

CIVIL CODE

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CIVIL CODE

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly issues the Civil Code.

PART ONE

GENERAL PROVISIONS

CHAPTER I

General Provisions**Article 1** *Applicability*

This Code regulates the legal status of and the legal standards for conduct of individuals and legal entities; the personal and property rights and obligations of individuals and legal entities in relations formed on the basis of equality, free will, asset independence and self-responsibility (hereinafter together referred to as *civil relations*).

Article 2 *Recognition, respect, protection and ensuring of civil rights*

1. In the Socialist Republic of Vietnam, civil rights are recognized, respected, protected and ensured in accordance with the Constitution and law.
2. Civil rights may be restricted only in accordance with law in necessary cases for the reason of national defence, national security, social order and safety, social morals, or community health.

Article 3 *Basic principles of civil law*

1. Every individual or legal entity is equal and may not be discriminated against for any reason; and is equally protected by law for personal and property rights.
2. Individuals and legal entities establish, perform and terminate their civil rights and obligations on the basis of free and voluntary commitments and agreement. Any commitment or agreement which does not violate a prohibition by law or is not contrary to social morals is valid for performance by the parties and must be respected by other subjects.
3. Individuals and legal entities must establish, perform and terminate their civil rights and obligations with good will and honesty.
4. The establishment, performance and termination of civil rights and obligations may not infringe upon

national or ethnic interest, public interest, or legitimate rights and interest of other people.

5. Individuals and legal entities must bear self-responsibility for non-performance or incorrect performance of civil obligations.

Article 4 *Application of the Civil Code*

1. This Code is the general law to govern civil relations.
2. Other related laws governing civil relations in specific sectors must not be inconsistent with the basic principles of civil law prescribed in article 3 of this Code.
3. Where other related laws do not contain provisions [on civil relations] or contain provisions which are in breach of clause 2 of this article, the provisions of this Code shall apply.
4. Where there is any difference between the provisions of this Code and of an international treaty to which the Socialist Republic of Vietnam is a member on the same issue, the provisions of the international treaty shall apply.

Article 5 *Application of customary practice*

1. Customary practice means a rule of behaviour with clear content to determine the rights and obligations of an individual or a legal entity in a specific civil relation, which was formed and repeated many times over a long period of time, and has been recognized and widely applied in a region, area, ethnicity, resident community, or in a civil sector.
2. Matters which are not addressed by law nor agreed by the parties may be regulated by customary practices, but such customary practices must not be inconsistent with the basic principles of civil law prescribed in article 3 of this Code.

Article 6 *Application of analogous law*

1. Where relations arise within the governing scope of civil law but are not addressed by law nor agreed by the parties and no customary practice applies, provisions of the law governing analogous civil relations shall apply.
2. Where analogous law cannot be applied in accordance with clause 1 of this article, the basic principles of civil law prescribed in article 3 of this Code, case law or equity shall apply.

Article 7 *State policies in respect of civil relations*

1. The establishment, implementation and termination of civil rights and obligations must ensure preservation of ethnic identity and shall respect and promote the good customs, practices and traditions, solidarity, mutual support, [*the tradition of*]¹ each person² for the community and the

¹ *Allens footnote:* Throughout this translation, words not appearing in the Vietnamese text have been inserted in italics in square parentheses to aid comprehension.

community for each person, and the high moral values of the various ethnic groups living together in Vietnam.

2. Conciliation between the parties in accordance with law is encouraged in civil relations.

CHAPTER II

Establishment, Implementation And Protection Of Civil Rights

Article 8 *Bases for establishing civil rights*

Civil rights are established on the following bases:

1. Contracts.
2. Unilateral legal acts.
3. Decisions of a court or other competent State agency in accordance with law.
4. Results of labour, production or business; results of activities which create the subject of intellectual property rights.
5. Possession of property.
6. Use of or deriving benefits from property without legal grounds.
7. Suffering loss or damage due to an illegal act.
8. Unauthorized performance of work.
9. Other bases prescribed by law.

Article 9 *Performance of civil rights*

1. Individuals and legal entities perform civil rights according to their will which must not be inconsistent with the provisions in articles 3 and 10 of this Code.
2. The non-performance by an individual or a legal entity of their civil rights is not the basis for termination of such rights, except where otherwise prescribed by law.

Article 10 *Limit to performance of civil rights*

1. Individuals and legal entities must not abuse their civil rights to cause loss or damage to other people, to breach their obligations, or for other purposes not in accordance with law.
2. If an individual or legal entity fails to comply with the provisions in clause 1 of this article, a court or another competent agency may, based on the nature and consequences of the act of breach, not

² *Allens footnote:* The Vietnamese text interchanges between 'individual' and 'person'. In this respect, this translation attempts to mirror the Vietnamese text.

protect a part or all of their rights, order compensation if loss or damage is caused, and may impose other remedies as prescribed by law.

Article 11 *Methods to protect civil rights*

Where the civil rights of an individual or a legal entity are violated, such entity has the right for self-protection in accordance with this Code or other relevant laws, or to request that a competent agency or

organization:

1. Recognize, respect, protect and ensure their civil rights.
2. Order compulsory termination of the violating act.
3. Order a public apology or correction.
4. Order the performance of obligations.
5. Order compensation for loss or damage.
6. Revoke a particular illegal decision of a competent person, agency or organization.
7. Other requests in accordance with law.

Article 12 *Self-defence of civil rights*

Self-defence of a civil right must be appropriate to the nature and seriousness of the violation of such civil right, and must not be inconsistent with the basic principles of civil law prescribed in article 3 of this Code.

Article 13 *Compensation for loss or damage*

Individuals and legal entities whose civil rights are violated shall be compensated for all loss or damage, except where otherwise agreed by the parties or otherwise prescribed by law.

Article 14 *Protection of civil rights via competent agencies*

1. The court and other competent agencies are responsible for respecting and protecting civil rights of individuals and legal entities.

Where a civil right is violated or disputed, protection of the right is carried out in accordance with the law on proceedings at a court or arbitration.

Protection of civil rights in accordance with administrative procedures is carried out in the cases prescribed by law. A decision on resolution of a case in accordance with administrative procedures may be reviewed at a court.

- 2.³ A court may not refuse resolution of a civil case for the reason that no provision is yet available to apply; in such case, the provisions in articles 5 and 6 of this Code shall apply.

³ *Allens footnote:* This provision is new as compared to the old 2005 Code. See also article 4.2 of the 2015 Civil Procedure Code: "A court may not refuse to resolve a civil case on the basis that there are no laws applicable to it. ... Resolution shall be based on the principles in the Civil Code and this Code".

Article 15 *Revocation of a particular illegal decision of a competent person, agency or organization*

Upon resolution of a request for protection of civil rights, a court or another competent agency has the right to revoke a particular illegal decision of a competent person, agency or organization.

Where a particular decision is revoked, the violated civil right is restored and may be protected by the methods prescribed in article 11 of this Code.

CHAPTER III

Individuals

Section 1

Civil Legal Capacity and Capacity for Civil Acts of Individuals

Article 16 *Civil legal capacity of individuals*

1. The civil legal capacity of an individual means the capability of the individual to have civil rights and civil obligations.
2. All individuals have equal civil legal capacity.
3. The civil legal capacity of an individual commences at birth and terminates at death.

Article 17 *Content of civil legal capacity of individuals*

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

Article 18 *No restriction on civil legal capacity of individuals*

The civil legal capacity of an individual may not be restricted, except where otherwise provided by this Code or other relevant laws.

Article 19 *Capacity for civil acts of individuals*

The capacity for civil acts of an individual shall be the capability of the individual to establish and exercise civil rights and perform civil obligations through his or her acts.

Article 20 *Adults*

1. Adults are persons who are eighteen (18) or more years of age
2. An adult shall have full capacity for civil acts except in the circumstances provided in articles 22, 23 and 24 of this Code.

Article 21 *Minors*

1. Minors are persons who are under eighteen (18) years of age.
2. Civil transactions of a person under six years of age are established and performed by his or her legal representative.
3. A person who is from six to under fifteen (15) years of age must have the consent of his or her legal representative to establish and perform civil transactions, except for civil transactions which are performed for the purpose of meeting the needs of daily life appropriate to the age group.
4. A person who is from fifteen (15) to under eighteen (18) years of age may himself or herself establish

and perform civil transactions, except for civil transactions relating to real property or movable property which require registration and other civil transactions which require the consent of his or her legal representative in accordance with law.

Article 22 *Loss of capacity for civil acts*

1. Where a person is incapable of being aware of or controlling his or her own acts due to any mental or other illness, a court shall, based on the conclusion of forensic mental examination and at the request of a person with related rights or interests, or a relevant agency or organization, issue a decision declaring the former person as a person who has lost capacity for civil acts.

Where the basis on which a person has been declared as having lost the capacity for civil acts no longer exists, the court shall, at the request of such person or any person with related rights or interests, or a relevant agency or organization, issue a decision revoking the decision declaring the loss of capacity for civil acts.

2. Civil transactions of a person who has lost the capacity for civil acts must be established and performed by his or her legal representative.

Article 23 *Person with difficulty in awareness or control of his or her own acts*

1. Where an adult is incapable of being sufficiently aware of or controlling his or her own acts due to any mental or physical condition but not to the extent of loss of capacity for civil acts, a court shall, based on the conclusion of forensic mental examination and at the request of such person, a person with related rights or interests, or a relevant agency or organization, issue a decision declaring the former person as a person who has difficulty in awareness or control of his or her own acts, appoint a guardian, and determine the rights and obligations of the guardian.
2. Where the basis on which a person has been declared as having difficulty in awareness or control of his or her own acts no longer exists, the court shall, at the request of such person or any person with related rights or interests, or a relevant agency or organization, issue a decision revoking the decision declaring such person as a person who has difficulty in awareness or control of his or her own acts.

Article 24 *Restricted capacity for civil acts*

1. At the request of a person with related rights or interests or of a relevant agency or organization, a court may issue a decision declaring a person whose addiction to drugs or other stimulants has ruined the property of his or her family as having restricted capacity for civil acts. The court determines the legal representative of a person with restricted capacity for civil acts and the scope of such representation.
2. The consent of the legal representative must be obtained in respect of the establishment and performance of civil transactions relating to the property of a person with restricted capacity for civil acts, except for transactions to meet the needs of daily life or where otherwise provided by relevant laws.
3. Where the basis on which a person has been declared as having restricted capacity for civil acts no longer exists, the court shall, at the request of such person or any person with related rights or interests or a relevant agency or organization, issue a decision revoking the decision declaring restricted capacity for civil acts.

Section 2

Personal Rights

Article 25 *Personal rights*

1. Personal rights provided for in this Code are civil rights personal to each individual and may not be transferred to other persons, except where otherwise provided by other relevant laws.
2. The establishment and performance of civil relations relating to personal rights of minors, persons having lost their capacity for civil acts, persons having difficulty in awareness and control of their acts must have the consent of the legal representatives of such persons in accordance with provisions of this Code, other relevant laws, or a decision of a court.

The establishment and performance of civil relations relating to personal rights of a person being declared as missing or a deceased person must have the consent of the spouse or adult children of such person; where there is no such person, the consent of the father or mother of the person being declared as missing or the deceased person shall be required, except where otherwise prescribed by this Code or other relevant laws.

Article 26 *Rights to having surnames and given names*

1. Each individual has the right to have a surname and given name (including a middle name, if any). The surname and given name of a person shall be determined according to the names in his or her birth certificate.
2. The surname of an individual is determined as the surname of his or her biological father or surname of his or her biological mother as agreed by the mother and the father; in the absence of such agreement, the surname of the child is determined according to customary practice. If the biological father has not been identified, the surname of the child is determined according to the surname of his or her biological mother.

If an abandoned child whose biological parents have not been identified is adopted, the surname of the child is determined according to the surname of his or her adoptive father or adoptive mother as agreed between the adoptive father and adoptive mother. Where there is only the adoptive father or the adoptive mother, the surname of the child is determined according to the surname of such parent.

If an abandoned child whose biological parents have not been identified has not been adopted, the surname of the child is determined according to the request of the person leading the establishment taking care of such child, or according to the request of the person wishing to register the birth of the child if such child is being temporarily fostered by such person.

A biological father or biological mother prescribed in this Code means a father or mother determined based on the event of birth; or a person hiring a surrogate with the person born through surrogacy in accordance with the Law on Marriage and Family.

3. Naming is restricted in the case of violation of legitimate rights and interests of other persons, or inconsistency with the basic principles of civil law prescribed in article 3 of this Code.

Names of Vietnamese citizens must be in Vietnamese or another ethnic language of Vietnam; and shall not be a number or a non-letter character.

4. An individual shall establish and exercise civil rights and perform civil obligations in his or her surname and given name.

5. The use of aliases and pseudonyms must not cause loss or damage to the legal rights or interests of other persons.

Article 27 *Right to change surnames*

1. An individual has the right to request the authorized State agency to recognize a change of surname in the following cases:
 - (a) Where the surname of a biological child is changed from the surname of the biological father to the surname of the biological mother or vice versa;
 - (b) Where the surname of a biological child is changed from the surname of the biological father or biological mother to the surname of the adoptive father or adoptive mother at the request of the adoptive father or adoptive mother;
 - (c) Where a person ceases to be an adopted child and such person or his or her biological father or mother wishes to reclaim the surname according to that of his or her biological father or mother;
 - (d) Where the father or mother of the person has been identified and they wish, or such person wishes, to change the surname of the person;
 - (dd) Where the person was lost⁴ and his or her surname is to be changed upon discovering the origin of his or her bloodline;

⁴ *Allens footnote:* Here, "lost" is used in the sense of a person who has no knowledge of his or her bloodline.

- (e) Where the surname of a person is changed to the surname of his or her spouse in a marriage or family relationship with a foreign element to comply with the law of the country of citizenship of the foreign spouse, or the surname before the change is reclaimed;
 - (g) Where the surname of a child is changed because the surname of the father or mother is changed;
 - (h) Other cases as prescribed by the laws on civil status.
2. The change of the surname for a person of nine or more years of age must be subject to the consent of such person.
 3. The changing of the surname of an individual shall not change or terminate the civil rights and obligations which were established in the former surname.

Article 28 *Right to change names*

1. An individual has the right to request that a competent State authority recognize a change of name in the following cases:
 - (a) Where the person wishes to change his or her given name which causes confusion or has an adverse effect on his or her family feelings or on his or her honour, legal rights or interests;

- (b) Where the adoptive father or mother of the person wishes to change the name of their adopted child; or if a person ceases to be an adopted child and such person or his or her biological father or mother wishes to reclaim the given name which was given by his or her biological father or mother;
 - (c) Where the biological father or mother of the person has been identified and they wish, or such person wishes, to change the name of the person;
 - (d) Where the person was lost and his or her given name is to be changed upon discovering the origin of his or her bloodline;
 - (dd) Where the name of a person is changed in a marriage or family relationship with a foreign element to comply with the law of the country of citizenship of the foreign spouse, or the name before the change is reclaimed;
 - (e) Where the given name of the person is to be changed upon a re-determination or a change of the gender of such person;
 - (g) Other cases as provided by the law on civil status.
2. The changing of the given name of a person who is nine or more years of age must be subject to the consent of such person.
 3. The changing of a given name of an individual shall not change or terminate the civil rights and obligations which were established in the former given name.

Article 29 *Right to identification and re-identification of ethnicity*

1. An individual has the right to identification and re-identification of his or her ethnicity.
2. An individual shall have his or her ethnicity identified at birth in accordance with the ethnicity of his or her biological father and mother. Where the biological father and mother belong to two different ethnic groups, the ethnicity of the person shall be that of his or her biological father or mother as mutually agreed between the biological father and mother; in the absence of such agreement, the ethnicity of the person shall be determined according to customary practices; where customary practices differ, the ethnicity of the person shall be determined according to the customary practice of the ethnic group with fewer people.
3. If an abandoned child whose biological parents have not been identified is adopted, the ethnicity of the child is determined according to the ethnicity of his or her adoptive father or adoptive mother as agreed between the adoptive father and adoptive mother. Where there is only the adoptive father or adoptive mother, the ethnicity of the child is determined according to the ethnicity of such parent.

If an abandoned child whose biological parents have not been identified has not been adopted, the ethnicity of the child is determined according to the request of the person leading the establishment taking care of such child, or the request of the person temporarily fostering such child at the time of birth registration for the child.

3. An individual shall have the right to request the authorized State agency to re-determine his or her ethnicity in the following cases:
 - (a) In accordance with the ethnicity of the biological father or mother where they belong to two different ethnic groups;

- (b) In accordance with the ethnicity of the biological father or mother in the case where the adopted person has identified his or her biological father or mother.
- 4. The re-determination of the ethnicity of a minor who is fifteen (15) to under eighteen (18) years of age must be subject to the consent of such person.
- 5. The abuse of re-determination of ethnicity for illegal personal gain or sowing division between and damaging the solidarity of Vietnamese ethnic groups is prohibited.

Article 30 *Right to declaration of birth and death*

- 1. When an individual is born, he or she has the right to have his or her birth declared.
- 2. When an individual dies, the death must be declared.
- 3. If a newborn child dies at twenty four (24) or more hours after birth, the birth must be declared and the death must be declared; if the child lives for under twenty four (24) hours, declaration of birth and declaration of death shall not be required, except where requested by the biological father or mother.
- 4. Birth declaration and death declaration are regulated by the law on civil status.

Article 31 *Right to nationality*

- 1. An individual has the right to nationality.
- 2. The determination of, any changes to, the obtaining or surrendering of or return to Vietnamese nationality shall be as prescribed in the Law on Vietnamese Nationality.
- 3. Rights of persons without nationality residing or living in the territory of Vietnam are ensured in accordance with law.

Article 32 *Rights of individual with respect to his or her image*

- 1. An individual has rights with respect to his or her image.

The use of an image of an individual must have the consent of the person.

Where an image of a person is used for commercial purposes, remuneration must be paid to the person having the image, except where agreed by the parties.

- 2. The use of an image in the following cases does not require consent of the person having the image or of his or her legal representative:
 - (a) The image is used for the national interest, ethnic group interest, or public interest;
 - (b) The image used is from a public activity, including conferences, workshops, sports competitions or artistic performance activities, or other public activities, which do not damage the honour, dignity or reputation of the person having the image.
- 3. Where the use of an image violates the provisions in this article, the person having the image has the right to request that a court issue a decision to force the violating person or related agency, organization or individual to recover, destroy or terminate the use of the image, to compensate for

loss or damage, and to apply other measures for resolution in accordance with law.

Article 33 *Right to live, and right to safety of life, health and physical body*

1. An individual has the right to live, the inviolable right to life and physical body, and the right to health protection by law. No one may be unlawfully deprived of his or her life.
2. When any person has a life threatening accident or illness, a person who discovers such situation has the responsibility to take or to request another individual, agency or organization with the necessary means to take such person promptly to the nearest medical examination or medical treatment facility; medical examination or medical treatment facilities are responsible to carry out medical examination or treatment in accordance with the law on medical examination and treatment.
3. The consent of a person is required for the anaesthetization, surgery, amputation, transplant of tissues or bodily organs of that person; the application of new techniques, or new medical examination or treatment methods to that person; and medical, pharmaceutical tests or any other form of testing on that person; which must be carried out by authorized organizations.

If the tested person is a minor, has lost the capacity for civil acts, has difficulty in awareness or control of his or her own acts, or is unconscious, the consent of a parent, spouse, adult child or guardian of such person must be obtained; where there is a threat to the life of a patient and it is not possible to wait for consent from one of the above persons, a decision of an authorized person of the medical examination or medical treatment facility is required.

4. Post-mortem examination may be performed in one of the following circumstances:
 - (a) The person expressed consent prior to death;
 - (b) In the absence of such consent, the consent of a parent, spouse, adult child or guardian of the deceased was obtained;
 - (c) In cases prescribed by law, pursuant to the decision of the head of the medical examination or medical treatment facility or of an authorized State agency.

Article 34 *Right to protection of honour, dignity and reputation*

1. The honour, dignity and reputation of an individual is inviolable and is protected by law.
2. An individual has the right to request that a court refute information which adversely affects his or her honour, dignity and reputation.

The protection of honour, dignity and reputation may be carried out after the death of an individual at the request of his or her spouse or adult child; or in the absence of such persons, at the request of a parent of the deceased, except where otherwise prescribed by relevant laws.

3. Information which adversely affects the honour, dignity and reputation of an individual must be removed or corrected by the same mass media means on which such information was previously published. If such information is stored by an agency, organization or individual, it must be destroyed.
4. Where it is impossible to identify the person who spread the information which adversely affects the honour, dignity and reputation [of an individual], the person affected by such information has the right to request that the court announce that such information is incorrect.

5. An individual whose honour, dignity and reputation is adversely affected by information shall, in addition to the right to request refutation of such information, have the right to request that the person providing such information publicly apologize, correct [the information], and pay compensation for loss or damage.

Article 35 *Right to donate and receive tissues and body organs and to donate and take bodies [corpses]*

1. An individual has the right to donate his or her tissues and body organs when living, or to donate his or her tissues, bodily organs or body after death for the purpose of medical treatment of others or for medical, pharmaceutical research or other scientific research.
2. An individual has the right to receive tissues or bodily organs of other persons for his or her medical treatment. Medical examination or medical treatment facilities and legal entities authorized to carry out scientific research have the right to receive bodily organs or to take corpses for medical treatment, medical or pharmaceutical testing or other scientific researches.
3. The donation and taking of tissues, bodily organs and corpses must comply with the conditions and be carried out in accordance with the provisions of this Code, the Law on Donation, Taking and Graft of Tissues and Bodily Organs, and Donation and Taking of Corpses, and other relevant laws.

Article 36 *Right to re-establish gender*

1. An individual has the right to re-establish his or her gender.

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

2. The re-establishment of the gender of a person shall be implemented in accordance with law.
3. An individual whose gender has been re-established has the right and obligation to register civil status changes in accordance with the law on civil status; and has personal rights suitable to the re-established gender pursuant to provisions of this Code and other relevant laws.

Article 37 *Gender transformation*

Gender transformation is carried out in accordance with law. An individual whose gender has been transformed has the right and obligation to register civil status changes in accordance with the law on civil status; and has personal rights suitable to the transformed gender pursuant to provisions of this Code and other relevant laws.

Article 38 *Right to private life, personal privacy and family privacy*

1. Private life, personal privacy and family privacy are inviolable and protected by law.
2. The collection, storage, use, and publication of information related to the private life or personal privacy of an individual must have the consent of that person, and the collection, storage, use, and publication of information related to family privacy must have the consent of the family members, except where otherwise prescribed by law.
3. The safety of the mail, telephone, telegraph, electronic database and other forms of private electronic information exchange of an individual shall be ensured and kept confidential.

The opening, control and seizure of the mail, telephone, telegraph, electronic database and other

forms of private electronic information exchange of another person may only be conducted in the cases provided by law.

4. A party to a contract may not disclose information on the private life, personal privacy or family privacy of the other party(ies) known to it during the process of contract establishment and performance, unless otherwise agreed.

Article 39 *Personal rights in marriage and family*

1. An individual has the right to marry and to divorce, the right to equality between husband and wife, the right to identify a parent or child, the right to be adopted, the right to adopt children, and other personal rights in marriage relations, parent and child relations, and relations among family members. A child born independent of [outside] the marital status of his or her father or mother has the same rights and obligations towards his or her father and mother.
2. Individuals exercise personal rights in marriage and family pursuant to this Code, the Law on Marriage and Family, and other relevant laws.

Section 3

Place Of Residence

Article 40 *Place of residence of individual*

1. The place of residence of an individual is the place where such person usually lives.
2. Where the place of residence of an individual is not able to be determined in accordance with clause 1 of this article, the place of residence of that individual shall be the place where he or she is currently living.
3. Where a party to a civil relation changes his or her place of residence attached to the exercise of rights and performance of obligations, it must inform the other party of its new place of residence.

Article 41 *Place of residence of minors*

1. The place of residence of a minor is the place of residence of the father and mother of the minor; if the mother and father have separate places of residence, the place of residence of the minor shall be the place of residence of the father or mother with whom the minor usually lives.
2. A minor may have a place of residence separate from the place of residence of his or her parents if so agreed by his or her parents or so provided by law.

Article 42 *Place of residence of wards*

1. The place of residence of a ward is the place of residence of the guardian of that ward.
2. A ward may have a place of residence separate from the place of residence of his or her guardian if so agreed by his or her guardian or so provided by law.

Article 43 *Place of residence of husbands and wives*

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

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

Article 44 *Place of residence of military personnel*

1. The place of residence of military personnel currently performing military service is the place at which the unit of the military personnel is stationed.
2. The place of residence of military officers, regular military personnel and national defence workers and officials shall be the place at which their unit is stationed, except where they have places of residence as provided in article 40.1 of this Code.

Article 45 *Place of residence of individuals performing itinerant occupations*

The place of residence of a person performing itinerant work on a ship, boat or other facility for performing the itinerant occupation is the place of registration of such ship, boat or facility, unless he or she has a place of residence as provided in article 40.1 of this Code.

Section 4

Guardianship

Article 46 *Guardianship*

1. Guardianship means an individual or a legal entity is required by law, is nominated by the commune level people's committee, is appointed by a court, or is prescribed in article 48.2 of this Code (hereinafter referred to as a *guardian*) to take care of and protect the legal rights and interests of a minor, a person who has lost his or her capacity for civil acts, or a person who has difficulty in awareness or control of his or her own acts (hereinafter referred to as a *ward*).
2. The guardianship of a person who has difficulty in awareness or control of his or her own acts must have the consent of that person if he or she is capable of expressing his or her wishes at the time of request.
3. Guardianship must be registered at a competent State authority in accordance with the law on civil status.

A natural guardian who does not register guardianship must still perform the obligations of a guardian.

Article 47 *Ward*

1. A ward includes:
 - (a) A minor who no longer has parents, or whose parents are not able to be identified;
 - (b) A minor who has parents but both of them have lost their capacity for civil acts; both of them have difficulty in awareness or control of their acts; both of them have had their capacity for civil acts restricted; both of them have had their rights toward the child restricted as declared by a court; or both do not have the means to care for and educate their child and request a guardian;
 - (c) A person who has lost his or her capacity for civil acts;
 - (d) A person who has difficulty in awareness or controlling his or her own acts.

2. A person may only be the ward of one guardian, except where both the mother and father are the guardians of their child, or both the grandfather and grandmother are the guardians of their grandchild.

Article 48 *Guardian*

1. An individual who or a legal entity which satisfies all the conditions prescribed in this Code may act as a guardian.
2. If a person of full capacity for civil acts selects his or her guardian and such person is in a circumstance which requires guardianship, the selected individual or legal entity shall be the guardian if such person [or legal entity] agrees. The selection of a guardian must be made in writing and notarized or certified.
3. One individual or a legal entity may be the guardian of more than one person.

Article 49 *Conditions for individuals to act as guardians*

An individual who satisfies all of the following conditions may act as a guardian:

1. Having full capacity for civil acts.
2. Having good ethics and necessary means to exercise the rights and perform the obligations of the guardianship.
3. Not being a person currently subject to criminal prosecution or a person who has been convicted and whose crime has not been removed from the record for a deliberate crime of violation of the life, health, honour, dignity or property of another person.
4. Not being a person having his or her rights toward his or her minor child restricted as declared by a court.

Article 50 *Conditions for legal entities to act as guardians*

A legal entity which satisfies all of the following conditions may act as a guardian:

1. Having civil legal capacity suitable for guardianship.
2. Having necessary means to exercise the rights and perform the obligations of the guardianship.

Article 51 *Supervision of guardianship*

1. The relatives of a ward agree to appoint a supervisor of a guardianship from the relatives, or select another individual or legal entity to supervise the guardianship.

The appointment or selection of a supervisor of a guardianship must have the consent of such person. Where the supervision of the guardianship involves management of assets of the ward, the supervisor must register at the commune level people's committee where the ward resides.

Relative of a ward means the spouse, parent or child of the ward; and if there is no such person, relative of a ward means the grandparent or biological sibling of the ward; and if there is also no such person, relative of a ward means the biological uncle or aunt of the ward.

2. If there is no relative of a ward or if the relatives fail to appoint or select a supervisor of the guardianship in accordance with clause 1 of this article, the people's committee of the commune level in which the guardian resides shall appoint an individual or a legal entity to supervise the guardianship. Where there is a dispute over the appointment or selection of a supervisor of guardianship, the court shall make a decision.
3. The supervisor of a guardianship must be a person having full capacity for civil acts if the guardian is an individual, or must have civil legal capacity suitable for guardianship if the guardian is a legal entity; and have necessary means for the performance of the supervision.
4. A guardianship supervisor has the following rights and obligations:
 - (a) To monitor and check the performance of guardianship by the guardian;
 - (b) To consider and to provide timely written opinions on the establishment and performance of civil transactions prescribed in article 59 of this Code;
 - (c) To request that the competent State authority in guardianship consider changes to or termination of guardianship or of guardianship supervision.

Article 52 *Natural guardian of minor*

The natural guardian of a minor prescribed in articles 47.1(a) and (b) of this Code is determined according to the following order:

1. The eldest biological brother or sister shall be the guardian [for his or her younger siblings], if the eldest brother or sister fails to satisfy all conditions for acting as a guardian, the next eldest biological sibling shall be the guardian, unless there is agreement that another biological sibling shall act as the guardian.
2. Where there is no guardian as prescribed in clause 1 of this article, the paternal grandparents or the maternal grandparents shall be the guardian; or these persons shall agree to nominate one or more of them to act as the guardian(s).
3. Where there is no guardian as prescribed in clauses 1 and 2 of this article, a biological uncle or aunt shall be the guardian.

Article 53 *Natural guardian of person having lost his or her capacity for civil acts*

Where there is no guardian as prescribed in article 48.2 of this Code, the natural guardian of a person who has lost his or her capacity for civil acts is determined as follows:

1. Where a wife has lost her capacity for civil acts, the husband shall be the guardian; where a husband has lost his capacity for civil acts, the wife shall be the guardian.
2. Where both parents have lost their capacity for civil acts, or where one parent has lost the capacity for civil acts and the other parent fails to satisfy all conditions to act as guardian, the eldest child shall be the guardian; if the eldest child fails to satisfy all conditions to act as guardian, the next eldest child who satisfies all conditions to do so shall be the guardian.
3. Where an adult who has lost his or her capacity for civil acts does not have a spouse or children, or where his or her spouse or children all fail to satisfy all conditions to act as guardian, the parents of that adult shall be the guardian.

Article 54 *Nomination and appointment of guardians*

1. Where a minor or a person who has lost his or her capacity for civil acts does not have a natural guardian in accordance with the provisions of articles 52 and 53 of this Code, the people's committee of the commune level in which the ward resides shall be responsible to nominate a guardian.

Where there is a dispute among the guardians prescribed in articles 52 and 53 of this Code on the guardian or dispute over the nomination of the guardian, a court shall appoint the guardian.

Where a guardian is nominated or appointed for a minor who is six years or more of age, the wish of such minor must be taken into account.

2. The nomination of a guardian must have the consent of the person nominated to act as the guardian.
3. The nomination of a guardian must be made in writing, specifying the reason for nominating the guardian, the specific rights and obligations of the guardian and the status of the property of the ward.
4. Except where the provisions in article 48.2 of this Code apply, the guardian of a person who has difficulty in awareness or control of his or her own acts shall be appointed by a court from among the guardians prescribed in article 53 of this Code. Where there is no guardian according to the above provision, the court shall appoint a guardian or request that a legal entity perform the guardianship.

Article 55 *Obligations of guardians with respect to minors under fifteen years of age*

1. To take care of and educate the ward.
2. To represent the ward in civil transactions, except where the law provides that persons who are under fifteen (15) years of age are able to establish and perform civil transactions by themselves.
3. To manage the property of the ward.
4. To protect the legal rights and interests of the ward.

Article 56 *Obligations of guardians with respect to minors from fifteen years to eighteen years of age*

1. To represent the ward in civil transactions, except where the law provides that persons who are from fifteen (15) to under eighteen (18) years of age may establish and perform civil transactions by themselves.
2. To manage the property of the ward, except where otherwise prescribed by law.
3. To protect the legal rights and interests of the ward.

Article 57 *Obligations of guardians with respect to wards having lost capacity for civil acts or having difficulty in awareness or control of their own acts*

1. The guardian of a person who has lost the capacity for civil acts has the following obligations:
 - (a) To take care of and to ensure the treatment of illness of the ward;
 - (b) To represent the ward in civil transactions;

- (c) To manage the property of the ward;
 - (d) To protect the legal rights and interests of the ward.
2. The guardian of a person who has difficulty in awareness or control of his or her own acts has obligations in accordance with a decision of a court from among the obligations prescribed in clause 1 of this article.

Article 58 *Rights of guardians*

1. A guardian of a minor or of a person who has lost the capacity for civil acts has the following rights:
- (a) To use the property of the ward to take care of and to pay for the essential needs of the ward.
 - (b) To be reimbursed for all reasonable expenditure for the management of the property of the ward.
 - (c) To represent the ward in the establishment and performance of civil transactions and to perform other rights in accordance with law for the protection of the legal rights and interests of the ward.
2. The guardian of a person who has difficulty in awareness or control of his or her own acts has rights in accordance with a decision of a court from among the rights prescribed in clause 1 of this article.

Article 59 *Management of property of wards*

1. A guardian of a minor or of a person who has lost the capacity for civil acts shall be responsible to manage the property of a ward as if it were the property of such guardian; and may undertake civil transactions relating to the property of the ward for the interests of the ward.

The sale, exchange, lease, loan, pledge, mortgage or deposit of any property and other civil transactions with a high value conducted by the guardian must have the consent of the supervisor of the guardianship.

A guardian may not make a gift of the property of the ward to another person. Unless the transaction is undertaken for the interests of the ward and the supervisor of the guardianship consents to the transaction, all civil transactions between a guardian and the ward of that guardian in relation to the property of the ward shall be invalid.

2. The guardian of a person who has difficulty in awareness or control of his or her own acts may manage the property of the ward in accordance with a decision of a court within the scope prescribed in clause 1 of this article.

Article 60 *Replacement of guardians*

1. A guardian shall be replaced in the following circumstances:
- (a) The guardian no longer satisfies all of the conditions provided in articles 49 and 50 of this Code;
 - (b) A guardian being an individual dies or is declared by a court to have restricted capacity for civil acts, to have difficulty in awareness or control of his or her own acts, to have lost his or her capacity for civil acts, to be a missing person, or a guardian being a legal entity terminates its existence;

- (c) The guardian commits a serious breach of his or her obligations as guardian;
 - (d) The guardian proposes that he or she be replaced and there is another person who agrees to act as guardian.
2. In the case of a change of natural guardian, the persons provided for in articles 52 and 53 of this Code shall be the natural guardians; and if there is no such natural guardian, a guardian shall be nominated or appointed in accordance with the provisions in article 54 of this Code.
 3. The replacement of an appointed guardian shall be implemented in accordance with the procedures set out in the law on civil status.

Article 61 *Transfer of guardianship*

1. Upon replacement by a guardian, the person who conducted the guardianship must transfer the guardianship to the new replacement within fifteen (15) days from the date on which the new guardian is available.
2. The transfer of guardianship must be made in writing, specifying the reason for the transfer, and the status of the property and other relevant matters of the ward at the time of the transfer. The agency which nominated or appointed the guardian [*and*] the supervisor of the guardianship shall witness the transfer of guardianship.
3. In the case of replacement of a guardian as prescribed in article 60.1 of this Code, the agency which nominated or appointed the guardian shall prepare minutes specifying the status of the property and other relevant matters of the ward and the rights and obligations which arose during the course of performing the guardianship for the purpose of transfer to the new guardian, [*and such minutes*] shall be witnessed by the supervisor of the guardianship.

Article 62 *Termination of guardianship*

1. Guardianship shall terminate in the following circumstances:
 - (a) The ward attains full capacity for civil acts;
 - (b) The ward dies;
 - (c) A parent of the ward who is a minor fully satisfies the conditions to exercise his or her [*the parent's*] rights and to perform his or her obligations.
 - (d) The ward is adopted.
2. Termination of guardianship is performed in accordance with the procedures set out in the law on civil status.

Article 63 *Consequences of termination of guardianship*

1. When a ward attains full capacity for civil acts, within fifteen (15) days from the date on which the guardianship is terminated, the guardian shall settle the property on the ward and transfer the rights and obligations which arose from civil transactions for the interest of the ward to the ward.
2. If a ward dies, the guardian shall settle the property on the heir of that ward or deliver the property to the person managing the estate of the ward, and transfer the rights and obligations which arose from civil transactions for the interest of the ward to the heir of that ward within three months from the date

on which the guardianship terminates. If an heir has not yet been identified upon expiry of that period, the guardian shall continue to manage the property of the ward until the property is settled in accordance with the law on inheritance and the guardian shall notify the people's committee of the commune level of the locality in which the guardian resides.

3. Where guardianship is terminated as prescribed in articles 62.1(c) and (d) of this Code, within fifteen (15) days from the date the guardianship is terminated, the guardian shall settle the property and transfer the rights and obligations which arose from civil transactions for the interest of the ward to the parents of that ward.
4. Property settlement and transfer of rights and obligations prescribed in this article shall be made in writing under the supervision of the supervisor of the guardianship.

Section 5

Search Notice for Persons Absent from Place of Residence, Declaration of Missing Persons, Declaration of Death

Article 64 *Request for search notice for person absent from his or her place of residence and management of property of such person*

Where a person has disappeared for six consecutive months, the persons with related rights or interests may petition a court for a search notice for the person absent from his or her place of residence in accordance with the law on civil proceedings and may request a court to take measures to manage the property of the person absent from his or her place of residence in accordance with article 65 of this Code.

Article 65 *Management of property of person absent from his or her place of residence*

1. At the request of a person with related rights or interests, a court shall hand over the property of a person who is absent from his or her place of residence to the following person for management:
 - (a) With respect to property the management of which the absent person has authorized, the person so authorized shall continue to manage the property;
 - (b) With respect to joint property, the remaining joint owners shall manage the property;
 - (c) Property which the husband or wife is currently managing shall continue to be managed by the husband or wife. If the husband or wife has died, has lost the capacity for civil acts, has difficulty in awareness or control of his or her own acts or has had his or her capacity for civil acts restricted, the adult children or the parents of the absent person shall manage the property.
2. Where none of the persons prescribed in clause 1 of this article exist, a court shall appoint a person from amongst the relatives of the person absent from his or her place of residence in order to manage the property of such person. If there are no relatives, the court shall appoint another person to manage the property.

Article 66 *Obligation of person managing property of person absent from his or her place of residence*

1. To maintain and preserve the property of the absent person as if it were his or her own.
2. To sell immediately any property being crops or other products which are in danger of deteriorating.
3. Pursuant to a court decision, to perform the obligations of the absent person to support others and

pay due debts and other financial obligations by recourse to the property of the absent person.

4. To return the property of the absent person upon his or her return and to inform a court thereof; to compensate for any loss or damage caused during the course of management of the property due to his or her [the manager's] fault.

Article 67 *Rights of person managing property of person absent from his or her place of residence*

1. To manage the property of the absent person.
2. To appropriate a portion of the property of the absent person to perform the obligations of such person to support others and to pay due debts and other financial obligations of the absent person.
3. To be reimbursed for all necessary expenditure relating to the management of the property of the absent person.

Article 68 *Declaration of missing persons*

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

The two year period shall commence from the date of the last information regarding such person. If the date of the last information is not able to be determined, the two year period shall commence from the first day of the month following the month of the last information. If the day or month of the last information is not able to be determined, the period shall commence from the first day of the year following the year of the last information.

