations, it is thought that the use of such terms will aid in understanding the underlying concepts. However, regardless of terminology, the provisions of this Book should be understood to apply to both monetary and non-monetary obligations.

the real security right is also void.

(4) Where a debt is extinguished due to satisfaction, prescription or other reason, the real security right is also extinguished.

(5) The provisions set forth in paragraphs (1) through (4) shall not apply to a floating hypothec that is created to secure multiple debts to be accrued under a continuing contract.

1-0-5 (Subordinate nature of real security when a secured claim is assigned to another)

(1) Where a claim secured by real security is assigned, the real security is assigned as well to the assignee of the claim unless otherwise [agreed to] [between the assignor and the assignee] **[To check]**. However, where it is required that the holder of a real security right possess the object of the real security right, the assignee of the claim must acquire possession thereof.

(2) The provisions of paragraph (1) shall not apply to claims that are secured by a floating hypothec.

1-0-6 (Indivisibility of real security right)

The effect of the real security right shall extend over the whole of the thing or right comprising the object of the security right until the holder of the real security right has received full satisfaction of the secured claim.

1-0-7 (Power to extend the effect of real security)

Except for cases referred to in Article 3-6-1 concerning preferential rights and Article 6-3-4 concerning a right of security by way of transfer of title, where the object of a real security right is transferred to a third party, the holder of the real security right may assert the effect of his security right against the third party; provided that such holder fulfills and complies with the established requirements for such assertion.

1-0-8 (Enforcement of real security right)

Where the holder of a real security right does not receive satisfaction of the secured claim, he may enforce the real security right in accordance with procedures established by law.

## **Chapter Two Right of Retention**

2-0-1 (Meaning of right of retention)

(1) Where a person possessing a thing belonging to another has a claim arising in regard to such thing, the person may retain the thing until the claim is satisfied. However, if the claim has not yet become due, the right of retention shall not be created.

(2) The provisions of paragraph (1) shall not apply where the possession commenced as a result of a tortious act.

2-0-2 (Preferential application of fruits<sup>11</sup>)

(1) The holder of a right of retention may collect fruits produced by the thing retained and apply them to satisfy the secured claim in preference to other creditors.

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<sup>11</sup> See Article 1-1-8 of Book Three (Real Rights) for the definition of 'fruit.'

(1) The fruits described in paragraph (1) must first be applied to the payment of the interest and the surplus, if any, to the principal.

2-0-3 (Duty of holder of right of retention to preserve the thing retained)

(1) The holder of a right of retention shall possess the thing retained with the care of a good manager.

(2) The holder of a right of retention may not use, lease or give as security the thing retained without the consent of the debtor. However, the holder of a right of retention may use the thing retained so long as such use is necessary to preserve the thing.

(3) Where the holder of a right of retention violates the provisions of paragraphs (1) and (2), the debtor may demand the extinction of the right of retention.

2-0-4 (Right to demand reimbursement of expenditures)

(1) Where the holder of a right of retention has defrayed necessary expenses in regard to the thing retained, he may seek reimbursement for such expenses from the owner.

(2) Where the holder of a right of retention has defrayed useful expenses in regard to the thing retained, he may seek reimbursement from the owner of, at his option, either the amount defrayed or the amount by which the value of the thing has increased, so long as the increase in value remains in effect. However, the court may upon application of the owner grant him reasonable time for reimbursement.

2-0-5 (Extinctive prescription regarding claim)

The exercise of a right of retention shall not interrupt or suspend a period of extinctive prescription with regard to the secured claim.

2-0-6 (Extinction of right of retention by furnishing of security)

The debtor may demand the extinction of a right of retention upon the furnishing of adequate security.

2-0-7 (Extinction of right of retention by loss of possession)

(1) A right of retention is extinguished by the loss of possession of the thing retained. However, this shall not apply to cases where the thing retained has been leased or pledged with the consent of the debtor in accordance with the provisions of paragraph (2) of Article 2-0-3.

(2) Even where the holder of a right of retention loses possession of the thing retained, if the holder of the right of retention regains possession of the thing retained pursuant to the provisions of Article 3-2-2 of Book Three, possession shall be deemed to have continued uninterrupted.

## **Chapter Three Preferential Rights**

### Section I. General Provisions

3-1-1 (Definition of preferential rights)

(1) A creditor holding a preferential right has a right to obtain satisfaction of the claim from particular assets [designated for each type of preferential rights] in priority to other creditors.

(2) The three types of preferential rights are a general preferential right, a preferential right over a [specific] movable, and a preferential right over a [specific] immovable.

3-1-2 (Subrogation)

(1) A preferential right may also be exercised against money or other things which the debtor is entitled to receive due to a sale, lease or loss of, or damage to the object of such preferential right. However, the holder of the preferential right must levy an order of attachment over the claim to receive such money or things prior to the payment or delivery thereof.

(2) The same shall apply to money to be paid as the price of creating a real right over the object of the preferential right.

## Section II. General Preferential Right

3-2-1 (Definition of general preferential right)

A person having a claim arising from any of the causes provided below has a preferential right over all of the property of the debtor.

- (i) Expenses for common benefit
- (ii) Claims held by employee
- (iii) Funeral expenses
- (iv) Supply of daily necessities

3-2-2 (Expenses for common benefit)

(1) A preferential right for expenses for common benefit exists in regard to expenses related to the preservation, liquidation or distribution of the debtor's property incurred for the benefit of all creditors.

(2) Where the expenses described in paragraph (1) have been incurred for the benefit of only some of the creditors, the preferential rights exists only as against those creditors who have benefited therefrom.

3-2-3 (Preferential right for claims held by employee)

A preferential right for claims held by an employee exists in regard to any and all claims which the employee possesses under the labor contract..

3-2-4 (Preferential right for funeral expenses)

(1) A preferential right for funeral expenses exists in regard to expenses incurred for a funeral conducted in accordance with the deceased debtor's station in life.

(2) The preferential right described in paragraph (1) exists in regard to expenses incurred for a funeral conducted in accordance with the station in life of a deceased relative whom the debtor was obligated to support.

3-2-5 (Preferential right for supply of daily necessities)

A preferential right for the supply of daily necessities exists in regard to the past six months' supply of food, drink and other daily necessities required for the subsistence of the debtor, relatives who live with the debtor and whom the debtor is obligated to support, and the debtor's servants.



### Section III. Preferential Right Over Specific Movables

#### 3-3-1 (Definition of preferential right over movables)

A person having a claim arising out of any of the following events has a preferential right over a specific movable belonging to the debtor.

