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**NOTE**

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

## **BOOK 1 GENERAL RULES**

### **1. General principles of private law**

This Code hereby sets forth the general principles governing civil law relationships. Except as otherwise provided through special laws, the provisions of this Code shall govern matters relating to property and familial relationships.

### **2. Fundamental concepts**

This Code embodies the tenets of individual dignity, principles of sexual equality and the guarantee of property rights set forth within the Constitution of the Kingdom of Cambodia.

### **3. The principle of private autonomy**

Under this Code, legal relations among private persons, including legal persons, shall be equal and equivalent, respecting the free intentions of such individuals. Public legal entities shall be deemed private persons in connection with legal relations that arise from their transactions.

### **4. Prohibition of abuse of rights**

No abuse of rights shall be permitted. Should a right be used beyond the scope of the protections originally intended, the exercise of such right shall be deemed to be invalid.

### **5. The principle of good faith**

Rights shall be exercised and duties performed in good faith.

## **BOOK 2 PERSONS**

## **Chapter 1 NATURAL PERSONS**

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

#### **6. Principle of equality in legal capacity**

All natural persons are entitled to possess rights and assume Obligations in their own name.

#### **7. Limitation on the capacity of foreign nationals to acquire rights**

Foreign nationals shall not be entitled to acquire or maintain certain rights as provided through law or treaty.

#### **8. Commencement and termination of legal capacity**

Natural persons shall acquire legal capacity upon birth, and shall lose such legal capacity upon death.

#### **9. Fetus**

(1) A fetus in existence at the time of the conducting of a tortious act shall be entitled to seek damages for any harm arising from such act upon its birth.

(2) A fetus in existence at the time of the death of a decedent shall be entitled to inherit from such decedent after birth.

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

### **Section II. Individual Rights**

#### **10. Concept of individual rights**

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

#### **11. Right to prohibition**

Should there be danger of an unlawful infringement of an individual right, or where there is danger of an unlawful repetition or continuance of such an infringement, the individual right holder may prohibit such infringement.

**12. Right to demand elimination of the effects of an infringing act**

A person who has suffered an unlawful infringement of an individual right may, where the infringement continues due to the presence of an effect arising from the infringing act, demand the elimination of the effect of the infringing act unless such elimination is not practically feasible.

**13. Right to damages**

The provisions of **Article 11 (Right to prohibition)** and **Article 12 (Right to demand elimination of the effects of an infringing act)** shall not prevent a person who has suffered an infringement of their individual rights from seeking damages for any harm suffered therefrom in accordance with the provisions regarding tortious acts.

### Section III. Mental Capacity

**14. Lack of capacity**

An act performed by a person who was unable to recognize and understand the legal consequences of his/her actions shall be deemed to be rescindable.

**15. Definition of Act**

The term Act as used in the provisions of Sections III, IV, and VI of this Chapter shall mean contracts and unilateral legal acts.

### Section IV. Capacity to Act

**16. Definition of statutorily General Wards**

Statutorily General Wards shall mean minors, General Wards, and persons under curatorship.

#### Sub-section I. Minors

##### **17. Definition of minor**

Minors are persons who have not attained the age of eighteen years.

##### **18. Right to rescind acts**

An act conducted by a minor without the consent of his/her parental authority holder or the guardian of the minor may be rescinded. This shall not apply to any acts performed for the sole purpose of obtaining rights or discharging a duty or Obligation, or any acts conducted in the course of daily life.

##### **19. Disposal of property with the permission of parental authority holder or the guardian of the minor**

Should a minor have been permitted by his/her parental authority holder or guardian to dispose of property for a specific purpose, the minor may dispose of said property within the scope of such purpose. A minor may also dispose of property if he/she has been permitted by his/her parental authority holder or guardian to dispose of said property without a specific purpose.

##### **20. Minor permitted to conduct business**

(1) A minor who is permitted by his/her parental authority holder or guardian to carry out one or more kinds of business shall have the capacity to act equal to a person of the age of majority to the extent of said business(es).

(2) In the case of paragraph (1), should it be found that the minor is unable to manage such business(es), his/her parental authority holder or guardian may rescind the permission to conduct said business(es) or impose restrictions thereon.

##### **21. Requirements for emancipation**

(1) Should a minor who has reached the age of sixteen completely support himself/herself, the court may, upon petition by the minor, declare the emancipation of the minor if such emancipation is deemed in the minor's best interest. In such case, the court shall hear the opinions of the parental authority holder(s).

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

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

#### **22. Effect of emancipation**

An emancipated minor shall be deemed to bear the capacity to act in the same manner as an adult.

#### **23. Minor's labor contract**

(1) Notwithstanding the provisions of **Article 27 (Property management and representation)** and **Article 28 (Property management and representation)**, a parental authority holder or guardian may not enter into a labor contract on behalf of a minor.