2. Where the wife or husband of a person who has been declared missing applies for divorce, a court shall grant the divorce in accordance with the law on marriage and family.
3. The decision of a court declaring that a person is missing must be sent to the people's committee at the commune level where the person declared missing last resided for noting in accordance with the law on civil status.

Article 69 *Management of property of persons declared missing*

The person currently managing the property of a person absent from his or her place of residence in accordance with the provisions in article 65 of this Code shall continue to do so when the absent person is declared missing by a court, and such person has the rights and obligations provided in articles 66 and 67 of this Code.

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

Article 70 *Revocation of decision declaring person missing*

1. Where a person who has been declared missing returns or where there is reliable information that such person is still alive, at the request of such person or of a person with related rights and

interests, a court shall issue a decision revoking the decision declaring that such person was missing.

2. Upon return of a person who had been declared missing, such person shall be entitled to redeem his or her property from the person managing the property after management expenses have been paid.
3. Where the wife or husband of a person who had been declared missing has been granted a divorce, the decision granting the divorce shall retain legal effect notwithstanding the return of the person who had been declared missing or reliable information that such person is still alive.
4. The decision of a court revoking the decision declaring that a person is missing must be sent to the people's committee at the commune level where the person declared missing resides for noting in accordance with the law on civil status.

Article 71 *Declaration of death*

1. A person with related rights and interests may request the court to issue a decision declaring that a person is dead in the following cases:
 - (a) If, after three years from the date on which the decision of a court declaring that the person is missing becomes legally effective, there is still no reliable information that such person is alive;
 - (b) If the person went missing during a war and there is no reliable information that such person is alive for five years from the date on which the war ended;
 - (c) If the person was in an accident, catastrophe or natural disaster and there is no reliable information that such person is alive for two years from the date on which such event occurred, except where otherwise provided by law;
 - (d) If the person has been missing for five consecutive years or longer and there is no reliable information that such person is alive. The period in this case shall be calculated in accordance with article 68.1 of this Code.
2. Depending on the facts of each case prescribed in clause 1 of this article, a court shall determine the date of death of a person declared dead.
3. The decision of a court declaring that a person is dead must be sent to the people's committee at the commune level where the person declared as dead resided for noting in accordance with the law on civil status.

Article 72 *Personal and property relations relating to person declared dead by court*

1. When a court's decision declaring that a person is dead becomes legally effective, all relations relating to marriage, family and other personal relations of such person shall be resolved in the same manner as if the person were dead.
2. The property relations of a person who is declared dead by a court shall be resolved in the same manner as if the person were dead; and the property of such person shall be dealt with in accordance with the law on inheritance.

Article 73 *Revocation of decision declaring death*

1. When a person who has been declared dead returns or where there is reliable information that such person is still alive, at the request of such person or of a person with related rights and interests, a

court shall issue a decision revoking the decision declaring that such person was dead.

2. Personal relations of a person who has been declared dead shall be restored when a court issues a decision revoking the decision declaring that such person was dead, except in the following cases:
 - (a) Where a court has granted a divorce pursuant to article 68.2 of this Code to the husband or wife of a person who had been declared dead, such decision shall retain legal effect;
 - (b) Where the husband or wife of a person who had been declared dead has remarried, such marriage shall retain legal effect.
3. A person who had been declared dead but who is still alive has the right to claim his or her property or the remaining property value from the persons who received his or her inheritance.

Where the heir of a person who a court had declared dead is aware that such person is still alive but intentionally concealed such information in order to enjoy an inheritance, the heir must return all of the property received, including any benefits and income derived, and if any loss or damage has been caused, the heir must also compensate.

4. The property relations between husbands and wives shall be dealt with in accordance with provisions of this Code and the Law on Marriage and Family.
5. The decision of a court revoking the decision declaring that a person was dead must be sent to the people's committee at the commune level where the person declared dead resides for noting in accordance with the law on civil status.

CHAPTER IV

Legal Entities

Article 74 *Legal entities*

1. An organization shall be recognized as a legal entity if it satisfies all of the following conditions:
 - (a) It was established in accordance with provisions of this Code or other relevant laws;
 - (b) It has an organizational structure pursuant to article 83 of this Code;
 - (c) It has property independent from other individuals and organizations and it is self- responsible by recourse to its property.
 - (d) It participates independently in legal relations in its own name.
2. Every individual or legal entity has the right to establish a legal entity, except where otherwise prescribed by law.

Article 75 *Commercial legal entities*

1. Commercial legal entity means a legal entity with the main objective of seeking profit which is distributed to its members.
2. Commercial legal entities comprise enterprises and other economic organizations.

3. The establishment, operation and termination of commercial legal entities are performed in accordance with this Code, the Law on Enterprises and other provisions of relevant laws.

Article 76 *Non-commercial legal entities*

1. Non-commercial legal entity means a legal entity without the main objective of seeking profit; and its profit, if any, is not distributed to members.
2. Non-commercial legal entities comprise State agencies, units of the people's armed forces, political organizations, socio-political organizations, socio-occupational-political organizations, social organizations, socio-occupational organizations, social funds, charity funds, social enterprises and other non-commercial organizations.
3. The establishment, operation and termination of non-commercial legal entities are performed in accordance with this Code, the laws on organization of the State apparatus and other provisions of relevant laws.

Article 77 *Charters of legal entities*

1. A legal entity must have a charter if the law so requires.
2. The charter of a legal entity shall include the following principal contents:
 - (a) Name of the legal entity;
 - (b) Purpose and scope of operation of the legal entity;
 - (c) Head office, branches and representative offices, if any;
 - (d) Legal capital (if any);
 - (dd) Legal representative of the legal entity;
 - (e) Organizational structure; procedures for appointment, election, designation, dismissal and resignation of and duties and powers of positions of the management body and other bodies;
 - (g) Conditions for becoming a member or to cease being a member of the legal entity if the legal entity has members;
 - (h) Rights and obligations of members if the legal entity has members;
 - (i) Procedures for approval of decisions of the legal entity; principles for dealing with internal disputes;
 - (k) Procedures for amending and supplementing the charter;
 - (l) Conditions for consolidation, merger, division, demerger, conversion of form and dissolution of the entity.

Article 78 *Names of legal entities*

1. A legal entity must have its name in the Vietnamese language.
2. The name of a legal entity must clearly reflect the organizational form of the legal entity and

distinguish it from other legal entities in the same field of activity.

3. A legal entity must use its own name in civil transactions.
4. The name of a legal entity shall be recognized and protected by law

Article 79 *Head offices of legal entities*

1. The head office of a legal entity is the place where the executive body of the entity is located. A legal entity must publicly announce any change of head office.
2. The liaison address of a legal entity is the address of the head office of the legal entity. A legal entity may choose another location to serve as its liaison address.

Article 80 *Nationality of legal entities*

A legal entity established in accordance with Vietnamese law is a Vietnamese legal entity.

Article 81 *Assets of legal entities*

The assets of a legal entity comprise the capital contributed by its owners, founders and members, and other assets the ownership of which is established for the legal entity in accordance with this Code and other relevant laws.

Article 82 *Establishment and registration of legal entities*

1. A legal entity may be established on the initiative of an individual or organization or in accordance with a decision of the authorized State agency.
2. Registration of legal entities comprise registration of establishment, registration of changes and other registrations in accordance with law.
3. The registration of a legal entity must be publicly announced.

Article 83 *Organizational structure of legal entities*

1. A legal entity must have a management body. The organization, duties and powers of the management body of a legal entity shall be provided in the charter of the legal entity or in the decision establishing the legal entity.
2. A legal entity has other bodies at its own decision or in accordance with law.

Article 84 *Branches and representative offices of legal entities*

1. A branch or a representative office is a dependent unit of a legal entity, not a legal entity.
2. A branch has the task of performing all or part of the functions of the legal entity.
3. A representative office has the task of representing [the legal entity] within the scope assigned by the legal entity and of protecting the interests of the legal entity.
4. The establishment and termination of branches and representative offices of legal entities must be registered in accordance with law and publicly announced.

5. The head of a branch or representative office shall perform his or her duties as authorized by the legal entity within the authorized scope and for the authorized duration.
6. A legal entity shall have the civil rights and obligations which arise from civil transactions established and performed by its branches and representative offices.

Article 85 *Representatives of legal entities*

The representative of a legal entity may be a legal representative or an authorized representative. The representative of a legal entity must comply with the provisions on representation in Chapter IX of this Part.

Article 86 *Civil legal capacity of legal entities*

1. The civil legal capacity of a legal entity means the capability of that entity to have civil rights and obligations. Civil legal capacity of legal entities is unrestricted, except where otherwise prescribed by this Code or other relevant laws.
2. The civil legal capacity of a legal entity arises from the time when it is established or permitted to be established by a competent State authority; where registration of operation of the legal entity is required, the civil legal capacity of the legal entity arises from the time of entry into the register.
3. The civil legal capacity of a legal entity terminates from the time when the entity is terminated.

Article 87 *Civil liability of legal entities*

1. A legal entity must bear civil liability with respect to the civil rights and obligations established and performed in the name of the legal entity by its representatives.

A legal entity bears civil liability with respect to the obligations established and performed by its founders or the representatives of its founders in order to establish and register the legal entity, unless otherwise agreed or prescribed by law.

2. A legal entity shall fulfil its civil liability by recourse to its property and shall not have civil liability on behalf of personnel of the legal entity with respect to the civil obligations established and performed by personnel of the legal entity other than in the name of the legal entity, except where otherwise prescribed by law.
3. Personnel of the legal entity shall not have civil liability on behalf of the legal entity with respect to the civil obligations established and performed by the legal entity, except where otherwise prescribed by law.

Article 88 *Consolidation of legal entities*

1. Legal entities may be consolidated to form a new legal entity.
2. After consolidation, the former legal entities terminate their existence from the time the new legal entity is established; and the civil rights and obligations of the former legal entities are transferred to the new legal entity.

Article 89 *Merger of legal entities*

1. A legal entity may be merged (hereinafter referred to as the *merging legal entity*) into another legal entity (hereinafter referred to as the *merged legal entity*).

2. After merger, the merging legal entity terminates its existence and its civil rights and obligations are transferred to the merged legal entity.

Article 90 *Division of legal entities*

1. A legal entity may be divided into a number of legal entities.
2. After division, the divided legal entity terminates its existence and its civil rights and obligations are transferred to the new legal entities.

Article 91 *Demerger of legal entities*

1. A legal entity may be demerged into a number of legal entities.
2. After demerger, the demerged legal entities and the demerging legal entities shall perform their civil rights and obligations in a manner consistent with their operational objectives.

Article 92 *Conversion of form of legal entities*

1. A legal entity may have its form converted into another legal entity.
2. After conversion of form, the converting legal entity terminates its existence from the time the converted legal entity is established; and the converted legal entity shall inherit the civil rights and obligations of the converting legal entity.

Article 93 *Dissolution of legal entities*

1. A legal entity is dissolved in the following cases:
 - (a) In accordance with the provisions in its charter;
 - (b) Pursuant to a decision of the authorized State agency;
 - (c) Upon expiry of its term of operation as provided in its charter or in the decision of the authorized State agency;
 - (d) Other cases in accordance with law.
2. Prior to dissolution, a legal entity must fulfil all of its property obligations.

Article 94 *Settlement of assets of dissolved legal entities*

1. Assets of dissolved legal entities are settled in the following order:
 - (a) Costs of dissolution of the legal entity;
 - (b) Amounts of salary, retrenchment allowances, social insurance and health insurance owed to employees in accordance with law and other benefits of employees in accordance with the signed collective labour agreement and labour contracts;
 - (c) Tax liabilities and other liabilities;
2. After all the costs for dissolution of the legal entity and liabilities have been paid in full, the remaining amount belongs to the owner of the legal entity and capital contributing members, except in the case

prescribed in clause 3 of this article or where otherwise prescribed by law.

3. Where all the costs for dissolution and the liabilities prescribed in clause 1 of this article have been paid in full by a social fund or charity fund, the remaining assets are transferred to another fund with the same operational objectives.

Where there is no other fund with the same operational objectives or a fund is dissolved because its activities are prohibited by law or contrary to social morals, the assets of the dissolved fund belong to the State.

Article 95 *Bankruptcy of legal entities*

Bankruptcy of legal entities is performed in accordance with the law on bankruptcy.

Article 96 *Termination of existence of legal entities*

1. A legal entity shall terminate its existence in the following cases:
 - (a) Consolidation, merger, division, conversion of form, or dissolution of the legal entity in accordance with articles 88, 89, 90, 92 and 93 of this Code;
 - (b) Declaration of bankruptcy in accordance with the law on bankruptcy.
2. A legal entity terminates its existence from the time when its name is removed from the legal entity registry or as from the time stated in a decision of an authorized State agency.
3. When a legal entity terminates its existence, its assets shall be resolved in accordance with this Code and other provisions of relevant laws.

CHAPTER V

The State Of The Socialist Republic Of Vietnam, And Central And Local State Agencies In Civil Relations

Article 97 *The State of the Socialist Republic of Vietnam and central and local State agencies in civil relations*

Upon participation in civil relations, the State of the Socialist Republic of Vietnam and central and local State agencies are equal to other entities and bear civil liabilities in accordance with articles 99 and 100 of this Code.

Article 98 *Representatives participating in civil relations*

Representation of the State of the Socialist Republic of Vietnam and central and local State agencies upon participation in civil relations is performed in accordance with the law on functions, duties, powers and organizational structure of State agencies. Representation through another individual or legal entity may be performed only in the cases and in accordance with the order and procedures prescribed by law.

Article 99 *Responsibilities for civil obligations*

1. The State of the Socialist Republic of Vietnam and central and local State agencies are responsible for their civil obligations with assets whose owner they represent and which they uniformly manage, except where assets have been transferred to a legal entity as prescribed in clause 2 of this article.

2. Legal entities established by the State of the Socialist Republic of Vietnam or central and local State agencies are not responsible for the obligations arising from the civil relations of the State of the Socialist Republic of Vietnam or central and local State agencies.
3. The State of the Socialist Republic of Vietnam or central and local State agencies are not responsible for the civil obligations of the legal entities they establish, including State owned enterprises, except where the civil obligations of such legal entities are guaranteed by the State of the Socialist Republic of Vietnam or by a central or local State agency in accordance with law.
4. Central and local State agencies are not responsible for the civil obligations of the State of the Socialist Republic of Vietnam or of other central and local State agencies, except where otherwise prescribed by relevant laws.

Article 100 *Responsibilities for civil obligations of the State of the Socialist Republic of Vietnam and central and local State agencies in civil relations where a party is a foreign State, legal entity or individual*

1. The State of the Socialist Republic of Vietnam and central and local State agencies are responsible for the civil obligations they establish with a foreign State, legal entity or individual in the following cases:
 - (a) An international treaty to which the Socialist Republic of Vietnam is a member contains provisions on waiver of immunity rights;
 - (b) The parties to the civil relation agree to waive immunity rights;
 - (c) The State of the Socialist Republic of Vietnam or a central or local State agency waives its immunity rights.
2. Liabilities for civil obligations of foreign States or State agencies upon participation in civil relations with the State of the Socialist Republic of Vietnam, central and local State agencies, or legal entities or individuals of Vietnam shall apply similarly to clause 1 of this article.

CHAPTER VI

Family Households, Co-Operative Groups And Other Organizations Without Legal Entity Status In Civil Relations

Article 101 *Subjects in civil relations involving family households, co-operative groups and other organizations without legal entity status*

1. Where a family household, co-operative group or other organization without legal entity status is involved in a civil relation, the members of such family household, co-operative group or other organization without legal entity status are the subjects involved in the establishment and performance of such civil transaction, or authorize their representative to be involved in the establishment and performance of such civil transaction. Authorization must be made in writing, unless otherwise agreed. Any change to a representative must be notified to the parties to the civil relation.

Where a member of a family household, co-operative group or other organization without legal entity status involved in a civil relation is not authorized by other members as the representative, such member is the subject of the civil relation established and performed by himself or herself.

2. Determination of the subject of a civil relation involving a family household using land is performed in accordance with the Law on Land.

Article 102 *Common property of members of family households, co-operative groups and other organizations without legal entity status*

1. Common property of members of family households, and the rights and obligations in respect of such property, are determined in accordance with article 212 of this Code.
2. Common property of members of co-operative groups, and the rights and obligations in respect of such property, are determined in accordance with article 506 of this Code.
3. Common property of members of other organizations without legal entity status, and the rights and obligations in respect of such property, are determined in accordance with the agreement of the members, except where otherwise prescribed by law.

Article 103 *Civil liability of members of family households, co-operative groups and other organizations without legal entity status*

1. Performance of civil obligations arising from the involvement in civil relations of family households, co-operative groups or other organizations without legal entity status is ensured by the common property of their members.
2. Where the members do not have or do not have sufficient common property to perform a common obligation, an entitled person may request that the members perform such obligation in accordance with article 288 of this Code.
3. In the absence of agreement among the parties, a cooperation contract or other provisions of law, the members jointly bear the civil liabilities prescribed in clause 1 and 2 of this article in proportion to their property contribution; or equally if proportionate shares are impossible to determine.

Article 104 *Legal consequences in respect of civil transactions established or performed by unauthorized member or beyond scope of representation*

1. Where an unauthorized member establishes or performs a civil transaction in the name of other members of a family household, co-operative group or other organization without legal entity status, or the representative establishes or performs [a civil transaction] beyond the scope of representation, the legal consequences of such transaction shall apply in accordance with articles 130, 142 and 143 of this Code.
2. Where a civil transaction established or performed by an unauthorized party or beyond the scope of representation causes loss and damage to other members of the family household, co-operative group or other organization without legal entity status, or to third persons, the aggrieved persons must be compensated.

CHAPTER VII

Property

Article 105 *Property*

1. Property comprises objects, money, valuable papers and property rights.
2. Property comprises immovable property and movable property. Immovable property and movable property may be existing property and property to be formed in the future.

Article 106 *Property registration*

1. Ownership rights and other rights in respect of property being immovable property are registered in accordance with this Code and the law on property registration.
2. Ownership rights and other rights in respect of property being movable property are not required to be registered, except where otherwise prescribed by the law on property registration.
3. Property registration must be made public.

Article 107 *Immoveable property and moveable property*

1. Immoveable property comprises the following types of property:
 - (a) Land;
 - (b) Houses and structures attached to land;
 - (c) Other property attached to land, houses and structures;
 - (d) Other property as provided by law.
2. Moveable property is property which is not immoveable property.

Article 108 *Existing property and property to be formed in the future*

1. Existing property means property which has been formed and to which ownership rights and other rights have been established by the subject before or at the time a transaction is established.
2. Property to be formed in the future comprises:
 - (a) Property which has not yet been formed;
 - (b) Property which has been formed, but to which ownership rights are established by the subject after the time of establishment of the transaction.

Article 109 *Benefits and income*

1. Benefits means the natural products of property.
2. Income means the gain derived from the exploitation of property.

Article 110 *Primary objects and auxiliary objects*

1. A primary object is an independent object the utility of which is able to be exploited in accordance with its function.
2. An auxiliary object is an object which directly supports the exploitation of the utility of a primary object and which is part of the primary object but which may be separated from it.

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

Article 111 *Divisible objects and indivisible objects*

1. A divisible object is an object which, after being divided, retains its original characteristics and use functions.
2. An indivisible object is an object which, after being divided, is not able to retain its original characteristics and use functions.

When it is necessary to divide an indivisible object, it must be valued in terms of money for the purpose of division.

Article 112 *Consumable objects and non-consumable objects*

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

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

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

Article 113 *Generic objects and distinctive objects*

1. Generic objects are objects which have the same appearance, characteristics and use functions and which are able to be defined by units of measure.

Generic objects which have the same quality are interchangeable.

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

An obligation to transfer a distinctive object must be fulfilled by transferring that particular distinctive object.

Article 114 *Integrated objects*

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

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

Article 115 *Property rights*

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

CHAPTER VIII

Civil Transactions

Article 116 *Civil transactions*

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

Article 117 *Conditions for effective civil transactions*

1. A civil transaction shall be effective when it satisfies all of the following conditions:
 - (a) The subjects have civil legal capacity and capacity for civil acts appropriate to the established civil transaction;
 - (b) The subjects participating in the transaction act entirely voluntarily;
 - (c) The objective and contents of the civil transaction are not contrary to the law or social morals.
2. The form of a civil transaction is a condition for its effectiveness in cases where the law so provides.

Article 118 *Objectives of civil transactions*

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

Article 119 *Forms of civil transactions*

1. Civil transactions may be created verbally, in writing or through specific acts.

Civil transactions by way of electronic means in the form of data messages in accordance with the law on e-transactions shall be deemed to be written transactions.
2. Where the law provides that a civil transaction must be in writing, notarized, certified [*and/or*] registered, such provisions must be complied with.

Article 120 *Conditional civil transactions*

1. Where parties have an agreement on the conditions which will give rise to or which will rescind a civil transaction, such transaction shall arise or be rescinded upon occurrence of such conditions.
2. In the case where the condition which will give rise to or which will rescind a civil transaction does not occur due to the directly or indirectly deliberate impeding action of one of the parties, such condition shall be deemed to have occurred. If the direct or indirect influence of one of the parties deliberately promote the occurrence of the condition, such condition shall be deemed not to have occurred.

Article 121 *Interpretation of civil transactions*

1. Where a civil transaction has unclear or confusing contents, may be understood in different ways and does not fall under the provisions in clause 2 of this article, the interpretation of such civil transaction shall be conducted in accordance with the following order:
 - (a) In accordance with the real wish of the parties at the time when the transaction was entered

into;

- (b) In a manner consistent with the objectives of the transaction;
- (c) In accordance with the customary practice of the place where the transaction was entered into.

2. The interpretation of civil contracts shall be conducted in accordance with the provisions in article 404 of this Code, and the interpretation of contents of wills shall be conducted in accordance with the provisions in article 648 of this Code.

Article 122 *Invalid civil transactions*

Civil transactions failing to satisfy any one of the conditions provided in article 117 of this Code shall be invalid, except where otherwise prescribed by this Code.

Article 123 *Invalidity of civil transactions due to breach of legal prohibitions or contravention of social morals*

Civil transactions with an objective or contents which breach legal prohibitions or which contravene social morals shall be invalid.

Legal prohibitions means provisions of law which do not permit a subject to perform specific acts.

Social morals are standards of general behaviour in social life, which are recognized and respected by the community.

Article 124 *Invalidity of civil transactions due to falsification*

1. Where parties enter into a civil transaction falsely for the purpose of concealing another civil transaction, such false transaction shall be invalid; notwithstanding, the transaction which is concealed shall be valid, unless it is also invalid pursuant to provisions of this Code or other relevant laws.
2. Where a civil transaction is falsely entered into for the purpose of evading responsibilities to a third person, such civil transaction shall be invalid.

Article 125 *Invalidity of civil transactions established and performed by minors, persons having lost their capacity for civil acts or having had their capacity for civil acts restricted, or persons having difficulty in awareness and control of their own acts*

1. Where a civil transaction is entered into and performed by a minor, a person who has lost the capacity for civil acts or has restricted capacity for civil acts, or a person who has difficulty in awareness or control of his or her acts, if the law provides that such transaction must be entered into, performed or agreed by the representative of such person, a court shall, at the request of the representative of such person, declare such transaction invalid, except for the cases prescribed in clause 2 of this article.
2. The civil transaction of a person prescribed in clause 1 of this article shall not be invalid in the following cases:
 - (a) It is a civil transaction of a person under six years of age or a person who has lost the capacity for civil acts in order to meet the daily essential needs of such person;
 - (b) It is a civil transaction which only gives rise to rights or only releases obligations of the minor,

the person who has lost the capacity for civil acts or has restricted capacity for civil acts, or the person who has difficulty in awareness or control of his or her acts in respect of the person who established or performed the transaction with the former;

- (c) It is a civil transaction the effectiveness of which is recognized by the person establishing it after he or she becomes an adult or has the capacity for civil acts restored.

Article 126 *Invalidity of civil transactions due to misunderstandings*

1. Where an established civil transaction involves a misunderstanding resulting in the failure by one or more parties to reach the objective of the transaction establishment, the misunderstanding party has the right to request that the court declare the civil transaction invalid, except for the case prescribed in clause 2 of this article.
2. An established civil transaction involving a misunderstanding shall not be invalid in the case the objective of the civil transaction establishment of the parties has been achieved, or the parties may immediately rectify the misunderstanding, thus achieving the objective of the civil transaction establishment.

Article 127 *Invalidity of civil transactions due to deception, threat or coercion*

Any party participating in a civil transaction as a result of deception, threat or coercion has the right to request that a court declare such civil transaction invalid.

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

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

Article 128 *Invalidity of civil transactions entered into by persons incapable of being aware of or controlling their acts*

A person who has the capacity for civil acts but has entered into a transaction at a time when he or she was incapable of being aware of or controlling his or her acts has the right to request that a court declare such civil transaction invalid.

Article 129⁵ *Invalidity of civil transactions due to non-compliance with form*

A civil transaction in breach of the provision that its form is a condition for its validity shall be invalid, except for the following cases:

1. Where the civil transaction established was required to be in writing, but the written document does not conform to the provisions of law, and one or more parties have performed at least two-thirds of the obligations in the transaction, the court shall, at the request of one or more parties, issue a decision to recognize the validity of such transaction.
2. Where the civil transaction established in writing is in breach of compulsory provisions on notarization or certification, and one or more parties have performed at least two-thirds of the obligations in the transaction, the court shall, at the request of one or more parties, issue a decision to recognize the validity of such transaction. In this case, the parties are not required to carry out notarization or certification.

⁵ *Allens footnote:* This provision is new as compared to the old 2005 Code.

Article 130 *Partially invalid civil transactions*

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

Article 131 *Legal consequences of invalidity of civil transactions*

1. An invalid civil transaction shall not give rise to civil rights and obligations with respect to the parties or to changes and termination of such rights and obligations as from the time the transaction is entered into.
2. Where a civil transaction is invalid, the parties shall restore [everything] to its original state and shall return to each other what they have received.

If restitution is not able to be made in kind, it shall be valued in terms of money to return.

3. The bona fide party in collecting benefits or income is not required to return such benefits or income.
4. The party at fault which caused loss and damage must compensate.
5. Resolution of consequences of invalid civil transactions relating to personal rights is provided by this Code and other relevant laws.

Article 132 *Time-limit for requesting court to declare civil transaction invalid*

1. The time-limit within which a request may be made to a court to declare a civil transaction invalid in articles 125, 126, 127, 128 and 129 of this Code shall be two years as from the date:
 - (a) The representative of a minor, a person who has lost the capacity for civil acts or has restricted capacity for civil acts, or a person who has difficulty in awareness or control of his or her acts knew or should have known that the principal himself or herself established or performed the transaction;
 - (b) The misunderstanding or deceived person knew or should have known that the transaction was established due to the misunderstanding or deception;
 - (c) The threatening or coercing person ceases the act of threat or coercion;
 - (d) The person incapable of being aware of or controlling his or her acts establishes the transaction;
 - (dd) The civil transaction is established, in the case the civil transaction did not conform to provisions on its form.
2. If there is no request for declaration of a civil transaction invalid upon the expiry of the time-limit prescribed in clause 1 of this article, the civil transaction is valid.
3. There is no restriction on the time-limit within which a request may be made to a court to declare a civil transaction invalid for the civil transactions prescribed in articles 123 and 124 of this Code.

Article 133⁶ *Protection of interests of bona fide third parties with respect to invalid civil transactions*

1. Where a civil transaction is invalid but the subject of the transaction is property which is not required to be registered and such property has already been transferred to a bona fide third person, the transaction established and performed with the third person shall remain valid, except in the case provided in article 167 of this Code.
2. Where a civil transaction is invalid but the property has been registered at a competent State authority, and then transferred to a bona fide third person by way of another civil transaction and such person established and performed the transaction based on such registration, such transaction shall not be invalid.

Where the property is required to be registered but has not been registered at a competent State authority, the transaction with the third person shall be invalid, except where the bona fide third person received the property by way of an auction at a competent organization or a transaction with another party being the owner of such property pursuant to a judgment or decision of an authorized State agency but thereafter such subject is not the owner of the property as a result of the judgment or decision being amended or rescinded.

3. The owner does not have the right to reclaim the property from the bona fide third person, if the civil transaction with such person is not invalid in accordance with clause 2 of this article, but has the right to initiate a legal action to request that the subject at fault resulting in the establishment of the transaction with the third person reimburse reasonable expenses and compensate for loss and damage.

CHAPTER IX

Representation

Article 134 *Representation*

1. Representation means an individual or a legal entity (hereinafter collectively referred to as the *representative*) acting in the name and for the benefit of another individual or legal entity (hereinafter collectively referred to as the *principal*) enters into and performs a civil transaction.
2. Individuals and legal entities may enter into and perform civil transactions through a representative. An individual may not allow another person to represent him or her if the law provides that the individual must personally enter into and perform such transaction.
3. Where provided by law, the representative must have civil legal capacity and full capacity for civil acts as appropriate to the civil transaction entered into and performed.

Article 135 *Basis for establishment of representation right*

Representation rights are established pursuant to an authorization between the principal and the representative (hereinafter referred to as authorized representation); pursuant to a decision of a competent

⁶ *Allens footnote:* This provision is different from the equivalent article 138 in the old 2005 Code.

State authority, pursuant to the charter of a legal entity, or in accordance with law (hereinafter referred to as legal representation).

Article 136 *Legal representative of individual*

1. The father or mother with respect to a minor.
2. The guardian with respect to a ward. The guardian of a person who has difficulty in awareness or control of his or her acts as the legal representative if appointed by a court.
3. The person appointed by a court where it is impossible to identify a representative prescribed in clauses 1 and 2 of this article.
4. The person appointed by a court with respect to a person with restricted capacity for civil acts.

Article 137 *Legal representative of a legal entity*

1. Legal representatives of a legal entity comprise:
 - (a) The person appointed by the legal entity according to its charter;
 - (b) The person authorized for representation in accordance with law;
 - (c) The person appointed by a court during the proceedings at the court.
2. One legal entity may have a number of legal representatives, each of whom has the right to represent the legal entity in accordance with articles 140 and 141 of this Code.

Article 138 *Authorized representatives*

1. An individual or a legal entity may authorize another individual or legal entity to enter into and perform a civil transaction.
2. Members of a family household, co-operative group or other organization without legal entity status may agree to appoint another individual or legal entity to act as their authorized representative to enter into and perform civil transactions relating to the common property of the members of the family household, co-operative group or organization without legal entity status.
3. A person aged from fifteen (15) years to below eighteen (18) years may be an authorized representative, except where the law provides that the civil transaction must be entered into and or performed by a person who has reached eighteen (18) or more years of age.

Article 139 *Legal consequences of act of representation*

1. A civil transaction established and performed by a representative with a third person in accordance with the scope of representation gives rise to rights and obligations of the principal.
2. The representative has the right to establish and perform necessary acts to achieve the aim of representation.
3. Where a representative knew or should have known that the establishment of an act of representation is due to a misunderstanding, deception, threat or coercion but nevertheless establishes or performs such act, no right or obligation of the principal shall arise, except where the principal knew or should have known it but did not object.

Article 140 *Term of representation*

1. The term of representation is determined according to the power of attorney, pursuant to a decision of a competent agency, pursuant to the charter of a legal entity, or in accordance with law.
2. If the term of representation is unable to be determined in accordance with clause 1 of this article, the term of representation is determined as follows:
 - (a) If the representation right is determined for a specific civil transaction, the term of representation is calculated to the time of termination of such civil transaction;
 - (b) If the representation right is not determined for a specific civil transaction, the term of representation is one year from the time the representation right arises.
3. Authorized representation is terminated in the following cases:
 - (a) Where it is so agreed;
 - (b) Where the term of representation has ended;
 - (c) Where the authorized work has been completed;
 - (d) Where the principal or the representative unilaterally terminates the representation;
 - (dd) Where the principal or the representative dies in the case of an individual; or the principal or the representative ceases its existence in the case of a legal entity;
 - (e) Where the representative no longer satisfies all the conditions prescribed in article 134.3 of this Code;
 - (g) Where there are other grounds which make the representation impossible to be carried out.
4. Legal representation is terminated in the following cases:
 - (a) Where the principal being an individual has become an adult or has had his or her capacity for civil acts restored;
 - (b) Where the principal being an individual dies;
 - (c) Where the principal being a legal entity ceases its existence;
 - (d) Where there are other grounds in accordance with this Code or other relevant laws.

Article 141 *Scope of representation*

1. A representative may enter into and perform civil transactions only within the scope of representation on the following bases:
 - (a) Decision of a competent authority;
 - (b) Charter of a legal entity;
 - (c) Contents of representation;
 - (d) Other provisions of law.

2. Where it is impossible to determine the specific scope of representation in accordance with clause 1 of this article, the legal representative has the right to enter into and perform all civil transactions in the interests of the principal, unless otherwise provided by law.
3. An individual or a legal entity may represent more than one individual or legal entity, but may not establish or perform civil transactions with himself or herself in the name of the principal, or with a third person for whom the representative also acts, unless otherwise provided by law.
4. A representative must inform the transacting parties of its scope of representation.

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

1. A civil transaction entered into and performed by an unauthorized person shall not give rise to rights and obligations with respect to the principal, except in one of the following cases:
 - (a) The principal has recognized the transaction;
 - (b) The principal knew but has not objected within a reasonable period;
 - (c) The principal is at fault, resulting in the fact that the transacting person did not know or could not have known that the person who entered into or performed the civil transaction with him or her was unauthorized.
2. Where a civil transaction established or performed by an unauthorized person does not give rise to rights and obligations with respect to the principal, the unauthorized person must, nevertheless, fulfil obligations to the person with whom he or she transacted, unless such person knew or should have known that the representative was unauthorized but still carried out the transaction.
3. A person having transacted with an unauthorized person has the right to terminate unilaterally the performance of or to rescind the civil transaction entered into and to demand compensation for any loss and damage, except where such person knew or should have known that the representative was unauthorized but still carried out the transaction or in the case prescribed in clause 1(a) of this article.
4. Where an unauthorized person and the transacting person deliberately enter into or perform a civil transaction and thereby cause loss and damage to the principal, they must be jointly liable to compensate for same.

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

1. A civil transaction entered into and performed by a representative beyond his or her scope of representation shall not give rise to rights and obligations of the principal with respect to that part of the transaction which exceeded the scope of representation, except in one of the following cases:
 - (a) The principal has agreed;
 - (b) The principal knew but has not objected within a reasonable period;
 - (c) The principal is at fault, resulting in the fact that the transacting person did not know or could not have known that the person entered into or performed the civil transaction with him or her beyond the scope of representation.

2. Where a civil transaction established or performed by a representative beyond the scope of representation does not give rise to rights and obligations with respect to that part of the transaction established or performed which exceeded the scope of representation, the representative must fulfil obligations to the person with whom he or she transacted with respect to that part of the transaction which exceeded the scope of representation, unless such person knew or should have known that the scope of representation was exceeded but still carried out the transaction.
3. A person having entered into a transaction with such representative has the right to terminate unilaterally or rescind the civil transaction with respect to that part which is beyond the scope of representation or with respect to the entire transaction and demand compensation for any loss and damage, except where such person knew or should have known that the scope of representation was exceeded but still carried out the transaction or in the case prescribed in clause 1(a) of this article.
4. Where a person and a representative enter into and perform a civil transaction deliberately beyond the scope of representation of the representative and thereby cause loss and damage to the principal, they must be jointly liable to compensate for the loss and damage.

CHAPTER X

Time-limits and Limitation Periods⁷

Section 1

Time-limits

Article 144 *Time-limits*

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

⁷ *Allens footnote:* This term is used to refer to both periods of time within which events may occur and periods of time which must expire before an event can occur.

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

Article 145 *Application of methods for calculating time-limits*

1. The method for calculating a time-limit shall be applied in accordance with the provisions of this Code, unless otherwise agreed or otherwise provided by law.
2. A time-limit shall be calculated according to the Gregorian calendar, unless otherwise agreed.

Article 146 *Provisions on time-limits and point of time for calculating time-limits*

1. Where the parties have agreed on a time-limit which is one year, half of one year, one month, half of one month, one week, one day, one hour or one minute, but such length of time is not continuous, the time-limit shall be calculated as follows:
 - (a) One year shall be three hundred and sixty five (365) days;

- (b) Half of one year shall be six months;
 - (c) One month shall be thirty (30) days;
 - (d) Half of one month shall be fifteen (15) days;
 - (dd) One week shall be seven days;
 - (e) One day shall be twenty four (24) hours;
 - (g) One hour shall be sixty (60) minutes;
 - (h) One minute shall be sixty (60) seconds.
2. Where the parties have agreed on a point of time which is at the beginning of a month, the middle of a month or the end of a month, such point of time shall be determined as follows:
- (a) The beginning of a month shall be the first day of that month;
 - (b) The middle of a month shall be the fifteenth day of that month;
 - (c) The end of a month shall be the last day of that month.
3. Where the parties have agreed on a point of time which is at the beginning of the year, the middle of a year or the end of a year, such point of time shall be determined as follows:
- (a) The beginning of a year shall be the first day of January;
 - (b) The middle of a year shall be the last day of June;
 - (c) The end of a year shall be the last day of December.

Article 147 *Commencement of time-limits*

1. Where a time-limit is stated by reference to minutes or hours, it shall commence from the stated moment of time.
2. Where a time-limit is stated by reference to days, weeks, months or years, the first day of the time-limit shall not be taken into account and the time-limit shall commence from the day immediately following the stated date.
3. Where a time-limit is stated by reference to an event, the date on which the event happens shall not be taken into account and the time-limit shall commence from the day immediately following the date on which the event happened.

Article 148 *End of time-limits*

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

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

Section 2

Limitation Periods

Article 149 *Limitation periods*

1. Limitation period means a time-limit provided by law where, upon its expiry, a legal consequence shall arise with respect to a subject under conditions provided by law.

Limitation periods are applied in accordance with this Code or other relevant laws.

2. A court shall apply provisions on limitation periods only upon petition to apply limitation periods of one or more parties, provided that such petition must be made before the first instance court issues a judgement or a decision resolving the case.

The beneficiary of the application of a limitation period has the right to reject the application of the limitation period, except where such rejection is aimed at avoiding the performance of an obligation.

Article 150 *Types of limitation periods*

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

Article 151 *Method for calculating limitation periods*

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

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

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

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

1. The limitation period for enjoyment of civil rights or release from civil obligations shall continue uninterrupted from its beginning to its expiry. If there is an event causing an interruption, the limitation period must recommence from the beginning, after the event causing the interruption ends.
2. The limitation period for enjoyment of civil rights or release from civil obligations is interrupted upon occurrence of any of the following events:
 - (a) An authorized State agency makes a resolution via a decision with legal effect with respect to the civil rights and obligations which are the subject of the limitation period;
 - (b) Civil rights or obligations which are the subject of a limitation period are disputed by a person with related rights or obligations and have been resolved by a judgement or decision with legal effect of a court.
3. The limitation period shall continue uninterrupted where the enjoyment of civil rights or the release from civil obligations or the right to initiate legal action is lawfully transferred to another person.

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

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

Article 155 *Non-applicability of limitation periods for initiating legal action*

A limitation period for initiating legal action shall not apply in the following cases:

1. Request for the protection of personal rights not attached to property.
2. Request for the protection of ownership rights, except where otherwise prescribed by this Code or other relevant laws.
3. Disputes over land use right in accordance with the Law on Land.
4. Other cases as provided by law.

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

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

1. An event of *force majeure* or other objective hindrance which renders the person with the right to

initiate [*legal action for a civil case*] or make a request not able to do so within the limitation period.