- (i) Lease of immovable property
- (ii) Carriage of passengers or goods
- (iii) Preservation of movable property
- (iv) Sale of movable property
- (v) Supply of seeds, seedlings, or fertilizer

#### 3-3-2 (Preferential right based on lease of immovable property)

A preferential right based on the lease of immovable property exists over movables of the lessee in order to secure the rent and other obligations of the lessee arising under the lease.

#### 3-3-3 (Scope of preferential right based on lease of immovable property - normal case)

(1) A preferential right held by the lessor of land exists over movables attached to the leased land or installed in buildings thereon, as well as over movables provided for use of the land and over the fruits from such land that are in the possession of the lessee.

(2) A preferential right held by the lessor of a building exists over movables installed in the building by the lessee.

#### 3-3-4 (Scope of preferential right based on lease of immovable property - assignment or sublease)

In the event of an assignment of a lease or a sublease, the preferential right of a lessor shall extend to the movables of the assignee or sublessee. The same shall apply to any money that the assignor or sublessor is to receive.

#### 3-3-5 (Scope of preferential right based on lease of immovable property)

Where all of the assets of a lessee are liquidated, the preferential right of the lessor exists only with regard to rent and other obligations owing for the previous, current and succeeding lease terms, and the reparation of any damage occurring during the previous and current lease terms.

#### 3-3-6 (Scope of preferential right based on lease of immovable property - in case of deposit)

Where a lessor has received a deposit, his preferential right exists only with respect to the portion of his claim that cannot be satisfied from the deposit.

#### 3-3-7 (Preferential right for carriage)

A preferential right held by a carrier exists over the baggage in the possession of the carrier with regard to the costs of carriage of the passenger or the baggage and incidental charges.

#### 3-3-8 (Bona fide acquisition)

The provisions of Articles 2-4-18 of Book Three regarding bona fide acquisition shall apply *mutatis mutandis* to preferential rights as set forth in Articles 3-3-2 through 3-3-7.

3-3-9 (Preferential right for preservation of a movable)

(1) A preferential right for preservation of movables exists over a movable in regard to costs incurred for the preservation thereof.

(2) The preferential right described in paragraph (1) also exists in regard to costs incurred for the preservation, ratification or exercise of the title or other right pertaining to the movable.

3-3-10 (Preferential right for sale of a movable)

A preferential right for sale of a movable exists over the movable in regard to the price and interest thereon.

3-3-11 (Preferential right for supply of seeds, seedlings or fertilizer)

(1) A preferential right for the supply of seeds, seedlings or fertilizer exists, in regard to the price thereof and the interest thereon, over the fruits derived from the land on which they are used for a period of one year from the time they are used.

(2) The preferential right described in paragraph (1) exists, for the supply of livestock feed provided for the breeding of livestock, over the livestock or the fruits derived from the livestock for a period of one year from the time the feed is used.

(3) The preferential right described in paragraph (1) exists, for the supply of silkworm eggs or mulberry leaves provided for the breeding of silkworms, over the things produced from the silkworm eggs or the mulberry leaves.

#### Section IV. Preferential Right Over Specific Immovables

3-4-1 (Preferential right over immovables)

A person having a claim that arises out of any of the following events has a preferential right over a specific immovable of the debtor.

- (i) Preservation of an immovable
- (ii) Work on an immovable
- (iii) Sale of an immovable

3-4-2 (Preferential right for preservation of an immovable)

(1) A preferential right for preservation of an immovable exists over the immovable in regard to costs incurred for the preservation thereof.

(2) The preferential right described in paragraph (1) also exists in regard to costs necessary for the preservation, ratification or exercise of the title or other right pertaining to the immovable.

3-4-3 (Preferential right for work on an immovable)

(1) A preferential right for work on an immovable exists over the immovable in regard to construction costs incurred in relation thereto by artisans, engineers and contractors.

(2) The preferential right described in paragraph (1) exists only where the increase in the value of the immovable due to such work still remains, and only with respect to such increase in value.

3-4-4 (Preferential right for sale of an immovable)

A preferential right for sale of an immovable exists over the immovable in regard to the price and interest thereon.

Section V. Ranking of Preferential Rights

3-5-1 (Ranking of general preferential rights)

(1) Where multiple general preferential rights exist, their respective priority rankings shall follow the order prescribed in Article 3-2-1.

(2) Where a general preferential right and a preferential right over a specific property coexist, the preferential right over a specific property shall have priority. However, a preferential right for expenses for common benefit shall have priority as against all creditors benefited thereby.

3-5-2 (Ranking of preferential rights over movables)

(1) Where multiple specific preferential rights coexist over the same movable, their respective priority rankings shall be as follows:

- |              |  |
|--------------|--|
| First rank:  | Preferential rights for lease of an immovable or for carriage;   |
| Second rank: | Preferential right for preservation of a movable, except that where two or more persons have preserved the movable, the person whose acts of preservation have occurred later shall take priority; and |
| Third rank:  | Preferential right for sale of a movable or for supply of seeds, seedlings or fertilizer.  |

(2) Where a person having a preferential right of the first rank was aware at the time that he acquired his claim of the existence of a person having a preferential right of the second or third rank, his rank shall be inferior to that of all persons having preferential right of the second or third rank. A person having a preferential right of the first rank is also inferior to a person who has preserved a thing for the benefit of such person having a preferential right of the first rank.

(3) The top priority ranking regarding fruits shall belong to the supplier of seeds, seedlings or fertilizer, while the second priority ranking shall belong to the lessor of the land.

3-5-3 (Ranking of preferential rights over immovables)

(1) Where multiple specific preferential rights coexist over the same immovable, their respective priority rankings shall follow the order prescribed in Article 3-4-1.

(2) Where successive sales of the same immovable have occurred, the priority rankings of the sellers' preferential rights shall follow the chronological order of the sales.

3-5-4 (Preferential rights of same rank)

Where two or more persons have preferential rights over the same object and their priority rankings are equal, they shall receive satisfaction in proportion to the amounts of their respective claims.

Section VI. Effect of Preferential Right

3-6-1 (Power to pursue third party acquirer)

[Where a third party acquires a movable comprising the object of a preferential right from the debtor,]

once the debtor has delivered the movable to the third party acquirer, the holder of the preferential right may not exercise the preferential right over the movable.

3-6-2 (Relationship to pledge over movable)

Where a preferential right and a pledge coexist over a movable, the pledgee shall have the same right as the person having a preferential right of the first rank mentioned in Article 3-5-2.

3-6-3 (Effect of general preferential right)

(1) A person having a general preferential right may not receive satisfaction out of immovables unless he has first resorted to property other than immovables and failed to obtain full satisfaction therefrom.

(2) With regard to immovables, satisfaction must first be sought out of those that are not subject to a specific security right<sup>12</sup>.

(3) If a person having a general preferential right fails to participate in a distribution of the proceeds in accordance with the provisions of paragraphs (1) and (2), he may not, to the extent of what he would have received through such participation, exercise his preferential right as against a registered third party.

(4) The provisions of paragraphs (1) through (3) shall not apply to cases where a distribution is to be made of the price of an immovable comprising the object of a specific security right prior to that of the price of non-immovables.

3-6-4 (Effect of general preferential right against third party)

The holder of a general preferential right may, even where the right is not registered over an immovable, assert such right against a creditor who has no specific security right over the immovable. However, such right may not be asserted against a registered third party.

3-6-5 (Effect of preferential right for preservation of immovable against third party)

(1) The effect of a preferential right for preservation of an immovable may not be asserted against a third party unless it is registered immediately after the act of preservation has been completed.

(2) The amount of increase in the value of the immovable arising from preservation shall be determined by an expert for appraisal appointed by the court at the time of participation in the distribution is sought.

3-6-6 (Effect of preferential right for work on immovable against third party)

(1) The effect of a preferential right for work on an immovable may not be asserted against a third party unless the right is registered immediately after the work has been completed.

(2) The amount of increase in the value of the immovable arising from the work performed shall be determined by an expert appointed by the court at the time participation in the distribution is sought.

3-6-7 (Relationship between hypothec and preferential right for preservation of an immovable or work on an immovable)

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<sup>12</sup> The term 'specific security right' refers to a preferential right over a specific immovable, pledge, hypothec or security right by way of transfer of title.

A preferential right registered in accordance with Articles 3-6-5 and 3-6-6 may be exercised in preference to a hypothec.

3-6-8 (Effect of preferential right for sale of immovable against third party)

The effect of a preferential right for sale of an immovable may not be asserted against a third party unless a statement that the sales price or interest thereon has not been paid is registered simultaneously with [the execution] of the sale contract.

3-6-9 (*Mutatis mutandis* application of provisions regarding hypothec)

In addition to the provisions of this Chapter, the provisions of Articles 5-3-1 through 5-3-3, 5-3-6, 5-3-7, 5-4-1 and 5-5-1 through 5-5-5 regarding hypothec shall apply *mutatis mutandis* to the effect of preferential rights.

## **Chapter Four Pledge**

### Section I. General Provisions

4-4-1 (Meaning of pledge)

A pledgee is entitled to hold possession of the thing that he has received from the debtor or a third party as security for his claim, and to obtain satisfaction of his claim out of such thing in preference to other creditors.

4-1-2 (Subrogation)

(1) A pledge may also be exercised against money or other things which the debtor is entitled to receive due to a sale or loss of, or damage to the thing pledged. However, the pledgee must levy an order of attachment over the claim to receive such money or things prior to the payment or delivery thereof.

(2) The same shall apply to money to be paid as the price of creating a real right over the thing pledged.

4-1-3 (Formation of pledge and requirement of delivery)

A pledge shall be created when the thing to be pledged is delivered to the pledgee by the debtor or a third party [security provider].

4-1-4 (Prohibition against pledger retaining direct possession)

A pledgee may not allow the pledger to retain direct possession of the thing pledged.

4-1-5 (Scope of secured claim)

Unless otherwise provided in the act of creation thereof, a pledge shall secure the principal, interest, penalties, expenses for enforcement of the pledge, expenses for preservation of the thing pledged, and damages arising from nonperformance of the debt or from latent defects in the thing pledged.

4-1-6 (Retention of thing pledged)

A pledgee may retain the thing pledged until he obtains satisfaction of his claim [the scope of which is]

mentioned in Article 4-1-5. However, this right cannot be asserted against any creditor who has priority over the pledgee.

4-1-7 (Priority right to receive satisfaction from fruits)

(1) A pledgee is entitled to receive the fruits produced from the thing pledged and obtain satisfaction of the claim in priority to other creditors.

(2) The fruits described in paragraph (1) shall first be applied to interest on the debt, and the remainder, if any, shall be thereafter applied to the principal.

4-1-8 (Pledgee's duty to preserve thing pledged)

(1) A pledgee shall possess the thing pledged with the duty of care of a good manager.

(2) Where a pledgee violates the provisions of paragraph (1), the debtor may demand the extinction of the pledge.

4-1-9 (Pledgee's right to reimbursement)

(1) Where a pledgee has defrayed necessary expenses in regard to the thing pledged, he may seek reimbursement for such expenses from the owner.

(2) Where a pledgee has defrayed useful expenses in regard to the thing retained, he may seek reimbursement from the owner of, at his option, either the amount defrayed or the amount by which the value of the thing has increased, so long as the increase in value remains in effect. However, the court may upon application of the owner grant him reasonable time for reimbursement.

4-1-10 (Extinctive prescription of claim)

The exercise of a pledge shall not interrupt or suspend a period of extinctive prescription with regard to the claim .

4-1-11 (Sub-pledge)

(1) A pledgee may sub-pledge the thing pledged in order to secure his own debt with the consent of the pledger.

(2) A pledgee may within the duration of the original pledge sub-pledge the thing pledged on his own responsibility. In such a case, the pledgee shall be responsible even for damages due to *force majeure* that would not have occurred if the thing had not been sub-pledged.

(3) Where the thing pledged is sold by compulsory sale and the price is apportioned, the sub-pledgee may receive full satisfaction of his claim from and to the extent of the amount to be apportioned to the pledgee. However, during the period that the claim of the sub-pledgee has not yet become due, the sub-pledgee may only demand that the amount to be received be officially deposited.

4-1-12 (Prohibition against forfeiture agreement)

Unless otherwise provided for in this Code or other law, a pledger may not, either in the act of creation of the pledge or by a contract executed before the time the debt becomes due, agree that the pledgee shall acquire ownership of the thing pledged or dispose of it in a manner other than that provided for by law.

4-1-13 (Third party security provider's right of indemnification)

If a person who has pledged his own property to secure the debt of another discharges the debt or loses ownership of the thing pledged due to the enforcement of the pledge, he is entitled to receive indemnification from the debtor in accordance with the provisions of this Code regarding guaranty.

Section II. Pledge Over Movable

4-2-1 (Requirements for asserting pledge)

The pledgee of a movable cannot assert the pledge against a third party unless he continuously holds possession of the thing pledged.

4-2-2 (Loss of possession)

If the pledgee of a movable is deprived of possession of the thing pledged, he can recover it only by an action for recovery of possession.

4-2-3 (Use of or receipt of benefits from thing pledged by pledgee)

(1) A pledgee may not use or lease the thing pledged without the consent of the debtor. However, the pledgee may use the thing pledged so long as such use is necessary to preserve the thing.