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

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

2. The person with the right to initiate [*legal action for a civil case*] or to make a request is a minor or has lost his or her capacity for civil acts or has a restricted capacity for civil acts or has difficulty in awareness or control of his or her acts, and does not yet have a representative.
3. A minor or a person who has lost his or her capacity for civil acts or has a restricted capacity for civil acts or has difficulty in awareness or control of his or her acts does not yet have a replacement representative in the following cases:
 - (a) The representative dies in the case of an individual, or ceases its existence in the case of a legal entity;
 - (b) The representative cannot continue the representation for a legitimate reason.

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

1. The limitation period for initiating legal action for a civil case shall re-commence in the following cases:
 - (a) The obligor has acknowledged a part or all of its obligations to the person initiating;
 - (b) The obligor has acknowledged or fulfilled part of its obligations to the person initiating;
 - (c) The parties have reconciled between themselves.
2. The limitation period for initiating legal action for a civil case shall re-commence from the date following the date on which the event provided in clause 1 of this article occurs.

PART TWO

OWNERSHIP RIGHTS AND OTHER RIGHTS WITH RESPECT TO PROPERTY

CHAPTER XI

General Provisions

Section 1

Principles For Establishment And Performance Of Ownership Rights And Other Rights With Respect To Property

Article 158 *Ownership rights*

Ownership rights comprise the rights of an owner to possess, use and dispose of the property of the owner

in accordance with law.

Article 159 *Other rights with respect to property*

1. Other rights with respect to property means the rights of an owner who directly holds or controls property under the ownership of another owner.
2. Other rights with respect to property comprise:
 - (a) Right to adjacent immovable property;
 - (b) Usufruct;
 - (c) Superficies [or surface rights].

Article 160 *Principles for establishment and performance of ownership rights and other rights with respect to property*

1. Ownership and other rights with respect to property are established and performed where prescribed by this Code or other relevant laws.

Other rights with respect to property remain effective in the case ownership is transferred, except where otherwise prescribed by this Code or other relevant laws.
2. An owner may conduct all acts as intended by the owner with respect to property but may not act contrary to provisions of law, cause damage to or adversely impact on the interest of the country, the nation or the public, or the lawful rights and interests of other persons.
3. A subject having other rights with respect to property may conduct all acts within the scope of rights prescribed in this Code and other relevant laws, but may not cause damage to or adversely impact on the interest of the country, the nation or the public, or the lawful rights and interests of the property owner or of other persons.

Article 161⁸ *Point of time when ownership rights and other rights with respect to property are established*

1. The point of time when ownership rights and other rights with respect to property are established shall be in accordance with provisions of this Code and other relevant laws; in the absence of such provisions, it shall be as agreed by the parties; in the absence of both provisions of law and agreement of the parties, the point of time when ownership rights and other rights with respect to property are established is the time of transfer of the property.

The time of transfer of the property means the time the entitled party or its legal representative possesses the property.
2. Where benefits or income arise on property which has not been transferred, such benefits or income belong to the transferor of the property, unless otherwise agreed.

Article 162 *Bearing risks in relation to property*

1. The owner must bear risks in relation to property under his or her ownership, unless otherwise agreed or otherwise prescribed by this Code or other relevant laws.
2. A subject having other rights with respect to property must bear risks in relation to property within the scope of his or her rights, unless otherwise agreed with the owner of the property, or otherwise

prescribed by this Code or other relevant laws.

⁸

Allens footnote: This provision is different from the equivalent article 168 in the old 2005 Code.

Section 2

Protection Of Ownership Rights And Other Rights With Respect To Property

Article 163 *Protection of ownership rights and other rights with respect to property*

1. No one may be unlawfully deprived of or limited in relation to his or her ownership rights or other rights with respect to property.
2. In really essential cases for national defence or security reasons, for national interest, or in emergencies, or for natural disaster control, the State shall acquire compulsorily or requisition property of organizations and individuals with consideration at market prices.

Article 164 *Measures for protection of ownership rights and other rights with respect to property*

1. An owner of or a subject having other rights with respect to property is entitled to himself or herself protect his or her rights and to stop any person infringing his or her rights, by measures which are not contrary to provisions of law.
2. An owner of or a subject having other rights with respect to property is entitled to petition the court or another competent State authority to order the person infringing his or her rights to return the property, to cease the act of illegal hindrance of the performance of ownership rights or other rights with respect to property, and to request compensation for loss and damage.

Article 165 *Lawful possession*

1. Lawful possession is the possession of property in the following circumstances:
 - (a) The owner possesses the property;
 - (b) A person is authorized by the owner to manage the property;
 - (c) A person is transferred the right to possess through a civil transaction in accordance with law;
 - (d) A person finds and keeps, in accordance with conditions provided by this Code or by other relevant laws, property which has no owner, property for which no owner is able to be determined, or property which has been dropped, forgotten, buried, hidden, covered or sunken;
 - (dd) A person finds and keeps, in accordance with the conditions provided by this Code or by other relevant laws, domestic animals, poultry or aquaculture stock which have been lost;

- (e) Other cases as provided by law.
2. Possession of property not in accordance with the provisions in clause 1 of this article means unlawful possession.

Article 166 *Right to reclaim property*

1. An owner of or a subject having other rights with respect to property has the right to reclaim his or her property from a person unlawfully possessing, using or receiving benefits from property.
2. An owner does not have the right to reclaim his or her property from the possession of a subject currently having other rights with respect to such property.

Article 167 *Right to reclaim moveable property, ownership of which is not required to be registered from bona fide possessor*

The owner has the right to reclaim from a bona fide possessor moveable property the ownership of which is not required to be registered, in the case where such possessor obtained the moveable property through a contract without consideration⁹ to a person without the right to dispose of such property. In the case where such contract includes consideration, the owner has the right to reclaim such moveable property if it was stolen [or] lost or in other circumstances in which possession was obtained contrary to the wish of the owner.

Article 168 *Right to reclaim moveable property, ownership of which is required to be registered or immovable property from bona fide possessor*

The owner has the right to reclaim from a bona fide possessor moveable property the ownership of which is required to be registered or immovable property, except for the case prescribed in article 133.2 of this Code.

Article 169 *Right to demand cessation of acts which unlawfully hinder exercise of lawful ownership rights and other rights with respect to property*

When exercising its ownership rights or other rights with respect to property, a subject has the right to demand that a person acting unlawfully to hinder [the exercise] cease such act, or has the right to request that a court or another competent State agency compel such person to do so.

Article 170 *Right to demand compensation for loss and damage*

When exercising its ownership rights or other rights with respect to property, a subject has the right to demand that a person infringing its ownership rights or other rights with respect to property compensate for any loss and damage.

Section 3

Limits Of Ownership Rights And Other Rights With Respect To Property

Article 171 *Rights and obligations of owner and subject having other rights with respect to property in emergency situations*

1. An emergency situation is the situation of a person having, in order to avoid danger which is directly and actually threatening the public interest, or his or her legal rights and interests or those of other persons, no alternative other than to commit actions causing loss and damage to a lesser extent than

the loss and damage that needs to be prevented.

⁹ *Allens footnote:* The literal translation is "compensation".

2. In an emergency situation, the owner of or a subject having other rights with respect to property may not hinder other persons from using the property of that owner, nor hinder other persons from causing loss and damage to such property, in order to prevent or reduce the greater danger or loss and damage that might occur.
3. Causing loss and damage in an emergency situation is not an act of infringement of ownership rights or other rights with respect to property. The owner of or a subject having other rights with respect to property which is damaged in an emergency situation shall be compensated for any loss and damage in accordance with the provisions of article 595 of this Code.

Article 172 *Obligations to protect environment*

When exercising its ownership rights or other rights with respect to property, a subject must comply with the law on protection of the environment. If it causes environmental pollution, the subject must cease the acts which caused the pollution and take measures to remedy any consequences and compensate for any loss and damage.

Article 173 *Obligations to respect and protect social order and security*

When exercising its ownership rights or other rights with respect to property, a subject must respect and ensure social order and security and may not abuse its rights in order to cause public disorder or loss of security or to cause loss and damage to the interest of the country, the nation or the public or legal rights and interests of other persons.

Article 174 *Obligation to respect building regulations*

When constructing a structure, the owner of or a subject having other rights with respect to property must comply with the law on construction and [*must*] ensure safety. It may not build beyond the height and distance provided by the law on construction or infringe the legal rights and interests of the owners of or subjects having other rights with respect to adjoining and neighbouring immovable properties.

Article 175 *Boundaries between immovable property*

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

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

No one may encroach on or change the boundary markers, including where the boundary is a canal, irrigation ditch, trench, gutter or path at the edge of a rice field. Every subject has the obligation to respect and preserve the common boundary.

2. A land user may use the airspace and the sub-surface according to the vertical dimensions of the boundaries around the land plot in accordance with law and may not interfere with the land use by other persons.

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

Article 176 *Boundary markers separating immoveable property*

1. An owner of an immoveable property may only erect boundary stakes and fences, plant trees and build separating walls on the area covered by its land use rights.
2. Adjoining immoveable property owners may agree with one another on the erection of boundary stakes and fences, the building of separating walls and the planting of trees on the boundary for use as boundary markers between the immoveable properties, and the boundary markers shall be under the joint ownership of such subjects.

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

3. With respect to boundary markers which are common house¹⁰ walls, the owner of the adjoining immoveable property may not cut out a window or air ventilating hole or drill the wall in order to install building structures, except with the consent of the owner of the adjoining property.

Where houses are separately built, but with adjoining walls, an owner may only drill and install building structures up to the limit separating its wall.

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

Article 177 *Ensuring safety where there is danger that trees or structures may cause loss and damage*

1. Where there is a danger that a tree or a structure may collapse onto adjoining and neighbouring immoveable properties, the owner of the property must immediately take remedies, cut down the tree or repair or demolish the structure at the request of the owners of adjoining and neighbouring immoveable properties; if it does not voluntarily do so, the owners of adjoining and neighbouring immoveable properties have the right to request the authorized State body to procure that the tree be cut down or the structure be demolished. The expenses for cutting down the tree or demolishing the structure shall be borne by the owner of the tree or the structure.
2. When digging a well or a pond or constructing underground structures, the owner of the project must do so at the distance away from the boundaries provided by the law on construction.

When engaged in the construction of a sanitation project, a warehouse for storing toxic chemical substances or other projects the use of which may cause environmental pollution, the owner of such property must construct such project at an appropriate site which is a reasonable distance away from the boundaries and must ensure hygiene and safety and must not adversely affect owners of other immovable properties.

¹⁰ *Allens footnote:* This is the literal translation. It appears to be used in the broader sense of "building".

3. The owner of the tree or the structure must compensate for any loss and damage caused to the owners of adjoining and neighbouring immovable properties prescribed in clauses 1 and 2 of this article.

Article 178 *Installation of doors and windows opening onto¹¹ adjoining immovable properties*

1. A house owner may only install entry and exit doors and windows opening onto adjacent houses or opposite houses and common walkways in accordance with the law on construction.
2. The underside of the awnings above entry and exit doors or of windows opening onto common walkways must be at least two point five (2.5) metres above the ground.

CHAPTER XII

Possession

Article 179 *Concept of possession*

1. Possession means the direct or indirect holding or control of property by a subject as the subject having rights in respect of the property.
2. Possession comprises possession by the owner and possession by non-owner(s).

Possession by a non-owner may not be the ground for establishment of ownership, except for the cases prescribed in articles 228, 229, 230, 231, 232, 233 and 236 of this Code.

Article 180 *Bona fide possession*

Bona fide possession means possession where the possessor has grounds to believe that he or she has rights with respect to the property in possession.

Article 181 *Possession not in good faith*

Possession not in good faith means possession where the possessor knew or should have known that he or she has no right with respect to the property in possession.

Article 182 *Continuous possession*

1. Continuous possession is possession which occurs over a period of time without dispute relating to rights with respect to such property, or with a dispute which has not been resolved by a judgement or decision with legal effect of a court or another competent State authority, including when the property is delivered to another person for possession.
2. Non-continuous possession shall not be deemed a ground to assume the status and rights of the possessor as prescribed in article 184 of this Code.

Article 183 *Overt possession*

1. Overt possession¹² means possession which occurs in a transparent manner, without concealment; [when] property currently being possessed is used in accordance with its functions and use purpose and is preserved and retained by the possessor as if it were his or her own property.

2. Non-overt possession shall not be deemed a ground to assume the status and rights of the possessor as prescribed in article 184 of this Code.

Article 184 *Assumption of status and rights of possessor*

1. The possessor is assumed as bona fide; any person who does not so believe must prove to the contrary.
2. Where there is a dispute over the rights with respect to property, the possessor is assumed as the person having such rights. The person in dispute with the possessor must prove that the possessor does not have such rights.
3. A bona fide, continuous and overt possessor is entitled to limitation periods for enjoying rights and to benefits or income from the property in accordance with this Code and other relevant laws.

Article 185 *Protection of possession*

If possession is infringed upon by another person, the possessor has the right to request that the person carrying out the act of infringement must stop such act, restore the original state, return the property and compensate for loss and damage, or to request that a court or another competent State authority compel such person to stop such act, restore the original state, return the property and compensate for loss and damage.

CHAPTER XIII

Ownership Rights

Section 1

Content of Ownership Rights

Sub-Section 1

Right to Possess

Article 186 *Right to possess of owner*

An owner may do all things to keep and control his or her property in accordance with his or her wishes provided that it is not contrary to law or social morals to do so.

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

1. When an owner authorizes another person to manage his or her property, the authorized person shall exercise the right to possess such property within the scope, in the manner and for the duration determined by the owner.
2. A person authorized to manage property is not able to become the owner of the property delivered [*for management*] in accordance with article 236 of this Code.

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

1. Where an owner delivers property to another person through a civil transaction which does not include the transfer of ownership rights, the person to whom the property is delivered must undertake

the possession of such property in a manner consistent with the purpose and content¹³ of the transaction.

2. The person to whom the property is delivered has the right to use such property and is entitled to transfer the right to possess and use the property to another person if the owner so agrees.
3. The person to whom the property is delivered is not able to become the owner of that property in accordance with article 236 of this Code.

Sub-Section 2

Right to Use

Article 189 *Right to Use*

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

Right to use may be transferred to another person as agreed or in accordance with law.

Article 190 *Right to use of owners*

The owner may use property in accordance with the wishes of the owner provided that this will not cause damage to or adversely affect the interests of the country, the nation or the public or the legal rights and interests of other persons.

Article 191 *Right to use of persons not being owners*

A person not being the owner may use property as agreed with the owner or in accordance with law.

¹³ *Allens footnote:* This is the literal translation.

Sub-section 3

Right of Disposal

Article 192 *Right of disposal*

Right of disposal means the right to transfer ownership rights with respect to property, to renounce such ownership rights, to consume or to destroy the property.

Article 193 *Conditions for exercise of right of disposal*

Disposal of property must be performed by a person having capacity for civil acts and must not be inconsistent with law.

Where the law provides formalities and procedures for disposal of property, such formalities and

procedures must be complied with.

Article 194 *Right of disposal of owners*

Owners shall have the right to sell, exchange, give, loan, bequeath, renounce the right to own, to consume or to destroy, or implement other forms of disposal in conformity with the law on property.

Article 195 *Right of disposal of persons not being owners*

A person not being the owner of property shall only have the right to dispose of the property pursuant to authorization from the owner or in accordance with provisions of the law.

Article 196 *Restrictions on right of disposal*

1. The right of disposal shall only be restricted in cases where the law so provides.
2. Where a property for sale is a property belonging to a historic or cultural relic in accordance with the Law on Cultural Relics, the State shall have the right of first refusal to purchase.

Where an individual or a legal entity has the right of first refusal to purchase certain property in accordance with law, upon the sale of such property, the owner must grant such right of first refusal to purchase to such [*individual or legal entity*] subject.

Section 2

Forms of Ownership

Sub-section 1

Ownership by the Entire People

Article 197 *Property under ownership by the entire people*

Land, water resources, mineral resources, maritime and airspace resources, other natural resources and property invested and managed by the State are public property under ownership by the entire people with the State as the owner's representative exercising uniform management.

Article 198 *Exercise of right of owner with respect to property under ownership by the entire people*

1. The State of the Socialist Republic of Vietnam is the representative to exercise the rights of the owner with respect to property under ownership by the entire people.
2. The Government shall manage uniformly and ensure the appropriate, efficient and economic use of property under ownership by the entire people.

Article 199 *Possession, management, use and disposal of property under ownership by the entire people*

The possession, management, use and disposal of property under ownership by the entire people shall be performed within the scope and in accordance with the procedures provided by law.

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

1. Where property under ownership by the entire people is invested in an enterprise, the State shall

exercise the rights of the owner with respect to such property in accordance with the laws on enterprises, management and use of State capital invested in production and business in enterprises and other provisions of relevant laws.

2. Enterprises carry out management and use of capital, land, natural resources and other property invested by the State in accordance with relevant laws.

Article 201 *Exercise of entire people's ownership rights with respect to property allocated to State agencies and units of people's armed forces*

1. Where property under the ownership of the entire people is allocated to a State agency or unit of the people's armed forces, the State shall exercise the right to inspect and supervise management and use of such property.
2. The State agency or unit of the people's armed forces shall manage the property allocated to it by the State and use such property for the correct purpose in accordance with law.

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

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

Article 203 *Rights of individuals and legal entities with respect to use and exploitation of property under ownership of entire people*

Individuals and legal entities are permitted to use land and exploit aquatic resources, natural resources and other properties under the ownership of the entire people for the correct purpose and effectively and [must] fulfil all of their obligations to the State in accordance with law.

Article 204 *Property under ownership of entire people not having been allocated to individuals and legal entities for management*

With respect to property under the ownership of the entire people which has not been allocated to individuals or legal entities for management, the Government shall organize protection, investigation and survey, and formulation of zoning in order to make [such property] available for use.

Sub-section 2

Private Ownership

Article 205 *Private ownership and property under private ownership*

1. Private ownership means the ownership by an individual or a legal entity.¹⁴

2. Lawful property under private ownership shall not be limited in terms of quantity and value.

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

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

Sub-section 3

Multiple Ownership

Article 207 *Multiple ownership¹⁴ and types of multiple ownership*

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

Article 208 *Creation of multiple ownership rights*

Multiple ownership rights are created as agreed or in accordance with provisions of the law or in accordance with customary practice.

¹⁴ *Allens footnote:* There is no reference to private ownership by other subjects (that is, non-individuals).

¹⁵ *Allens footnote:* The literal translation is "mutual ownership".

Article 209 *Ownership in common*

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

Article 210 *Joint ownership*

1. Joint ownership means multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is unspecified.

Joint ownership includes divisible joint ownership and indivisible joint ownership.

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

Article 211 *Multiple ownership by communities*

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

entire community.

2. Members of a community shall jointly manage, use and dispose of multiple ownership property in the mutual interests of the community as agreed or in accordance with customary practice, but not in breach of matters prohibited by the law or not inconsistent with social morals.
3. Multiple ownership property by a community is indivisible joint property.

Article 212 *Multiple ownership by family members*

1. Property of family members who live together shall comprise property contributed or jointly created by the members and other properties with respect to which the ownership rights are created in accordance with this Code and other relevant laws.
2. The possession, use and disposal of multiple ownership property of family members shall be implemented in accordance with the method of agreement. In the case of disposal of registered immovable property or moveable property or property being the main income of the family, it must be agreed by all the family members who are adults with full capacity for civil acts, unless otherwise provided by law.

Where there is no agreement, the provisions on ownership in common in this Code and other relevant laws shall apply, except in the case provided in article 213 of this Code.

Article 213 *Multiple ownership by husbands and wives*

1. Multiple ownership by a husband and wife is divisible joint ownership.
2. A husband and wife jointly create and develop multiple ownership property and have equal rights to possess, use and dispose of such property.
3. A husband and wife shall agree on or authorize each other in relation to the possession, use and disposal of the multiple ownership property.
4. The multiple ownership property of a husband and wife may be divided as agreed or pursuant to a decision of a court.
5. Where a husband and wife select an agreed property regime in accordance with the law on marriage and family, the multiple ownership property of the husband and wife shall comply with such property regime.

Article 214 *Multiple ownership in apartment buildings*

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

Article 215 *Mixed multiple ownership*

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

Article 216 *Management of multiple ownership property*

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

Article 217 *Use of multiple ownership property*

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

Article 218 *Disposal of multiple ownership property*

1. Each owner in common has the right to dispose of its share of the ownership rights.
2. Disposal of joint property shall be implemented as agreed by the owners of the property or as provided by law.
3. Where an owner in common sells its share of the ownership rights, the other owners of the property have the right of first refusal to purchase such share.

Such owner may sell [*such share*] to other persons if no other owner purchases within three months in the case of immovable property, or within one month in the case of moveable property, from the date on which the other owners received notice of the sale and the conditions of the sale. The notice must be in writing, and the conditions of the sale applicable to the other owners of multiple ownership property must be identical to those applicable to persons not being the owners of multiple ownership property.

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

4. Where one of the owners of multiple ownership property in the case of immovable property renounces its share of the ownership rights or where such person dies without leaving an heir, its

share of the ownership rights shall belong to the State, except in the case of multiple ownership by communities where the share of ownership rights shall belong to the remaining members.

5. Where one of the owners of multiple ownership property in the case of moveable property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall be under multiple ownership of the other owners.
6. Where all owners [*of multiple ownership property*] renounce their ownership rights with respect to the multiple ownership property, the creation of the ownership rights shall be implemented in accordance with article 228 of this Code.

Article 219 *Division of multiple ownership property*

1. Where multiple ownership [*property*] is divisible, each owner has the right to request the property be divided. If the status of multiple ownership must be maintained within a certain period of time as agreed by the owners of multiple ownership property or as provided by law, each owner only has the right to request the property to be divided upon expiry of that period. Where the property is not able to be divided in kind, the owner who makes the request for division has the right to sell its share of the ownership rights, unless otherwise agreed by the owners of multiple ownership property.
2. Where a person requests one of the owners of multiple ownership property to fulfil a payment obligation and such owner does not have private property or sufficient private property to make the payment, the requesting person has the right to request that the multiple ownership property be divided and to participate in the division of the property, unless otherwise provided by law.

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

Article 220 *Termination of multiple ownership*

Multiple ownership shall terminate in the following circumstances:

1. The multiple ownership property has been divided.
2. One of the owners of the multiple ownership [*property*] is entitled to enjoy the property in its entirety.
3. The multiple ownership property no longer exists.
4. Other cases as provided by law.

Section 3

Creation and Termination of Ownership Rights

Sub-section 1

Creation of Ownership Rights

Article 221 *Bases for creation of ownership rights*

Ownership rights are created with respect to property in the following circumstances:

1. Through labour or lawful production and business activities, or through activities of creating objects of

intellectual property rights.

2. Transfer of ownership rights as agreed or pursuant to a judgment or decision of a court or another authorized State agency.
3. Receipt of benefits and income.
4. Formation of new property through merging, mixing or processing.
5. Through inheritance.
6. Possession in accordance with law of property which has been abandoned or of which the owner is not able to be identified, or property which has been buried, concealed, covered or sunken and found, or which has been lost or mislaid by another person; of stray poultry or livestock, or of aquaculture stock.
7. Possession of or receipt of benefits from property as provided in article 236 of this Code.
8. Other cases as provided by law.

Article 222 *Creation of ownership rights with respect to property earned from labour, lawful business and production activities, and activities of creating objects of intellectual property rights*

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

Persons conducting creative activities have ownership rights with respect to property earned from the creative activities in accordance with the *Law on Intellectual Property*.

Article 223 *Creation of ownership rights pursuant to contracts*

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

Article 224 *Creation of ownership rights with respect to benefits and income*

An owner or the person using property has ownership rights with respect to the benefits and income [*derived from such property*] as agreed or in accordance with law from the time when such benefits and income are derived.

Article 225 *Creation of ownership rights in case of merger*

1. Where property of more than one owner¹⁶ is merged to form an indivisible object and it is not possible to determine whether the property which is merged is the primary object or an auxiliary object, the newly formed object shall be the multiple ownership property of such owners. If the property which is merged consists of the primary object and [*an*] auxiliary object[s], the newly formed object shall belong to the owner of the primary object from the time when the new object is formed. The owner of the new property must pay the value of the auxiliary object to its owner, unless otherwise agreed.
2. Where a person merges the moveable property of another person with its own moveable property, even though he or she knew or should have known that such property was not his or her own and it

did not have the consent of the owner of the property which was merged, the owner of the property which is merged shall have one of the following rights:

- (a) To request the person having merged the property to deliver the new property to him or her and to pay the value of the property;
- (b) If the owner of the property which is merged does not wish to take the new property, to request the person having merged the property to pay the value of the merged property and to compensate for any loss and damage;
- (c) Other rights as provided by law.

¹⁶ *Allens footnote:* The literal translation is "many different owners".

3. Where a person merges the moveable property of another person with his or her own immoveable property, even though he or she knew or should have known that such property was not his or her own and did not have the consent of the owner of the property which was merged, the owner of the property which is merged has one of the following rights:
 - (a) To request the person having merged the property to pay the value of the merged property and to compensate for any loss and damage;
 - (b) Other rights as provided by law.
4. Where a person merges his or her own moveable property with the immoveable property of another person, the owner of the immoveable property has the right to request the person having merged the property to remove the illegally merged property and to compensate for any loss and damage or [*has the right to*] retain the property and pay the value of the merged property to the person having merged the property, unless otherwise agreed.

Article 226 *Creation of ownership rights in case of mixing*

1. Where the property of more than one owner is mixed to form a new indivisible object, the new object shall be the multiple ownership property of such owners from the moment of mixing.
2. Where a person has mixed the property of another person with his or her own property, even though he or she knew or should have known that such property is not his or her own and he or she does not have the consent of the owner of the property which has been mixed, the owner of the property which has been mixed may:
 - (a) To request the person having mixed the property to deliver the new property to him or her and pay such person the value of the property of such person;
 - (b) If the owner of the property which has been mixed does not wish to take the new property, to request the person having mixed the property to pay the value of the property [*of the owner*] and to compensate for any loss and damage.

Article 227 *Creation of ownership rights in case of processing*

1. An owner of raw materials which are processed to form a new object is the owner of the newly formed object.

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

Article 228 *Creation of ownership rights with respect to abandoned property and property the owner of which is not able to be identified*

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

A person finding or currently managing an abandoned property which is moveable property shall have the right to own such property, unless otherwise provided by law. If the [*abandoned*] property is immoveable property, it shall belong to the State.

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

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

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

If the owner of the moveable property is still not able to be identified after one year from the date of the public announcement, the ownership rights with respect to such property shall belong to the finder of the property.

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

Article 229 *Creation of ownership rights with respect to buried, concealed, covered or sunken property which is found*

1. A person finding a buried, concealed, covered or sunken property must inform or immediately return it to the owner. If [*the finder*] is not aware of the owner, [*the finder*] must inform or deliver the property to the people's committee or police station of the nearest commune or another authorized State agency in accordance with law.
2. Ownership rights with respect to a buried, concealed, covered or sunken property which is found, but which has no owner or the owner of which is not able to be identified, shall be determined, after deducting search and maintenance expenses, as follows:
 - (a) A found property which belongs to an historic or cultural relic as provided in the *Law on Cultural Relics* shall belong to the State and the finder shall be entitled to a monetary reward in accordance with law.

- (b) A found property which does not belong to an historic or cultural relic as provided in the *Law on Cultural Relics*, and which has a value less than or equivalent to ten (10) times the basic wage rate provided by the State, shall belong to the finder; if the value of the found property is more than ten (10) times the basic wage rate provided by the State, the finder shall be entitled to the value of ten (10) times the basic wage rate provided by the State plus fifty (50) per cent of the remaining value of the property in excess of ten (10) times the basic wage rate provided by the State, with the remaining value belonging to the State.

Article 230 *Creation of ownership rights with respect to property which other persons have lost or mislaid*

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

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

2. If, after one year from the date of the public announcement of the property which some other person has lost or mislaid, the owner of the object is still not able to be identified or the owner does not claim the property, the ownership rights with respect to such property shall be determined as follows:
 - (a) If the value of the lost or mislaid property is less than or equal to ten (10) times the basic wage rate provided by the State, the finder shall be permitted to create the ownership rights with respect to such property in accordance with this Code and other relevant laws. If the value of the property found is more than ten (10) times the basic wage rate provided by the State, after deducting costs of preservation, the finder shall be entitled to the value of ten (10) times the basic wage rate provided by the State plus fifty (50) per cent of the remaining value of the property in excess of ten (10) times the basic wage rate provided by the State, with the remaining value belonging to the State.
 - (b) A lost or mislaid property which belongs to an historic or cultural relic as provided in the *Law on Cultural Relics* shall belong to the State. The finder shall be entitled to a monetary reward in accordance with law.

Article 231 *Creation of ownership rights with respect to stray domestic livestock*

1. A person capturing a stray domestic livestock [animal] must take care of it and immediately notify the people's committee of the commune in which such person resides in order that a public announcement may be made notifying the owner to reclaim [the stray animal]. After six months from the date of the public announcement or after one year in the case of a domestic animal which is allowed to roam according to customary practice, the ownership rights with respect to the domestic animal and any offspring born during the period of feeding and taking care of [the domestic animal] shall belong to the person who captured it.
2. Where an owner is entitled to reclaim the stray domestic animal, he or she must remunerate the person having captured it for feeding and taking care [of the stray animal] and any other expenses [incurred]. During the period of feeding and taking care of the stray animal, the person who captured it shall be entitled to half of any offspring born or fifty (50) per cent of the value of the offspring born. Such person must compensate for any loss and damage if he or she intentionally causes the death of the stray animal.

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

1. Where the domestic poultry of a person is lost and captured by another person, the person having captured the [*stray domestic*] poultry must make a public announcement notifying the owner to reclaim such poultry. If no one reclaims the domestic poultry after one month from the date of the public announcement, the ownership rights with respect to the domestic poultry and any benefit from the domestic poultry during the period of feeding and taking care of it shall belong to the person who captured it.
2. Where an owner is entitled to reclaim the stray poultry, he or she must remunerate the person who captured it for feeding and taking care [*of the stray domestic poultry*] and any other expenses [*incurred*]. During the period of feeding and taking care of the stray [*domestic poultry*], the person who captured it shall enjoy the benefits from the stray [*domestic poultry*]. Such person must compensate for any loss and damage if he or she intentionally causes the death of the stray [*domestic poultry*].

Article 233 *Creation of ownership rights with respect to aquaculture stock*

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

Article 234 *Creation of ownership rights due to inheritance*

An heir is entitled to create ownership rights with respect to inherited property in accordance with Part Four of this Code.

Article 235 *Creation of ownership rights in accordance with judgment or decision of court or another authorized State agency*

Ownership rights may also be created on the basis of a legally effective judgement or decision of a court or another authorized State agency.

Article 236 *Creation of ownership rights by reference to limitation periods due to unlawful possession or deriving of benefits from property*

A person unlawfully but in good faith possessing, or deriving benefits from, property continuously and in an overt manner for ten (10) years with respect to moveable property, and for thirty (30) years with respect to immoveable property, shall become the owner of such property from the moment of commencement of possession, unless otherwise provided by this Code or other relevant laws.

Sub-section 2

Termination of Ownership Rights

Article 237 *Bases for terminating ownership rights*

Ownership rights shall terminate in the following cases:

1. The owner transfers his or her ownership rights to another person.
2. The owner renounces his or her ownership rights.
3. The property is consumed or destroyed.
4. The property is realized in order to fulfil the obligations of the owner.
5. The property is requisitioned.
6. The property is confiscated.
7. The ownership rights with respect to the property have been created for another person in accordance with this Code.
8. Other cases as provided by law.

Article 238 *Transfer of ownership rights by owner*¹⁷

Where an owner transfers its ownership rights to another person through a contract for sale and purchase, by exchange, gift or loan, or through other contracts for transfer of ownership rights as provided by law, or through inheritance, the ownership rights of the owner with respect to the property shall terminate from the time when the ownership rights of the transferee arise.

Article 239 *Renunciation of ownership rights*

An owner may terminate ownership rights with respect to its property by publicly declaring, or by performing certain acts evidencing, its renunciation of the right to possess, use and dispose of such property.

With respect to property the renunciation of which may harm social order or security or cause environmental pollution, the renunciation of ownership rights must comply with the law.

Article 240 *Property ownership rights which have been created for other persons*

Where ownership rights with respect to property the owner of which is not able to be identified; with respect to buried, concealed, covered or sunken property which has been found; lost or mislaid property; stray domestic livestock, poultry; or aquaculture stock have been created for another person in accordance with articles 228 to 233 of this Code, the ownership rights of the person formerly having the property shall terminate.

When the ownership rights of a person possessing or deriving benefits from property have been created in accordance with article 236 of this Code or other relevant laws, the ownership rights of the person who formally had the property shall terminate.

Article 241 *Realization of property in order to fulfil obligations of owner*

1. Ownership rights with respect to property shall terminate when such property is realized in order to fulfil the obligations of the owner pursuant to a decision of a court or another authorized State agency, unless otherwise provided by law.
2. Property which the law provides is not able to be seized may not be realized in order to fulfil the obligations of the owner.
3. The ownership rights with respect to property realized in order to fulfil the obligations of the owner

shall terminate at the time when the ownership rights of the recipient of such property arise.

¹⁷ *Allens footnote:* The literal translation is "The owner transfers its ownership right to other persons".

4. The realization of land use rights shall be carried out in accordance with the law on land.

Article 242 *Consumed or destroyed property*

When property is consumed or destroyed, the ownership rights with respect to such property shall terminate.

Article 243 *Property which is compulsorily acquired*

Where property is compulsorily acquired by the State in accordance with law, the ownership rights of the owner shall terminate from the time when the decision of the authorized State agency becomes legally effective.

Article 244 *Confiscated property*

Where property of an owner is confiscated and paid into the State Budget due to the owner committing a crime or an administrative offence, the ownership rights of the owner with respect to such property shall terminate from the time when the judgment or decision of the court or of the authorized State agency becomes legally effective.

CHAPTER XIV

Other Rights with respect to Property

Section 1

Rights with respect to Adjoining Immoveable Property

Article 245 *Rights with respect to adjoining immoveable property*

Right with respect to adjoining immoveable property means a right performed with respect to an adjoining immoveable property (hereinafter referred to as *the property subject to the owed entitlement*) for the purpose of serving the exploitation of another immoveable property under the ownership of another person (hereinafter referred to as *the entitled immoveable property*).

Article 246 *Bases for creation of rights with respect to adjoining immoveable property*

Rights with respect to adjoining immoveable property shall be created subject to natural terrain, in accordance with law, in accordance with agreements or under a will.

Article 247 *Effectiveness of rights with respect to adjoining immoveable property*

Rights with respect to adjoining immoveable property shall be effective to all individuals and legal entities, and shall be transferred when the immoveable property is transferred, unless otherwise provided by relevant law.

Article 248 *Principles for performance of rights with respect to adjoining immoveable property*

The performance of rights with respect to adjoining immoveable property shall be as agreed by the parties.

Where the parties have not agreed, [*the rights with respect to the adjoining immovable property*] shall be performed on the following principles:

1. It must be assured that the reasonable requirements for exploitation of entitled immovable property are consistent with the use purpose of both the entitled immovable property and the property subject to the owed entitlement.
2. It is not permitted to abuse rights with respect to obliged immovable property.
3. It is not permitted to conduct any act which hinders the performance of rights with respect to entitled immovable property or causes the performance of rights with respect to entitled immovable property to become difficult.

Article 249 *Change to performance of rights with respect to adjoining immovable property*

Where there is a change to the use or exploitation of obliged immovable property, resulting in a change to the performance of rights with respect to entitled immovable property, the owner of the property subject to the owed entitlement must give reasonable prior notice to the owner of the entitled immovable property. The owner of the obliged immovable property must facilitate the owner of the property subject to the owed entitlement in compliance with such change

Article 250 *Obligation of owners relating to draining of rainwater*

An owner of a house or other construction works must install water drain pipes in order that the rainwater from the roof of its house or construction works does not run onto any adjoining immovable properties.

Article 251 *Obligation of owners relating to draining of waste water*

An owner of a house or other construction works must install underground drains or water drainage channels to discharge waste water to the prescribed location in order that the waste water does not run and spill onto any adjoining immovable properties or onto public streets or public places.

Article 252 *Rights relating to supply and drainage of water through adjoining immovable property*

Where, due to the natural location of immovable property, the supply and drainage of water must pass through another immovable property, the owner of the immovable property through which the water flows must provide an appropriate channel for the supply and drainage of water and may not hinder or prevent the flow of water.

The person using the water supply and drainage channel must minimize to the lowest possible extent any loss and damage to the owner of the immovable property through which the water flows when installing the water channel. If loss and damage is caused, compensation must be made. Where water flows naturally from a higher position to a lower position and causes loss and damage to the owner of the immovable property through which the water flows, the person using the water supply and drainage channel shall not be liable to compensate for any loss and damage.

Article 253 *Rights relating to irrigation and water drainage in cultivation*

A person having the right to use land for cultivation has the right to request neighbouring land users to provide a reasonable and convenient water channel for irrigation and drainage. A person having been so requested has the obligation to grant such request. If the person using such water channel causes loss and damage to neighbouring land users, compensation must be made.

Article 254 *Right of passage*

1. An owner of immovable property which is surrounded by immovable properties of other owners such that there is no passage or there is not enough space for a passage to a public road, has the right to request the owners of the surrounding immovable properties to provide it with a reasonable passage through their areas.

The passage shall be opened in the adjoining immovable property which is deemed to be the most convenient and reasonable, taking into consideration the special characteristics of the location, the interests of the immovable property which does not have an exit¹⁸, and what will cause the least damage to the immovable property through which the passage is created.

An owner of entitled immovable property in respect of a passage must pay compensation to the owner/s of property subject to the owed entitlement, unless otherwise agreed.

2. The location and the length, width and height of the passage shall be agreed by the owners in order to ensure convenient passage and minimize inconvenience to the parties. If there are any disputes regarding the passage, the parties may request a court or another authorized State agency to resolve same.
3. Where immovable property is divided into more than one portion for different owners or users, upon division, necessary passages must be provided, without compensation, to persons in the interior as provided in clause 2 of this article.

Article 255 *Installation of electricity transmission cables and communication cables through other immovable properties*

An owner of immovable property has the right to install electricity transmission cables and communication cables in a reasonable manner through the immovable property of other owners, but must ensure the safety and convenience of such owners. If loss and damage is caused, compensation must be made.

Article 256 *Termination of rights with respect to adjoining immovable property*

Rights with respect to adjoining immovable property shall terminate in the following circumstances:

1. The entitled immovable property and the *property subject to the owed entitlement* are under the ownership of the same person.
2. The use or exploitation of immovable property no longer gives rise to the requirement for enjoying the rights.
3. As agreed by the parties.
4. Other cases as provided by law.

¹⁸ *Allens footnote*: The literal translation is "which is surrounded/encircled".

Section 2

Usufruct Rights

Article 257 *Usufruct rights*

Usufruct right means the right of a subject to exploit and enjoy benefits and income from a property under the ownership of another subject within a certain period of time.

Article 258 *Bases for creation of usufruct rights*

Usufruct rights shall be created in accordance with law, in accordance with agreements or under a will.

Article 259 *Effectiveness of usufruct rights*

The usufruct right shall be created as from the time of receipt of transfer of property, unless otherwise agreed or provided by relevant law.

The usufruct right which has been created shall be effective to all individuals and legal entities, unless otherwise provided by relevant law.