(2) Where a pledgee violates the provisions of paragraph (1), the debtor may demand the extinction of the pledge.

4-2-4 (Summary enforcement of pledge)

(1) If the pledgee of a movable does not obtain satisfaction of his claim, he may apply to the court to have the thing pledged appropriated to himself in satisfaction of the debt to the extent of its value as appraised by an expert, provided that reasonable grounds exist for doing so. In such case the pledgee must provide the debtor with advance notice of the application.

(2) In the case referred to in paragraph (1), where the value of the thing pledged as determined by expert appraisal exceeds the amount of the debt, the pledgee of the movable shall return the excess amount to the owner of the thing pledged.

4-2-5 (Ranking of pledges over movable)

If multiple pledges have been created over the same movable, their respective priority rankings shall follow the chronological order of their creation.

Section III. Pledge Over Immovable

4-3-1 (Pledgee's right to use and receive profits)

The pledgee of an immovable may use and receive the profits of the immovable in accordance with its ordinary use.

4-3-2 (Costs of management, etc.)

The pledgee of an immovable shall pay the costs of management thereof and shall bear all other charges pertaining to such immovable.

4-3-3 (Interest)

The pledgee of an immovable may not demand interest on the secured claim.

4-3-4 (Validity of special provisions)

The provisions of Articles 4-3-1 through 4-3-3 shall not apply where otherwise provided in the act of creation of a pledge.

4-3-5 (Duration)

(1) The duration of a pledge of an immovable cannot exceed five years. If a pledge of an immovable is created for a longer period, such period shall be reduced to five years.

(2) The pledge of an immovable may be renewed. However the renewal period cannot exceed five years from the time of renewal.

4-3-6 (*Mutatis mutandis* application of provisions regarding hypothec)

In addition to the provisions of this Section, the provisions of Chapter Five (Hypothec) shall apply *mutatis mutandis* to pledges of immovables.

#### Section IV. Pledge Over Right/Claim

4-4-1 (Object of pledge over rights)

(1) Any property right<sup>13</sup> may comprise the object of a pledge.

(2) In addition to the provisions of this Section IV, the provisions of Sections I, II and III shall apply *mutatis mutandis* to the pledges mentioned in paragraph (1).

4-4-2 (Requirements for assertion of pledge over claim in name of specific creditor)

(1) Where a claim belonging to a specific creditor is made the object of a pledge, the pledge cannot be asserted against the original debtor of such claim or any other third party unless such original debtor has been notified of the creation of the pledge or unless he has given consent thereto.

(2) The notice and consent described in paragraph (1) may not be asserted against a third party other than the original debtor unless they are evidenced by a date certified writing.

4-4-3 (Enforcement of pledge through collection of debt)

(1) A pledgee may directly collect the debt comprising the object of the pledge.

(2) If the subject-matter of the claim is money, the pledgee may only obtain payment of such portion thereof as corresponds to the amount of the secured claim held by him.

(3) In the case described in paragraph (2), if the claim described above becomes due earlier than the pledgee's claim, the pledgee may require the original debtor to deposit the amount payable. In such a case, the pledge shall exist over the money deposited.

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<sup>13</sup> See the footnote to Article 2-4-20-1 of Book Three for the explanation of 'property right.'



(4) If the subject-matter of the claim is not money, the pledgee has a pledge over the thing to be received as satisfaction thereof.

## **Chapter Five Hypothec**

### Section I. Nature of Hypothec

#### 5-1-1 (Nature of hypothec)

(1) A hypothec is entitled to obtain satisfaction of his claim in preference to other creditors out of the immovable property that has been furnished as security by the debtor or a third party without transfer of possession.

(2) A perpetual lease or usufruct may also be made the object of a hypothec. The provisions of this Chapter Five shall apply *mutatis mutandis* in such a case.

(3) Where a special law allows a certain type of property other than immovable property to be the object of a hypothec, such law shall apply.

### Section II. Creation of Hypothec

#### 5-2-1 (Creation of hypothec)

A hypothec is created through an agreement reached between a creditor and a debtor or third party that furnishes immovable property as security.

#### 5-2-2 (Asserting hypothec)

A hypothec may not assert the hypothec against a third party who is not the hypothecator unless the instrument creating a hypothec is notarized and registered in the land registry.

### Section III. Effect of Hypothec

#### 5-3-1 (Scope of effect of hypothec)

(1) [The effect of] a hypothec shall extend to all things that are attached to and form part of the land comprising the object of the hypothec when the hypothec is created, including buildings residing thereon. It also extends to things that attach to the land after the hypothec is created.

(2) A contract creating a hypothec may not contain any provision that is contrary to the provisions set forth in paragraph (1).

#### 5-3-2 (Effect of hypothec on land over building owned by third party)

Where based on a perpetual lease, usufruct or leasehold a third party owns a building on the land comprising the object of the hypothec [when the hypothec is created], [the effect of] the hypothec does not extend to the building.

#### 5-3-3 (Effect of hypothec over fruits)

The provisions of Article 5-3-1 do not apply to the fruits produced from the immovable comprising the object of the hypothec. However, this shall not apply after the immovable is subject to an order of

attachment.

5-3-4 (Subrogation)

(1) A hypothec may be enforced against money or other things which the hypothecator is entitled to receive by reason of the sale or loss of, or damage to, the object thereof.

(2) A hypothec may be enforced against fruits that are produced after the object of the hypothec is subject to an order of attachment.

5-3-5 (Right of indemnification of a third party security provider)

If a person who creates a hypothec to secure the debt of another discharges the debt or loses ownership of the hypothecated immovable as a result of the enforcement of the hypothec, such person is entitled to demand indemnification from the debtor in accordance with the provisions of this Code regarding guaranty.

5-3-6 (Ranking of hypothecs)

Where multiple hypothecs have been created on an immovable in order to secure multiple debts, the rank of their priority shall be based on the order of their registration.

5-3-7 (Scope of claims secured)

(1) Where a hypothec is entitled to receive interest or periodic payments, he can enforce the hypothec only in regard to payments due for the last two years. However, if a special registration was made in regard to periodic payments for an earlier period after they became due, the hypothec may also be enforced in regard to such payments from the time of such registration.

(2) Where a hypothec is entitled to demand damages due to the debtor's default, the provisions of paragraph (1) shall apply in regard to the last two years. However, the damages together with interest and other periodic payments may not exceed the total amount due over those two years.

#### Section IV. Enforcement of Hypothec

5-4-1 (Compulsory sale of hypothecated property)

In the event of a failure to perform on a debt, a hypothec may apply to the court for compulsory sale of the hypothecated immovable.