Article 260 *Term of usufruct rights*

1. The term of the usufruct right shall be as agreed by the parties or as provided by law but the maximum term shall be the full life of the first usufruct if the usufruct is an individual, and if the first usufruct is a legal entity, [*the term*] shall last until the legal entity terminates its existence, but not exceeding thirty (30) years.
2. An usufructuary has the right to lease the usufruct right within the term provided in clause 1 of this article.

Article 261 *Rights of usufructuaries*

1. To personally or permit another person to exploit, use or receive benefits and income from objects of the usufruct right.
2. To request the owner of property to perform the obligation to repair the property in accordance with clause 4 of article 263 of this Code; where [*the usufructuary*] performs such obligation on behalf of the owner, [*the usufructuary*] shall have the right to request the owner of the property to reimburse any costs.
3. To lease the usufruct right with respect to property.

Article 262 *Obligations of usufructuaries*

1. To accept property on the basis of its current status and to conduct registration if provided by law.
2. To exploit property in compliance with its utility and use purpose.
3. To take care of and preserve property as if it were its own property.
4. To maintain or repair property periodically in order to assure the normal use; to restore the condition of the property and remedy adverse consequences with respect to the property, resulting from failure to perform properly its obligations in compliance with technical requirements or in accordance with customary practice regarding preservation of property.
5. To return property to the owner upon expiry of the usufruct term.

Article 263 *Rights and obligations of owners of properties*

1. To dispose of the property but not to change the created usufruct right.
2. To request a court to deprive [*the usufructuary*] of the usufruct right where the usufructuary commits a serious breach of its obligations.
3. Not to hinder, or conduct any other act causing difficulties to, or infringe lawful rights and benefits of the usufructuary.
4. To perform the obligation to repair the property in order to ensure that [*the property*] is not considerably impaired, causing the property to become unusable or causing loss of the entire utility or value of the property.

Article 264 *Right to enjoy benefits and income*

1. An usufructuary has the ownership right with respect to benefits and income earned from the property the object of the usufruct right within the period such right is effective.
2. Where the usufruct right terminates before the period for receipt of benefits and income has come, then, when the period for receipt of benefits and income comes, the usufructuary shall be entitled to the value of benefits and income earned in proportion to the period for which such person is entitled to the usufruct right.

Article 265 *Termination of usufruct rights*

The usufruct rights shall terminate in the following cases:

1. The term of the usufruct right expires.
2. As agreed by the parties.
3. The usufructuary becomes the owner of the property the object of the usufruct right.
4. The usufructuary renounces or does not perform the usufruct right within the term provided by law.
5. The property which is the object of the usufruct right no longer exists.
6. As decided by a court.
7. Other bases as provided by law.

Article 266 *Return of property upon termination of usufruct rights*

Property being the object of the usufruct right must be returned to the owner upon termination of the usufruct right, unless otherwise agreed or provided by law.

Section 3

Surface Rights

Article 267 *Surface rights*

Surface right means the right of a subject with respect to land surface, water surface, spaces on the land surface and water surface, and subsurface of the land the use right of which belongs to another subject.

Article 268 *Bases for creation of surface rights*

Surface rights shall be created in accordance with law or agreements or under a will.

Article 269 *Effectiveness of surface rights*

The surface right shall take effect as from the time when a subject having the land use right transfers the land surface, water surface, spaces on the land surface and water surface and subsurface to a subject having the surface right, unless otherwise agreed or provided by relevant law.

Surface rights are effective to all individuals and legal entities, unless otherwise provided by relevant law.

Article 270 *Term of surface rights*

1. The term of the surface right shall be determined in accordance with law or agreements or under a will but shall not exceed the term of the land use right.
2. Where the term of the surface right is not specified in the agreement or will, either party may terminate such right at any time but must give at least six months prior notice to the other party thereof.

Article 271 *Contents of surface rights*

1. A subject of a surface right has the right to exploit and use the land surface, water surface, spaces on the land surface and water surface, and the subsurface of the land the use right which belongs to another person for the purpose of construction of works, plantation of trees and cultivation, but it must not be contrary to this Code, the laws on land, on construction, zoning, natural resources and minerals, and other relevant laws.
2. A subject of a surface right has the ownership right with respect to the property created in accordance with clause 1 of this article.
3. Where a surface right is transferred partly or entirely, the subject receiving the transfer shall be entitled to inherit the surface right on the conditions and within the scope in proportion to the share of the transferred surface right.

Article 272 *Termination of surface rights*

A surface right shall terminate in the following cases:

1. The period of entitlement to the surface right expires.
2. The subject having the surface right and the surface having the land use right are the same.
3. The subject having the surface right renounces its right.
4. The land use right which includes the surface right is resumed in accordance with the Law on Land.
5. As agreed by the parties or as provided by law.

Article 273 *Realization of property upon termination of surface rights*

1. When a surface right terminates, the subject of the surface right must return the land surface, water surface, spaces on the land surface and water surface, and the subsurface to the subject having the land use right as agreed or as provided by law.
2. The subject of the surface right must realize the property owned by it before the surface right terminates, unless otherwise agreed.

Where the subject of the surface right fails to realize the property before the surface right terminates, the ownership right with respect to such property shall belong to the subject having the land use right as from the time of termination of the surface right, except in the case where the subject having the land use right does not take [receive] such property.

Where the subject having the land use right does not receive the property and is required to realize the property, the subject having the surface right must pay the costs for such realization.

PART THREE

OBLIGATIONS AND CONTRACTS

CHAPTER XV

General Provisions

Section 1

Bases for Giving Rise to and Subject Matter of Obligations

Article 274 *Obligations*

Obligations means acts whereby one or more subjects (hereinafter referred to as *obligors*)¹⁹ must transfer objects, transfer rights, pay money or provide valuable papers, perform acts or refrain from performing certain acts in the interests of one or more other subjects (hereinafter referred to as *obligees*)²⁰.

¹⁹ *Allens footnote:* The literal translation is "parties having obligations".

²⁰ *Allens footnote:* The literal translation is "parties having rights".

Article 275 *Bases for giving rise to obligations*

Obligations arise from the following bases:

1. Contracts.
2. Unilateral legal acts.
3. Unauthorized performance of acts.
4. Unlawful possession or use of or receipt of benefits from property.
5. Causing damage through unlawful acts.
6. Other bases as provided by law.

Article 276 *Subject matter of obligations*

1. The subject matter of an obligation shall be property or acts which must be performed or acts which must not be performed.
2. The object of an obligation must be defined.

Section 2

Performance of Obligations

Article 277 *Places for performing obligations*

1. The place for performing an obligation shall be agreed by the parties.
2. Where the parties do not have an agreement, the place for performance of the obligation shall be:
 - (a) The location of the immoveable property, if the subject matter of the obligation is immoveable property;
 - (b) The place of residence or head office of the obligee, if the subject matter of the obligation is not immoveable property.

Where the obligee changes its place of residence or head office, it must notify the obligor of the change and must bear any increase in expenses resulting from the change in residence or head office, unless otherwise agreed.

Article 278 *Time-limits²¹ for performing obligations*

1. The time-limit for performing an obligation shall be as agreed by the parties or as provided by law or as decided by an authorized State agency.

²¹ *Allens footnote:* This is the literal translation. It may be understood as either a fixed future point in time or as a period of time.

2. The obligor must perform the obligation strictly in accordance with the [*relevant*] time-limit, unless otherwise provided by this Code or other relevant laws.

If the obligor performs the obligation prior to the time-limit²² and the obligee accepts such performance, the obligation shall be deemed to have been fulfilled on time.

3. Where it is impossible to determine the time-limit for the performance of an obligation in accordance with clause 1 of this article, either party may fulfil the obligation or demand the fulfilment of the obligation [*as the case may be*] at any time, but must give reasonable prior notice to the other party.

Article 279 *Performance of obligations to deliver objects*

1. A person having the obligation to deliver an object must take care of and preserve the object until the time of delivery.
2. Where an object to be delivered is a distinctive object, the obligor must deliver that particular object in the same condition as agreed. If the object is a generic object, it must be delivered in accordance with the quality and quantity agreed. If there is no agreement as to the quality, the object delivered must be of average quality. If the object is an integrated object, the whole integrated object must be delivered.

3. An obligor must bear all expenses related to the delivery of an object, unless otherwise agreed.

Article 280 *Performance of obligations to pay money*

1. An obligation to pay money shall be performed in full, strictly on time, at the place and by the method as agreed.
2. The obligation to pay money shall include the payment of interest on principal, unless otherwise agreed.

Article 281 *Performance of obligations to perform acts or not to perform acts*

1. Obligation to perform an act means an obligation whereby the obligor must perform that particular act.
2. Obligation not to perform an act means an obligation whereby the obligor must not perform that particular act.

Article 282 *Performance of obligations in stages*²³

An obligation may be performed in stages as agreed or as provided by law or as decided by an authorized State agency.

The late performance of one stage of an obligation shall be deemed to be late performance of the obligation.

²² *Allens footnote:* The apparent meaning is that the obligor performs the civil obligation before the time-limit without the prior consent of the obligee.

²³ *Allens footnote:* The literal translation is "over a period".

Article 283 *Performance of obligations through third parties*

With the consent of the obligee, an obligor may authorize a third person to perform an obligation on behalf of the obligor provided that the obligor shall be liable to the obligee if the third person fails to perform or performs incorrectly the obligation.

Article 284 *Conditional performance of obligations*

1. Where the parties have agreed on conditions for the performance of an obligation or where the law provides certain conditions for the performance of an obligation, the obligor must²⁴ perform the obligation when such conditions are satisfied.
2. Where the conditions do not happen or happen resulting from the efforts of one party, the provisions in clause 2 of article 120 of this Code shall apply.

Article 285 *Performance of obligations having optional subject matters*

1. Obligation having an optional subject matter means an obligation the subject matter of which is one of several different items of property or acts from which the obligor may select at its discretion, except where it is agreed or provided by law that the right to select is reserved to the obligee.
2. The obligor must notify the obligee of the property or act selected in order to perform the obligation.

If the obligee has fixed a time-limit for performance of the obligation with a selected subject matter, the obligor must fulfil the obligation on time.

3. Where there remains only one property or one act [*to select*], the obligor must deliver that [particular] property or perform that [*particular*] act.

Article 286 *Performance of substitutable obligations*

Substitutable obligation means an obligation whereby if the obligor fails to perform the original obligation, it may perform a different obligation as agreed by the obligee as a substitute for the original obligation.

Article 287 *Performance of severable obligations*

Where more than one person jointly perform an obligation and each person has a clearly defined share of the obligation which is severable, each person must perform only its own share of the obligation.

Article 288 *Performance of joint obligations*

1. Joint obligation means an obligation which must be performed by more than one person and which the obligee may request any one of the obligors to perform in its entirety.
2. When one person has performed an obligation in its entirety, such person may demand the other joint obligors to make payment for their respective shares of the joint obligation to [*such person*].

²⁴ *Allens footnote:* Evidently, this is not meant to imply that an obligor cannot perform an obligation before the conditions are satisfied if it so wishes.

3. Where an obligee designates one person from amongst the joint civil obligors to perform an entire obligation and later releases that person, the other obligors shall also be released from performing the obligation.
4. Where an obligee releases one of the joint obligors from its share of the joint civil obligation, the other obligors must, nevertheless, perform jointly their respective shares of the obligation.

Article 289 *Performance of obligations for joint obligees*

1. Obligation for joint obligees means an obligation whereby each joint obligee may demand the obligor to perform the civil obligation in its entirety.
2. An obligor may perform its obligation with respect to any one of the joint obligees.
3. Where one of the joint obligees releases the obligor from performing the share of the obligation owed to such joint obligee, the obligor must, nevertheless, perform the remaining shares of the obligation owed to the other joint obligees.

Article 290 *Performance of divisible obligations*

1. Divisible obligation means an obligation the subject matter of which is able to be divided into portions for the purpose of performance.
2. An obligor may perform the obligation in stages, unless otherwise agreed.

Article 291 *Performance of indivisible obligations*

1. Indivisible obligation means an obligation the subject matter of which must be performed [*in its entirety*] at the one time.
2. Where several persons must perform an indivisible obligation, they must perform the obligation [*in its entirety*] at the same time.

Section 3

Security for Performance of Obligations

Sub-section 1

General Provisions

Article 292 [*Types of*] security²⁵ for performance of obligations

[Types of] security for the performance of obligations comprise:

1. Pledge of property.
2. Mortgage of property.

²⁵ *Allens footnote:* The literal translation is "measures to secure".

3. Performance bond.
4. Security deposit.
5. Escrow deposit.
6. Reserve of ownership rights.
7. Guarantee.
8. Fidelity guarantees.²⁶
9. Retention of property.

Article 293 *Scope of secured obligations*

1. An obligation may be fully or partly secured, as agreed or as provided by law; if there is no agreement on or if the law does not provide, the scope of the security, then the obligation, including the obligation to pay interest or fine and to compensate for any damage, shall be deemed to be fully secured.
2. Secured obligations may be current obligations, future obligations and conditional obligations.
3. In the case of providing security for future obligations, an obligation which is formed during the term of security shall be the secured obligation, unless otherwise agreed.

Article 294 *Security for performance of future obligations*

1. In the case of providing security for performance of a future obligation, the parties are entitled to reach a specific agreement on the scope of the secured obligation or on the deadline for performing the secured obligation, unless otherwise provided by law.
2. When the future obligation is formed, the parties are not required to re-create security for such obligation.

Article 295 *Security property*

1. Security property must be under the ownership rights of the securing party, except in the case of retaining property or reserving ownership rights.
2. Security property may be generally describable but must be identifiable.
3. Security property may be either current property or property to be formed in the future.
4. The value of a security property may be lesser, equal or greater than the value of the secured obligation.

²⁶ *Allens footnote:* An alternative translation is "reputation-based collateral".

Article 296 *Single item of property used as security for performance of several obligations*

1. A single item of property may be used as security for performance of several obligations if, at the time of establishment of the security transaction, the value of such property is greater than the total aggregate value of the secured obligations, unless otherwise agreed or otherwise provided by law.
2. Where a single item of property is used as security for performance of several obligations, the securing party must notify the later secured party that the security property is being used as security for performance of other obligations. The provision of security on each occasion must be made in writing.
3. Where the property must be realized in order to satisfy one obligation which has fallen due, the other obligations which have not yet fallen due shall also be deemed due and all jointly secured parties shall be entitled to take part in the realization of the property. The secured party which provided notice of realization of the property shall be responsible for realizing the property, unless otherwise agreed by the jointly secured parties.

If the parties wish to continue to fulfil the obligations which have not yet fallen due, they may agree that the securing party will use other property as security for performance of the obligation which has fallen due.

Article 297 *Enforceable against third persons*

1. Security shall be enforceable against a third person as from the time when the security is registered or the secured party keeps or holds the security property.
2. When the security becomes enforceable against a third person, the secured party may have recourse to the security property and is entitled to payment as stipulated in article 308 of this Code

and other relevant laws.

Article 298 *Registration of security*

1. Security is registered as agreed or provided by law.

Registration shall be a condition for effectiveness of a security transaction only when the law so provides.

2. A security which is registered shall be enforceable against a third person as from the time of registration.
3. Registration of security shall be carried out in accordance with the law on registration of security.

Article 299 *Cases of realization of security property*

1. The obligor fails to perform or performs incorrectly the obligation when it falls due.
2. The obligor is in breach of its obligation resulting in liability for early performance of the obligation pursuant to an agreement or as stipulated by law.
3. In other circumstances as agreed by the parties or as provided by law.

Article 300 *Notice of realization of security property*

1. Prior to carrying out realization of the security property, the secured party must provide written notice within a reasonable period of time of realization of the security property to the securing party and other jointly secured parties.

When the security property is in danger of damage resulting in its diminishing in value or losing its entire value, the secured party shall have the right to immediately realize such property and at the same time shall notify the securing party and other secured parties of the realization of the property.

2. If the secured party fails to provide notice of realization of the security property pursuant to clause 1 of this article and causes loss and damage, then the secured party must pay compensation to the securing party and other jointly secured parties.

Article 301 *Delivery of security property for realization*

A person currently holding security property is obliged to deliver it to the secured party for realization in one of the cases stipulated in article 299 of this Code.

Where the person currently holding the property fails to deliver it, the secured party shall have the right to request a court to resolve the matter, unless otherwise provided by relevant law.

Article 302 *Right to recover security property*

If prior to realization of the security property the securing party fully discharges the obligation it owes to the secured party and pays all expenses arising from late performance of such obligation, then the securing party shall have the right to recover such property, unless otherwise provided by law.

Article 303 *Method of realization of pledged or mortgaged property*

1. A securing party and a secured party have the right to reach agreement on one of the following

methods of realization of a pledged or mortgaged property:

- (a) The property will be sold by auction;
 - (b) The secured party will itself sell the property;
 - (c) The secured party will receive the property in replacement of performance of the obligation of the securing party;
 - (d) Other methods.
2. Where there is no agreement on a method of realization of the security property as stipulated in clause 1 above, then the property shall be sold by auction, unless otherwise provided by law.

Article 304 *Sale of pledged or mortgaged property*

1. The auction of pledged or mortgaged property shall be conducted in accordance with the law on auction of property.
2. The sale of pledged or mortgaged property by the secured party itself shall be conducted in accordance with the provisions on sale of property in this Code and the following provisions:
 - (a) The payment of the proceeds from realization of the property shall be made in accordance with article 307 of this Code;
 - (b) After the results of sale of the property are available, the owner of the property and the party having the right to realize the property are required to conduct procedures in accordance with law to transfer the ownership rights in respect of the property to the purchaser of the property.

Article 305 *Receipt of security property in replacement of performance of obligation of securing party*

1. A secured party shall have the right to receive the security property in replacement of performance of the obligation of the securing party if there is [such] an agreement upon establishment of the security transaction.
2. Where there is no agreement as stipulated in clause 1 above, the secured party shall be only permitted to receive the security property in replacement of performance of the obligation when the securing party so agrees in writing.
3. If the value of the security property is greater than the value of the secured obligation, then the secured party must pay the securing party the difference; and if the value of the security property is less than the value of the secured obligation, then the unpaid portion of the obligation shall become an unsecured obligation.
4. The securing party is obliged to conduct the procedures to transfer the ownership rights in respect of the property to the secured party in accordance with law.

Article 306 *Valuation of security property*

1. A securing party and a secured party have the right to reach agreement on the price of the security property or to value [the security property] via a property valuation organization upon realization of the security property.

Where there is no agreement, the property shall be valued via a property valuation organization.

2. The security property shall be objectively valued in conformity with the market price.
3. The valuation organization must pay compensation for any loss and damage caused by its unlawful act to the securing party or the secured party during the process of valuation of the security property.

Article 307 *Payment of proceeds from realization of pledged or mortgaged property*

1. The proceeds from realization of a pledged or mortgaged property, after payment of expenses for taking care of, seizing and realizing the pledged or mortgaged property, shall be paid in the order of priority stipulated in article 308 of this Code.
2. Where the amount of the proceeds from realization of the pledged or mortgaged property after payment of expenses for taking care of, seizing and realizing the pledged or mortgaged property is greater than the value of the secured obligation, then the difference must be paid to the securing party.
3. Where the amount of the proceeds from realization of the pledged or mortgaged property after payment of expenses for taking care of, seizing and realizing the pledged or mortgaged property is less than the value of the secured obligation, then the unpaid portion of the obligation shall be determined to be an unsecured obligation, unless the parties have agreed on additional security property. The secured party shall have the right to demand the party having the secured obligation to perform the unpaid portion of the obligation.

Article 308 *Order of priority for payment between jointly secured parties*

1. When a single item of property is used as security for performance of several obligations, the order of priority for payment between the jointly secured parties shall be determined as follows:
 - (a) Where all types of security are enforceable against a third person, the order of payment shall be determined according to the order in which enforceability against [the third person] is established;
 - (b) Where there are types of security which are enforceable against a third person and types of security which are not enforceable against a third person, the obligation with the type of security which is enforceable against the third person shall be paid first;
 - (c) Where all types of security are not enforceable against a third person, the order of payment shall be determined according to the order in which the types of security were established.
2. The order of priority for payment stipulated in clause 1 above may be changed if the jointly secured parties reach agreement on changing the order of priority for payment as between themselves. The subrogee of a right to priority payment shall only be entitled to priority payment within the scope of the security of the subrogator.

Sub-section 2

Pledges of Property

Article 309 *Pledges of property*

Pledge of property means the delivery by one party (hereinafter referred to as the *pledgor*) of property under its ownership to another party (hereinafter referred to as the *pledgee*) as security for the performance

of an obligation.

Article 310 *Effectiveness of pledges of property*

1. A contract of pledge of property shall be effective as from the time of entering into the contract, unless otherwise agreed or provided by law.
2. A pledge of property shall be enforceable against a third person as from the time when the pledgee holds the pledged property.

Where an immovable property is the subject matter of a pledge in accordance with law, the pledge of the immovable property shall be enforceable against a third person as from the time of registration.

Article 311 *Obligations of pledgors*

1. To deliver the pledged property to the pledgee as agreed.
2. To notify the pledgee of any third person rights, if any, with respect to the pledged property; in the case of failure to provide such notice, the pledgor shall have the right to cancel the contract of pledge of property and demand compensation for loss and damage or [*the right to*] maintain the contract and agree on the rights of the third person with respect to the pledged property.
3. To pay the pledgee reasonable expenses for taking care of the pledged property, unless otherwise agreed.

Article 312 *Rights of pledgors*

1. To demand the pledgee suspend use of the pledged property in cases provided in clause 3 of article 314 of this Code if the pledged property is in danger of losing its value or depreciating in value as a result of such use.
2. To demand the pledgee return the pledged property and relevant documents, if any, after the obligation secured by the pledge has terminated.
3. To demand the pledgee compensate for any loss and damage caused to the pledged property.
4. To sell, replace, exchange or give the pledged property if the pledgee agrees or as provided by law.

Article 313 *Obligations of pledgees*

1. To take care of and preserve the pledged property; if [the pledgee] loses, mislays or damages the pledged property, the pledgee must compensate the pledgor for loss and damage.
2. Not to sell, exchange or give the pledged property and not to use it as security for the performance of another obligation.
3. Not to lease, lend or exploit the use functions of, nor to enjoy the benefits or income derived from the pledged property, unless otherwise agreed.
4. To return the pledged property and relevant documents, if any, when the obligation secured by the pledge terminates or is substituted with another security.

Article 314 *Rights of pledgees*

1. To demand a person unlawfully possessing or using the pledged property return the property.²⁷
2. To realize the pledged property in accordance with the methods as agreed or as provided by law.
3. To lease, lend or exploit the use functions of the pledged property, and to enjoy the benefits and income derived from the pledged property if so agreed.
4. Upon returning the pledged property to the pledgor, to be reimbursed for reasonable expenses incurred in taking care of the pledged property.

²⁷ *Allens footnote:* It is not clear to whom the pledgee may demand the property be returned.

Article 315 *Termination of pledges of property*

A pledge of property shall terminate in the following cases:

1. The obligation secured by the pledge has terminated.
2. The pledge of property has been cancelled or substituted with another security.
3. The pledged property has been realized.
4. As agreed by the parties.

Article 316 *Return of pledged property*

Where a pledge of property is terminated in accordance with clause 1 or 2 of article 315 of this Code or as agreed by the parties, the pledged property and documents relating to the pledged property shall be returned to the pledgor. Any benefits and income derived from the pledged property shall also be returned to the pledgor, unless otherwise agreed.

Sub-section 3

Mortgages of Property

Article 317 *Mortgages of property*

1. Mortgage of property means the use by one party (hereinafter referred to as the *mortgagor*) of property under its ownership as security for the performance of an obligation to the other party (hereinafter referred to as the *mortgagee*) without transferring such property to the mortgagee.
2. Mortgaged property shall be held by the mortgagor. The parties may agree to deliver the mortgaged property to a third person to hold.

Article 318 *Mortgaged property*

1. Where an entire immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed.
2. Where a portion of an immovable property or moveable property having auxiliary objects is

mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed.

3. Where a land use right of land having assets attached to the land under the ownership right of the mortgagor is mortgaged, such assets shall also form part of the mortgaged property, unless otherwise agreed.
4. Where a mortgaged property is insured, the mortgagee must notify the insurer that the insured property is being mortgaged. The insurer shall pay the insured sum directly to the mortgagee upon occurrence of an insured event.

If the mortgagee fails to notify the insurer that the insured property is being mortgaged, the insurer shall pay the insured sum in accordance with the insurance contract and the mortgagor shall be obliged to make payment to the mortgagee.

Article 319 *Effectiveness of mortgages of property*

1. A contract of mortgage of property shall be effective as from the time of entering into the contract, unless otherwise agreed or provided by law.
2. A mortgage of property shall be enforceable against a third person as from the time of registration.

Article 320 *Obligations of mortgagors*

1. To deliver documents relating to the mortgaged property if the parties so agree, unless otherwise provided by law.
2. To take care of and preserve the mortgaged property.
3. If the mortgaged property is in danger of losing its value or depreciating in value due to its exploitation, to take necessary remedial measures, including ceasing the exploitation of the mortgaged property.
4. When the mortgaged property is damaged, then the mortgagor must conduct within a reasonable period of time repairs or replace the property with another property of equivalent value, unless otherwise agreed.
5. To provide the mortgagee with information on the current status of the mortgaged property.
6. To deliver the mortgaged property to the mortgagee for realization in one of the cases of realization of security property stipulated in article 299 of this Code.
7. To notify the mortgagee of any third person rights, if any, with respect to the mortgaged property. In the case of failure to provide such notice, the mortgagee shall have the right to cancel the contract of mortgage of property and demand compensation for loss and damage or [*the right to*] maintain the contract and agree on the rights of the third person with respect to the mortgaged property.
8. Not to sell, replace, exchange or donate the mortgaged property, except in the cases provided in clauses 4 and 5 of article 321 of this Code.

Article 321 *Rights of mortgagors*

1. To exploit the use functions, and to enjoy the benefits and income derived from the mortgaged property, except where the benefits and income also form part of the mortgaged property as agreed.

2. To invest in order to increase the value of the mortgaged property.
3. To recover the mortgaged property held by a third person and the documents relating to the mortgaged property held by the mortgagee when the obligation secured by the mortgage is terminated or is substituted by another security.
4. To sell, replace or exchange mortgaged property being goods rotating during the production and business process. In this case, the right to demand that the purchaser pay money, the proceeds received, the assets formed from the proceeds received or substituted or exchanged assets shall form the mortgaged property.
When a warehouse is mortgaged, the mortgagor may substitute goods in the warehouse but must ensure the value of the goods in the warehouse remains the value agreed.
5. To sell, exchange or give mortgaged property not being goods rotating during the production and business process, if the mortgagee agrees or as provided by law.
6. To lease or lend the mortgaged property provided that notice must be provided to the lessee and the borrower that the property is being mortgaged and that the mortgagee must also be notified that such notice has been provided.

Article 322 *Obligations of mortgagees*

1. Where the parties agree that the mortgagee will hold the documents relating to the mortgaged property, to return to the mortgagor such documents upon termination of the mortgage.
2. To conduct the procedures for realization of the mortgaged property in accordance with law.

Article 323 *Rights of mortgagees*

1. To examine and inspect directly the mortgaged property provided that such examination and inspection does not hinder or cause difficulty to the formation, use and exploitation of the mortgaged property.
2. To require the mortgagor to provide information on the current status of the mortgaged property.
3. To require the mortgagor to apply necessary measures to preserve the property and the value of the property if there is a danger that use and exploitation of the mortgaged property will cause loss of value or depreciation in value of the property.
4. To conduct registration of the mortgage in accordance with law.
5. To require the mortgagor or a third person holding the mortgaged property to deliver it to the mortgagee for realization if the mortgagor has failed to perform or performed incorrectly the obligation.
6. To hold the documents relating to the mortgaged property if the parties so agree, unless otherwise provided by law.
7. To realize the mortgaged property in the cases provided in article 299 of this Code.

Article 324 *Rights and obligations of third persons holding mortgaged property*

1. A third person holding mortgaged property has the following rights:
 - (a) To exploit the use functions of the mortgaged property if so agreed.
 - (b) To receive remuneration and be reimbursed for expenses incurred in taking care of and preserving the mortgaged property, unless otherwise agreed.
2. A third person holding mortgaged property has the following obligations:
 - (a) To take care of and preserve the mortgaged property, and to compensate for any loss and damage if the third person loses the mortgaged property or causes the mortgaged property to lose its value or depreciate in value;
 - (b) If the property is in danger of losing its value or depreciating in value due to exploitation of the use function of the mortgaged property, to cease such exploitation.
 - (c) To return the mortgaged property to the mortgagee or mortgagor as agreed or as provided by law.

Article 325 *Mortgage of land use rights without mortgaging property attached to land*

1. In the case of a mortgage of a land use right without mortgaging the property attached to the land and the land user is also the owner of the property attached to the land, then the property to be realized shall include the property attached to the land, unless otherwise agreed.
2. In the case of a mortgage of a land use right and the land user is not also the owner of the property attached to the land, then on realization of the land use right, the owner of the property attached to the land is entitled to continue to use the land within its rights and obligations; and the rights and obligations of the mortgagor in the relationship with the owner of the property attached to the land shall be transferred to the person receiving the transfer of the land use right, unless otherwise agreed.

Article 326 *Mortgage of property attached to land without mortgaging land use right*

1. In the case of a mortgage of property attached to land without mortgaging the land use right and the owner of the property attached to the land is also the land user, then the property to be realized shall include the land use right, unless otherwise agreed.
2. In the case of a mortgage of property attached to land without mortgaging the land use right and the owner of the property attached to the land is not also the land user, then on realization of the property attached to the land, the person receiving the transfer of the ownership right to such property attached to the land is permitted to continue to use the land within the transferred rights and obligations of the owner of the property attached to the land, unless otherwise agreed.

Article 327 *Termination of property mortgages*

A mortgage of property shall terminate in any of the following cases:

1. The obligation which is secured by the mortgage has terminated.
2. The mortgage of the property has been cancelled or substituted with another security.
3. The mortgaged property has been realized.

4. As agreed by the parties.

Sub-section 4

Performance Bonds, Security Deposits and Escrow Deposits

Article 328 *Performance bonds*

1. Performance bond means a sum of money, precious metals, gemstones or other valuable objects (hereinafter referred to as *performance bond property*) delivered by one party (hereinafter referred to as *depositor*) to another party (hereinafter referred to as *recipient of a performance bond*) for a period of time as security for the entering into or performance of a contract.
2. Upon a contract being entered into or performed, any performance bond property shall be returned to the depositor, or deducted from the amount of an obligation to pay money. If the depositor refuses to enter into or perform the contract, the performance bond property shall belong to the recipient of the performance bond; and if the recipient of the performance bond refuses to enter into or perform the contract, it must return the performance bond property and pay an amount equivalent to the value of the performance bond property to the depositor, unless otherwise agreed.

Article 329 *Security deposits*

1. Security deposit means a sum of money, precious metals, gemstones or other valuable objects (hereinafter referred to as *security deposit property*) delivered by a lessee of moveable property to the lessor for a period of time as security for the return of the leased property.
2. Where the leased property is returned, the lessee is entitled to recover the security deposit property after rent has been paid; and if the lessee does not return the leased property, the lessor is entitled to reclaim the leased property; and if the leased property is no longer able to be returned, the security deposit property shall belong to the lessor.

Article 330 *Escrow deposits*

1. Escrow deposit means a sum of money, precious metals, gemstones or other valuable papers deposited by an obligor into an escrow account at a credit institution as security for the performance of an obligation.
2. Where an obligor fails to perform or performs incorrectly an obligation, the obligee is entitled to be paid, and compensated for any loss and damage that the obligor causes, by the credit institution where the account is held, after bank service charges are deducted.
3. The procedures for making [escrow] deposits and making payments shall be as provided by law.

Sub-section 5

Reserve of Ownership

Article 331 *Reserve of ownership*

1. Pursuant to a purchase and sale contract, the ownership right to a property may be reserved by the seller until the time when the obligation to make payment is fully discharged.
2. The reserve of the ownership right must be made in writing in a separate document or be stated in the purchase and sale contract.

3. The reserve of the ownership right shall be enforceable against third persons as from the time of registration.

Article 332 *Right to reclaim property*

Where a purchaser fails to discharge the obligation to make payment to a seller as agreed, then the seller shall have the right to reclaim the property. The seller shall return the amount of money paid by the purchaser after deduction of the value of wear and tear of the property resulting from its use. Where the purchaser causes loss of or damage to the property, then the seller shall have the right to demand compensation for loss and damage.

Article 333 *Rights and obligations of property purchasers*

1. To use the property and to enjoy the benefits and income derived from the property within the period in which the reserve of the ownership right takes effect.
2. To bear risks with respect to the property during the duration of reserve of the ownership right, unless otherwise agreed.

Article 334 *Termination of reserve of ownership right*

A reserve of the ownership right shall terminate in the following cases:

1. The obligation to make payment to the seller has been discharged.
2. The seller recovers the property the ownership right of which is reserved.
3. As agreed by the parties.

Sub-section 6

Guarantees

Article 335 *Guarantees*

1. Guarantee means an undertaking made by a third person (hereinafter referred to as the *guarantor*) to an obligee (hereinafter referred to as the *beneficiary*) to perform an obligation on behalf of an obligor (hereinafter referred to as the *principal*) if the obligation falls due and the principal fails to perform or performs incorrectly the obligation.
2. The parties may agree that the guarantor shall only be obliged to perform the obligation on behalf of the principal if the principal is incapable of performing it.

Article 336 *Scope of guarantees*

1. A guarantor may guarantee²⁸ an obligation in whole or in part on behalf of a principal.

²⁸ *Allens footnote:* The literal translation is "undertake to guarantee".

2. A guaranteed obligation includes interest on the principal, penalties, compensation for any loss and damage and interest on the late amount for the period of the delay, unless otherwise agreed.

3. The parties may agree to use a security over a property as security for performance of the obligation to provide a guarantee.
4. Where the guaranteed obligation is a future obligation, the scope of the guarantee shall not include any obligation arising after the guarantor dies or the legal entity being the guarantor terminates its existence.

Article 337 *Remuneration*

The guarantor shall be entitled to receive remuneration if so agreed by the guarantor with the principal.

Article 338 *Joint guarantors*

When more than one person guarantee an obligation, those persons must perform jointly the guarantee, except where it is agreed or provided by law that the guarantee comprises separate portions. The obligee may demand any one of the joint guarantors to perform the obligation in its entirety.

Where one of the joint guarantors has performed the entire obligation on behalf of the principal, the guarantor may demand the other guarantors perform their respective portions of the obligation with respect to that guarantor.

Article 339 *Relationship between guarantors and beneficiaries*

1. Where a principal fails to perform or performs incorrectly its obligations, the beneficiary shall have the right to request the guarantor to perform the guaranteed obligation, except where the parties agree that the guarantor shall only be obliged to perform the obligation on behalf of the principal if the principal is incapable of performing it.
2. A beneficiary may not demand a guarantor to perform an obligation on behalf of the principal until the obligation falls due.
3. Where a beneficiary is able to offset the obligation with the principal, the guarantor does not have to perform the guaranteed obligation.

Article 340 *Right to demand of guarantors*

A guarantor may demand the principal indemnify²⁹ the guarantor to the extent of the guaranteed obligation which has been performed, unless otherwise agreed.

Article 341 *Discharge from guaranteed obligations*

1. Where a guarantor is required to perform a guaranteed obligation which the beneficiary discharges the guarantor from performing, the principal shall not be required to perform the obligation with respect to the beneficiary, unless otherwise agreed or provided by law.

²⁹ *Allens footnote:* The literal translation is "perform its obligation with respect to".

2. Where one person from amongst the joint guarantors is discharged from the performance of its portion of the guaranteed obligation, the other joint guarantors must, nevertheless, perform their [portion of the] guaranteed obligation.
3. Where one person from amongst the joint beneficiaries discharges the guarantor from the

performance of its portion of the obligation with respect to such person, the guarantor remains liable to perform the remaining portion of the obligation with respect to the other joint beneficiaries.

Article 342 *Civil liability of guarantors*

1. Where a principal fails to perform or performs incorrectly an obligation, the guarantor must perform such obligation.
2. Where a guarantor fails to perform correctly a guaranteed obligation, the beneficiary shall have the right to request the guarantor pay the value of the breached obligation and compensate for any loss and damage.

Article 343 *Termination of guarantees*

A guarantee shall terminate in the following cases:

1. The guaranteed obligation terminates.
2. The guarantee is cancelled or is substituted by another security.
3. The guarantor has satisfied the guaranteed obligation.
4. As agreed by the parties.

Sub-section 7

Fidelity Guarantees

Article 344 *Fidelity guarantees provided by socio-political organizations*

A socio-political organization at the grassroots level may provide a fidelity guarantee in order that poor individuals and households are able to borrow sums from credit institutions for purposes of production, business or consumption in accordance with law.

Article 345 *Formalities and contents of fidelity guarantees*

A loan guaranteed by a fidelity guarantee must be made in writing and be certified by the socio-political organization providing the fidelity guarantee in terms of conditions and situation of the borrower.

The agreement providing a fidelity guarantee must specify the loan amount, the purpose of loan, the term of loan, the interest rate, and the rights, obligations and responsibilities of the borrower, the lending credit institution and the socio-political organization which provides the fidelity guarantee.

Sub-section 8

Retaining Property

Article 346 *Retaining property*

Retaining property means the obligee (hereinafter referred to as the *retaining party*) currently lawfully holding property being the subject matter of a bilateral contract shall be permitted to [*continue to*] retain the property when the obligor fails to perform the obligation or performs incorrectly the obligation.

Article 347 *Creation of retaining property*

1. Retaining property shall arise from the time when the obligation falls due and the obligor fails to perform or performs incorrectly the obligation.
2. Retaining property shall be effective against third persons from the time when the retaining party holds the property.

Article 348 *Rights of retaining parties*

1. To request the obligor to fulfil all obligations arising from a bilateral contract.
2. To request the obligor to pay expenses necessary for taking care of and keeping the retained property.
3. To exploit the retained property to receive benefits and income if the obligor so agrees.

The value of exploitation of the retained property shall be offset against the value of the obligation of the obligor.

Article 349 *Obligations of retaining parties*

1. To take care of and keep the retained property.
2. Not to change the condition of the retained property.
3. Not to transfer or use the retained property without the consent of the obligor.
4. To return the retained property when the obligation has been performed.
5. To compensate for any loss and damage if the retained property is lost or damaged.

Article 350 *Termination of retaining*

Retaining property shall terminate in the following circumstances:

1. The retaining party no longer actually holds the property.
2. The parties agree to use another security to replace the retaining.
3. The obligation has been performed.
4. The retained property no longer exists.
5. As agreed by the parties.

Section 4

Civil Liability

Article 351 *Civil liability arising from breach of obligations*

1. An obligor which commits a breach of its obligations has civil liability to the obligee.

Breach of obligation means an obligor fails to perform the obligation on time, does not perform the

obligation fully, or performs incorrectly the contents of the obligation.

2. Where an obligor fails to perform correctly an obligation due to an event of *force majeure*, it shall not have civil liability, unless otherwise agreed or otherwise provided by law.
3. An obligor shall not have civil liability if it is able to prove that failure to perform the obligation was due entirely to the fault of the obligee.

Article 352 *Liability to continue to perform obligations*

When an obligor performs incorrectly its obligation, the obligee is permitted to request the obligor to continue to perform the obligation.

Article 353 *Late performance of obligations*

1. Late performance of an obligation is the failure to have performed the obligation in whole or in part as at the expiry of the time-limit for the performance of such obligation.
2. The party being late in performance of an obligation must notify immediately the obligee about the failure to have performed the obligation in a timely manner.