5-4-2 (Compulsory sale of buildings owned by third party)

(1) Where the hypothecator or a third party erects a building on land after it is hypothecated, and the hypothecator owns that building, the hypothec may demand the compulsory sale of the building together with the hypothecated land. However, if the price of the land together with the building thereon is less than the price of the land as a vacant plot, the hypothec may demand that the hypothecator remove the building prior to the compulsory sale of the land.

(2) Where a third party owns the building on the hypothecated land based on a perpetual lease, usufruct or leasehold, if the third party cannot assert such perpetual lease, usufruct or leasehold against the hypothec, the hypothec may demand the compulsory sale of the building together with the hypothecated land.

5-4-3 (Third party acquirer's application to purchase)

A third party acquirer of a hypothecated immovable may purchase the immovable at the compulsory sale.

5-4-4 (Third party acquirer's right to reimbursement)

Where a third party acquirer has defrayed necessary or useful expenses in regard to a hypothecated immovable, he may obtain reimbursement from the proceeds of the sale of the immovable with priority over the hypothec.

5-4-5 (Simultaneous or staggered application of proceeds in case of joint hypothec)

(1) Where two or more immovables are hypothecated to secure the same claim and their proceeds from compulsory sale are to be applied simultaneously to its satisfaction, the burdens of satisfaction of the claim shall be allocated in proportion to the value of each immovable.

(2) [Where two or more immovables are hypothecated to secure the same claim,] if the proceeds of only one of the immovables are to be so applied, the hypothec may obtain full satisfaction of his claim therefrom. In this case, the hypothec next in rank may exercise the right of the prior hypothec via subrogation to the extent of the amount that the prior hypothec would have received out of the other immovables in accordance with the provisions of paragraph (1).

5-4-6 (Joint hypothec - registration of subrogation)

A person who enforces a right of hypothec via subrogation in accordance with the provisions of paragraph (2) of Article 5-4-5 must enter the subrogation in the registry of the hypothec.

## Section V. Disposal of Hypothec

5-5-1 (Sub-hypothecation)

(1) A hypothec may hypothecate his right of hypothec in order to secure the debt of himself or another. This is referred to as 'sub-hypothecation'.

(2) Where a hypothecated thing is sold by compulsory sale and the proceeds are apportioned, the sub-hypothec may receive full satisfaction of his claim from and to the extent of the amount to be apportioned to the hypothec. However, during the period that the claim of the sub-hypothec has not yet become due, the sub-hypothec may demand only that the amount to be received be officially deposited.

5-5-2 (Transfer or waiver of hypothec)

(1) A hypothec may transfer or waive his right of hypothec for the benefit of another creditor(s) of the same debtor.

(2) A transferee of a right of hypothec may exercise the received right of hypothec as security for his own debt. In this case, the provisions of paragraph (2) of Article 5-5-1 shall apply *mutatis mutandis*.

(3) A person who waives a right of hypothec may not thereafter assert the right of hypothec against the creditor(s) for whose benefit the waiver was made.

5-5-3 (Transfer, waiver or change of ranking)

(1) A hypothec may transfer or waive his priority ranking for the benefit of another hypothecary creditor of the same debtor. Moreover, a hypothec may change the priority of his ranking among multiple hypothees with the consent of the other hypothees. However, where such a change would affect the interests of another party, such party's consent must be obtained.

(2) Where the object of a right of hypothec is sold by compulsory sale and the proceeds are apportioned among multiple hypothees, a transferee of a priority ranking in regard to the right of hypothec may receive full satisfaction of his claim from and to the extent of the total amount to be apportioned to [both the transferor and the transferee].

(3) Where the object of a right of hypothec is sold by compulsory sale and the proceeds are apportioned among multiple hypothees, a hypothec who has received a waiver of a priority ranking in regard to the right of hypothec may, as between himself and the hypothec who has waived the priority ranking, receive equal repayment from and to the extent of the total amount to be apportioned to [both of them].

(4) A hypothec who consents to a change in priority ranking may enforce the right of hypothec in accordance with such consent.

5-5-4 (Effect of disposal of hypothec)

(1) The disposal of a hypothec described in Articles 5-5-1, 5-5-2 and 5-5-3 shall be ineffective unless it is notarized and entered in the registration thereof

(2) The disposal of a hypothec may not be asserted as against the principal debtor, a guarantor, hypothecator or their respective successors unless the principal debtor is notified of such disposal or consents thereto.

(3) Where the principal debtor receives notice of or consents to a disposal of a right of hypothec as described in paragraph (2), repayment made without the approval of a person receiving the benefit of such disposal may not be asserted against such person.

5-5-5 (Ranking of disposal of hypothec)

If in the case described in Articles 5-5-1, 5-5-2 and 5-5-3 the hypothec has disposed of his right of hypothec for the benefit of two or more persons, the rank of priority of the rights of the persons benefiting from such disposal shall be determined by the order of entries in the registration of the hypothec.

## Section VI. Extinction of Hypothec

### Sub-section XIV. Extinction by demand

5-6-1 (Payment of price)

Where a third party who has purchased ownership of or perpetual lease or usufruct on the hypothecated immovable pays the price thereof to the hypothec on the hypothec's demand, the hypothec shall be thereby extinguished in favor of the third party.

### Sub-section XV. Extinction by prescription

5-6-10 (Acquisition of hypothec via extinctive prescription)

A hypothec may be not be extinguished by prescription in favor of the debtor or the hypothecator unless the claim secured thereby is extinguished at the same time.

5-6-11 (Extinction of hypothec by acquisition of hypothecated immovable by acquisitive prescription)

Where a person other than the debtor or the hypothecator has completed possession of a hypothecated immovable that satisfy the requirements for acquisitive prescription regarding such immovable, the hypothec shall be extinguished thereby. However, this shall not apply where a third party acquirer of the hypothecated immovable acquires the immovable with knowledge of the existence of the hypothec.

## Section VII. Floating Hypothec (to come)

### **Chapter Six Transfer of Title for Security Purpose (to come)**

### **Chapter Seven Guaranty**

#### Section I. Formation of Guaranty

7-1-1 (Formation of contract of guaranty)

(1) A guaranty shall be formed when (i) a prospective guarantor undertakes to the obligee that in the event the obligor ['principal obligor'] fails to perform his obligation ['underlying obligation'], the prospective guarantor will perform the whole or part of such obligation together with the obligor ['guarantor's obligation'], and (ii) the obligee accepts such undertaking.

(2) A rider providing security for loss, which shall constitute a guaranty obligation independent from the underlying obligation, may be executed as part of a contract of guaranty. However, this shall be limited to situations in which the provision of security for loss or guaranty constitutes part of the business of the person assuming the obligations imposed by such rider.