Article 354 *Postponement of performance of obligations*

1. When it is not possible to perform an obligation on time, the obligor must inform immediately the obligee and may suggest postponement of performance of the obligation.

In the case of failure to notify the obligee, the obligor must compensate for any loss and damage arising, unless otherwise agreed or unless it was impossible for objective reasons to provide notification.

2. The obligor may postpone the performance of the obligation only if the obligee consents. The performance of the obligation in this case of postponement shall be deemed to be performance in a timely manner.

Article 355 *Late acceptance of performance of obligations*

1. Late acceptance of the performance of an obligation means the time-limit for the fulfilment of the obligation has expired and the obligor has already fulfilled the obligation but the obligee does not accept the performance of such obligation.
2. When the subject matter of late acceptance of performance of an obligation is property, the obligor may deposit the property at a place of bailment or take other necessary measures to take care of the property and is entitled to demand reimbursement of reasonable expenses. In the case of bailment of the property, the obligor must immediately notify the obligee.
3. The obligor has the right to sell property which is in danger of being damaged, and must immediately inform the obligee and pay the proceeds of sale of such property to the obligee after deducting necessary expenses for the preservation and sale of the property.

Article 356 *Liability for failure to perform obligation to deliver objects*

1. Where the obligation to deliver a distinctive object is not performed, the aggrieved party has the right to demand the defaulting party deliver that particular object. If the object no longer exists or is damaged, the obligor must pay the value of the object.

2. Where the obligation to deliver a generic object is not performed, the aggrieved party has the right to demand the defaulting party deliver another generic object; if another generic object for replacement is unavailable, the value of the object must be paid.
3. Where the breach of an obligation as provided in clauses 1 and 2 of this article causes loss and damage to the aggrieved party, the defaulting party must compensate for it.

Article 357 *Liability for late performance of obligation to make payment*

1. An obligor who is late in making payment must pay interest on the amount overdue for the period it is overdue.
2. The interest rate arising from late payment shall be as agreed by the parties but must not exceed the interest rate prescribed in clause 1 of article 468 of this Code; if there is no agreement, the provisions in clause 2 of article 468 of this Code shall apply.

Article 358 *Liability for failure to perform or not to perform acts*

1. Where an obligor fails to perform an act which it must perform, the obligee has the right to request the obligor perform the act, or the obligee may perform the act or assign the performance of the act to another person and demand the obligor pay reasonable expenses incurred and compensate for any loss and damage.
2. Where a person has an obligation not to perform an act but, nevertheless, performs such act, the obligee has the right to demand the obligor cease performing the act, make restitution³⁰ and compensate for any loss and damage.

Article 359 *Liability for late acceptance of performance of obligation*

An obligee which is late in accepting the performance of an obligation, and thereby causes loss and damage to the obligor, must compensate the obligor for such loss and damage and shall accept all risks and expenses arising from the time when acceptance fell due,³¹ unless otherwise provided by law.

³⁰ *Allens footnote:* The literal translation is "restore to the original condition".

³¹ *Allens footnote:* The literal translation is "the time of late acceptance".

Article 360 *Liability to compensate for loss and damage due to breach of obligation*

Where there is any loss and damage resulting from a breach of an obligation, the obligor must compensate for the total loss and damage, unless otherwise agreed or provided by law.

Article 361 *Loss and damage caused by breach of obligations*

1. Loss and damage caused by a breach of an obligation comprises physical damage and spiritual damage.
2. Physical damage is actual physical losses which can be determined, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income.
3. Spiritual damage is spiritual losses caused by harming life, health, honour, dignity, reputation and other personal interests of a subject.

Article 362 *Obligation to prevent or mitigate loss and damage*

An obligee must take necessary and reasonable measures so that the loss and damage will not occur or to mitigate the loss and damage for such obligee.

Article 363 *Compensation for loss and damage due to fault of aggrieved party*

Where there is a breach of an obligation and loss and damage is partially caused by the fault of the aggrieved party, the defaulting party is only required to compensate for the loss and damage which corresponds to the extent of its fault.

Article 364 *Fault in civil liability*

Fault in civil liability comprises intentional fault and unintentional fault.

Intentional fault is where a person is fully aware that its act³² will cause loss and damage to another person but, nevertheless, performs the act and, irrespective of whether or not it so wishes, allows the loss and damage to occur.

Unintentional fault is where a person does not foresee that its act is capable of causing loss and damage, even though it knows or should know that the loss and damage will occur, or where it does foresee that such act is capable of causing loss and damage but believes that the loss and damage will not occur or will be able to be prevented.

Section 5

Transfer of Right to Demand and Transfer of Obligations

Article 365 *Transfer of right to demand*

1. A party having the right to demand the performance of an obligation may transfer such right to

³² *Allens footnote:* There is no mention of omissions.

demand to a subrogee [of the obligee] as agreed, except in the following cases:

- (a) The right is the right to demand support or the right to demand compensation for any loss and damage resulting from harm to life, health, honour, dignity or reputation;
 - (b) The obligee and the obligor agree or the law provides that the right to demand may not be transferred.
2. Where a person having a right to demand transfers such right to a subrogee, the subrogee [of the obligee] shall become the person having the right to demand.

The transfer of the right does not require the consent of the obligor.

A person transferring a right to demand must provide a written notice to the obligor of such transfer, unless otherwise agreed. Where the party transferring the right to demand fails to provide a notice of the transfer, giving rise to expenses to the obligor, then the party transferring the right to demand must pay such expenses.

Article 366 *Obligation to provide information and documents*

1. A person transferring a right to demand must provide the necessary information and the relevant documents to the subrogee [of the obligee].
2. A person transferring a right to demand and breaching the provisions in clause 1 of this article, thereby causing loss and damage, must compensate for it.

Article 367 *No liability after transfer of right to demand*

A person transferring a right to demand shall not be liable for the capability of the obligor to perform the obligation after the right to demand is transferred, unless otherwise agreed.

Article 368 *Transfer of right to demand performance of secured obligations*

Where a right to demand the performance of a secured obligation is transferred, the transfer of the right to demand shall include the security.

Article 369 *Right to refuse of obligors*

1. Where the obligor is not notified of the transfer of the right to demand and where the subrogee [of the obligee] does not prove the authenticity of the transfer of the right to demand, the obligor has the right to refuse to perform the obligation with respect to the subrogee [of the obligee].
2. Where the obligor is not notified of the transfer of the right to demand and has already fulfilled the obligation with respect to the person having transferred the right to demand, the subrogee [of the obligee] may not demand the obligor perform the obligation with respect to that subrogee.

Article 370 *Transfer of obligations*

1. An obligor may transfer an obligation to a subrogee [of the obligor] with the consent of the obligee, except where the obligation is personal to the obligor or where the law provides that the obligation may not be transferred.
2. Upon a transfer of the obligation, the subrogee [of the obligor] shall become the obligor.

Article 371 *Transfer of secured obligations*

Where a secured obligation is transferred, the security shall terminate³³, unless otherwise agreed.

Section 6

Termination of Obligations

Article 372 *Bases for termination of obligations*

An obligation shall terminate in the following cases:

1. The obligation is fulfilled.
2. The parties so agree.
3. The obligee waives performance of the obligation.
4. The obligation is substituted by another obligation.

5. The obligation is offset.
6. The obligee and the obligor merge.
7. The statutory period for release from the obligation has expired [matured].
8. The obligor being an individual dies, or the obligor being a legal entity terminates its existence, and the obligation must be performed by that particular individual or legal entity.
9. The obligee being an individual dies and the right to demand does not form part of the bequeathed estate, or the obligee being a legal entity terminates its existence and the right to demand is not able to be transferred to another legal entity.
10. The distinctive object which is the subject matter of the obligation no longer exists and is substituted by another civil obligation.
11. Other cases as provided by law.

Article 373 *Fulfilment of obligations*

The obligation shall be deemed to have been fulfilled when the obligor has performed the obligation in its entirety, or has performed a portion of the obligation and the obligee waives performance of the remainder.

³³ *Allens footnote:* The consent of the obligee is required to any transfer, so the obligee may require other security.

Article 374 *Fulfilment of obligations where obligees are late in accepting subject matter of obligations*

When an obligee is late in accepting the subject matter of an obligation which is a property, the obligation shall be fulfilled at the moment when the property is deposited at a place of bailment in accordance with clause 2 of article 355 of this Code.

Article 375 *Termination of obligations by agreement*

Parties may agree to terminate an obligation at any time but must not cause loss and damage to the interests of the nation, the people or the public or the legal rights or interests of other persons.

Article 376 *Termination of obligations due to waiver*

1. An obligation shall terminate when the obligee waives the obligation of the obligor, unless otherwise provided by law.
2. When a secured obligation is waived, the security shall also terminate.

Article 377 *Termination of obligations by substitution*

1. Where parties agree to substitute an original obligation with another obligation, the original obligation shall terminate.
2. An obligation shall also terminate if the obligee has accepted another property or the performance of

another act as a substitute for the property or act previously agreed.

3. Where an obligation is an obligation to support others or to compensate for any loss and damage due to harm to life, health, honour, dignity or reputation, or another personal obligation which is unable to be transferred to other persons, such obligation may not be substituted with another obligation.

Article 378 *Termination of obligations where obligations are offset*

1. Where parties have reciprocal obligations with respect to generic properties, when both obligations fall due, the parties are not required to perform their obligations to each other, and the obligations shall be deemed to have terminated, unless otherwise provided by law.
2. Where the values of properties or acts are not equivalent, the parties shall settle with each other the difference in value.
3. Objects having monetary value may be used to offset an obligation to pay money.

Article 379 *Cases where obligations may not be offset*

An obligation may not be offset in the following cases:

1. The civil obligation is in dispute.
2. The obligation is to compensate for harm to life, health, dignity, honour or reputation.
3. The obligation is to support others.
4. Other obligations as provided by law.

Article 380 *Termination of obligations upon merger of obligor and obligee*

An obligation of an obligor shall terminate when the obligor becomes the obligee with respect to that particular obligation.

Article 381 *Termination of civil obligations due to expiry of duration of waiver of obligation*

Upon expiry of the duration of waiver of an obligation, the obligation shall terminate.

Article 382 *Termination of obligations when obligee being individual dies or when obligee being legal entity terminates existence*

Where parties have agreed or the law provides that an obligation is to be performed only for a particular obligee and such individual dies or such legal entity terminates its existence, the obligation shall terminate.

Article 383 *Termination of obligations when distinctive objects no longer exist*

An obligation to deliver a distinctive object shall terminate when such distinctive object no longer exists.

Parties may agree on the substitution of such object with another object or on compensation for any loss and damage.

Article 384 *Termination of obligations in cases of bankruptcy*

In cases of bankruptcy, obligations shall terminate in accordance with the Law on Bankruptcy.

Section 7

Contracts

Sub-section 1

Entering into Contracts

Article 385 *Definition³⁴ of contract*

Contract means an agreement between parties in relation to the establishment, modification or termination of civil rights and obligations.

Article 386 *Offers to enter into civil contracts*

1. Offer to enter into a contract means a clear expression by the offeror of its intention to enter into a contract and to be bound by such offer made to another determined party or to the public (hereinafter collectively referred to as *the offeree*).
2. Where an offer to enter into a contract has specified the time for reply and the offeror enters into a contract with a third person during the time-limit for reply by the offeree, if the offeror fails to enter

³⁴ *Allens footnote:* The literal translation is "concept".

into the contract with the offeree and the offeree suffers loss and damage, the offeror must compensate the offeree for such loss and damage.

Article 387 *Information in entering into contracts*

1. Where one party has information affecting the acceptance of entering into a contract by the other party, it must notify the other party thereof.
2. Where one party receives confidential information from the other party during the process of entering into a contract, such party shall be responsible to keep such information confidential and must not use such information for private purposes of such party or for other illegal purposes.
3. If a party in breach of clauses 1 and 2 of this article causes loss and damage, it must pay compensation.

Article 388 *Time-limit within which offer to enter into contract remains effective*

1. The time-limit within which an offer to enter into a contract remains effective shall be determined as follows:
 - (a) Where an offeror has specified such time-limit;
 - (b) Where an offeror has not specified the time-limit, the offer to enter into the contract is effective as from the time the offeree receives the offer, unless otherwise provided by relevant law.
2. The following cases shall be deemed to be receipt of an offer to enter into a contract:
 - (a) The offer is delivered to the place of residence if the offeree is an individual, or the offer is

delivered to the head office if the offeree is a legal entity;

- (b) The offer is placed into the official information system of the offeree;
- (c) When the offeree knows about the offer to enter into a contract by way of other means.

Article 389 *Modification or withdrawal of offers to enter into contracts*

1. An offeror may modify or withdraw an offer to enter into a contract in the following cases:
 - (a) The offeree receives notice of modification or withdrawal of the offer prior to or at the same time as receipt of the offer;
 - (b) The offeror clearly specified the circumstances in which the offer could be modified or withdrawn and such circumstances have in fact arisen.
2. When the offeror modifies the contents of the offer, it shall be a new offer.

Article 390 *Rescission of offers to enter into contracts*

An offeror may rescind the offer to enter into a contract if such right was specified in the offer and the offeree receives the notice of rescission of the offer prior to the offeree providing a notice of acceptance of the offer to enter into the contract.

Article 391 *Termination of offers to enter into contracts*

An offer to enter into a contract shall terminate in the following cases:

1. The offeree accepts to enter into the contract.
2. The offeree replies that the offer is not accepted.
3. The time-limit for acceptance has expired.
4. When notice of modification or withdrawal of the offer becomes effective.
5. When notice of rescission of the offer becomes effective.
6. As agreed by the offeror and the offeree within the time-limit within which the offer to enter into a contract remains effective.

Article 392 *Amendment of offer proposed by offeree*

When an offeree accepts the offer to enter into a contract but specifies conditions or amendments to the offer, the offeree shall be deemed to have made a new offer.

Article 393 *Acceptance of offers to enter into contracts*

1. Acceptance of an offer to enter into a contract means a reply by the offeree accepting the entire contents of the offer.
2. The silence of the offeree shall not be deemed to be an acceptance of the offer to enter into the contract, unless otherwise agreed or unless it complies with the custom established by the parties.

Article 394 *Time-limits for acceptance of offers to enter into civil contracts*

1. Where an offeror has specified a time-limit for reply, a reply accepting shall only be effective if it is made within that time-limit. If the offeror receives an acceptance after the time-limit has expired, such acceptance shall be deemed to be a new offer from the party which is late in replying.

Where the offeror does not specify a time-limit for reply, a reply accepting shall only be effective if it is made within a reasonable time-limit.

2. If a notice of acceptance of an offer to enter into a contract arrives late for objective reasons which the offeror knows or should know, such notice shall still be effective, unless the offeror immediately replies that it does not agree with such acceptance by the offeree.
3. Where the parties communicate directly, including conversations by telephone or other means of communication, the offeree must reply immediately as to whether or not it will accept, except where the parties have agreed on the time-limit for reply.

Article 395 *Cases where offeror dies, loses capacity for civil acts or has difficulties in being aware of or controlling his or her own acts*

Where the offeror dies, loses capacity for civil acts or has difficulties in being aware of or controlling his or her own acts after the offeree has replied accepting the offer, the offer to enter into a contract shall still be valid, except where the content and signing of the contract are personal to the offeror.

Article 396 *Cases where offeree dies, loses capacity for civil acts or has difficulties in being aware of or controlling his or her own acts*

Where the offeree has accepted to enter into a contract but then dies, loses capacity for civil acts or has difficulties in being aware of or controlling his or her own acts, the reply accepting the offer to enter into a contract shall still be valid, except where the content and signing of the contract are personal to the offeree.

Article 397 *Withdrawal of notice of acceptance to enter into contract*

The offeree may withdraw notice of acceptance to enter into a contract if the notice of such withdrawal arrives prior to or at the same time as the offeror receives the reply accepting the offer to enter into a contract.

Article 398 *Contents of contracts*

1. Parties to a contract have the right to agree on the contents in the contract.
2. A contract may contain the following contents:
 - (a) Subject matter of the contract;
 - (b) Quantity and quality;
 - (c) Price and method of payment;
 - (d) Time-limit, place and method of performing the contract;
 - (dd) Rights and obligations of the parties;
 - (e) Liability for breach of contract;

- (g) Method of resolving disputes.

Article 399 *Places for entering into contracts*

The place where a contract is entered into shall be as agreed by the parties; if there is no agreement, such place shall be the residence of the individual who, or the head office of the legal entity which made the offer to enter into the contract.

Article 400 *Time when contracts are entered into*

1. A contract is entered into at the time when the offeror receives an acceptance of entering into the contract.
2. Where the parties have agreed that silence shall constitute an acceptance of entering into the contract within a certain period of time, the time when the contract is entered into is the last moment of such period.
3. The time when an oral contract is entered into is the time when the parties have reached agreement on the contents of the contract.
4. The time when a written contract is entered into is the time when the last party signs the contract or [*accepts to enter into the contract*] by another method of acceptance which is expressed in writing.

Where an oral contract is entered into and is then prepared in writing, the time when the contract is entered into shall be determined in accordance with clause 3 of this article.

Article 401 *Effectiveness of contracts*

1. A contract legally entered into shall take effect from the time when it is entered into, unless otherwise agreed or otherwise provided by relevant law.
2. From the time when a contract takes effect, the parties must exercise the rights and perform the obligations to each other as undertaken. The contract may only be amended or cancelled as agreed by the parties or as provided by law.

Article 402 *Principal types of contracts*

Contracts comprise the following principal types:

1. A bilateral contract is a contract whereby each party has an obligation to the other.
2. A unilateral contract is a contract whereby only one party has an obligation.
3. A principal contract is a contract the effectiveness of which does not depend on another contract.
4. An ancillary contract is a contract the effectiveness of which depends on a principal contract.
5. A contract for the benefit of a third person is a contract whereby contracting parties must perform obligations for the benefit of a third person and the third person enjoys benefits from such performance.
6. A conditional contract is a contract the performance of which depends on the occurrence, modification or termination of a specified event.

Article 403 *Appendices to contracts*

1. A contract may have appendices attached to it which provide details on certain terms and conditions of the contract. The appendices shall have the same effectiveness as the contract. The contents of the appendices shall not contradict the contents of the contract.
2. If the terms and conditions of the appendices contradict the terms and conditions of the contract, such terms and conditions [*of the appendices*] shall be ineffective, unless otherwise agreed. If the parties agree that the terms and conditions of the appendices [may] contradict the terms and conditions of the contract, the terms and conditions of the contract which are contradicted shall be deemed to have been amended.

Article 404 *Interpretation of contracts*

1. Where a contract contains terms and conditions which are unclear, the interpretation of such terms and conditions shall be based not only on the wording of the contract but also on the intentions of the parties which are expressed before and at the time of preparation and performance of the contract.
2. Where a contract contains a term or wording which may be interpreted in different ways, such term or wording shall be interpreted in the way most appropriate to the purpose and nature of the contract.
3. Where a contract contains a term or wording which is difficult to understand, such term or wording shall be interpreted in accordance with the customary practice of the place where the contract was entered into.
4. The terms of a contract must be interpreted in relation to each other so that the meanings of the terms conform with the entire content of the contract.
5. Where there is a conflict between the mutual intentions³⁵ of the parties and the wording used in the contract, the mutual intentions of the parties shall be used in order to interpret the contract.
6. Where the drafting party inserts into the contract contents which are disadvantageous to the other party, the contract shall be interpreted in a manner favouring the other party.

Article 405 *Standard form contracts*

1. Standard form contract means a contract containing terms and conditions which are prepared by a party based on a standard form requiring the other party to reply within a reasonable period of time. If the offeree accepts, it shall be deemed to have accepted the entire contract provided by the offeror.

The standard form contract must be made public so that the offeree knows or should know the contents of the contract.

The order and procedures for publication of standard form contracts shall be as provided by law.

2. Where a standard form contract contains terms and conditions which are unclear³⁶, such terms and conditions shall be interpreted in a manner favouring the offeree³⁷.
3. Where a standard form contract contains provisions exempting the party providing such standard form contract from liability, [or] increasing the liability of or waiving legitimate interests of the other party, such provisions shall be ineffective, unless otherwise agreed.

Article 406 *General trading conditions for entering into contracts*

1. General trading conditions mean fixed terms and conditions published by a party which are generally applicable to the parties offered to enter into a contract. If an offeree accepts to enter into the contract, the offeree shall be deemed to have accepted such terms and conditions.

³⁶ *Allens footnote:* No mention is made of failure to include terms and conditions.

³⁷ *Allens footnote:* The literal translation is "the party providing the standard form contract shall bear the adverse consequences thereof".

2. General trading conditions shall only be effective in respect of the parties entering into a transaction if such trading conditions have been publicized so that such parties know or should know such conditions.

The order and procedures for publication of general trading conditions shall be as provided by law.

3. General trading conditions must assure equality between parties. Where general trading conditions contains provisions exempting the party providing the general trading conditions from liability, [or] increasing the liability of or waiving legitimate interests of the other party, such provisions shall be ineffective, unless otherwise agreed.

Article 407 *Invalid contracts*

1. The provisions on invalid civil transactions in articles 123 to 133 inclusive of this Code shall also govern invalid contracts.
2. Invalidity of a principal contract shall terminate an ancillary contract, unless the parties agree that the ancillary contract replaces the principal contract. This provision shall not apply with respect to security for the performance of obligations.
3. Invalidity of an ancillary contract shall not terminate the principal contract, unless the parties agree that the ancillary contract is an inseparable part of the principal contract.

Article 408 *Invalidity of contracts due to impossibility of performing subject matter*

1. If, immediately as from the time a contract is entered into, it is impossible to perform the subject matter of the contract, the contract shall be invalid.
2. If, when entering into a contract, one party knew or should have known that it was impossible to perform the subject matter of the contract but failed to notify the other party which entered into the contract, the first party must compensate the other party for loss and damage, unless the other party knew or should have known that it was impossible to perform the subject matter of the contract.
3. The provisions in clauses 1 and 2 of this article also apply to a contract containing one or more parts with subject matter which is impossible to perform, but the remaining parts of the contract shall remain valid.

Sub-section 2

Performance of Contracts

Article 409 *Performance of unilateral contracts*

With respect to a unilateral contract, the obligor must perform the obligation strictly as agreed. The obligor

may only perform the obligation prior to or after the time-limit with the consent of the obligee.

Article 410 *Performance of bilateral contracts*

1. With respect to a bilateral contract, where the parties have agreed on a time-limit for the performance of an obligation, each party must perform its obligation when the obligation falls due. One party may not postpone performance by reason of the other party not having performed the obligations owed to the first party, except in the cases provided in articles 411 and 413 of this Code.
2. Where the parties have no agreement on which party will perform its obligation first, the parties must perform their obligations concurrently; where obligations are not able to be performed concurrently, the obligation the performance of which will take longer shall be performed first.

Article 411 *Right to postpone performance of obligations in bilateral contracts*

1. The party which is required to perform its obligation first has the right to postpone the performance of such obligation, if the ability of the other party to perform its obligation has substantially decreased such that its obligation is not able to be performed as undertaken, until the other party is able to perform its obligation or has security for performance of its obligation.
2. The party which is required to perform its obligation last has the right to postpone the performance of such obligation when it falls due if the party which was required to perform its obligation first failed to do so when such obligation fell due.

Article 412 *Retaining property in bilateral contracts*

Where the obligor fails to perform correctly its obligation, the obligee shall create the right to retain property in respect of property of the obligor in accordance with articles 346 to 350 inclusive of this Code.

Article 413 *Obligations unable to be performed due to fault of one party*

With respect to a bilateral contract, when one party is unable to perform its obligation due to the fault of the other party, the first party has the right to demand the other party continue to perform its obligation with respect to the first party or has the right to cancel the contract and demand compensation for loss and damage.

Article 414 *Failure to perform obligations not due to fault of parties*

With respect to a bilateral contract, when one party is not able to perform its obligation but there is no fault of any party, the party unable to perform does not have the right to demand the other party perform its obligation with respect to the party [*unable to perform*]. When one party has performed a part of its obligation, such party has the right to demand the other party perform its corresponding obligation with respect to the party [*having performed a part of its obligations*].

Article 415 *Performance of contracts for benefit of third persons*

Where a contract is performed for the benefit of a third person, the third person has the right to demand the obligor personally perform the obligation with respect to such third person. If there is a dispute between the parties to the contract as to the performance of the contract, the third person does not have the right to demand performance until the dispute is resolved.

An obligee also has the right to demand the obligor perform a contract for the benefit of a third person.

Article 416 *Right to waive of third persons*

1. Where a third person waives its [*right to*] benefits prior to the performance of an obligation by an obligor, the obligor shall not be required to perform the obligation but must notify the obligee, the contract shall be deemed to be cancelled, and each party shall return anything it has received from the other party.
2. If a third person waives its [*right to*] benefits after the obligor has performed the obligation, the obligation shall be deemed to have been fulfilled and the obligee must perform its undertakings with respect to the obligor. In such case, benefits arising from the contract shall belong to the party which would be the beneficiary if the contract was not for the benefit of the third person, unless otherwise agreed.

Article 417 *No amendment or cancellation of contracts for benefit of third persons*

Where a third person has agreed to receive a benefit, the parties to the contract may not amend or cancel the contract, even where the contract is yet to be performed, except with the consent of the third person.

Article 418 *Agreements on penalties for breach*

1. Penalty for breach means an agreement between the parties in a contract, whereby a party breaching an obligation must pay a sum of money to the party whose rights are breached.
2. The amount of a penalty for breach shall be as agreed by the parties, unless otherwise provided by relevant law.
3. The parties may agree that a party breaching an obligation must only be subject to a penalty for breach without having to compensate for loss and damage, or must be subject to a penalty for breach and also pay compensation for loss and damage.

Where the parties have agreed on penalties for breach but do not have an agreement on both penalties for breach and compensation for loss and damage, the party breaching an obligation shall be required to be subject to the penalty for breach only.

Article 419 *Compensable damage caused by breach of contracts*

1. Compensable damage caused by breach of contractual obligations shall be determined in accordance with clause 2 of this article, article 13 and article 360 of this Code.
2. An obligee may demand compensation for loss and damage in respect of benefits from the contract which the obligee would have enjoyed. The obligee may also request the obligor to pay any fee arising from failure to fulfil contractual obligations without overlapping with the amount of compensation for loss and damage in respect of the benefits from the contract.
3. As requested by the obligee, a court may order the obligor to pay compensation for spiritual damage to the obligee. The amount of compensation shall be decided by the court on the basis of the contents of the case.

Article 420³⁸ *Performance of contracts when circumstances change substantially*

1. Circumstances shall [be deemed to] change substantially when the following conditions are satisfied:

Allens footnote: This provision granting a court power to amend a contract is new compared to the equivalent article 423 in the old 2005 Code.

- (a) There is a change to the circumstances due to objective reasons, occurring after the contract is entered into;
 - (b) At the time when the contract is entered into, the parties are unable to foresee the change of circumstances;
 - (c) There is such a big change in circumstances that the contract would not have been entered into or would have been entered into with completely different contents if the parties had foreseen such change;
 - (d) The continuation of performance of the contract without changing the contents of the contract will cause serious loss and damage to one party;
- (dd) The party whose benefits are affected has taken all necessary measures to the best of its ability and appropriate with the nature of the contract but is unable to prevent or mitigate the level of affecting the benefits.
2. Where circumstances change substantially, the party whose benefits are affected has the right to request the other party to re-negotiate the contract within a reasonable period of time.
 3. Where the parties are unable to reach agreement on amendment of the contract within a reasonable period of time, either party may request a court to:
 - (a) Terminate the contract at a definite time;
 - (b) Amend the contract to balance legitimate rights and benefits of the parties due to substantial change in circumstances.

The court is only permitted to make a decision on amendment of the contract in a case where termination of the contract will cause loss and damage of an amount higher than the costs for performance of the contract if the contract is amended.

4. During the process of negotiation of amendment or termination of the contract and during the period the court resolves the case, the parties must continue to perform their obligations under the contract, unless otherwise agreed.

Sub-section 3

Amendment and Termination of Contracts

Article 421 *Amendment of contracts*

1. Parties may agree to amend a contract.
2. A contract may be amended in accordance with article 420 of this Code.
3. An amended contract must comply with the formalities of the original contract.

Article 422 *Termination of contracts*

A contract shall terminate in the following cases:

1. The contract has been completed.
2. The parties so agree.
3. Where a contract is only able to be performed by the particular individual or legal entity which entered into the contract³⁹, and that particular individual dies, or that legal entity ceases to exist.
4. The contract is cancelled or unilaterally terminated.
5. The contract is not able to be performed because the subject matter of the contract no longer exists.
6. The contract is terminated in accordance with article 420 of this Code.
7. Others circumstances as provided by law.

Article 423 *Cancellation of contracts*

1. A party has the right to cancel a contract and shall not be liable to compensate for loss and damage in the following cases:
 - (a) The parties agree that a breach of contract by the other party gives rise to cancellation.
 - (b) The other party commits a serious breach of contractual obligations;
 - (c) Other circumstances as provided by law.
2. Serious breach means failure to fulfil correctly obligations by a party so that the other party is unable to achieve the purpose of entering into the contract.
3. A party cancelling a contract must notify the other party immediately of the cancellation [*and*] must compensate if the failure to notify causes loss and damage.

Article 424 *Cancellation of contracts due to late performance of obligations*

1. Where an obligor fails to perform correctly the obligations which an obligee requests to be performed within a reasonable period of time but the obligor fails to perform⁴⁰, the obligee may cancel the contract.
2. Where, due to the nature of a contract or due to the wishes of the parties, the purpose of the contract will not be achieved if [*the contract*] is not implemented within a certain period of time, and the obligor fails to perform correctly its obligations upon expiry of such period, the other party shall have the right to cancel the contract without complying with clause 1 of this article.

Article 425 *Cancellation of contracts due to inability to implement*

Where an obligor is unable to perform part or all of its obligations, causing the purpose of the obligee not to be achieved, the obligee may cancel the contract and request compensation for loss and damage.

³⁹ *Allens footnote:* The literal translation is "An individual having entered into a contract dies, a legal entity or other subject is terminated and the contract must be performed by that particular individual, legal entity or subject".

⁴⁰ *Allens footnote:* This is the literal translation.

Article 426 *Cancellation of contracts where property is lost or damaged*

Where a party loses or damages property the subject matter of a contract and is unable to return or compensate by another property or is unable to repair or replace with property of the same type, the other party may cancel the contract.

The party at fault must pay monetary compensation with an amount equivalent to the value of the lost or damaged property, unless otherwise agreed or as provided in clauses 2 and 3 of article 351 and articles 363 of this Code.

Article 427 *Consequences of cancellation of contracts*

1. Where a contract is cancelled, it shall be [*deemed to have been*] ineffective as from the time when it was entered into and the parties shall be required to perform the agreed obligations, except for the agreements on penalties for breach and compensation for loss and damage, and the agreements on dispute resolution.
2. Each party must return anything it has received from the other party upon deduction of reasonable costs during performance of the contract and costs for preservation and development of property.

The restitution shall be made in kind. If restitution is not able to be made in kind, it must be valued in terms of money for the purpose of restitution.

Where [all or both] the parties have an obligation to return, restitution must be implemented at the same time, unless otherwise agreed or unless otherwise provided by law.

3. The party suffering loss and damage caused by a breach of obligations by the other party shall be compensated.
4. Any consequence of cancelling a contract in relation to personal rights shall be dealt with in accordance with this Code and other relevant laws.
5. In the case of cancellation of a contract without the grounds provided in articles from 423 to 426 inclusive of this Code, the party cancelling the contract shall be determined as the party breaching obligations and must perform civil liabilities due to failure to perform correctly obligations in accordance with this Code and other relevant laws.

Article 428 *Unilateral termination of performance of contracts*

1. A party has the right to terminate unilaterally the performance of a contract and is not required to pay compensation for loss and damage if the other party commits a serious breach of the obligations stipulated in the contract or if so agreed by the parties or so provided by law.
2. A party terminating unilaterally the performance of a contract must notify the other party immediately of its termination of the contract [*and*] must compensate if the failure to notify causes loss and damage.
3. Where the performance of a contract is terminated unilaterally, it shall terminate from the time when the other party is notified of the termination. [*In such case,*] the parties do not have to continue to perform their obligations, except for the agreements on penalties for breach and compensation for loss and damage, and the agreements on dispute resolution. A party which has already performed its obligation may demand the other party make payment for the portion of the obligation which have been fulfilled.
4. The party suffering loss and damage caused by failure to perform correctly contractual obligations by

the other party shall be compensated.

5. In the case of unilateral termination of performance of a contract with no grounds provided in clause 1 of this article, the party unilaterally terminating performance of the contract shall be determined as the party breaching obligations and must perform civil liabilities in accordance with this Code and other relevant laws due to failure to perform correctly the contractual obligations.

Article 429⁴¹ *Limitation period for initiating legal action with respect to contracts*

The limitation period for initiating legal action to request a court to resolve a dispute relating to a contract is three years from the date on which the person with the right to make the request knew or should have known that his/her lawful rights and interests were infringed.

CHAPTER XVI

A Number of Common Contracts

Section 1

Contracts for Sale and Purchase of Property

Article 430 *Contracts for sale and purchase of property*

Contract for sale and purchase means an agreement between parties whereby a seller transfers the ownership right with respect to property to the purchaser and the purchaser pays the seller.

Contracts for sale and purchase of residential houses or sale and purchase of houses for other purposes shall be performed in accordance with this Code, the Law on Residential Housing and other relevant laws.

Article 431 *Subject matter of contracts for sale and purchase*

1. Property stipulated in this Code may be the subject matter of a contract for sale and purchase. Where property is prohibited or restricted from being assigned in accordance with regulations of law, the property the subject matter of a contract for sale and purchase must comply with such regulations.
2. Property for sale must be owned by the seller or the seller must have the right to sell it.

Article 432 *Quality of property for sale and purchase*

1. The quality of property for sale and purchase shall be as agreed by the parties.

⁴¹ *Allens footnote:* Compare the 2 year period in article 697 of the old 2005 Code.

2. Where the quality standard of property has been proclaimed or is regulated by an authorized State agency, the quality of the property as agreed by the parties must not be lower than the quality of property determined in accordance with the proclaimed standard or the regulations of the authorized State agency.
3. Where parties have not agreed on or have unclear agreements on the quality of property for sale and purchase, the quality of the property for sale and purchase shall conform with the property quality

standard which has been proclaimed or stipulated by the authorized State agency or it must conform with the industry standard.

Where there is no property quality standard proclaimed or stipulated by the authorized State agency and no industry standard, the quality of property for sale and purchase shall conform with normal standards or separate standards which are consistent with the purpose of entering into the contract and comply with the Law on Protection of Consumers' Rights.

Article 433 *Price and method of payment*

1. Price and method of payment shall be as agreed by the parties or as determined by a third person at the request of the parties. Where the law stipulates that the price and method of payment must conform with the regulations of the authorized State agency, the agreements between the parties must comply with such regulations.
2. Where there is no agreement or there are unclear agreements on the price and method of payment, the price shall be determined on the basis of the market price and the method of payment shall be determined according to customary practice at the time and place of entering into the contract.

Article 434 *Time-limits for performance of contracts for sale and purchase*

1. The time-limit for performance of a contract for sale and purchase shall be as agreed by the parties. The seller must deliver the property to the purchaser at the agreed time. The seller may only deliver the property prior to or after the time-limit with the consent of the purchaser.
2. Where the parties have not agreed on a time-limit for delivery of the property, the purchaser has the right to demand, at any time, the seller deliver the property and the seller also has the right to demand, at any time, the purchaser accept the property, but the parties must give reasonable prior notice to each other.
3. The purchaser shall pay the purchase price at the agreed time. If the time of payment is not determined or is unclearly determined, the purchaser must pay immediately at the time of acceptance of the purchased property or upon receipt of documents evidencing the ownership right with respect to the property.

Article 435 *Place for delivery of property*

The place for delivery of the property shall be as agreed by the parties. If there is no agreement, clause 2 of article 277 of this Code shall apply.

Article 436 *Method of delivery of property*

1. Property shall be delivered by the method as agreed by the parties. If there is no agreement, the property shall be delivered on one occasion directly to the purchaser.
2. Where the seller delivers the property on a number of occasions as agreed but fails to perform correctly its obligations on a specified occasion, the purchaser may cancel the part of the contract which relates to such failure and demand compensation for loss and damage.

Article 437 *Liability in respect of delivery of property in incorrect quantities*

1. Where a seller delivers property in a quantity which is more than that agreed, the purchaser has the right to accept or not to accept the excess. If it accepts the excess, it must make payment for the excess according to the price agreed in the contract, unless otherwise agreed.

2. Where a seller delivers property in a quantity which is less than that agreed, the purchaser has one of the following rights:
 - (a) To accept the amount delivered and set a time-limit for the seller to deliver the amount outstanding;
 - (b) To accept the amount delivered and demand compensation for loss and damage;
 - (c) To cancel the contract and demand compensation for loss and damage if the breach causes the purchaser not to be able to achieve the purpose of entering into the contract.

Article 438 *Liability in respect of delivery of incomplete integrated objects*

1. Where an integrated object is delivered incomplete, thereby rendering the object unusable, the purchaser has either of the following rights:
 - (a) To accept [*the object*] and demand the seller deliver the remaining parts, demand compensation for loss and damage, and postpone payment in respect of the parts received until the missing parts are delivered;
 - (b) To cancel the contract and demand compensation for loss and damage.
2. Where a purchaser has paid for, but not yet accepted, the delivery of an incomplete integrated object, the purchaser shall be paid interest on the amount pre-paid at the interest rate as agreed by the parties but not exceeding the interest rate provided in article 468.1 of this Code; if there is no agreement, article 468.2 of this Code shall apply and [*the purchaser*] may demand the seller compensate for loss and damage due to the delivery of the incomplete integrated object from the time when the contract was required to be performed to the time when the complete integrated object is delivered.

Article 439 *Liability in respect of delivery of property of incorrect type*

Where a property delivered is of an incorrect type, the purchaser has one of the following rights:

1. To accept the property and pay the agreed price.
2. To demand delivery of a property of the correct type and compensation for loss and damage.
3. To cancel the contract and demand compensation for loss and damage if delivery of the property of an incorrect type causes the purchaser not to be able to achieve the purpose of entering into the contract.

In the case of a property of various types and where the seller does not deliver correctly one or a number of types as agreed, the purchaser may cancel the part of the contract relating to such type of the property and demand compensation for loss and damage.

Article 440 *Obligation to make payment*

1. A purchaser is obliged to make payment within the time-limit, at the place and with the amount provided in the contract.
2. If the parties only agree on the time-limit for delivery of property, the time-limit for payment shall be determined corresponding to the time-limit for delivery of the property. If the parties have not agreed

on both the time-limit for delivery of the property and the time-limit for payment, the purchaser must make payment at the time of acceptance of the property.

3. A purchaser who does not perform correctly the obligation to make payment must pay interest on the late amount for the period of the delay in accordance with article 357 of this Code.

Article 441 *Time for passing of⁴² risk*

1. A seller has⁴³ the risk with respect to property before the property is delivered to the purchaser, and the purchaser has the risk with respect to property from the time of acceptance of the property, unless otherwise agreed or stipulated by law.
2. Where the law requires that ownership rights with respect to property the subject matter of a contract for sale and purchase must be registered, the seller has the risk until completion of the registration procedures and the purchaser has the risk from completion of the registration procedures, unless otherwise agreed.