(3) Where assumption of the guaranty obligation does not constitute part of the business of the prospective guarantor, the obligee shall provide the prospective guarantor with any and all material information concerning the guaranty obligation to be assumed, thereby giving the prospective guarantor a chance to fully deliberate [whether to enter into the contract of guaranty based on such information].

(4) Where the obligee fails to carry out the duty described in paragraph (3), the guarantor may rescind the contract of guaranty.

7-1-2 (Formality of contract of guaranty)

(1) A guaranty undertaking made without being recorded in an instrument or document may be revoked at any time. However, this shall not apply where the guarantor has voluntarily set to perform the guaranty obligation.

(2) The provisions of paragraph (1) shall also apply to a guaranty undertaking made in

connection with a monetary obligation where the amount of the guaranty obligation is not set forth in the guarantor's handwriting.

(3) The contents of the guaranty obligation shall be specifically described in the guaranty instrument or document.

#### 7-1-3 (Floating guaranty)

(1) Notwithstanding the provisions of paragraphs (2) and (3) of Article 7-1-2, a floating guaranty contract that guarantees the performance of unspecified future obligations accruing from a certain continuing legal relationship shall be valid and effective only if the continuing legal relationship forming the basis of the underlying obligations is specified.

(2) If the term of the guaranty is not stated in the floating guaranty contract, the guarantor may, after a reasonable period of time has elapsed since the date of execution of the contract, terminate the floating guaranty contract.

(3) If the principal obligor's business or financial position has deteriorated substantially since the date of execution of the floating guaranty contract, the guarantor may immediately terminate the floating guaranty contract.

(4) Upon the death of a guarantor under a floating guaranty contract, only the floating guarantor's obligations regarding the underlying obligations in existence at the time of the guarantor's death shall be subject to succession.

## Section II. Effect of Guaranty

#### 7-2-1 (Scope of guaranty)

(1) A guaranty obligation shall include interest accruing on the underlying obligation, penalties, damages and all other charges incidental to the underlying obligation.

(2) A guaranty contract may specify the amount of penalties or damages payable for non-performance of the guaranty obligation.

#### 7-2-2 (Nature of guaranty)

(1) Where an underlying obligation does not exist, a guaranty shall not be created. However, a guaranty can be created with regard to an underlying obligation that could arise in the future or an underlying obligation subject to a condition.

(2) If the guarantor's burden is more onerous than that of the underlying obligation with respect to either the object or the terms and conditions of the obligation, the guarantor's obligation shall be reduced in accordance with the scope of the underlying obligation.

(3) The extinction of the underlying obligation shall operate to extinguish the guaranty obligation as well.

(4) A demand for performance or any other ground for interruption of a prescription period against the principal obligor shall also be effective against the guarantor.

(5) Except as otherwise provided for in the guaranty contract, when the claim owed to the principal obligor was assigned, the claim owed to the guarantor shall also be deemed to have been assigned to the assignee.

7-2-3 (Rights of guarantor)

- (1) The guarantor is entitled to invoke prescriptive extinction of the underlying obligation.
- (2) The principal obligor's waiver of the benefit of prescription shall not be effective against the guarantor.
- (3) The guarantor may raise any defenses available to the principal obligor.
- (4) Where the principal obligor is entitled to rescind or terminate [the contract giving rise to the underlying obligation], the guarantor may refuse to perform the guaranty obligation.
- (5) Where the principal obligor is entitled to a set-off of the underlying obligation by virtue of a counter-obligation owed by the obligee, the guarantor may refuse to perform the guaranty obligation to the extent that the underlying obligation would be extinguished by the exercise of the set-off.

7-2-4 (Guaranty of voidable obligation)

Where a guarantor who offers a guaranty or security against loss as part of his business assumes a guaranty obligation regarding the voidable obligation while being aware of grounds for rescission [of the contract giving rise to the underlying obligation], the guarantor shall be presumed to have assumed an independent obligation regarding the same subject matter as that of the underlying obligation.

7-2-5 (Qualification as guarantor)

- (1) Where an obligor has a duty to furnish a guarantor to the obligee, the guarantor must be a person of full legal capacity who has sufficient financial ability to effect performance.
- (2) If the guarantor ceases to fulfill the conditions set forth in paragraph (1), the obligee may demand that the obligor replace the guarantor with a person who fulfills such conditions.
- (3) If the obligor is unable to furnish a guarantor who fulfills the conditions set forth in paragraph (1), the obligee may demand that the obligor furnish other security in lieu thereof.
- (4) This Article shall not apply in cases where the obligee has designated the guarantor.

7-2-6 (Meaning of joint guaranty and principle of joint guaranty)

- (1) [A guarantor who is obligated to perform jointly and severally with the principal obligor] may not (i) demand of the obligee that performance be demanded from the principal obligor prior to the guarantor, or (ii) exempt oneself from enforcement of the guaranty obligation by establishing that the principal obligor has sufficient resources to tender performance and is easily subject to execution.
- (2) In the absence of an agreement to the contrary, the guarantor is bound to perform the guaranty obligation jointly and severally with the principal obligor.

7-2-7 (Effect of events occurring with respect to guarantor)

Events that occur with respect to the guarantor shall have no effect with respect to the principal obligor. However, this shall not apply to a demand or other grounds for the interruption of prescription that is made or occurred to a guarantor who has been commissioned by the principal obligor.

7-2-8 (Co-guarantors)

(1) Where multiple persons undertake to be guarantors in a contract, each guarantor is obligated with respect to the entire amount of the underlying obligation.

(2) In the absence of an agreement to apportion the guaranty obligation among the co-guarantors and limit each co-guarantor's liability vis-à-vis the obligee to the apportioned share thereof, the burden of the guaranty obligation shall be presumed to be shared equally among all co-guarantors.

### Section III. Indemnification

#### 7-3-1 (Commissioned guarantor's right to indemnification)

(1) Where a guarantor commissioned by the principal obligor has effected performance on behalf of the principal obligor or has otherwise extinguished the underlying obligation at his expense, the guarantor is entitled to demand indemnification from the principal obligor.

(2) The guarantor described in paragraph (1) may demand indemnification of the actual amount paid by him and interest accruing thereon from the time of payment, as well as compensation for damages.

(3) A guarantor commissioned by a principal obligor may preemptively exercise his right to indemnification in any of the following cases:

- (i) Where the guarantor has without negligence on his part received the issuance of a judgment ordering performance to the obligee, and such judgment has become final and binding;
- (ii) Where the principal obligor has been declared bankrupt, and the obligee does not file for a distribution in the bankruptcy procedure;
- (iii) Where the underlying obligation has become due; or
- (iv) Where the deadline for performance of the underlying obligation is not fixed and its maximum period of performance cannot be established, and five years have elapsed since the date of execution of the guaranty contract.