Article 442 *Transport costs and costs related to transfer of ownership rights*

1. Transport costs and costs related to transfer of ownership rights shall be as agreed by the parties, unless otherwise provided by law.
2. Where the parties have not agreed or there are unclear agreements, the transport costs and costs related to transfer of ownership rights shall be determined on the basis of costs proclaimed or stipulated by the authorized agency or on the basis of the industry standard.
3. Where there is no basis for determination as provided in clauses 1 and 2 of this article, the transport costs and costs related to transfer of ownership rights shall be determined in accordance with normal standards or separate standards which are consistent with the purpose of entering into the contract.
4. Where the parties have not agreed on and the law does not stipulate transport costs and costs related to transfer of ownership rights, the seller shall be liable for the costs of transportation to the place of delivery of the property and the costs related to the transfer of the ownership right.

Article 443 *Obligation to provide information and instructions for use*

A seller has the obligation to provide a purchaser with necessary information on the property for sale and

⁴² *Allens footnote:* The literal translation is "bearing".

⁴³ *Allens footnote:* The literal translation is "bears".

purchase and instructions on the use of the property. If the seller fails to perform this obligation, the purchaser has the right to demand the seller perform [*such obligation*] within a reasonable period of time and, if the seller still fails to perform [*such obligation*] causing the purchaser not to be able to achieve the purpose of entering into the contract, the purchaser has the right to cancel the contract and demand compensation for loss and damage.

Article 444 *Assurances⁴⁴ as to ownership rights of purchasers with respect to purchased property*

1. A seller has the obligation to assure that the ownership rights with respect to the property sold to a purchaser are not disputed by a third person.
2. Where [*ownership rights with respect to*] property are disputed by a third person, the seller must support the purchaser in protecting the interests of the purchaser. If a third person has the

ownership rights with respect to all or part of the property for sale and purchase, the purchaser has the right to cancel the contract and demand the seller compensate for loss and damage.

3. Where a purchaser knows or should know that property for sale and purchase is under the ownership of a third person but nevertheless purchases [*the property*], [*the purchaser*] must return the property to the owner and does not have the right to demand compensation for loss and damage.

Article 445 *Assurance as to quality of objects for sale and purchase*

1. A seller must assure the utility value or the characteristics of the object for sale and purchase. If, after having purchased an object, a purchaser discovers defects which cause the object to lose its value or diminish its utility value, the purchaser must notify the seller immediately of such defects and has the right to demand the seller repair or replace the defective object with another object, to reduce its price and to compensate for loss and damage, unless otherwise agreed.
2. A seller must assure that an object for sale corresponds to descriptions on any package, to any trademarks or to any samples selected by the purchaser.
3. A seller shall not be liable for any defect of an object in the following cases:
 - (a) Where the purchaser knew or should have known of the defect at the time of purchase;
 - (b) Where the object was sold at an auction or a second-hand shop;
 - (c) Where the purchaser was at fault in causing the defect.

Article 446 *Warranty obligations*

If agreed by parties or stipulated by law, a seller has the obligation to provide a warranty for the object for sale and purchase for a [*certain*] period, hereinafter referred to as the *warranty period*.

The warranty period shall be calculated from the time when the purchaser has the obligation to accept the object.

⁴⁴ *Allens footnote:* An alternative translation is "guarantees". The translation "assurances" has been chosen in this context to make a distinction from "guarantees" referred to in articles 361 to 373.

Article 447 *Right to claim on warranty*

A purchaser who discovers a defect in a purchased⁴⁵ object during the warranty period has the right to demand the seller repair the object free of charge, or reduce its price or replace it with another object, or it has the right to return the object in exchange for a refund.

Article 448 *Repair of objects during warranty periods*

1. A seller must repair a [*defective*] object and assure that it satisfies the quality standards or characteristics as undertaken.
2. A seller shall pay the costs for repairing a [*defective*] object and for transporting it from the place of residence or head office of the purchaser to the place of repair and vice versa.
3. A purchaser has the right to demand the seller complete the repairs within a time-limit agreed by the

parties or within a reasonable time. If the seller is not able to make or complete the repairs within such time, the purchaser has the right to demand a price reduction or replacement of the defective object with another object, or it has the right to return the object in exchange for a refund.

Article 449 *Compensation for loss and damage during warranty period*

1. In addition to demanding the performance of warranty obligations, a purchaser has the right to demand the seller compensate for loss and damage caused during the warranty period due to technical defects of the object.
2. A seller shall not be liable to compensate for loss and damage if it is able to prove that the loss and damage was caused by the fault of the purchaser. The seller shall be entitled to a reduction in the amount of compensation for the loss and damage where the purchaser has failed to take [a//] necessary measures available to it to mitigate⁴⁶ the loss and damage.

Article 450 *Sale and purchase of property rights*

1. Where property rights are sold and purchased, a seller must deliver the relevant documents and complete the procedures for transferring the ownership right to the purchaser and the purchaser must pay the seller.
2. Where property rights are the right to demand payment of a debt and the seller has guaranteed the ability to pay of the debtor, the seller must be jointly liable for payment if the debt falls due and the debtor fails to pay.
3. The time when ownership rights with respect to property rights⁴⁷ are transferred is the time when a purchaser receives documents on the ownership rights with respect to the property rights, or the time when the transfer of the ownership rights is registered if so provided by law.

Article 451 *Auctions of property*

Property may be sold at an auction in accordance with the wishes of the owner or as provided by law.

⁴⁵ *Allens footnote:* The literal translation is "sold and purchased".

⁴⁶ *Allens footnote:* The literal translation is "to prevent and limit".

⁴⁷ *Allens footnote:* These rights are distinguished from ownership rights with respect to property.

A sale by auction of multiple ownership property must have the consent of all owners, unless otherwise agreed or otherwise provided by law.

A sale by auction of property must be implemented on the principles of objectiveness, publicity and transparency, ensuring lawful rights and interests of participants, and shall be implemented in accordance with the law on auction of property.

Article 452 *Purchases after trial use*

1. Parties may agree on the trial use of purchased property⁴⁸ by the purchaser for a period, hereinafter referred to as the *trial use period*. During the trial use period, the purchaser may inform the seller whether or not the purchaser wishes to make the purchase. If the purchaser fails to inform the seller prior to the expiry of the trial use period, the purchaser shall be deemed to have accepted the purchase on the terms agreed prior to the property being received for trial use.

Where the parties have not agreed or have unclearly agreed on the time-limit for trial use, such time-limit shall be determined in accordance with customary practice applicable to transactions having

subject matter of the same type.

2. During the trial use period, property shall remain under the ownership of the seller. The seller has all risks with respect to the property, unless otherwise agreed. During the trial use period, the seller may not sell, give, lease, exchange, mortgage or pledge the property until the purchaser informs the seller whether or not it wishes to make the purchase.
3. A prospective purchaser⁴⁹ who informs [*the seller*] that it does not wish to make the purchase must return the property to the seller and must compensate the seller if the prospective purchaser lost or damaged the trial property. The prospective purchaser shall not be liable for normal wear and tear caused by the trial use and shall not have to return any benefits derived from the trial use.

Article 453 *Purchases by deferred payment or payment in instalments*

1. Parties may agree that the purchaser may purchase by deferred payment or payment in instalments of the purchase price within a time-limit after delivery of the purchased property. The seller has the right to retain ownership of the property sold until the purchaser has paid the purchase price in full, unless otherwise agreed.
2. Contracts for purchase by deferred payment or payment in instalments shall be made in writing. The purchaser may use the property purchased by deferred payment or payment in instalments and has the risk during the period of use, unless otherwise agreed.

Article 454 *Buy-back of property sold*

1. A seller and purchaser [*of property*] may agree that the seller has the right to buy-back the property within a period of time following the sale,⁵⁰ hereinafter referred to as the *buy-back period*.

⁴⁸ *Allens footnote:* The literal translation is "purchased object".

⁴⁹ *Allens footnote:* The literal translation is "trial user".

⁵⁰ *Allens footnote:* The literal translation is "after a time-limit".

The buy-back period for property shall be as agreed by the parties; where there is no agreement, the buy-back period shall not exceed one year in respect of moveable property, and five years in respect of immoveable property, from the time of delivery of the property, unless otherwise provided by relevant law. During this period, the seller may buy back the property at any time provided that reasonable prior notice is given to the purchaser. The buy-back price shall be the market price at the time when and place where the buy-back occurs, unless otherwise agreed.

2. During the buy-back period, a purchaser may not enter into the transaction of transferring the ownership right with respect to the property to another subject and shall have all risks with respect to the property, unless otherwise agreed.

Section 2

Contracts for Exchange of Property

Article 455 *Contracts for exchange of property*

1. Contract for the exchange of property means an agreement between parties whereby they deliver property, and transfer the ownership rights thereto, to each other.

2. A contract for the exchange of property must be made in writing, and [*must be*] notarized, certified or registered if so provided by law.
3. Where one party exchanges with another party property which the former does not own or [*property*] in respect of which it has no authorization from the owner, the other party may cancel the contract and demand compensation for loss and damage.
4. Each party shall be deemed to be the seller of the property delivered to the other party and the purchaser of the property delivered to it. The provisions on contracts for sale and purchase in articles 430 to 439 inclusive, articles 441 to 449 inclusive and article 454 of this Code shall also apply to contracts for the exchange of property.

Article 456 *Settlement of differences in value*

Where exchanged property differs in value, the parties must settle that difference between themselves, unless otherwise agreed or otherwise provided by law.

Section 3

Contracts for Gifts of Property

Article 457 *Contracts for gifts of property*

Contract for a gift of property means an agreement between parties whereby the giver delivers its property and transfers its ownership rights to the recipient without requiring compensation and the recipient agrees to accept the gift.

Article 458 *Gifts of moveable property*

1. A contract for a gift of moveable property shall take effect from the time when the recipient accepts the property, unless otherwise agreed.
2. Where the law requires the ownership rights to moveable property to be registered, the contract shall take effect from the time of registration.

Article 459 *Gifts of immovable property*

1. A gift of immovable property must be recorded in writing and notarized [*or*] certified, and the ownership right with respect to the immovable property is required to be registered in accordance with law.
2. A contract for a gift of immovable property shall take effect from the time of registration. In the case of immovable property for which no registration of ownership rights is required, the gift contract shall take effect from the time when the property is delivered.

Article 460 *Liability in respect of intentional gift of property not under one's ownership*

Where a giver intentionally gives property which is not under its ownership and the recipient does not know or is not able to know this, such giver must reimburse the recipient for expenses incurred by the recipient in increasing the value of the property at such time as it is reclaimed by the owner.

Article 461 *Disclosure of defects in gifts*

A giver has the obligation to notify the recipient of any defects in a gift. If the giver knows about defects in a

gift but fails to provide notice thereof, the giver must be liable to compensate for loss and damage caused to the recipient; but if the giver does not know about defects in a gift, *[the giver]* shall not be liable to compensate for loss and damage.

Article 462 *Conditional gifts of property*⁵¹

1. A giver may demand a recipient to perform one or several obligations prior to or after the giving of a gift. The conditions for giving a gift must not breach matters prohibited by law and must not contravene social morals.
2. Where a recipient performs an obligation required to be performed as a condition to the giving of a gift and the giver fails to deliver the gift⁵², the giver must pay for the obligation already performed by the recipient.
3. Where a recipient fails to perform an obligation required to be performed after the giving of a gift, the giver may reclaim the gift and demand compensation for loss and damage.

Section 4

Contracts for Loan of Property

Article 463 *Contracts for loan of property*

Contract for the loan of property means an agreement between parties whereby a lender delivers property to a borrower. When the loan falls due, the borrower must repay the lender property of the same type in accordance with the correct quantity and quality, and must pay interest if so agreed or so provided by law.

⁵¹ *Allens footnote:* In common law, this is not really a gift, as consideration is being provided.

⁵² *Allens footnote:* The literal translation is "property".

Article 464 *Ownership rights with respect to property lent*

A borrower shall become the owner of borrowed property from the time of delivery of the property.

Article 465 *Obligations of lenders*

1. To deliver the property to the borrower in full, strictly in accordance with the quality and quantity, and at the time and place agreed.
2. Where the lender knows that the property is not of the agreed quality but fails to notify the borrower, to compensate the borrower for any loss and damage, unless the borrower accepts the property with knowledge *[that the property is not of the agreed quality]*.
3. Not to demand the borrower return the property prior to the due date, except in the cases provided in article 470 of this Code or unless otherwise provided by other relevant laws.

Article 466 *Obligations of borrowers to repay loans*

1. Where the property lent is a sum of money, the borrower must repay *[the lender]* the loan in full when due. If the property is an object, the borrower must deliver *[to the lender]* an object of the same type, quantity and quality, unless otherwise agreed.
2. A borrower who is unable to deliver an object may, with the consent of the lender, repay the value of the borrowed object in cash as at the time and place of delivery.

3. The place for repayment of a loan shall be the place of residence or head office of the lender, unless otherwise agreed.
4. If a borrower fails to repay [*all or any instalment of*] an interest-free loan, in whole or in part when payment falls due, the lender shall have the right to request [*the borrower*] pay interest at the interest rate provided in article 468.2 of this Code on the overdue amount, unless otherwise agreed or provided by law.
5. If a borrower fails to repay, in whole or in part a loan with interest, the borrower must pay interest in accordance with the following provisions:
 - (a) [*The borrower must pay*] interest on the principal which is due and unpaid at the interest rate agreed in the contract for the term of loan; in the case of late payment, [*the borrower*] must also pay interest at the interest rate provided in article 468.2 of this Code;
 - (b) [*The borrower must pay*] interest on the principal which is due and unpaid [at the interest rate] equal to one hundred and fifty (150) per cent of loan interest stated in the contract for the period of the delay, unless otherwise agreed.

Article 467 *Use of borrowed property*

Parties may agree that borrowed property may only be used for the agreed purpose of the loan. The lender may check the use of the property and may demand its early return if, despite warning, the borrower continues to use the property contrary to the agreed purpose.

Article 468⁵³ *Interest rates*

1. The rate of interest for a loan shall be as agreed by the parties.

Where the parties have agreed on the interest rate, such agreed rate must not exceed twenty (20) per cent per annum of the loan, unless otherwise provided by other relevant laws. Based on the actual circumstances and as proposed by the Government, the Standing Committee of the National Assembly shall make a decision on adjustment of the interest rate mentioned above and make a report to the National Assembly at the next meeting session.

Where the agreed interest rate exceeds the interest rate cap provided in this clause, the excess interest rate shall be ineffective.

2. Where parties agree that interest will be payable but fail to specify an interest rate and there is a dispute as to the interest rate, the interest rate shall equal fifty (50) per cent of the interest rate cap provided in clause 1 of this article as at the date on which repayment is made.

Article 469 *Performance of contracts for loans without fixed term*

1. With respect to a contract for an interest-free loan without a fixed term, the lender may reclaim the property and the borrower may repay the debt at any time, provided that each party gives reasonable prior notice to the other party unless otherwise agreed.
2. With respect to a contract for a loan with interest without a fixed term, the lender may reclaim the property at any time, subject to giving reasonable prior notice to the borrower, and shall be paid interest until the time when the property is returned. The borrower may also return the property at any time, subject to giving reasonable prior notice to the lender, in which case the borrower shall pay interest only up to the date on which repayment is made.

Article 470 *Performance of contracts for fixed term loans*

1. With respect to a contract for a fixed term interest-free loan, the borrower may return the property at any time, subject to giving reasonable prior notice to the lender. The lender may only reclaim the property prior to the due date if the borrower consents.
2. With respect to a contract for a fixed term loan with interest, the borrower may return the property prior to the due date, but must pay interest for the entire term, unless otherwise agreed or provided by law.

Article 471 *"Họ, hội, biêu, phường"⁵⁴*

1. "Họ, hội, biêu, phường" (hereinafter referred to as "ho") means a form of transaction regarding property in accordance with customary practice on the basis of an agreement reached by a group of people who assemble together and jointly determine the number of people, the term, the amount of

⁵³ *Allens footnote:* This is new in comparison with article 476 of the old 2005 Code.

⁵⁴ *Allens footnote:* The Vietnamese term "họ, hội, biêu, phường" is a form of transaction by groups, assemblies, gatherings of people and guilds. This longstanding form of transaction in Vietnam has no English language equivalent. "Ho" means both the form of transaction and the money received as a result of such transaction. money or other property, the form of contribution and payment of "ho", and the rights and obligations of the members [*of the group*].

2. The organization of "ho" is aimed at mutual assistance of citizens and shall be implemented in accordance with law.
3. Where the organization of "ho" generates interest, the interest rate must comply with this Code.
4. It shall be strictly prohibited to organize "ho" in the form of lending at high interest rates.

Section 5

Contracts for Lease of Property

Sub-section 1

General Provisions on Contracts for Lease of Property

Article 472 *Contracts for lease of property*

Contract for lease of property means an agreement between parties whereby a lessor delivers property to a lessee for use during a fixed term and the lessee is required to pay rent.

Contracts for lease of residential houses and contracts for lease of houses for other purposes shall comply with this Code, the Law on Residential Housing and other relevant laws.

Article 473 *Rent*

1. Rent shall be as agreed by the parties or shall be determined by a third person as requested by the parties, unless otherwise provided by law.

2. Where there is no agreement or there is an unclear agreement, the rent shall be determined on the basis of the market price at the place and at the time of entering into the lease contract.

Article 474 *Lease term*

1. The term of a lease shall be as agreed by the parties. If there is no agreement, the term of the lease shall be determined according to the purpose of the lease.
2. Where parties have not agreed on the term of a lease and the term of a lease is not able to be determined according to the purpose of the lease, either party shall have the right to terminate the contract at any time but must give reasonable prior notice to the other party.

Article 475 *Sub-leases*

A lessee may sub-lease leased property with the consent of the lessor.⁵⁵

⁵⁵ *Allens footnote:* There is no "unless otherwise provided by law" at the end of this article. Various entities are prohibited by law from sub-leasing.

Article 476 *Delivery of leased property*

1. A lessor must deliver property to the lessee strictly in accordance with the agreed quantity, quality, type and condition and at the agreed place and time, and [*must*] provide information necessary for use of the property.
2. Where a lessor is late in delivering property, the lessee may extend the time for the delivery of the property or may cancel the contract and demand compensation for loss and damage. If the leased property is not of the quality agreed, the lessee has the right to demand the lessor repair the property or reduce the rent, or to cancel the contract and demand compensation for loss and damage.

Article 477 *Obligation to assure utility value of leased property*

1. A lessor must assure that leased property is in the condition agreed and is suitable for the purpose of the lease contract for the entire term of the lease. The lessor must repair any damage to or defect in the leased property, with the exception of minor damage which the lessee must repair in accordance with customary practice.⁵⁶
2. Where the utility value of leased property decreases otherwise than due to the fault of the lessor, the lessee has the right to demand the lessor implement one or several measures as follows:
 - (a) To repair the property;
 - (b) To reduce the rent;
 - (c) To replace the property or to unilaterally terminate performance of the contract and to demand compensation for loss and damage, if the leased property has defects which the lessee did not know of or if the leased property is beyond repair and the purpose of the lease is not able to be achieved as a result.
3. Where a lessee demands repair⁵⁷ but the lessor fails to repair in time or at all,⁵⁸ provided that [*the lessee*] informs the lessor, the lessee has the right to repair personally the leased property at reasonable costs and has the right to demand the lessor reimburse the costs of repair.

Article 478 *Obligation to assure right of lessees to use property*

1. A lessor must assure the right of a lessee to un-interfered use of the property.
2. In the event of a dispute as to the ownership right to leased property, which interferes with use of that property by the lessee, the lessee has the right to terminate unilaterally the performance of the contract and demand compensation for loss and damage.

Article 479 *Obligation to take care of leased property*

1. A lessee shall take care of leased property and shall carry out minor repairs and maintenance. If the lessee causes any loss of or damage to the property, it must compensate the lessor.

⁵⁶ *Allens footnote:* It is unclear which customary practice is referred to here.

⁵⁷ *Allens footnote:* The literal translation is "Where the lessor has been given notice".

⁵⁸ *Allens footnote:* No mention is made of timely but inadequate repair.

The lessee shall not be liable for normal wear and tear due to use of the leased property.

2. A lessee may, with the consent of the lessor, carry out repairs and improvements to leased property which increase its value and may demand reimbursement from the lessor for reasonable costs incurred.

Article 480 *Obligation to use leased property strictly in accordance with utility and purpose*

1. A lessee must use leased property strictly in accordance with its utility and the agreed purpose.
2. Where a lessee fails to use leased property strictly in accordance with its utility and purpose, the lessor has the right to terminate unilaterally the performance of the contract and to demand compensation for loss and damage.

Article 481 *Payment of rent*

1. A lessee must pay rent in full and on time as agreed. If there is no agreement on the time for payment of rent, the time shall be determined in accordance with the customary practice at the place of payment. If it is not possible to determine the time of payment in accordance with such customary practice, the lessee must make payment when the lessee returns the leased property.
2. Where the parties have agreed on payment of rent in instalments, if the lessee fails to make payment for three consecutive instalments, the lessor has the right to terminate unilaterally the performance of the lease contract,⁵⁹ unless otherwise agreed or otherwise provided by law.

Article 482 *Return of leased property*

1. A lessee must return leased property in the same condition in which it was received, normal wear and tear excepted, or in the condition agreed. If the value of the leased property has decreased in comparison with its condition at the time it was received, the lessor has the right to demand compensation for any loss and damage, normal wear and tear excepted.
2. Where leased property is moveable property, the place for returning the leased property shall be the place of residence or head office of the lessor, unless otherwise agreed.

3. Where leased property is livestock, the lessee must return both the leased livestock and any offspring born during the term of the lease, unless otherwise agreed. The lessor must reimburse the lessee for expenses incurred in caring for the offspring.
4. Where a lessee is late in returning leased property, the lessor has the right to demand the lessee return the leased property and to pay rent for the period of delay and the lessee must compensate for loss and damage. The lessee must pay a penalty for the late return of the leased property if so agreed.
5. The lessee must bear the risk in relation to the leased property during the period of delay.

⁵⁹ *Allens footnote:* No mention is made of any right to [demand] unpaid rent.

Sub-section 2

Contracts for "Thue Khoan"⁶⁰ of Property

Article 483 *Contracts for "thue khoan" of property*

Contract for "thue khoan" of property means an agreement between parties whereby a "thue khoan" lessor delivers the property to a "thue khoan" lessee for the exploitation of its utility and for the enjoyment of the benefits and income derived from the "thue khoan" property, and the "thue khoan" lessee has the obligation to pay rent.

Article 484 *Subject matters of contracts for "thue khoan" of property*

The subject matter of a contract for "thue khoan" may be land, forest, [and] water surfaces which have not been exploited,⁶¹ livestock, production and business facilities, and other means of production together with the equipment required to exploit the utility of such property and to enjoy the benefits and income derived therefrom, unless otherwise provided by law.

Article 485 *Terms of "thue khoan"*

The term of a "thue khoan" shall be as agreed by parties. Where there is no agreement or where there is an agreement but it is unclear, the term of "thue khoan" shall be determined according to the production or business cycle appropriate to the nature of the subject matter of the "thue khoan".

Article 486 *Rent in respect of "thue khoan"*

Rent in respect of a "thue khoan" shall be as agreed by the parties. If a "thue khoan" is awarded by tender, the rent in respect of such "thue khoan" shall be determined on the basis of the bidding result.

Article 487 *Delivery of "thue khoan" property*

Upon delivery of "thue khoan" property, parties must record their assessment of the condition and value of the property.

If the parties are not able to determine⁶² the value, a third person shall be invited to determine the value. Such determination shall be made in writing.

Article 488 *Payment of "thue khoan" rent and method of payment*

1. "Thue khoan" rent may be paid in kind or money, or by performance of acts.
2. A "thue khoan" lessee must pay "thue khoan" rent in full even where the lessee does not exploit the utility of the "thue khoan" property.

⁶⁰ *Allens footnote:* This is a form of lease having no English language equivalent. "Thuê khoán" may be used as a noun or a verb.

⁶¹ *Allens footnote:* It is not clear whether "which have not been exploited" qualifies only water surfaces or also land and forests.

⁶² *Allens footnote:* This is the literal translation, not "agree on".

3. When entering into a contract for "thue khoan", parties may agree on conditions for a reduction in rent. If at least one third of the benefits or income is lost due to an event of *force majeure*, a "thue khoan" lessee may demand a reduction of or exemption from rent, unless otherwise agreed.
4. Where a "thue khoan" lessee must pay in kind according to the season or cycle in the exploitation of the utility of the "thue khoan" property, payment must be made at the end of such season or cycle, unless otherwise agreed.
5. Where a "thue khoan" lessee is required to perform an act, the "thue khoan" lessee must perform that particular act.
6. The time for payment of "thue khoan" rent shall be as agreed by the parties. Where the parties have not so agreed, the "thue khoan" lessee must make payment on the last day of a month; in the case of "thue khoan" according to the production or business cycle, the payment must be made no later than the end of such production or business cycle.

Article 489 *Exploitation of "thue khoan" property*

A "thue khoan" lessee must exploit "thue khoan" property strictly in accordance with the agreed purpose and [mus] inform the "thue khoan" lessor periodically of its condition and its exploitation. If the "thue khoan" lessor demands or requires information at any other time, the "thue khoan" lessee must provide such information promptly. If the "thue khoan" lessee does not exploit the "thue khoan" property strictly in accordance with the agreed purpose, the "thue khoan" lessor has the right to terminate unilaterally the performance of the contract and demand compensation for loss and damage.

Article 490 *Taking care, maintenance and disposal of "thue khoan" property*

1. During the period of exploitation of the "thue khoan" property, the "thue khoan" lessee must take care of and preserve the "thue khoan" property and any related equipment at its own expense, unless otherwise agreed. If the "thue khoan" lessee loses or damages the "thue khoan" property or causes any loss or reduction in its value, the "thue khoan" lessee must compensate for loss and damage. The "thue khoan" lessee shall not be liable for normal wear and tear due to the use of the "thue khoan" property.
2. A "thue khoan" lessee may repair or improve "thue khoan" property if [the parties] so agree, but⁶³ must preserve its value.

A "thue khoan" lessor must reimburse a "thue khoan" lessee for the reasonable expenses incurred in repairing or improving the "thue khoan" property as agreed.

3. A "thue khoan" lessee may not sub-lease "thue khoan" property without the consent of the "thue khoan" lessor.

Article 491 *Enjoyment of benefits and liability for damage with respect to "thue khoan" livestock*

During the term of a "thue khoan" of livestock, the "thue khoan" lessee shall be entitled to enjoy half of the number of offspring born and shall be liable for half of any damage to the "thue khoan" livestock caused by an event of *force majeure*, unless otherwise agreed.

⁶³ *Allens footnote:* The literal translation is "and".

Article 492 *Unilateral termination of performance of contracts for "thue khoan"*

1. Where a party terminates unilaterally the performance of a ["*thue khoan*"] contract, that party must give reasonable prior notice to the other party. If the "thue khoan" is based on a season or cycle of exploitation, the period of prior notice must conform to such season or cycle.
2. Where a "thue khoan" lessee breaches an obligation and the exploitation of the "thue khoan" property is the sole means of livelihood of the lessee and continuation of the "thue khoan" would not seriously affect the interests of the "thue khoan" lessor, the "thue khoan" lessor may not terminate unilaterally the performance of the contract. In such case, the "thue khoan" lessee must undertake to the "thue khoan" lessor not to commit further breaches of the contract.

Article 493 *Return of "thue khoan" property*

Upon termination of a "thue khoan" contract, the "thue khoan" lessee must return the "thue khoan" property in a condition which takes into account the agreed depreciation. If the "thue khoan" lessee has caused any reduction in the value of the "thue khoan" property, the "thue khoan" lessee must compensate for loss and damage.

Section 6

Contracts for Borrowing Property

Article 494 *Contracts for borrowing property*

Contract for borrowing property means an agreement between parties whereby a lender delivers property to a borrower for use free of charge for a period of time and the borrower returns the property at the end of the period of time or when the purpose of the borrowing has been achieved.

Article 495 *Subject matter of contracts for borrowing property*

Any non-consumable property may be the subject matter of a contract for borrowing property.

Article 496 *Obligations of borrowers of property*

1. To take care of and preserve the borrowed property and not to change its condition at the volition of the borrower. The borrower must repair any normal damage to the property.
2. Not to on-lend the property to any other person without the consent of the lender.
3. To return the borrowed property on the due date. If there is no agreement on the time for returning

the property, the borrower must return the property immediately after the purpose of the borrowing has been achieved.

4. To compensate for loss and damage where the borrower causes loss of or damage to the borrowed property.
5. The borrower of property must bear the risk with respect to the borrowed property during the period of late return.

Article 497 *Rights of borrowers of property*

1. To use the borrowed property strictly in accordance with its utility and agreed purpose.
2. To demand the lender reimburse reasonable expenses incurred in carrying out repairs or improvements to the borrowed property which increase its value, if so agreed.
3. Not to bear liability for normal wear and tear of the borrowed property.

Article 498 *Obligations of lenders of property*

1. To provide necessary information on the use of the property and its defects, if any.
2. To reimburse the borrower for expenses⁶⁴ incurred in carrying out repairs or improvements to the borrowed property which increase its value, if so agreed.
3. Where the lender knows but fails to notify the borrower of a defect in the property which results in loss and damage to the borrower, to compensate the borrower for such loss and damage, except where the borrower knows or should know of such defect.

Article 499 *Rights of lenders of property*

1. If there is no agreement on the borrowing period, to reclaim the property immediately after the borrower has achieved its purpose. If the lender suddenly and urgently needs to use the borrowed property, the lender may reclaim it upon giving reasonable prior notice to the borrower, even if the borrower has not yet achieved its purpose.
2. To reclaim the property where the borrower fails to use it strictly in accordance with the agreed purpose, utility, or method or where the borrower on-lends the property without the consent of the lender.
3. To demand compensation for loss and damage to the property caused by the borrower.

Section 7

Contracts on Land Use Rights

Article 500 *Contracts on land use rights*

Contract on land use right means an agreement between parties whereby a land user converts, assigns, leases, sub-leases, gives or mortgages the land use right, contributes capital in the form of the land use right [*to the other party*], or exercises other rights with respect to the other party as provided in the Law on Land, and the other party shall exercise rights and perform obligations in accordance with the contract entered into with the land user.

Article 501 *Contents of contracts on land use rights*

1. General provisions on contracts and relevant contents of commonly used contracts in this Code shall apply to contracts on land use rights, unless otherwise provided by law.

⁶⁴ *Allens footnote:* Evidently, the expenses must be "reasonable", as per article 497.2.

2. Contents of a contract on land use right must not contravene the provisions on land use purposes, land use term, land use zoning and planning and other rights and obligations in the law on land and other relevant laws.

Article 502 *Formalities and procedures for performance of contracts on land use rights*

1. A contract on land use right must be in writing in accordance with the formalities as provided in this Code, the law on land and other relevant laws.
2. The performance of a contract on land use right must comply with the order and procedures provided in the law on land and other relevant laws.

Article 503 *Effectiveness of transfer of land use right*

The transfer of a land use right shall take effect as from the time of registration as provided in the Law on Land.

Section 8

Co-operation Contracts

Article 504⁶⁵ *Co-operation contracts*

1. Co-operation contract means an agreement between individuals or legal entities on jointly contributing property and their efforts in order to perform certain tasks, to enjoy benefits mutually and to bear liabilities jointly.
2. A co-operation contract must be in writing.

Article 505 *Contents of co-operation contracts*

A co-operation contract shall contain the following principal items:

1. Purpose and term of co-operation;
2. Full names and places of residence of individuals; names and head offices of legal entities;
3. Property to be contributed, if applicable;
4. Contribution by human labour, if applicable;
5. Method of distribution of benefits and income;
6. Rights and obligations of co-operating members;
7. Rights and obligations of representatives, if applicable;

⁶⁵ *Allens footnote:* These articles on a co-operation contract are new. The only mention of a co-operation contract in the old Code is in articles 111 and 120 in the context of co-operative groups.

8. Conditions for participating in and withdrawing from the co-operation contract applicable to members, if applicable;
9. Conditions for termination of co-operation.

Article 506 *Joint property of co-operating members*

1. Property which members contribute or create together and other property as provided by law shall be property in common of the co-operating members.

Where there is an agreement on monetary contribution and a co-operating member delays the contribution, such member shall be responsible to pay interest on the late amount for the period of delay as provided in article 357 of this Code and must pay compensation for loss and damage.

2. The disposal of property being a land use right, a house, a production workshop or other means of production must be agreed in writing by all members; the disposal of other property shall be decided by representatives of the members, unless otherwise agreed.
3. Joint property must not be distributed before termination of the co-operation contract, except where it is agreed by all co-operating members.

The distribution of joint property provided in this clause shall not change or terminate the rights and obligations created or performed prior to the time of distribution of the property.

Article 507 *Rights and obligations of co-operating members*

1. To enjoy benefits and income from co-operation activities.
2. To participate in making decisions on matters relating to the performance of the co-operation contract and the supervision of co-operation activities.
3. To pay compensation for loss and damage to other co-operating members caused by the member's fault.
4. To exercise other rights and perform other obligations in accordance with the contract.

Article 508 *Establishment and performance of civil transactions*

1. Where co-operating members appoint a representative, such person shall act as the representative in the establishment and performance of civil transactions.
2. Where co-operating members do not appoint a representative, the co-operating members must jointly participate in establishing and performing civil transactions, unless otherwise agreed.
3. Civil transactions established and performed by the subjects provided in clauses 1 and 2 of this article shall give rise to rights and obligations of all co-operating members.

Article 509 *Civil liability of co-operating members*

Co-operating members shall jointly bear civil liability by recourse to their joint property. If the joint property is insufficient to fulfil the common obligations, the co-operating members shall be liable by recourse to their

own separate properties in proportion to their share of contribution, unless otherwise provided by the co-operation contract or by law.

Article 510 *Withdrawal from co-operation contracts*

1. A member may withdraw from a co-operation contract in the following cases:
 - (a) In accordance with the conditions agreed in the co-operation contract;
 - (b) [*Such member*] has a legitimate reason and receives agreement from more than half of the total number of co-operating members.
2. The member withdrawing from the co-operation contract has the right to demand the return of property which he or she contributed and to receive his or her share of the joint property and must perform his or her obligations as agreed. If the distribution of the share of his or her property in kind adversely affects the co-operation activities, the value of such property shall be distributed instead.

The withdrawal from the co-operation contract shall not terminate the rights and obligations of such person which were created and performed prior to the time of withdrawal from the co-operation contract.

3. Where the withdrawal from a co-operation contract does not fall into the case provided in clause 1 of this article, the member withdrawing from the contract shall be determined as the party in breach of the contract and must perform its civil liability in accordance with this Code and other relevant laws.

Article 511 *Accession to co-operation contracts*

An individual or legal entity shall become a new member of a co-operation contract if it is agreed by more than half of the total number of co-operating members, unless otherwise provided by the co-operation contract.

Article 512 *Termination of co-operation contracts*

1. A co-operation contract shall be terminated in the following cases:
 - (a) As agreed by the co-operating members;
 - (b) Upon expiry of the term stated in the co-operation contract;
 - (c) The objective of the co-operation has been achieved;
 - (d) As decided by the authorized State agency;
 - (dd) Other cases as provided by this Code and other relevant laws.
2. When a co-operation contract is terminated, all debts arising from the contract must be paid. If the joint property is insufficient to pay debts, the separate properties of the co-operating members shall be used to pay debts in accordance with article 509 of this Code.

If there is joint property remaining after debts have been fully paid, such property shall be distributed among the co-operating members in proportion to their respective contributions, unless otherwise agreed.

Section 9

Contracts for Services

Article 513 *Contracts for services*

Contract for services means an agreement between parties whereby a service provider performs an act for a client⁶⁶ which pays a fee for that act.

Article 514 *Subject matter of contracts for services*

The subject matter of a contract for services shall be an act which is capable of being performed, which does not breach matters prohibited by law and which does not contravene social morals.

Article 515 *Obligations of clients*

1. To supply the service provider with the information, documentation and facilities necessary for the performance of the act if so agreed or required for the performance of the act.
2. To pay a fee to the service provider as agreed.

Article 516 *Rights of clients*

1. To demand the service provider perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Where a service provider commits a serious breach of its obligations, the client may terminate unilaterally performance of the contract and demand compensation for loss and damage.

Article 517 *Obligations of service providers*

1. To perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Not to assign the act to another person for performance on its behalf, without the consent of the client.
3. To take care of, and to return to the client after completion of the act, the documents and facilities provided to it.
4. To notify the client promptly of any inadequacy in the information or documents and any failure of the facilities to satisfy the quality required for the completion of the act.

⁶⁶ *Allens footnote:* The literal translation is "service user".

5. To keep confidential any information of which it has had knowledge during the period of providing the service as agreed or as provided by law.
6. If the service provider causes any loss of or damage to the documents or facilities supplied or discloses confidential information, to compensate the client for loss and damage.

Article 518 *Rights of service providers*

1. To demand the client provide information, documents and facilities to perform the act.
2. To amend the terms of service in the interests of the client without necessarily asking for the opinion of the client where waiting for [*such opinion*] would cause loss and damage to the client, provided that the service provider promptly informs the client thereof.
3. To demand the client pay the fee.

Article 519 *Payment of fees*

1. A client must pay the agreed fee for services.
2. If, upon entering a contract, there is no agreement on the service fee rate or on the method for fixing the fee for services and there are no other instructions on fees, the service fee rate shall be fixed on the basis of market fees for services of the same type at the time when and place where the contract was entered into.
3. A client must pay the fee for services at the place where the service is provided and at the time of its completion, unless otherwise agreed.
3. Where the services provided fail to meet the terms of the agreement or the act is not completed on time, the client has the right to reduce the fee for services and demand compensation for loss and damage.

Article 520 *Unilateral termination of performance of contracts for services*

1. Where the continued provision of services does not benefit the client, the client has the right to terminate unilaterally the performance of the contract but must provide reasonable prior notice to the service provider, in which case the client must pay a fee according to the portion of services already provided and [*must*] compensate for loss and damage.
2. Where the client commits a serious breach of its obligations, the service provider has the right to terminate unilaterally the performance of the contract and demand compensation for loss and damage.

Article 521 *Continuation of contracts for services*

If, after the expiry of the [*agreed*] period for performance of an act in accordance with a contract for services, the act has not been completed and the service provider continues its performance and the client is aware of this but does not object, the performance of the contract for services shall automatically be deemed to continue in accordance with the agreed terms until the act is completed.

Section 10

Transport Contracts

Sub-section 1

Contracts for Transport of Passengers

Article 522 *Contracts for transport of passengers*

Contract for transport of passengers means an agreement between parties whereby a carrier transports passengers and luggage to an agreed⁶⁷ destination and the passengers must pay transport fares.

Article 523 *Formalities for contracts for transport of passengers*

1. A contract for transport of passengers may be made in writing or orally or determined by specific conduct.
2. A ticket is evidence of the entry into a contract for transport of passengers by the parties.

Article 524 *Obligations of carriers*

1. To carry the passengers safely from the place of departure to the agreed destination on time by the means agreed and on the agreed route; to ensure that there are sufficient seats for the passengers and that the transport capacity of the carrier is not exceeded.
2. To purchase civil liability insurance for the passengers, as provided by law.
3. To ensure that the departure time is adhered to as notified or agreed.
4. To carry and return the luggage to the passenger or person entitled to receive the luggage in accordance with the agreed destination, time and route.
5. To refund the transport fare to any passenger as agreed or as provided by law.

Article 525 *Rights of carriers*

1. To demand the passengers pay in full the passenger transport fares and fares for the transport of personal luggage in excess of the prescribed limit.
2. To refuse to carry a passenger in the following cases:
 - (a) Where the passenger fails to follow the regulations of the carrier, where the acts of the passenger disturb public order, obstruct the work of the carrier, or pose a threat to life, health or property of other persons, or where a passenger commits other acts which make it impossible to ensure safety during the journey. In this case, the passenger shall not receive a refund of the passenger transport fare, and must pay a fine if so provided by the transport regulations;

⁶⁷ *Allens footnote:* The literal translation includes "specified".

- (b) Where the health of the passenger is such that it is obvious to the carrier that the transport [*of such person*] will endanger the passenger or other persons during the journey;
- (c) In order to prevent the spread of contagious diseases.

Article 526 *Obligations of passengers*

1. To pay in full the passenger transport fare and fares for the transport of luggage in excess of the prescribed limit, and to take care of his or her hand-luggage.
2. To be present at the place of departure at the agreed time.
3. To respect and comply strictly with the regulations of the carrier and all other regulations ensuring traffic safety.

Article 527 *Rights of passengers*

1. To request to be transported by the agreed means of transport, with the value on the basis of the agreed freight charges, and in accordance with the agreed route.
2. To be exempt from transport fares for check-in luggage and hand-luggage within the limits as agreed or as provided by law.
3. To demand reimbursement of expenses incurred or compensation for any loss and damage if the carrier is at fault in failing to transport according to the agreed time schedule and destination.
4. To receive a refund of all or part of the transport fare in the cases provided in clauses 2(b) and (c) of article 525 of this Code and in other cases as agreed or as provided by law.
5. To receive the luggage at the agreed destination in accordance with the agreed time and route.
6. To request temporary interruption of the journey for the duration and in accordance with the procedures provided by law.

Article 528 *Liability to compensate for loss and damage*

1. In case of loss of life of or damage to the health or luggage of a passenger, the carrier must compensate for any loss and damage in accordance with law.
2. Unless otherwise provided by law, a carrier shall not be liable to compensate for loss of life of or damage to the health and luggage of a passenger [*in the case*] where such loss or damage is entirely due to the fault of the passenger.
3. A passenger who breaches the agreed terms for transport or the transport regulations, thereby causing loss and damage to the carrier or a third person, must compensate.

Article 529 *Unilateral termination of contracts for transport of passengers*

1. A carrier has the right to terminate unilaterally the performance of a contract in the cases provided in article 525.2 of this Code.
2. A passenger has the right to terminate unilaterally the performance of a contract where the carrier breaches the obligations provided in clauses 1, 3 and 4 of article 524 of this Code.

Sub-section 2

Contracts for Transport of Property

Article 530 *Contracts for transport of property*

Contract for transport of property means an agreement between parties whereby a carrier has the obligation to transport property to an agreed destination and to deliver it to the authorized recipient, and the customer⁶⁸ has the obligation to pay the freight charges.

Article 531 *Formalities for contracts for transport of property*

1. A contract for transport of property may be entered into in writing or orally or determined by specific conduct.

2. A bill of lading or equivalent source document of transport shall be evidence of the entering into of a contract by the parties.

Article 532 *Delivery of property to carriers*

1. A customer has the obligation to deliver property to a carrier at the agreed time and place and to pack the property in accordance with the agreed specifications. The customer must bear the costs of loading the property onto and unloading the property from the means of transport, unless otherwise agreed.
2. Where a customer is late in delivering property to the agreed place,⁶⁹ the customer must reimburse the carrier for the costs associated with the delay and pay the freight charges for transporting the property to the place agreed in the contract.

If the carrier is late in accepting the property at the agreed place, it shall be liable for the costs incurred due to such late acceptance.

Article 533 *Freight charges*

1. The rate of freight charges shall be as agreed by the parties. If the law regulates freight charges, charges shall apply as regulated.
2. A customer must pay freight charges in full after the property is loaded onto the means of transport, unless otherwise agreed.

Article 534 *Obligations of carriers*

1. To transport⁷⁰ [*the property*] in its entirety and safely to the agreed destination at the [*agreed*] time.

⁶⁸ *Allens footnote:* The literal translation is "transport hirer".

⁶⁹ *Allens footnote:* The literal translation is "Where a customer delivers property not in accordance with the agreed time and place".

⁷⁰ *Allens footnote:* The literal translation is "guarantee to transport".

2. To deliver the property to the person entitled to receive it.
3. To bear all costs related to the transport of the property, unless otherwise agreed.
4. To purchase civil liability insurance as required by law.
5. To compensate the customer for loss and damage where the carrier causes loss of or damage to the property, unless otherwise agreed or otherwise provided by law.

Article 535 *Rights of carriers*

1. To check the authenticity of the property and the bill of lading or equivalent source document of transport.
2. To refuse to transport property which is different from that agreed in the contract.
3. To demand the full and timely payment of the freight charges by the customer.
4. To refuse to transport property if the carrier knows or should know that the transacting of such

property is prohibited or that the property is of a dangerous or toxic nature.

Article 536 *Obligations of customers*

1. To pay in full the freight charges to the carrier, at the time and by the method of payment as agreed.
2. To provide necessary information relating to the transported property in order to assure safety of the transported property.
3. To take care of the property during transport if so agreed. Where the customer takes care of the property and it is lost or damaged, the customer shall not be entitled to compensation.

Article 537 *Rights of customers*

1. To demand the carrier transport the property to the agreed destination at the agreed time.
2. To receive directly the property which has been transported, or to appoint a third person to receive it.

Article 538 *Delivery of property to recipients*

1. A recipient of property may be the customer or a third person appointed by the customer to receive the property.
2. A carrier must deliver the property to a recipient of the property in full, at the time and place as agreed.
3. Where property has been delivered to the point of delivery on time but there is no recipient of the property, the carrier may deposit such property at a place of bailment and must notify immediately the customer or a third person appointed by the customer to accept the property. The customer or such third person must bear the reasonable expenses incurred in relation to the bailment of the property.

The obligation to deliver property shall be completed upon bailment of the property and when the customer or the third person appointed by the customer to accept the property has been notified about the bailment.

Article 539 *Obligations of recipients of property*

1. To produce to the carrier the bill of lading or other equivalent source document of transport, and to receive the property at the agreed time and place.
2. To bear the costs for loading and unloading the transported property, unless otherwise agreed or otherwise provided by law.
3. To reimburse [*the carrier*] for reasonable costs incurred due to late acceptance of the property.
4. To notify the customer of the acceptance of the property and [*provide*] other necessary information required by the customer if the recipient of the property is a third person appointed by the customer.

Article 540 *Rights of recipients of property*

1. To verify the quantity and quality of the delivered property.
2. To accept the delivered property.

3. To demand the carrier reimburse reasonable costs incurred due to any delay by the carrier in delivering the property.⁷¹
4. To demand the carrier compensate for loss of or damage to the property.

Article 541 *Liability to compensate for damage*

1. Where a carrier is responsible for the loss of or damage to property, the carrier must compensate the customer for damage, except in the case provided in article 536.3 of this Code.
2. A customer must compensate a carrier and any third parties for loss and damage caused by the transport of dangerous or toxic property which is not safely packaged or the safety of which is not otherwise ensured.
3. A carrier shall not be liable to compensate for loss and damage in the event of *force majeure* causing loss or deterioration of or damage to the property during transport, unless otherwise agreed or otherwise provided by law.

Section 11

Processing Contracts

Article 542 *Processing contracts*

Processing contract means an agreement between parties whereby a processor carries out work to create products at the request of a supplier, and the supplier receives the products and pays fees.

⁷¹ *Allens footnote:* The literal translation is "due to waiting to accept the property".

Article 543 *Subject matter of processing contracts*

The subject matter of a processing contract shall be items which are specified by samples, the standard of which is agreed by the parties or provided by law.

Article 544 *Obligations of suppliers*

1. To supply raw materials to the processor strictly in accordance with the agreed quantity, quality, time and place; and to provide necessary documents relating to the processing.
2. To provide the processor with instructions as to how to perform the contract.
3. To pay agreed fees.

Article 545 *Rights of suppliers*

1. To accept the processed products in accordance with the agreed quantity, quality, manner, time and place.
2. To terminate unilaterally performance of the contract and demand compensation for loss and damage if the processor commits a serious breach of the contract.
3. Where the products are not of the agreed quality and the supplier accepts the products but requests repairs, but the processor is not able to perform the repairs within the agreed time, the supplier has

the right to cancel the contract and demand compensation for loss and damage.

Article 546 *Obligations of processors*

1. To take care of the raw materials supplied by the supplier.
2. To notify the supplier to replace any raw materials supplied which are not of the agreed quality; to refuse to perform the processing if the processor knew or should have known that the use of the raw materials may create products which pose a danger to society.
3. To deliver the products to the supplier strictly in accordance with the agreed quantity, quality, method, time and place.
4. To keep confidential all information relating to the processing and the products.
5. To be liable for the quality of the products, unless the lack of quality is due to the raw materials supplied by the supplier or due to the unreasonable instructions of the supplier.
6. To return any leftover raw materials to the supplier after completing performance of the contract.

Article 547 *Rights of processors*

1. To demand the supplier deliver the raw materials strictly in accordance with the agreed quality, quantity, time and place.
2. To refuse [*to comply with*] unreasonable instructions of the supplier during performance of the contract where the processor is of the view that [*compliance with*] such instructions could decrease the quality of the products, provided that the processor immediately informs the supplier.
3. To demand the supplier make payment of the fees in full, at the time and by the method as agreed.

Article 548 *Liability for risk*

Unless otherwise agreed, the owner of the raw materials has the risk with respect to such materials and the products processed therefrom until the products are delivered to the supplier.

If the supplier is late in accepting the products, it has the risk during the period of delayed acceptance, including where the products are processed from the raw materials of the processor, unless otherwise agreed.

If the processor delays delivery of the products and the delay damages the processed property, the processor must compensate for loss and damage suffered by the supplier.

Article 549 *Delivery and acceptance of processed products*

A processor must deliver, and the supplier must accept, products at the agreed time and place.

Article 550 *Late delivery and acceptance of processed products*

1. Where the processor is late in delivering processed products, the supplier may extend the time of delivery. If, upon expiry of such extension, the processor still has not delivered the products, the supplier has the right to terminate unilaterally the performance of the contract and demand compensation for loss and damage.

2. Where the supplier is late in accepting the products, the processor may deposit the products at a place of bailment and must notify the supplier immediately. The obligation to deliver the products shall be fulfilled when the agreed terms are satisfied and the supplier has been notified. The supplier must bear all costs incurred for bailment.

Article 551 *Unilateral termination of performance of processing contracts*

1. Unless otherwise agreed or otherwise provided by law, each party has the right to terminate unilaterally the performance of a processing contract if continued performance would not benefit that party, but must give reasonable prior notice to the other party.
2. If the supplier terminates unilaterally the performance of the contract, the supplier must pay fees for the work already performed, unless otherwise agreed. If the processor terminates unilaterally the performance of the contract, it shall not be paid fees, unless otherwise agreed.
3. A party which unilaterally terminates the performance of a contract and thereby causes loss and damage to the other party, must compensate.

Article 552 *Payment of fees*

1. Unless otherwise agreed, the supplier must pay fees in full at the time of accepting the products.
2. If there is no agreement on the rate of fees, the applicable rate shall be the average rate charged for the production of products of the same type at the place of processing at the time of payment.
3. If the products fail to meet the [agreed] quality due to the raw materials supplied or the unreasonable instructions provided by the supplier, the supplier does not have the right to reduce the fees.

Article 553 *Dealing with leftover raw materials*⁷²

Unless otherwise agreed, the processor must return leftover raw materials to the supplier upon termination of the processing contract.

Section 12

Contracts for Bailment of Property

Article 554 *Contracts for bailment of property*

Contract for bailment of property means an agreement between parties whereby a bailee accepts the property of a bailor for safekeeping, for return to the bailor upon expiry of the duration of the contract, and the bailor must pay a fee to the bailee, except where the bailment is free of charge.

Article 555 *Obligations of bailors of property*

1. Upon delivery of the property, to inform the bailee of the condition of the property and the appropriate safekeeping measures; if [the bailor] fails to inform [the bailee], and the property is destroyed or damaged as a result of inappropriate safekeeping, the bailor must be liable itself [for such destruction of or damage to the bailed property] and must compensate for [other] loss and damage caused.
2. To pay the bailment fees in full, at the time and by the method as agreed.

Article 556 *Rights of bailors of property*

1. If the bailment contract does not specify a duration, to reclaim the property at any time subject to giving reasonable prior notice to the bailee.
2. To demand compensation for loss of or damage to the bailed property caused by the bailee, except in the case of an event of *force majeure*.

Article 557 *Obligations of bailees of property*

1. To take care of the property as agreed and return it to the bailor in the same condition in which the bailee received it.
2. To change the method for safekeeping of the property only where such change is necessary for better safekeeping of such property and provided that the bailor is notified immediately of the change.
3. If, due to its nature, the bailed property is in danger of being damaged or destroyed, to notify promptly the bailor and request the bailor to advise, within a certain period of time, a solution. If the

⁷² *Allens footnote:* The literal translation is "Liquidation of raw materials".

bailor fails to reply within such period of time, the bailee has the right to take all necessary measures to take care of the property and to demand the bailee reimburse the costs incurred.

4. If the bailee causes any loss of or damage to the bailed property, to compensate for loss and damage, except in the case of an event of *force majeure*.

Article 558 *Rights of bailees of property*

1. To demand the bailor pay the agreed [*bailment*] fees.
2. Where the bailment is free of charge, to demand the bailor pay the reasonable costs of taking care of the property.
3. Where the bailment is for an indefinite period of time, to request, at any time, that the bailor take back the property subject to giving reasonable prior notice to the bailor.
4. Where the bailed property is in danger of being damaged or destroyed, to sell the property in the interests of the bailor, inform the bailor thereof and pay the proceeds of the sale to the bailor after deduction of reasonable expenses incurred for the sale of the property.

Article 559 *Return of bailed property*

1. A bailee must return the same property that was received, including any benefits derived therefrom, unless otherwise agreed.

The bailed property shall be returned [*to the bailor*] at the place where it was delivered. If the bailor wishes to have the property returned at another place, the bailor must bear the transport costs to such place, unless otherwise agreed.

2. A bailee must return property at the agreed time and only has the right to request the bailor take back the property prior to such time for a legitimate reason.

Article 560 *Late taking back of bailed property*

If a bailee is late in returning the property, the bailee may not demand the bailor pay bailment fees and costs for taking care of the property incurred from the agreed time for return of the property [*to the time it is actually returned*] and bears the risk with respect to the property during such period.

Where a bailor is late in taking back property, the bailor must pay all costs for taking care of the property and the bailment fees to the bailee during the period for which the bailor was late.

Article 561 *Payment of bailment fees*

1. A bailor must pay bailment fees in full when taking back the bailed property, unless otherwise agreed.
2. Where the parties have no agreement on the rate of bailment fees, the applicable rate shall be the average rate of bailment fees at the time when and place where the bailment fee is paid.
3. Notwithstanding that the bailor takes back the property prior to the agreed time, the bailor must pay the bailment fees in full and must pay the necessary costs which the bailee incurs due to the return of the property by the bailee prior to the agreed time, unless otherwise agreed.
4. Where a bailee requests a bailor to take back the property prior to the agreed time, the bailee shall not [*be entitled to*] be paid bailment fees and must compensate for any loss and damage to the bailor, unless otherwise agreed.

Section 13

Authorization Contracts

Article 562 *Authorization contracts*

Authorization contract means an agreement between parties whereby an attorney has the obligation to perform an act in the name of a principal. The principal is only required to pay remuneration if so agreed or so provided by law.

Article 563 *Duration of authorization*

The duration of the authorization shall be as agreed by the parties or as provided by law. If there is no agreement and the duration is not provided by law, the authorization contract shall be effective for one year from the date on which the authorization is made.

Article 564 *Sub-authorization*

1. An attorney may sub-authorize its authorization to another person in the following circumstances:
 - (a) As agreed by the principal;
 - (b) There is an event of force majeure and if the sub-authorization is not applied, the purpose of establishing and performing the civil transaction for the benefit of the principal will be unable to be achieved.
2. A sub-authorization shall not exceed the scope of the original authorization.
3. The formalities of the sub-authorization contract must conform with the formalities of the original authorization contract.

Article 565 *Obligations of attorneys*

1. To perform the act in accordance with the authorization and inform the principal of such performance.
2. To notify any third parties involved in the performance of the authorized act of the duration and scope of the authorization and of any amendments of or additions to such scope.
3. To take care of and preserve documents and facilities provided for the performance of the authorized act.
4. To keep information confidential which the attorney comes to know during the performance of the authorized act.
5. To return to the principal any property received and benefits derived during the performance of the authorized act as agreed or as provided by law.
6. To compensate for loss and damage caused by a breach of any of the obligations provided in this article.

Article 566 *Rights of attorneys*

1. To demand the principal provide the information, documentation and facilities necessary for performance of the authorized act.
2. To be reimbursed for reasonable expenses incurred in the performance of the authorized act; to receive remuneration if so agreed.

Article 567 *Obligations of principals*

1. To provide the information, documentation and facilities necessary for the attorney to perform the [authorized] act.
2. To be liable for undertakings given by the attorney within the scope of the authorization.
3. To reimburse the attorney for reasonable expenses incurred by the attorney in the performance of the authorized act; to pay any agreed remuneration to the attorney.

Article 568 *Rights of principals*

1. To demand the attorney report fully on the performance of the authorized act.
2. To demand the attorney return any property and benefits derived from the performance of the authorized act, unless otherwise agreed.
3. If the attorney breaches any of the obligations provided in article 565 of this Code, to be compensated for loss and damage.

Article 569 *Unilateral termination of performance of authorization contracts*

1. Where an authorization involves payment of remuneration, the principal has the right, at any time, to terminate unilaterally the performance of the contract but must remunerate the attorney in proportion to the acts performed and compensate for loss and damage. If the authorization does not involve payment of remuneration, the principal has the right, at any time, to terminate the performance of the contract, subject to giving reasonable prior notice to the attorney.

A principal must notify [*any*] third person⁷³ in writing of the termination of the performance of the contract by the principal. If the principal fails to do so, any contract with [*any such*] third person shall remain in effect, unless such third person knows or should know of the termination of the performance of the contract.

2. Where an authorization does not involve payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract, subject to giving reasonable prior notice to the principal. If the authorization involves payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract and must compensate for any loss and damage caused to the principal, if applicable.

⁷³ *Allens footnote:* Presumably, this means "any third person involved in the performance of the authorized act".

CHAPTER XVII

Promises of Rewards and Prize Competitions

Article 570 *Promises of rewards*

1. A person having made a public promise of a reward must pay that reward to a person having performed the act requested by the promissor.
2. An act for which a reward is promised must be specific and capable of being performed and [*must*] not breach matters prohibited by law nor contravene social morals.

Article 571 *Withdrawal of promises of rewards*

A promissor may withdraw its promise of a reward at any time prior to the commencement of the performance of the act. A withdrawal of a promise of reward must be made in the same manner and by the same media in which the promise of reward was announced.

Article 572 *Payment of rewards*

1. Where a person performs an act for which a reward is promised, that person shall be given the reward upon completion of the act.
2. Where several persons perform an act for which a reward is promised, concurrently but independently, the person having first completed the act shall be given the reward.
3. Where more than one person completes, at the same time, an act for which a reward is promised, the reward shall be distributed in equal shares amongst such persons.
4. Where more than one person co-operates with the others to perform, at the request of the promissor, an act for which a reward is promised, each person shall receive a share of the reward in proportion to its contribution.

Article 573 *Prize competitions*

1. The organization of a cultural, artistic, sports, scientific, technical or other competition must not breach matters prohibited by law nor contravene social morals.
2. A person organizing a competition must announce publicly the terms of participation, the scale of marks, the prizes and the value of each prize.

Any alteration of the terms of participation must be announced⁷⁴ in the manner in which the competition was announced, within a reasonable period of time prior to the competition being conducted.

3. A winner of a prize has the right to demand the organizer of a competition give a prize of the value announced.

⁷⁴ *Allens footnote:* The literal translation is "made".

CHAPTER XVIII

Performance of Acts⁷⁵ Without⁷⁶ Authorization

Article 574 *Performance of acts without authorization*

Performance of acts without authorization means the voluntary performance of acts by a person being under no obligation to perform the act for the benefit⁷⁷ of a beneficiary, without the knowledge of the beneficiary, or with its knowledge but without the beneficiary raising any objection.

Article 575 *Obligation to perform acts without authorization*

1. A person performing an act without authorization has the obligation to do so in accordance with its capabilities and conditions.
2. A person performing an act without authorization must do so as if such person were performing such act for its own benefit. If such person knows or is able to guess the wishes of the beneficiary, such person must perform the act in accordance with such wishes.
3. A person performing an act without authorization must, if requested, notify the beneficiary of the progress and results of the performance, unless the beneficiary already knows such information or the person performing the act without authorization⁷⁸ does not know the place of residence or head office of the beneficiary.
4. If a beneficiary dies in the case of an individual, or terminates existence in the case of a legal entity, the person performing an act without authorization must continue to perform the act until the heir or representative of the beneficiary takes over⁷⁸ [the act].⁷⁹
5. Where a person performing an act without authorization has legitimate reasons for not being able to continue performance, such person must notify the beneficiary, or the representative or close relatives of the beneficiary, or may ask another person to perform the act on its behalf.

Article 576 *Obligation of beneficiary to pay for acts performed [without authorization]*

1. A beneficiary of an act performed without authorization must accept the results of the act when it is handed over to the beneficiary by the person having performed the act and [must] reimburse that person for reasonable expenses incurred in performing such act, even where the performance has failed to achieve the results desired by the beneficiary.
2. If a person has performed an act properly for the benefit of a beneficiary, the beneficiary must remunerate the person having performed the act, unless the person having performed the act refuses to accept the remuneration.

⁷⁵ *Allens footnote:* The literal translation is "work". An alternative translation is "tasks".

⁷⁶ *Allens footnote:* This is the literal translation. In certain circumstances, it may be understood to mean "not requiring".

⁷⁷ *Allens footnote:* It is unclear whether this must be determined objectively.

⁷⁸ *Allens footnote:* It is unclear whether this means "performs" or "accepts the results of".

⁷⁹ *Allens footnote:* No specific reference is made to cases where an act is performed for the benefit of a beneficiary personally.

Article 577 *Obligation to compensate for loss and damage*

1. If a person performing an act without authorization intentionally causes loss and damage [*to the beneficiary*] while performing the act, such person must compensate for such loss and damage.
2. If a person performing an act without authorization unintentionally causes loss and damage [*to the beneficiary*] while performing the act, the compensation by such person may be reduced on the basis of the circumstances in which the act was performed.

Article 578 *Termination of performance of acts without authorization*

The performance of acts without authorization shall terminate in the following cases:

1. The beneficiary so requests.
2. The beneficiary, or its heir or representative, takes over the acts.
3. The person performing the acts without authorization becomes not able to continue performance in accordance with article 575.5 of this Code.
4. The person performing the acts without authorization dies in the case of an individual, or terminates existence in the case of a legal entity.

CHAPTER XIX

Obligations to Return [Property] Due to Unlawful Possession or Use of Property or Deriving of Benefits from Property

Article 579 *Obligation to return [property]*

1. A person possessing or using property of another unlawfully must return the property to its owner or a subject with other rights with respect to such property. If the owner or such subject is not able to be found, the person possessing or using property of another unlawfully must deliver the property to the authorized State body, except in the case provided in article 236 of this Code.
2. A person deriving benefits from property unlawfully, thereby causing loss and damage to another, must give such benefits to such other person, except in the case provided in article 236 of this Code.

Article 580 *Property to be returned*

1. A person possessing or using property unlawfully must return the whole of such property.
2. Where the property to be returned is a distinctive object, that particular object must be returned and, if such distinctive object is lost or damaged, monetary compensation must be paid, unless otherwise agreed.

3. If the property to be returned is a generic object which has been lost or damaged, an object of the same type must be returned or monetary compensation [*must*] be paid, unless otherwise agreed.
4. A person deriving benefits from property unlawfully must return, either in kind or in money, the benefits derived from the property to any person having suffered loss of such benefits.

Article 581 *Obligation to return benefits and income*

1. A person possessing or using property, or a person deriving benefits from property, unlawfully and not in good faith, must return any benefits and income derived from the property during the time of unlawful possession or use of, or deriving benefits from, the property.
2. A person possessing or using property, or a person deriving benefits from property, unlawfully but in good faith, must return any benefits and income derived from the property from the time when it knew or should have known that the possession or use of, or deriving benefits from, the property was unlawful, except in the case provided in article 236 of this Code.

Article 582 *Right to demand third person to return property*

Where a person unlawfully possessing or using property transfers the property to a third person, the third person must return the property if so demanded by the owner or subject with other rights with respect to the property, unless this Code contains some other provision. If money or compensation has been paid for such property, the third person has the right to demand the party having transferred the property to the third person compensate for loss and damage.

Article 583 *Obligation to pay*

Upon taking back property, an owner, subject with other rights with respect to property or aggrieved person must reimburse the person having taken possession of or used the property, or having derived benefits from the property, unlawfully but in good faith, for the necessary expenses such person has incurred for taking care of the property and increasing its value.

CHAPTER XX

Liability for Compensation for Non-Contractual Damages⁸⁰

Section 1

General Provisions

Article 584 *Grounds giving rise to liability to compensate for loss and damage*

1. A person harming the life, health, honour, dignity, reputation, property, or other legal rights or interests of another person, thereby causing loss and damage, must compensate [*for such loss and damage*], unless otherwise provided by this Code and other relevant laws.
2. A person causing loss and damage is not required to be responsible to compensate for loss and damage arising and caused by an event of force majeure or due entirely to the fault of the aggrieved party, unless otherwise agreed or provided by law.
3. If property causes loss and damage, the owner or possessor of the property must be responsible to compensate for it, except where the loss and damage arises in accordance with clause 2 of this article.

⁸⁰ *Allens footnote:* This is similar to the common law of torts or the civil law of delicts.

Article 585 *Principles of compensation for loss and damage*

1. Actual loss and damage must be compensated in full and promptly. Unless otherwise provided by law, parties may agree on the amount of compensation; on the form of compensation, which may be money, in kind or the performance of an act; on one-off payment or payment in instalments; and on the method of compensation.
2. The compensation payable by a person who is responsible for compensation for loss and damage may be reduced if [*such person*] was not at fault or [*such loss and damage*] was caused unintentionally and is very large in comparison to the financial position of such person.
3. If the amount of compensation [*determined*] becomes unrealistic, the aggrieved party, or the party having caused loss and damage, has the right to request a court or another authorized State body to change the amount of compensation.
4. Where an aggrieved party is at fault for causing loss and damage, such party shall not be entitled to compensation for the part of the loss and damage arising from its fault.
5. A party with infringed rights or benefits shall not be compensated if the loss and damage results from failure to apply necessary and reasonable measures to prevent or mitigate the loss and damage to such party.

Article 586 *Capacity of individuals for liability to compensate for loss and damage*

1. A person of eighteen (18) or more years of age who causes loss and damage shall be personally liable to compensate.
2. Where a person under fifteen (15) years of age causes loss and damage, his or her parents, if any, must compensate for the total loss and damage. If the parents have insufficient property to compensate and the minor who has caused the loss and damage has property of his or her own, such property shall be used to satisfy the outstanding amount of compensation, except in the cases provided in article 599 of this Code.

Where a person who is between fifteen (15) and eighteen (18) years of age causes loss and damage, such person must compensate by recourse to his or her own property. If such person has insufficient property to compensate, the parents of such person must satisfy the outstanding amount by recourse to their own property.

3. Where a minor, or a person who has lost the capacity for civil acts, or a person having difficulties in being aware of, or controlling, his or her own acts causes loss and damage but there is a guardian, such guardian shall use the property of the ward to compensate. If the ward has no or insufficient property to compensate, the guardian must do so by recourse to the property of the guardian. If the guardian is able to prove that he or she was not at fault with respect to guardianship,⁸¹ the guardian shall not be required to use its property to compensate.

⁸¹ *Allens footnote:* This appears to mean that the guardian has not contributed to the cause of the damage due to inadequate guardianship.

Article 587 *Compensation for loss and damage caused jointly by several persons*

Where several persons jointly cause loss and damage, they must jointly compensate any aggrieved person.⁸² Liability for compensation of each person having jointly caused the loss and damage shall be determined in proportion to the degree of fault of each person. If the degree of fault is not able to be determined, the persons causing loss and damage must compensate in equal shares.

Article 588 *Limitation period for initiating legal action claiming compensation for loss and damage*

The limitation period for initiating legal action claiming compensation for loss and damage shall be three years from the date on which the person with the right to make the request knew or should have known that his or her legal rights or interests were infringed.

Section 2

Assessment of Loss and Damage

Article 589 *Loss and damage caused by infringement⁸³ of property*

Loss and damage caused by infringement of property comprises:

1. Property which was lost, destroyed or damaged.
2. Interests associated with the use and exploitation of the lost or impaired property.
3. Reasonable costs for the prevention, mitigation and remedy of the damage.
4. Other loss and damage as provided by law.

Article 590 *Loss and damage caused by harm⁸⁴ to health*

1. Loss and damage caused by harm to health comprises:
 - (a) Reasonable costs for treating, nursing and rehabilitating health, and functional losses and impairment of the aggrieved person;
 - (b) Loss of or reduction in the actual income of the aggrieved person. If the actual income of the aggrieved person is irregular and is not able to be determined, the average income level for the type of work performed by the aggrieved person shall be applied;
 - (c) Reasonable costs and actual income losses of the carers of the aggrieved person during the period of treatment. If the aggrieved person loses his or her ability to work and requires a permanent carer, the damage shall also include reasonable costs for taking care of the aggrieved person.
 - (d) Other loss and damage as provided by law.

⁸² *Allens footnote:* It is apparent from the following article that such person must be a third person.

⁸³ *Allens footnote:* This is the closest translation.

⁸⁴ *Allens footnote:* The literal translation is "infringement".

2. A person being responsible to pay compensation when the health of another person is harmed must pay the items provided in clause 1 of this article together with an amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum payable to a

person whose health is harmed shall not exceed fifty (50) times the basic wage rate provided by the State.

Article 591 *Loss and damage caused by harm⁸⁵ to life*

1. Loss and damage caused by harm to life comprises:
 - (a) Damage caused by harm to health as provided in article 590 of this Code;
 - (b) Reasonable funeral costs;
 - (c) Support for the dependants of the aggrieved person.
 - (d) Other loss and damage as provided by law.
2. A person being responsible to pay compensation when the life of another person is harmed must pay compensation for loss and damage as provided in clause 1 of this article together with an amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who were directly reared by the deceased or to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum payable to a person whose life is harmed shall not exceed one hundred (100) times the basic wage rate provided by the State.

Article 592 *Loss and damage caused by harm to honour, dignity or reputation*

1. Loss and damage caused by harm to the honour, dignity or reputation comprises:
 - (a) Reasonable costs for mitigating and remedying the damage;
 - (b) Loss of or reduction in actual income.
 - (c) Other loss and damage as provided by law.
2. A person being responsible to pay compensation when the honour, dignity or reputation of another person is harmed must pay compensation for loss and damage as provided in clause 1 of this article together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum payable to a person whose honour, dignity or reputation is harmed shall not exceed ten (10) times the basic wage rate provided by the State.

Article 593 *Period of entitlement to compensation for loss and damage caused by harm to health or resulting from loss of life*

1. Where an aggrieved person loses totally the ability to work, the aggrieved person shall receive

⁸⁵ *Allens footnote:* The literal translation is "infringement".

compensation from the time his or her ability to work is totally lost until the time of his or her death, unless otherwise agreed.

2. Where the aggrieved person dies, his or her dependants shall be entitled to receive support from the time the person whose life is harmed dies and for the following durations:

- (a) A child of the deceased, whether living or conceived prior to his or her death, shall be entitled to compensation until the age of eighteen (18) years, except a child between fifteen (15) and eighteen (18) years of age who is employed and earns sufficient income to look after himself or herself;
 - (b) An adult who is not able to work shall be entitled to receive support until his or her death.
3. Where a child of the deceased has been conceived, support shall be provided from the time such child is born and alive.

Section 3

Compensation for Loss and Damage in Number of Specific Cases

Article 594 *Compensation for loss and damage⁸⁶ by persons exceeding limits of reasonable self-defence*

A person causing loss and damage while acting in reasonable self-defence shall not be liable to compensate any aggrieved person.

A person causing loss and damage while not acting in reasonable self-defence must compensate any aggrieved person.

Article 595 *Compensation for loss and damage by persons exceeding requirements of emergency situation*

1. A person causing loss and damage as a result of exceeding the requirements of an emergency situation must compensate any aggrieved person for that part of the loss and damage which resulted from exceeding the requirements of an emergency situation.
2. A person creating an emergency situation which leads to loss and damage being caused must compensate any aggrieved person.

Article 596 *Compensation for loss and damage caused by persons using stimulants*

1. A person who, due to the consumption of alcohol or the use of other stimulants, becomes incapable of being aware of or controlling his or her acts, thereby causing loss and damage to another person, must compensate such person.
2. A person who intentionally causes another person to take alcohol or stimulants, thereby causing such person to become incapable of being aware of or controlling his or her acts, must compensate any person aggrieved thereby.

Article 597 *Compensation for loss and damage caused by persons belonging to legal entity⁸⁷*

A legal entity must compensate for any loss and damage caused by any person belonging to the legal entity during the performance of duties assigned by it [*to such person*]. If a legal entity has compensated for loss and damage, it has the right to demand the person at fault for causing the loss and damage to reimburse it an amount of money in accordance with law.

Article 598 *Compensation for loss and damage caused by public servants*

The State has the responsibility to compensate for any loss and damage caused by acts of public servants contrary to law as provided by the Law on the State's Liability to Pay Compensation.

Article 599 *Compensation for loss and damage caused by persons under fifteen years of age or persons having lost capacity for civil acts and under direct supervision of school, hospital or other legal entity*

1. Where a person under fifteen (15) years of age causes loss and damage while under direct supervision of a school, the school must compensate for the loss and damage.
2. If a person who has lost his or her capacity for civil acts causes loss and damage to another person while under the direct supervision of a hospital or other legal entity, such other legal entity must compensate for the loss and damage.
3. The school, hospital or other legal entity provided in clauses 1 and 2 of this article shall not be required to pay compensation if it proves that it was not at fault with respect to supervision; in such case, the parents or guardian of the person under fifteen (15) years of age or of the person who has lost his or her capacity for civil acts must compensate.

Article 600 *Compensation for loss and damage caused by workers and trainees*

An individual or legal entity must compensate for any loss and damage caused by any worker or trainee belonging to it during the performance by the employee or trainee of his or her assigned duties. The individual, legal entity or other subject has the right to demand such worker or trainee reimburse it an amount of money in accordance with law.

Article 601 *Compensation for loss and damage caused by sources of extreme danger*

1. Sources of extreme danger comprise motorized means of transport, power transmission systems, operating industrial plants, weapons, explosives, inflammable substances, toxic substances, radioactive substances, dangerous animals and other sources of extreme danger as provided by law.

An owner of a source of extreme danger must operate, use, take care of, preserve and transport sources of extreme danger in accordance with law.

2. An owner of a source of extreme danger must compensate for loss and damage caused by such source. If the owner has transferred possession or use of the source of extreme danger to another person, such other person must compensate [for the loss and damage], unless otherwise agreed.

⁸⁷ *Allens footnote:* The literal translation is "persons of a legal entity". This may include persons other than employees.

3. An owner, or possessor or user of a source of extreme danger must compensate for loss and damage caused by such source, even where such owner or person is not at fault, except in either of the following cases:
 - (a) The aggrieved person is entirely at fault for intentionally causing the loss and damage;
 - (b) The loss and damage occurred due to an event of *force majeure* or in an emergency situation, unless otherwise provided by law.
4. Where a source of extreme danger is taken into possession or used unlawfully, the person possessing or using [it] unlawfully must compensate for loss and damage.

Where an owner and a possessor and/or user of a source of extreme danger is at fault in allowing

the unlawful possession or use of the source of extreme danger, then such owner and a possessor and/or user must compensate jointly for the loss and damage.

Article 602 *Compensation for damage caused by environmental pollution*

A subject polluting the environment, thereby causing loss and damage, must compensate in accordance with the law, including when such subject was not at fault.

Article 603 *Compensation for damage caused by livestock*

1. An owner of livestock must compensate for loss and damage caused to another person by such livestock. A possessor or user of livestock must compensate for loss and damage during the period of possession or use of livestock, unless otherwise agreed.
2. Where a third person is entirely at fault for livestock causing loss and damage to another person, the third person must compensate for the loss and damage. If both the third person and the owner are at fault, both of them must compensate jointly for the loss and damage.
3. Where livestock which is possessed or used unlawfully causes loss and damage, the unlawful possessor or user must compensate *[for the damage]*. Where the owner, possessor or user of livestock is at fault by allowing the unlawful possession or use of livestock, *[the owner, possessor or user]* must compensate jointly for the damage.
4. Where livestock which is allowed to roam according to customary practice causes loss and damage, its owner must compensate according to customary practice provided that such compensation does not contravene the law or social morals.

Article 604 *Compensation for loss and damage caused by trees*

An owner or possessor *[of a tree]* or a person assigned to manage *[a tree]* must compensate for loss and damage caused by the tree.

Article 605 *Compensation for loss and damage caused by houses and other construction works [or buildings]*

An owner or possessor of, or a person assigned to manage a house or construction works *[or building]* must compensate for loss and damage caused by such house or construction works *[or building]* to another person.

Where a person executing construction is at fault by allowing other houses or construction works to cause loss and damage, such person must jointly compensate *[for the loss and damage]*.

Article 606 *Compensation for loss and damage caused by infringement of corpses*

1. An individual or legal entity causing damage to a corpse must compensate.
2. Damage caused by infringement of a corpse shall include reasonable costs for mitigating and remedying the damage.
3. A person responsible to pay compensation when a corpse is damaged must pay compensation as provided in clause 2 of this article together with another amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to

agree, the maximum sum payable for a damaged corpse shall not exceed thirty (30) times the basic wage rate provided by the State.

Article 607 *Compensation for damage caused by infringement of graves*

1. An individual or legal entity causing damage to the grave of another must compensate.
2. Damage caused by infringement of a grave shall include reasonable costs for mitigating and remedying the damage.
3. A person responsible to pay compensation when the grave of another person is damaged must pay compensation as provided in clause 2 of this article together with another amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum payable for a damaged grave shall not exceed ten (10) times the basic wage rate provided by the State.

Article 608 *Compensation for loss and damage caused by infringement of consumer interests*

An individual or legal entity carrying out production or business of goods or services and failing to ensure the quality of goods or services, thereby causing loss and damage to consumers, must compensate [for such damage].

PART FOUR

INHERITANCE

CHAPTER XXI

General Provisions

Article 609 *Rights of inheritance*

An individual may make a will to dispose of his or her estate⁸⁸, may leave his or her property to an heir in accordance with law, or may inherit an estate [left to him or her] under a will or in accordance with law.

An heir not being an individual may inherit an estate under a will.

Article 610 *Equality of individuals with respect to rights of inheritance*

All individuals are equal with respect to rights to bequeath their property to others and to inherit estates under wills or in accordance with law.

Article 611 *Time and place of commencing inheritance*

1. The time of commencement of an inheritance shall be the time when the deceased⁸⁹ dies. Where a court declares that a person is dead, the time of commencement of the inheritance shall be the date provided in article 71.2 of this Code.
2. The place of commencement of the inheritance shall be the last place of residence of the owner of the estate. If the last place of residence is not able to be determined, the place of commencement of the inheritance shall be the place at which all or most of the estate is located.