(4) A principal obligor who has received a demand for indemnification from the guarantor pursuant to paragraph (1) may, so long as the obligee has not received full and complete performance of the obligation, demand that the guarantor furnish security or procure a discharge from the obligation for the benefit of the principal obligor.

(5) In the case described in paragraph (4), the principal obligor may relieve himself from liability for indemnification by making a deposit with the official depository office, furnishing security to the guarantor or procuring a discharge from the obligation for the benefit of the guarantor.

#### 7-3-2 (Voluntary guarantor's right to indemnification)

Where a guarantor who did not be commissioned by the principal obligor has effected performance on behalf of the principal obligor or has otherwise caused the principal obligor to be released from the underlying obligation at the guarantor's expense, the principal obligor shall indemnify the guarantor to the extent that the principal obligor was enriched thereby. However, if the guaranty was provided against the will of the principal obligor, the principal obligor shall indemnify the guarantor to the extent that the principal obligor continues to be enriched.



7-3-3 (Requirements for indemnification)

(1) Where the guarantor has, without notifying the principal obligor that he received a demand for performance from the obligee, effected performance of the obligation or otherwise procured the discharge thereof at his own expense, and if the principal obligor has had any means of defense against the obligee, the principal obligor may set it up against the guarantor's demand for indemnification. However, if the mean of defense so set up is a set-off, the guarantor may demand that the obligee perform the counter-obligation that might have been extinguished if it had been set-off.

(2) If, as a result of the guarantor's failure to notify the principal obligor that he has procured the discharge of the obligation at his own expense, the principal obligor has also effected in good faith performance of the obligation or otherwise procured a discharge at the principal obligor's expense, the principal obligor may treat his performance or other act of discharge as effective.

7-3-4 (Right to indemnification of guarantor on behalf of one of several obligors)

A guarantor on behalf of one of several joint obligors or obligors of an indivisible joint obligation may obtain indemnification from the other obligors in proportion to their respective shares.

7-3-5 (Right to indemnification of co-guarantors)

(1) If one of several co-guarantors has effected performance of the guaranty obligation or otherwise procured a common discharge thereof at his own expense, such guarantor may demand indemnification from the other guarantors in proportion to their respective shares of the burden.

(2) In the case described in paragraph (1), the guarantor may demand indemnification with respect to the actual amount paid and interest accruing thereon, as well as compensation for damages.

(3) In the case of a co-guaranty that contains an agreement to apportion the guaranty obligation among the co-guarantors and limit each co-guarantor's liability vis-à-vis the obligee to the apportioned share thereof, if one of the co-guarantors has procured at his own expense a common discharge of the obligation in excess of his share of the burden, the provisions of Articles 7-3-2 (Indemnification of voluntary guarantor), 7-3-3 (Requirements for indemnification) and 7-3-4 (Right to indemnification from one of several obligors) shall apply *mutatis mutandis*.

## Section IV. Subrogation

7-4-1 (Subrogation following performance)

(1) A guarantor who has effected performance of the underlying obligation or otherwise procured discharge thereof at his own expense shall acquire the obligee's rights in connection with the underlying obligation, and shall be entitled to exercise in lieu of the obligee the security interests securing such rights.

(2) In the case described in paragraph (1), a guarantor who has obtained a partial discharge may exercise the obligee's rights and the associated security interests concurrently with the obligee in proportion to the value of the discharge obtained by the guarantor. In this case, the right of termination may be exercised solely by the obligee. However, in the event of termination, [the terminating obligee] shall return to the subrogor the amount for which the discharge was obtained and interest thereon.

7-4-2 (Duty to deliver documents, etc.)

(1) An obligee who has obtained full satisfaction by virtue of the guarantor's performance or

other expenditure must deliver to the guarantor the instrument certifying the underlying obligation and the property held in the obligee's possession as security.

(2) If the guarantor's performance or other expenditure has been made with respect to only part of the obligation, the obligee shall record the fact of the subrogation in the instrument and allow the guarantor to supervise the preservation of the property held in the obligee's possession as security.

7-4-3 (Duty to preserve security)

An obligee who has obtained satisfaction by virtue of the guarantor's performance or other expenditure is obligated to preserve the security for the benefit of the guarantor who made such performance or other expenditure.

7-4-4 (Ranking of subrogors)

(1) A guarantor who effects performance or other expenditure may not thereafter be subrogated to the rights of the obligee as against a third-party acquirer of an immovable provided as security unless [the fact of subrogation] is registered after such performance or other expenditure.

(2) A guarantor shall be subrogated to the rights of the obligee as against third party security providers only in accordance with the proportion of the number of third party security providers to that of guarantors.

7-4-5 (*Mutatis mutandis* application of provisions regarding subrogation of performing party)

With respect to subrogation arising out of a guarantor's performance or other expenditure, in addition to the provisions set forth in this Section VI, the provisions of Sub-section IV, Section I, Chapter Seven of Book Four shall apply *mutatis mutandis*.

## Chapter Eight Joint Obligation

### Section I. Creation of Joint Obligation

8-1-1 (Definition of joint obligation)

(1) Where multiple persons have assumed a joint obligation, the obligee may demand full or partial performance from any individual obligee or from all of the obligees simultaneously or separately.

(2) Where one, several or all joint obligors have been declared bankrupt, the obligee may seek distribution of the entire amount of the obligation in the bankruptcy proceedings for each of such obligors.

8-1-2 (Creation of joint obligation)

(1) A joint obligation is created by a provision of law or by the express or implied agreement between the obligee and each of multiple obligors who are acknowledged to have in common an intention of being obligated jointly with the others.

(2) The agreement described in paragraph (1) may be reached between the obligee and all obligors simultaneously or between the obligor and each obligor separately.

(3) The obligee can exempt any obligor from the joint liability with other obligors.

(4) An obligor who is exempted from the joint liability is thereafter liable only for that share of the obligation assumed by the obligor prior to the exemption.

(5) Each joint obligor is presumed to bear an equal share of the total obligation.

#### 8-1-3 (Nullification or revocation regarding obligor)

The existence of grounds for nullification or revocation of an act regarding a joint obligor shall not affect the validity of the obligation assumed by the remaining joint obligors.

### Section II. Effect of Events Occurring Regarding Single Joint Obligor

#### 8-2-1 (Universal effect of demand or other ground for interruption of prescription period)

A demand for performance or other act that serves to interrupt a period of prescription that is made with respect to one joint obligor shall be effective against all other joint obligors.

#### 8-2-2 (Universal effect of performance, etc.)

Where one joint obligor makes performance, substitute act of performance or performance by deposit, the obligation is thereby extinguished with respect to the other joint obligors as well.