Article 612 *Estates*

An estate comprises property which the deceased owned and property which the deceased jointly owned with other persons.

Article 613 *Heirs*

If an heir is an individual, such person must be alive at the time of commencement of the inheritance or, if such person is born and alive after the commencement of inheritance, [must] have been conceived prior to the time when the deceased dies. Where an heir under a will is not an individual, it must be in existence at the time of commencement of the inheritance.

Article 614 *Time when rights and obligations of heirs arise*

From the time of commencement of an inheritance, the heirs have the property rights and obligations left by the deceased.

⁸⁸ *Allens footnote:* The literal translation is "property".

⁸⁹ *Allens footnote:* The literal translation is "person having the estate".

Article 615 *Performance of property obligations left by deceased*

1. A person entitled to an inheritance has the responsibility to perform the property obligations within the scope of the estate left by the deceased.
2. Where an estate has not yet been divided, the property obligations left by the deceased shall be performed by the administrator of the estate as agreed by the heirs within the scope of the estate left by the deceased.
3. Where an estate has already been divided, each heir shall perform those property obligations left by the deceased corresponding to, but not exceeding, that part of the estate that the heir has inherited, unless otherwise agreed.
4. Where an heir not being an individual inherits an estate under a will, it must perform the property obligations left by the deceased in like manner as an individual heir.

Article 616 *Administrators of estates*

1. Administrator of an estate means the person who is appointed in the will or by agreement of the heirs.
2. Where a will fails to appoint, and the heirs have not yet appointed an administrator, [any] person currently possessing, using or managing [property within] the estate at the time of the commencement of the inheritance shall continue its administration until the heirs have appointed an administrator.
3. Where an heir has not yet been determined and there is not yet an administrator of the estate as provided in clauses 1 and 2 of this article, the estate shall be administered by the authorized State agency.

Article 617 *Obligations of administrators of estates*

1. An administrator of an estate as provided in clauses 1 and 3 of article 616 of this Code has the following obligations:
 - (a) To make a list of [*the property within*] the estate and collect any property belonging to the estate of the deceased which is possessed by others, unless otherwise provided by law;
 - (b) To take care of the estate and not sell, exchange, give, pledge, mortgage or otherwise dispose of property [*within the estate*] without the written consent of the heirs;
 - (c) To notify the heirs of the status of the estate;
 - (d) To compensate for any loss and damage if the administrator breaches any of its obligations, thereby causing loss and damage;
 - (dd) To deliver back⁹⁰ the estate at the request of the heirs.

⁹⁰ *Allens footnote:* This is the literal translation. An alternative translation is "to return".

2. A person possessing, using or managing [*property within*] an estate as provided in article 616.2 of this Code has the following obligations:
 - (a) To take care of the estate and not sell, exchange, give, pledge, mortgage or otherwise dispose of property [*within the estate*];
 - (b) To notify the heirs of the estate;
 - (c) To compensate for loss and damage if such person breaches any of its obligations, thereby causing loss and damage;
 - (d) To deliver back the estate as was agreed with the deceased in a contract or at the request of the heirs.

Article 618 *Rights of administrators of estates*

1. An administrator of an estate as provided in clauses 1 and 3 of article 616 of this Code has the following rights:
 - (a) To represent the heirs in dealings with any third parties in relation to the estate of inheritance;
 - (b) To be remunerated as agreed with the heirs;
 - (c) To be reimbursed for expenses incurred in taking care of the estate.
2. A person possessing, using or managing [*property within*] an estate as provided in article 616.2 of this Code has the following rights:
 - (a) To continue to use the estate as agreed with the deceased in a contract or with the consent of the heirs;
 - (b) To be remunerated as agreed with the heirs;
 - (c) To be reimbursed for expenses incurred in taking care of the estate.

3. Where an agreement with the heirs [of an estate] on the amount of remuneration is not reached, the administrator of the estate shall be entitled to a reasonable amount of remuneration.

Article 619 *Inheritance by persons entitled to inherit each other's estate but dead at same time*⁹¹

Where persons who are entitled to inherit each other's estate die at the same time or are deemed to have died at the same time because it is impossible to determine who died first (hereinafter collectively referred to as *simultaneous death*), they do not have the right to inherit each other's estate and the estate of each of the deceased shall be inherited by their respective heirs, except in the case of inheritance pursuant to article 652 of this Code.

⁹¹ *Allens footnote:* It is unclear precisely what "at the same time" means. Query what happens if one person survives the other by one day?

Article 620 *Disclaimer of inheritance*

1. An heir may disclaim an inheritance, unless such disclaimer is for the purpose of avoiding the performance of its property obligations to other persons.
2. A disclaimer of an inheritance must be made in writing, and must be sent to the administrator of the estate, the other heirs and the person authorized to distribute the estate for information.
3. The disclaimer of an inheritance must be expressed prior to the time of distribution of the estate.

Article 621 *Persons not entitled to inherit*

1. The following persons are not entitled to inherit:
 - (a) Persons convicted of having intentionally caused the death of or harmed the health of the deceased, of having seriously mistreated or tortured the deceased, or of having harmed the honour or dignity of the deceased;
 - (b) Persons having seriously breached their duty to support the deceased;
 - (c) Persons convicted of having intentionally caused the death of another heir in order to obtain all or part of the entitlement of such other heir to the estate;
 - (d) Persons deceiving, coercing or obstructing the deceased with respect to the making of the will, or forging, altering, destroying or concealing the will in order to obtain all or part of the estate contrary to the wishes of the deceased.
2. Persons provided in clause 1 of this article may, nevertheless, inherit the estate if the deceased was aware of [such] acts but, nevertheless, allowed them to inherit the estate under the will.

Article 622 *Estates*⁹² *which no one inherits*

Where there is no heir under a will and at law, or where there is an heir but such heir is not entitled to inherit the estate or disclaims the inheritance of the estate, the residual estate for which there is no heir shall, after fulfilment of property obligations, belong to the State.

Article 623⁹³ *Limitation periods for inheritance*

1. The limitation period for a claim of an heir for distribution of an estate shall be thirty (30) years in the case of immoveable property and ten (10) years in the case of moveable property from the time of commencement of the inheritance. Upon expiry of such period, the estate shall belong to the heir who is currently managing such estate. Where there is no heir currently managing the estate, the estate shall be dealt with as follows:
 - (a) The estate shall belong to the person currently possessing [*the estate*] as provided in article 236 of this Code;
 - (b) The estate shall belong to the State if there is no possessor as provided in sub-clause (a) above.
2. The limitation period for an heir to declare his or her right of inheritance or to disallow the claim to inheritance of another shall be ten (10) years from the time of commencement of the inheritance.
3. The limitation period for requesting an heir to fulfil property obligations of the deceased shall be three (3) years from the time of commencement of the inheritance.

⁹² *Allens footnote:* The literal translation is "property".

⁹³ *Allens footnote:* This provision is new as compared to article 645 in the old 2005 Code.

CHAPTER XXII

Inheritance Under Wills

Article 624 *Wills*

Will means an expression of the wishes of an individual, made in order to bequeath⁹⁴ his or her property to others after his or her death.

Article 625 *Testators*

1. An adult who satisfies all the conditions provided in clause 1(a) of article 630 of this Code may make a will to dispose of his or her property.
2. A person who is between fifteen (15) and eighteen (18) years of age is permitted to make a will with the consent of his or her parents or guardian thereto.

Article 626 *Rights of testators*

A testator has the following rights:

1. To appoint heirs or to deprive an heir of the right to inherit the estate.
2. To determine those parts of the estate to which each heir is entitled.
3. To reserve part of the estate as a gift or for worship purposes.
4. To designate heirs to perform obligations.

5. To appoint a custodian of the will, an administrator of the estate, and a distributor of the estate.

Article 627 *Formalities for wills*

A will must be made in writing. If it is not able to be made in writing, it may be made orally.

Article 628 *Written wills*

Written wills comprise:

⁹⁴ *Allens footnote*: The literal translation is "pass".

1. Unwitnessed written wills.
2. Witnessed written wills.
3. Written wills which are notarized.
4. Written wills which are certified.

Article 629 *Oral wills*

1. Where a person is likely to die and it is not possible for him or her to make a written will, such person may make an oral will.
2. If the testator is alive and is of sound mind three months after he or she has made an oral will, such will shall automatically become invalid.

Article 630 *Lawful wills*

1. A lawful will must satisfy the following requirements:
 - (a) The testator was of sound mind when he or she made the will; and he or she was not deceived, threatened or coerced [*into making the will*];
 - (b) The contents of the will do not breach matters prohibited by law or contravene social morals and the will complies with legal formalities.
2. A will made by a person between fifteen (15) and eighteen (18) years of age must be made in writing and with the consent of the parents or guardian of such person thereto.
3. A will made by a person who is incapacitated or illiterate must be made in writing by a witness and [*must be*] notarized or certified.
4. A written will which is not notarized or certified shall be deemed lawful only if it satisfies the requirements provided in clause 1 of this article.
5. An oral will shall be deemed lawful only if the testator orally expressed his or her last wishes before at least two witnesses who recorded those wishes in writing and signed or fingerprinted the document immediately after the testator orally expressed his or her last wishes. Such will must be certified by a notary public officer or an authorized agency, verifying signatures or fingerprints of the witnesses within five business days of the date on which the testator orally expressed his or her last

wishes.

Article 631 *Contents of wills*

1. A will must contain the following principal items:
 - (a) The date on which the will is made;
 - (b) The full name and place of residence of the testator;
 - (c) The full names of the persons and the agencies or organizations entitled to inherit the estate;
 - (d) The estate to be bequeathed and its location.
2. In addition to the items provided in clause 1 of this article, a will may contain other items.
3. A will may not be written using abbreviations or other symbols. If a will consists of several pages, each page must be numbered and bear the signature or fingerprint of the testator.

Where a will is erased or altered, the person writing the will by his or her own hand or the witness to the will must sign his or her name beside the erased or altered item.

Article 632 *Witnesses to making of will*

Any person may act as a witness to the making of a will, except the following persons:

1. Persons who are heirs of the testator under the will or at law.
2. Persons with property rights or obligations which relate to the will.
3. Minors, persons who lose the capacity for civil acts, and persons who have difficulties in being aware of, or controlling their acts.

Article 633 *Unwitnessed written wills*

A testator must write⁹⁵ a will by his or her own hand and [*must*] sign it.

The drawing up of a written will without witnesses must comply with article 631 of this Code.

Article 634 *Witnessed written wills*

Where a testator does not write a will by his or her own hand, the testator may type on his or her own or may request another person to write or type the will, but there must be at least two witnesses. The testator must sign or fingerprint the will in the presence of the witnesses; the witnesses shall acknowledge the signature or fingerprint of the testator and sign the will.

The drawing up of a written will with witnesses must comply with articles 631 and 632 of this Code.

Article 635 *Wills which are notarized or certified*

A testator may request that the will be notarized or certified.

Article 636 *Procedures for preparation of wills at notary practising organization or people's committee of commune*

The preparation of a will at a notary practising organization or the people's committee of the commune must comply with the following procedures:

1. The testator shall declare the contents of his or her will to a notary public officer or a member of the people's committee of the commune who has the authority to certify it. The notary public officer or

⁹⁵ *Allens footnote:* This is the literal translation.

the member of the people's committee of the commune who has the authority to certify must record the wishes stated by the testator. The testator shall sign or fingerprint the will after acknowledging that it has been recorded accurately and that it expresses faithfully the intentions of the testator. Thereafter, the notary public officer or the member of the people's committee of the commune shall sign the will.

2. Where the testator is not able to read or hear the will or not able to sign or fingerprint it, there must be a witness who must acknowledge the will by signing it before a notary public officer or a member of the people's committee of the commune who has the authority to certify it. The notary public officer or the member of the people's committee of the commune who has the authority to certify the will shall certify it, in the presence of the testator and the witnesses.

Article 637 *Persons not permitted to notarize or certify wills*

A notary public officer or a member of the people's committee of the commune who has authority shall not be permitted to notarize or certify a will in any of the following circumstances:

1. Being an heir of the testator under the will or at law.
2. Being a person whose father, mother, wife, husband or child is an heir under the will or at law.
3. Being a person having property rights or obligations relating to the will.

Article 638 *Written wills valid as though notarized or certified*

1. A serving soldier who is not able to request a notarization or certification of his or her will provided that such will is certified by the head of his or her unit having the rank of a company commander or higher.
2. A person travelling on a seagoing vessel or aircraft provided that the will is certified by the captain of the vessel or aircraft.
3. A person undergoing medical treatment in a hospital or other medical establishment or sanatorium provided that the will is certified by the person in charge of such hospital or establishment [*or sanatorium*].
4. A person conducting surveys, explorations or research in mountainous areas, forests or offshore islands provided that the will is certified by the person in charge of the unit.
5. A Vietnamese citizen residing abroad provided that the will is certified by a Vietnamese consular or diplomatic representative mission in that country.
6. A person held in temporary detention, held in custody, serving a prison sentence or administrative penalty, or at an educational or medical facility provided that the will is certified by the person in charge of such facility.

Article 639 *Wills prepared by notary public officers at places of residence [of testators]*

1. A testator may request a notary public officer to visit his or her place of residence in order to prepare a will.
2. Such will shall be prepared in accordance with the procedures for the preparation of wills at a notary practising organization provided in article 636 of this Code.

Article 640 *Amendment of, addition to, replacement or revocation of wills*

1. A testator may amend, add to, replace or revoke the will which has been made at any time.
2. If a testator adds to his or her will, the original will and the codicil shall have equal validity. If a part of the original will and the codicil conflict with each other, the codicil shall prevail.⁹⁶
3. Where a testator replaces a will with a new will, the previous will shall be [*deemed to have been*] revoked.

Article 641 *Custody of wills*

1. A testator may request a notary practising organization or another person to keep custody of the will of the testator.
2. Where a will is kept in custody by a notary practising organization, it must be taken care of and looked after in accordance with this Code and the law on notaries.
3. A person keeping [*custody of*] a will has the following obligations:
 - (a) To keep the contents of the will confidential;
 - (b) To take care of and look after the will. If the will is lost or damaged, the person must notify immediately the testator;
 - (c) Upon the death of the testator, to deliver the will to his or her heirs or to the person authorized to announce the will. The delivery of the will must be recorded in writing and signed by the person delivering the will, and by the person receiving it, in the presence of at least two witnesses.

Article 642 *Loss and damage of wills*

1. If, from the commencement of the inheritance,⁹⁷ the will is lost or damaged to the extent that it is incapable of indicating clearly the wishes of the testator and there is no evidence of the true wishes of the testator, it shall be deemed that no will exists and inheritance at law shall apply.
2. Where the will is found prior to distribution of the estate, the estate shall be distributed according to the will.
3. If, within the limitation period for requesting distribution of an estate, the will is found after distribution of the estate, the estate must be re-distributed under the will if so requested by the heir under the will.

⁹⁶ *Allens footnote:* The literal translation is "only the codicil shall be legally effective".

⁹⁷ *Allens footnote:* This is the literal translation, however it is apparent from paragraph 2 that the relevant time is the distribution of the estate.

Article 643 *Effectiveness of wills*

1. A will shall become effective from the time of commencement of the inheritance.
2. All or part of a will shall be ineffective in any of the following cases:
 - (a) An heir under the will dies prior to or at the same time as the testator dying;
 - (b) An agency or organization named as an heir no longer exists at the time of commencement of the inheritance.

Where there are several heirs under a will and one of them dies prior to or at the same time as the testator, or one of the agencies or organizations named as an heir under the will no longer exists at the time of commencement of the inheritance, only that part of the will which relates to the individual, agency or organization no longer existing shall be ineffective.

3. A will shall not be effective if the estate left to the heirs no longer exists at the time of commencement of the inheritance. If only part of the estate left to the heirs remains, only that part of the will which relates to such part of the estate shall be legally effective.
4. Where a will contains provisions which are unlawful but such provisions do not affect the effectiveness of the remainder of the will, only such unlawful provisions shall be ineffective.
5. Where a person leaves behind more than one will with respect to certain property, only the most recent of such wills shall be effective.

Article 644 *Heirs notwithstanding contents of wills*

1. Where a testator does not grant any of the following persons an inheritance, or grants any such person an inheritance which is less than two-thirds of the share that person would have received if the estate had been distributed according to law,⁹⁸ such person shall be entitled to a share of the estate equivalent to two-thirds of the share that he or she would have received if the estate had been distributed in accordance with law:
 - (a) Children who are minors, father, mother, wife or husband of the testator;
 - (b) Children who are adults but who are incapable of working.
2. The provision in clause 1 of this article shall not apply to any person who disclaims his or her inheritance pursuant to article 620 or who is not entitled to inherit as provided in article 621.1 of this Code.

Article 645 *Estates used for worship purposes*

1. Where a testator designates part of his or her estate for worship purposes, such part of the estate shall not be distributed among the heirs and shall be delivered to the person appointed in the will to manage for worship purposes. If such appointee fails to implement strictly the will or the agreement of the heirs, the heirs have the right to appoint another person to manage for worship purposes.

⁹⁸ *Allens footnote:* This appears to mean "if inheritance at law had applied".

Where the testator fails to appoint a person to manage that part of his or her estate which is designated for worship purposes, the heirs shall appoint a person to manage such part of the estate.

Where all heirs under a will have died, that part of the estate which is designated for worship purposes shall belong to the person managing that part of the estate for worship purposes provided that he or she is an heir at law.

2. Where the entire estate of the deceased is insufficient to satisfy all property obligations of the deceased, no part of the estate may be designated for worship purposes.

Article 646 *Testamentary gifts*

1. A testator may designate part of his or her estate as a testamentary gift to another person. The testamentary gift must be expressly stated in the will.
2. The grantee of a gift being an individual must be alive at the time of commencement of the inheritance or be born and alive after the time of commencement of the inheritance and conceived prior to the time when the owner of the estate dies. Where the grantee of a gift is not an individual, it must exist at the time of commencement of the inheritance.
3. The grantee of a gift shall not be required to fulfil property obligations with respect to that part [of the estate] granted as a gift, unless the whole estate is insufficient to satisfy all property obligations of the grantor, in which case the part of the estate granted as a gift shall also be applied towards satisfying the remainder of the obligations of the grantor.

Article 647 *Announcement of wills*

1. Where a written will is kept by a notary practising organization, the notary officer shall be the person announcing the will.
2. Where a testator has appointed a person to announce the will, such person shall announce the will. If the testator fails to appoint a person or has appointed a person but the appointee refuses to announce the will, the heirs shall agree on the appointment of a person to announce the will.
3. After the time of commencement of an inheritance, the person announcing the will must send copies of the will to all persons with an interest in the contents of the will.
4. A recipient of a copy of a will has the right to verify the copy against the original.
5. Where a will has been prepared in a foreign language, it must be translated into Vietnamese and notarized or certified.

Article 648 *Interpretation of contents of wills*

Where the contents of a will are unclear and may be interpreted in different ways, the heirs under the will must interpret jointly the contents of the will based on the true wishes of the deceased, taking into consideration the relationship of the deceased with the heirs under the will. If such persons fail to agree on the interpretation of the contents of the will, they may request a court to resolve it.

Where part of the contents of a will is not able to be interpreted but the remainder of the will is not affected, only that part which is not able to be interpreted shall not be legally effective.

CHAPTER XXIII

Inheritance at Law

Article 649 *Inheritance at law*

Inheritance at law means inheritance in accordance with the order of priority of inheritance and the conditions and procedures of inheritance provided by law.

Article 650 *Cases of inheritance at law*

1. Inheritance at law shall apply in the following cases:
 - (a) There is no will;
 - (b) The will is unlawful;
 - (c) All heirs under the will died prior to or at the same time as the testator dying, or the agencies or organizations which are entitled to inherit under the will no longer exist at the time of commencement of the inheritance;
 - (d) The persons appointed as heirs under the will do not have the right to inherit or disclaimed the inheritance.
2. Inheritance at law shall also apply to the following parts of an estate:
 - (a) Parts of an estate in respect of which no disposition has been made in the will;
 - (b) Parts of an estate related to an ineffective part of the will;
 - (c) Parts of an estate related to heirs under the will not having the right to inherit, having disclaimed the inheritance, or having died prior to or at the same time as the testator dying; and parts of an estate related to agencies or organizations entitled to inherit under the will but no longer existing at the time of commencement of the inheritance.

Article 651 *Heirs at law*

1. Heirs at law are categorized in the following order of priority:
 - (a) The first level of heirs comprises: spouses, biological parents, adoptive parents, offspring and adopted children of the deceased;
 - (b) The second level of heirs comprises: grandparents and siblings of the deceased; and biological grandchildren of the deceased;
 - (c) The third level of heirs comprises: biological great-grandparents of the deceased, biological uncles and aunts of the deceased, and biological nephews and nieces of the deceased.
2. Heirs at the same level shall be entitled to equal shares of the estate.
3. Heirs at a lower level shall be entitled to inherit where there are no heirs at a higher level because such heirs have died, or because they are not entitled to inherit, have been deprived of the right to inherit or have disclaimed the right to inherit.

Article 652 *Succeeding heirs*⁹⁹

Where a child of a testator died prior to or at the same time as the testator, the grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such father or mother still been alive. If the grandchildren also died prior to or at the same time as the testator, the great-grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such father or mother still been alive.

Article 653 *Inheritance relations between adopted children and their adoptive parents and biological parents*

An adopted child and his or her adoptive parents may inherit each other's estates and may also inherit in accordance with articles 651 and 652 of this Code.

Article 654 *Inheritance relations between stepchildren and their stepparents*

If a stepchild and his or her stepparents care for and support each other as though they were biologically related, they may inherit each other's estates and may also inherit in accordance with articles 652 and 653 of this Code.

Article 655 *Inheritance where wives and husbands have divided multiple ownership property; wives and husbands have applied for divorce or have remarried*

1. Where a wife and husband have divided their multiple ownership property while they are still married and one of them subsequently dies, the surviving spouse shall still be entitled to inherit the estate of the deceased.
2. Where a wife and husband have applied for but not yet obtained a legally effective divorce pursuant to a judgement or decision of a court, or they have obtained such a divorce but the judgement or decision of the court is not yet effective, and one of them dies, the surviving spouse shall, nevertheless, be entitled to inherit the estate of the deceased.
3. A person who is the wife or husband of the deceased at the time when his or her spouse dies shall be entitled to inherit the estate of the deceased even if that person subsequently remarries.

CHAPTER XXIV

Settlement and Distribution of Estates

Article 656 *Meeting of heirs*

1. After being notified of the commencement of an inheritance, or after a will has been announced, the heirs may meet to agree on the following matters:

⁹⁹ *Allens footnote:* The literal translation is "Succeeding inheritance".

- (a) If the testator has failed to appoint an administrator of the estate or a distributor of the estate, or has not determined the powers and obligations of such persons, the appointment of such persons and the determination of their powers and obligations, as the case may be;
 - (b) Method of distributing the estate.
2. All agreements by the heirs must be made in writing.

Article 657 *Distributors of estates*

1. A distributor of an estate may also be the administrator of the estate appointed in the will or by agreement of the heirs.
2. A distributor of an estate must distribute it strictly in accordance with the will or the agreement of the heirs at law.
3. A distributor of the estate may receive remuneration if so allowed by the testator in the will or if so agreed by the heirs.

Article 658 *Order of priority of payment*

Property obligations and expenses related to an inheritance shall be paid in the following order of priority:

1. Reasonable funeral expenses in accordance with customary practice.
2. Outstanding support payments.
3. Expenses for taking care of the estate.
4. Allowances for dependants of the deceased.
5. Wages.
6. Monetary compensation for any loss or damage.
7. Taxes and other payables to the State budget.
8. Other liabilities owed to other individuals or legal entities.
9. Fines.
10. Other expenses.

Article 659 *Distribution of estates in accordance with wills*

1. An estate shall be distributed in accordance with the wishes of the testator. If the will fails to specify the share of each heir, the estate shall be divided equally between the persons named in the will, unless otherwise agreed.
2. Where a will provides for the distribution in kind of an estate, each of the heirs shall be entitled to receive his or her share in kind, plus the benefits and income derived therefrom, or must bear the depreciation in value of such share in kind up to the time when the estate is distributed. If the property [*which is the subject of a share in kind*] has been destroyed due to the fault of another person, the heir has the right to demand compensation for loss and damage.
3. Where a will provides for the distribution of an estate according to certain proportions of the total value of the estate, such proportions shall be calculated on the basis of the value of the estate at the time of distribution.

Article 660 *Distribution of estates in accordance with law*

1. If, at the time of distribution, an heir has been conceived but not yet born, a part of the estate equal to the share of another heir at the same level of heirs shall be set aside for the unborn heir. If the heir is born alive, he or she shall inherit such part of the estate. If the heir does not survive his or her birth, the other heirs at the same level of heirs shall be entitled to his or her share.
2. The heirs have the right to demand the estate to be distributed in kind. If the estate is not able to be equally distributed in kind, the heirs may agree that the property shall be valued and may agree on which heirs shall be entitled to receive which particular items of property.¹⁰⁰ Failing such agreement, the assets in kind shall be sold for distribution.¹⁰¹

Article 661 *Limited distribution of estates*

Where it was the wish of a testator, or where the heirs agree, that an estate is to be distributed only after a certain period of time, it shall be distributed only after such period of time has expired.

If there is a request to distribute an estate but such distribution will seriously and adversely affect the life of the remaining wife or husband and family, such spouse has the right to request a court to fix the share of the estate to which [other] heirs are entitled but not to allow distribution of the estate during a certain period of time. Such period shall not exceed three years from the date of commencement of inheritance. If upon expiry of the period of three years the remaining spouse proves that the distribution of the estate still affects seriously and adversely the life of his or her family, he or she shall have the right to request the court to permit one-off extension, but not exceeding three years..

Article 662 *Distribution of estates where there is a new heir or where right of heir to inherit has been disallowed*

1. Where a new heir appears after an estate has been distributed, the estate shall not be re-distributed in kind but the heirs which have received [a share of] the estate must pay the new heir a sum equivalent to the share of the estate of such [new heir] at the time of distribution of the estate in proportion to the [respective] share of the estate already received [by each heir], unless otherwise agreed.
2. Where the right of an heir to inherit is disallowed after an estate has been distributed, such heir must return the inheritance or pay to the other heirs a sum equivalent to the value of the inheritance received at the time of distribution of the estate, unless otherwise agreed.

¹⁰⁰ *Allens footnote:* The literal translation is "which persons shall receive the assets in kind".

¹⁰¹ *Allens footnote:* The literal translation is "persons receiving the assets in kind".

PART FIVE

LAW APPLICABLE TO CIVIL RELATIONS INVOLVING FOREIGN ELEMENTS

CHAPTER XXV

General Provisions

Article 663 *Scope of application*

1. This part regulates the law applicable to civil relations involving foreign elements.

Where the provisions of another law on the law applicable to civil relations involving foreign elements are not contrary to the provisions in article 664 to 671 inclusive of this Code, such [other] law shall apply; if they are contrary, then the relevant provisions of Part Five of this Code shall apply.

2. Civil relation involving a foreign element means a civil relation in any of the following cases:
 - (a) At least one of the participating parties is a foreign individual or legal entity;
 - (b) The participating parties are Vietnamese citizens or legal entities but the establishment, modification, implementation or termination of such relation happened in a foreign country;
 - (c) The participating parties are Vietnamese citizens or legal entities but the subject matter of such civil relation is located in a foreign country.

Article 664 *Determination of law applicable to civil relations involving foreign element*

1. The law applicable to civil relations involving a foreign element shall be determined in accordance with an international treaty of which the Socialist Republic of Vietnam is a member or in accordance with the law of Vietnam.
2. Where an international treaty of which the Socialist Republic of Vietnam is a member or the law of Vietnam stipulates that the parties have the right to choose [*the applicable law*], the law applicable to a civil relation involving foreign element shall be determined at the choice of the parties.
3. Where it is impossible to determine the applicable law as provided in clauses 1 and 2 of this article, the applicable law shall be the law of the country which has the closest connection with such civil relation involving a foreign element.

Article 665 *Application of international treaties to civil relations involving foreign elements*

1. Where an international treaty of which the Socialist Republic of Vietnam is a member regulates the rights and obligations of parties to civil relations involving a foreign element, such international treaty shall apply.
2. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those of this Part and other laws on law applicable to civil relations involving a foreign element, such international treaty shall apply.

Article 666 *Application of international practice*

Parties are permitted to choose international practice in the circumstances provided in article 664.2 of this Code. If the consequences of application of such international practice are inconsistent with the fundamental principles of the law of Vietnam, the law of Vietnam shall apply.

Article 667 *Application of foreign law*

Where a foreign law applies but is interpreted in different ways, the application must comply with the interpretation by the authorized agency in such [*foreign*] country.

Article 668 *Scope of laws referred to*

1. Laws referred to shall comprise the provisions on determination of applicable law and the provisions

on rights and obligations of parties to civil relations, except in the case provided in clause 4 of this article.

2. In the case of reference to the law of Vietnam, the provisions of the law of Vietnam regarding rights and obligations of parties to civil relations shall apply.
3. In the case of reference to the law of a third country, the law of the third country regarding rights and obligations of parties to civil relations shall apply.
4. In the circumstances provided in article 664.2 of this Code, the law chosen by the parties shall be the provisions on rights and obligations of the parties to a civil relation, excluding the provisions on determination of applicable law.

Article 669 *Application of law of countries having multiple legal systems*

Where the law of a country having multiple legal systems is referred to, the applicable law shall be determined on the principles provided in the law of such country.

Article 670 *Cases in which foreign laws do not apply*

1. A foreign law referred to [to which reference is made] shall not apply in the following cases:
 - (a) The consequences of application of the foreign law are inconsistent with the fundamental principles of the law of Vietnam;
 - (b) It is impossible to determine the contents of the foreign law although necessary measures have been applied in accordance with the law on civil proceedings.
2. Where a foreign law does not apply in accordance with clause 1 of this article, the law of Vietnam shall apply.

Article 671 *Limitation periods*

The limitation period applicable to a civil relation involving a foreign element shall be determined in accordance with the law applicable to such civil relation.

CHAPTER XXVI

Law Applicable to Individuals and Legal Entities

Article 672 *Bases for determination of law applicable to stateless persons and to persons with multiple nationalities*

1. Where a law referred to is the law of a country of which an individual holds nationality but such individual is a stateless person, the applicable law shall be the law of the country of residence of such person at the time when a civil relation involving a foreign element was established. If such person has multiple places of residence or it is impossible to determine the place of residence at the time when a civil relation involving a foreign element was established, the applicable law shall be the law of the country with which such person has the closest connection.
2. Where a law referred to is the law of a country of which an individual holds nationality but such individual is a person with multiple nationalities, the applicable law shall be the law of the country of which such person holds nationality and where such person resides at the time when a civil relation involving a foreign element was established. If such person has multiple places of residence or it is

impossible to determine the place of residence or the place of residence and the place of which such person holds nationality are different at the time when the civil relation involving a foreign element was established, the applicable law shall be the law of the country of which such person holds nationality and with which such person has the closest connection.

Where a law referred to is the law of a country of which an individual holds nationality but such individual is a person with multiple nationalities, including Vietnamese nationality, the applicable law shall be the law of Vietnam.

Article 673 *Civil legal capacity of individuals*

1. The civil legal capacity of individuals shall be established on the basis of the law of the country of which such person holds nationality.
2. A foreign individual in Vietnam shall have civil legal capacity in the same manner as a Vietnamese citizen, unless otherwise provided by the law of Vietnam.

Article 674 *Capacity for civil acts of individuals*

1. The capacity for civil acts of individuals shall be determined in accordance with the law of the country of which such person holds nationality, except in the case provided in clause 2 of this article.
2. Where a foreign individual establishes or performs civil transactions in Vietnam, the capacity for civil acts of such foreign individual shall be determined in accordance with the law of Vietnam.
3. The determination of whether an individual has lost capacity for civil acts, has difficulties in being aware of, or controlling his or her own acts or has restricted capacity for civil acts in Vietnam must comply with the law of Vietnam.

Article 675 *Determination that individual has disappeared or died*

1. A determination that an individual has disappeared or died must comply with the law of the country of which such person held nationality at the point of time prior to the last information about such person, except in the case provided in clause 2 of this article.
2. A determination in Vietnam of whether or not an individual has disappeared or died must comply with the law of Vietnam.

Article 676 *Legal entities*

1. The nationality of a legal entity shall be determined in accordance with the law of the country in which the legal entity was established.
2. The civil legal capacity, name and legal representative of a legal entity; or the organization, re-organization or dissolution of a legal entity; or the relationship between a legal entity and members of such legal entity; or responsibilities of a legal entity and of members of such legal entity with respect to obligations of such legal entity shall be determined in accordance with the law of the country of which such legal entity holds nationality, except in the case provided in clause 3 of this article.
3. Where a foreign legal entity establishes or performs civil transactions in Vietnam, the civil legal capacity of such foreign legal entity shall be determined in accordance with the law of Vietnam.

CHAPTER XXVII

Law Applicable to Property Relations and Personal Relations

Article 677 *Classification of property*

The classification of whether a property is moveable or immoveable property shall be made in accordance with the law of the country in which such property is located.

Article 678 *Ownership rights and other rights with respect to property*

1. The establishment, exercise, operation and termination of ownership rights and other rights with respect to property shall be determined in accordance with the law of the country in which the property is located, except in the case provided in clause 2 of this article.
2. Ownership rights and other rights with respect to property being moveable property in transit shall be determined in accordance with the law of the country of destination, unless otherwise agreed.

Article 679 *Intellectual property rights*

Intellectual property rights shall be determined in accordance with the law of the country in which the subject matter of intellectual property rights is requested to be protected.

Article 680 *Inheritance*

1. Inheritance shall be determined in accordance with the law of the country of which the person who bequeathed the assets held nationality immediately prior to his or her death.
2. The exercise of the right to inherit immoveable property must comply with the law of the country where such immoveable property is located.

Article 681 *Wills*

1. The capacity to create a will, and to alter or rescind a will, shall be determined in accordance with the law of the country of which the testator held nationality at the time of creation, alteration or rescission of the will.
2. The form of a will shall be determined in accordance with the law of the country in the place where the will is created. The form of a will may also be recognized in Vietnam if it is in compliance with the law of any of the following countries:
 - (a) The country in which the testator resided at the time of creation of the will or at the time when the testator dies;
 - (b) The country of which the testator held nationality at the time of creation of the will or at the time when the testator dies;
 - (c) The country in which the immoveable property is located if the estate of inheritance is immoveable property.

Article 682 *Guardianship*

The guardianship shall be determined in accordance with the law of the country in which a ward resides.

Article 683 *Contracts*

1. Parties in a contractual relationship may agree to choose the law applicable to the contract, except in the cases provided in clauses 4, 5 and 6 of this article. Where the parties have not agreed on the applicable law, the law of the country having the closest connection with such contract shall apply.
2. The laws of the following countries shall be deemed to have the closest connection with a contract:
 - (a) With respect to a contract for sale and purchase of goods, it shall be the law of the country in which the seller resides in the case of an individual or in which [*the seller*] was established in the case of a legal entity;
 - (b) With respect to a contract for services, it shall be the law of the country in which the service provider resides in the case of an individual or in which [*the service provider*] was established in the case of a legal entity;
 - (c) With respect to a contract for transfer of use rights or assignment of intellectual property rights, it shall be the law of the country in which the recipient of rights resides in the case of an individual or in which [*the recipient of rights*] was established in the case of a legal entity;
 - (d) With respect to a labour contract, it shall be the law of the country in which the employee regularly performs work. If the employee regularly performs work in different countries or it is impossible to determine the place where the employee regularly performs work, the law of the country having the closest connection with the labour contract shall be the law of the country in which the employer resides in the case of an individual or [*in which the employer*] was established in the case of a legal entity;
 - (dd) With respect to a consumption contract, it shall be the law of the country in which the consumer resides.
3. Where it is proved that the law of a country other than the laws stated in clause 2 of this article has a closer connection with the contract, the applicable law shall be the law of such country.
4. Where the subject matter of a contract is immovable property, the law applicable to transfer of ownership rights and other rights with respect to property being immovable property, [*applicable to*] lease of immovable property or use of immovable property in order to guarantee the performance of obligations shall be the law of the country in which the immovable property is located.
5. Where the law chosen by the parties to a labour contract or a consumption contract adversely affects minimum benefits of the employee or consumer as provided in the law of Vietnam, the law of Vietnam shall apply.
6. Parties [*to a contract*] may agree to change the law applicable to the contract, but such change must not affect the lawful rights and benefits to which a third person was entitled before such change of the applicable law, unless the third person so agrees.
7. The form of a contract shall be determined in accordance with the law applicable to such contract. In the case where the form of a contract is inconsistent with the form of a contract pursuant to the law applicable to such contract, but is consistent with the form of such contract pursuant to the law of the country in which the contract was entered into or pursuant to the law of Vietnam, the form of such contract shall, nevertheless, be recognized in Vietnam.

Article 684 *Unilateral legal acts*

The law applicable to an unilateral legal act shall be the law of the country in which an individual creating

such legal act resides or in which a legal entity creating such legal act was established.

Article 685 *Obligations to return [property] due to unlawful possession or use of or deriving of benefits from property*

The obligations to return [property] due to unlawful possession or use of or deriving of benefits from property shall be determined in accordance with the law of the country in which the property was unlawfully possessed or used or in which benefits enjoyed arose unlawfully.

Article 686 *Unauthorized performance of acts*

Parties may agree to choose the law applicable to unauthorized performance of acts. Where there is no agreement, the applicable law shall be the law of the country in which the acts are performed without authorization.

Article 687 *Compensation for non-contractual damages*

1. Parties may agree to choose the law applicable to the compensation for non-contractual damages, except in the case provided in clause 2 of this article. Where there is no agreement, the law of the country in which the consequences of the event causing loss and damage arise, shall apply.
2. Where a party having caused loss and damage and an aggrieved party have the places of residence in the case of individuals or the places of establishment in the case of legal entities in the same country, the law of that country shall apply.

PART VI

IMPLEMENTING PROVISIONS

Article 688 *Transitional provisions*

1. In the case of a civil transaction which was established prior to the effective date of this Code, the application of law shall be regulated as follows:
 - (a) If such civil transaction is not yet performed and its contents and form are different from those provided in this Code, the subject carrying out the transaction shall continue to implement it in accordance with the Civil Code 33-3005-QH11 and legal instruments providing detailed regulations on the Civil Code 33-2005-QH11, unless the parties to the civil transaction have agreed on the amendment of and addition to the contents and form of the transaction in order to comply with this Code and to apply the provisions of this Code.

If such civil transaction is being performed and its contents and form are different from those provided in this Code, the Civil Code 33-2005-QH11 and legal instruments providing detailed regulations on the Civil Code 33-2005-QH11 shall apply;
 - (b) If such civil transaction is not yet performed or is being performed and its contents and form comply with this Code, this Code shall apply;
 - (c) If such civil transaction was completed prior to the effective date of this Code and there is a dispute, the Civil Code 33-2005-QH11 and legal instruments providing detailed regulations on the Civil Code 33-2005-QH11 shall apply in order to resolve [*such dispute*];
 - (d) The limitation period shall be applied in accordance with this Code.

2. This Code shall not apply in order to lodge a protest on the basis of judicial review or retrial in respect of a case which was resolved by a court in accordance with the civil law prior to the effective date of this Code.

Article 689 *Effectiveness*

This Code is of full force and effect as from 1 January 2017.

The Civil Code 33-2005-QH11 shall be no longer effective as from the effective date of this Code.

This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 10th Session on 24 November 2015.

The Chairman of the National Assembly
NGUYEN SINH HUNG