#### 8-2-3 (Universal effect of offset)

(1) Where one joint obligor has a claim against the obligee, the obligor's offset of the claim against the obligation shall serve to extinguish the obligation on behalf of all joint obligors.

(2) While the obligor possessing the claim described in paragraph (1) does not exercise an offset of such claim against the obligation, the other obligors may refuse to perform with respect to that obligor's share of the obligation.

#### 8-2-4 (Universal effect of novation)

The execution of a novation between the obligee and any joint obligor shall serve to extinguish the obligation for all obligors.

#### 8-2-5 (Universal effect of merger)

A merger between the obligee and any joint obligor shall be deemed to constitute performance by that obligor.

#### 8-2-6 (Universal effect of exemption)

(1) An exemption given to one joint obligor with respect to the entire obligation is effective with respect to the other obligors only to the extent of the share of the obligation for which that obligor is responsible.

(2) Where an exemption with respect to part of the obligation is given to one joint obligor, the exemption's effect with respect to the other obligors shall be proportional to the effect it would have had if it had constituted an exemption with respect to the entire obligation.

#### 8-2-7 (Universal effect of prescription)

(1) Where one joint obligor invokes the benefit of a prescription that has been perfected with respect to

that obligor, the other obligors shall be exempted from the obligation to the extent of the share of the obligation for which that obligor was responsible.

(2) In the case described in paragraph (1), where the prescription has been perfected but the benefit of prescription has not been invoked, the other obligors may invoke such prescription with respect to the share of the obligation for which the obligor originally eligible to invoke prescription was responsible.

#### 8-2-8 (Principle of relative effect)

Except as provided in Articles 8-2-1 through 8-2-7, an event occurring with respect to one joint obligor shall have no effect with respect to the other obligors.

### Section III. Indemnification

#### 8-3-1 (Performing obligor's right to indemnification)

(1) Where a joint obligor has obtained a discharge from the obligation through his own performance or other expenditure, and the other joint obligors have consequently been discharged as well, the joint obligor may demand indemnification from the other obligors with respect to their respective shares of the obligation. Where the performance or other expenditure of a joint obligor covers only a part of the obligation, and that obligor and the other joint obligors receive a discharge to that extent, the obligor may demand indemnification in accordance with the percentage of the entire obligation that was discharged by such performance or expenditure.

(2) The demand for indemnification described in paragraph (1) may include legal interest incurred after the date of discharge through performance or other expenditure, as well as unavoidable expenses and other losses.

#### 8-3-2 (Notification as requirement for indemnification)

(1) Where a joint obligor, without notifying the other obligors of the receipt of a demand for performance by the obligee, obtains a discharge from the obligation through his own performance or other expenditure, thereby discharging the other joint obligors as well, another obligor who had grounds to defend against the obligee's claim may raise such grounds, to the extent of such obligor's share of the obligation, as a defense to a claim for indemnification by the joint obligor who obtained a discharge from the obligation through performance or other expenditure. However, where the other obligor's grounds for defending against the obligee consist of an offset [with a counter-obligation owed by the obligee], the obligor against whom the defense is raised may demand that the obligee perform such counter-obligation that should have been extinguished by the offset.

(2) Where a joint obligor obtains a discharge from the obligation through his own performance or other expenditure and fails to notify the other obligors that they are thereby discharged from the obligation as well, and another joint obligor thereafter obtains a discharge from the obligation by tendering performance or other expenditure to the obligee without knowledge of the discharge obtained as a result of the first joint obligor's performance or expenditure, the second joint obligor may deem his own performance or other action discharging the obligation as effective.

(3) Where performance or other expenditure that would discharge the obligation are made by multiple joint obligors, if the notification described in paragraphs (1) and (2) is not provided, the discharging performance or other expenditure that is made first in time shall be deemed effective.

#### 8-3-3 (Indemnification where joint obligor lacks financial capacity)

Where a joint obligor lacks the financial capacity to make indemnification, the amount of that obligor's

liability for indemnification shall be borne by the obligor demanding indemnification and by the remaining joint obligors having such capacity in proportion to their respective share of the obligation. However, where the obligor demanding indemnification is negligent, such obligor may not demand indemnification from the other obligors for the financially incapable obligor's share of the obligation.

8-3-4 (Exemption of joint liability and financially incapable obligor's share)

Where a joint obligor obtains an exemption from the joint liability with other obligors, if any of the other obligors lacks the financial capacity to make indemnification, the obligee shall assume that share of the indemnification amount imputed to the financially incapable obligor for which the obligor exempted from the joint liability would otherwise be liable.

**Section IV. Subrogation by Performance**

8-4-1 (Subrogation)

(1) Where a joint obligor obtains the right to demand indemnification from the other obligors, such obligor shall succeed to the claims possessed by the obligee against the other obligors to the extent of such indemnification, and shall be subrogated to the position of the obligee in regard to any security interests securing such claims.

(2) The provisions of Book Four, Chapter Seven, Section I, Sub-section IV shall apply *mutatis mutandis* to the subrogation of an obligor seeking indemnification.

**Section V. Other Situations Involving Multiple Obligors**

8-5-1 (Indivisible obligation, sham obligation, divisible obligation)

(1) Where multiple obligors owe the same obligation to a single obligee, if the obligors are not acknowledged to have in common an intention to assume joint and several responsibility with the others, the provisions of Article 8-1-1 shall apply *mutatis mutandis*. However, where performance of the obligation is divisible, and divided performances will not harm the obligee, each obligor shall assume a divided and separate obligation corresponding to his respective share. Where each obligor's share cannot be determined, each share shall be presumed to be equal.

(2) In the case described in the first sentence of paragraph (1), events occurring with respect to one obligor shall not affect the other obligors except in the cases described in Article 8-2-2 and paragraph (1) of Article 8-2-3.

(3) Where one obligor described in the first sentence of paragraph (1) obtains a discharge of the obligation through his own performance or other expenditure and the other obligors are thereby discharged as well, if it is necessary to preserve fairness between the performing obligor and the other obligors, the performing obligor may, to the extent necessary to preserve fairness among the obligors, demand indemnification from the other obligors.

**BOOK SIX “Relatives” (to come)**

**Chapter One General Provisions (to come)**  
**Chapter Two Engagement (to come)**  
**Chapter Three Marriage (to come)**  
**Chapter Four Parents and Children (to come)**  
**Chapter Five Parental Power (to come)**  
**Chapter Six Guardianship (to come)**  
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**BOOK SEVEN “SUCCESSION” (to come)**  
**Chapter One General Provisions (to come)**  
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**Chapter Five Acceptance and Renunciation of Succession (to come)**  
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