(2) A contract that contravenes the provisions of paragraph (1) shall not be binding upon the minor. This shall not apply where the minor has ratified said contract.

(3) A parental authority holder, guardian, or administrative authority may, should the labor contract be considered to be disadvantageous to the minor, terminate said contract and such termination shall not be retroactive.

### **Sub-section II. General Wards**

#### **24. Declaration of commencement of general guardianship**

(1) With respect to a person who remains in a perpetual mental state lacking the ability to recognize and understand the legal

consequences of his/her actions due to mental disability, the court may declare the commencement of a general guardianship at the petition of the person himself/herself, the person's spouse, any relative within the fourth degree of consanguinity, the guardian of the minor, the supervisor of the guardian of the minor, supervisor of the curator, the chief of the *Commune* or *Sangkat* where the person's domicile is located, or a prosecutor. This provision shall not apply in cases where such person is under 15 years of age at the time of application.

(2) In cases where the court makes a declaration under Paragraph (1) for a person under curatorship, the court shall rescind the declaration of commencement of curatorship.

#### **25. Meaning of General Ward and appointment of general guardian**

A person subject to a declaration of commencement of general guardianship shall be deemed to be a General Ward, and shall be placed under the care of a general guardian.

#### **26. Right to rescind acts**

An act conducted by a General Ward may be rescinded. This shall not apply to an act necessary in the course of daily life.

#### **27. Rescinding of declaration of commencement of general guardianship**

Should the grounds for the general guardianship described in **Article 24(Declaration of commencement of general guardianship)** cease to exist, the court shall rescind the declaration of commencement of general guardianship upon petition by the person himself/herself, the person's spouse, a relative within four degrees of consanguinity, a guardian, a guardian's supervisor, the chief of the *Commune* or *Sangkat* where the person's domicile is located, or a prosecutor.

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

#### **28. Declaration of commencement of curatorship**

(1) With respect to a person whose ability to recognize and understand

the legal consequences of his/her actions is substantially impaired due to mental disability, the court may declare the commencement of curatorship at the petition of the person himself/herself, the person's spouse, a relative within four degrees of consanguinity, a guardian, a supervisor of the guardian, the chief of the Commune or *Sangkat* where the person's domicile is located, or a prosecutor.

(2) In cases where the court issues a declaration under Paragraph (1), and where the person is General Ward, the court shall rescind the declaration of commencement of the general guardianship.

#### **29. Meaning of person under curatorship and appointment of curator**

The person subject to a declaration of commencement of curatorship shall be deemed to be a Person Under Curatorship, and shall be placed under the care of a court-appointed curator.

#### **30. Right to rescind act**

Any of the following acts conducted by a person under curatorship without the consent of the curator may be rescinded. This shall not apply where the act is conducted in the course of daily life:

- a. Receipt or use of principal funds;
- b. Incur or guarantee a debt;
- c. Act with the intent of obtaining or losing rights pertaining to an immovable or other valuable asset;
- d. Conduct an act of litigation;
- e. Enter into a contractual donation, or into a settlement or arbitration agreement;
- f. Accept or waive succession or divide a legacy;
- g. Refuse a donation or bequest, or accept a donation or bequest subject to an encumbrance;
- h. Build anew, renovate, expand or conduct major repairs to a building or structure;
- i. Execute a lease agreement that exceeds three years duration for land, two years duration for a building, or six months duration for a movable; or
- j. Any other act that a court specifically declares as requiring

the consent of the curator based on the petition of a person listed in **Article 28 (Declaration of commencement of curatorship)**, a curator, or a curator's supervisor.

### **31. Rescinding of declaration of commencement of curatorship**

Should the grounds for the curatorship described in **Article 28 (Declaration of commencement of curatorship)** cease to exist, the court shall rescind the declaration of commencement of curatorship upon the petition of the person himself/herself, the person's spouse, a relative within four degrees of consanguinity, a guardian, a supervisor of the guardian, the chief of the Commune or *Sangkat* where the person's domicile is located, or a prosecutor.

## **Sub-section IV. Protection of Parties to Transactions with an General Wards**

### **32. Right to demand**

(1) The counterparty to an act conducted by an General Ward, upon said General Ward becoming a person of full capacity, may request a definitive answer as to whether said formerly General Ward will ratify the rescindable act by providing notice to said formerly General Ward requesting a response within a period no less than 1 month. Should the previously General Ward fail to provide a definite answer within said period, the act shall be deemed to have been ratified.

(2) Provisions of paragraph (1) shall apply to cases where the notice set forth in paragraph (1) was given to a parental authority holder, guardian or curator with respect to an act within the scope of the their authority prior to the General Ward becoming fully capacitated and no definite answer was dispatched by the guardian or curator within the specified period.

(3) The counterparty to an act conducted by a person under curatorship may notify the person under curatorship and demand that such person obtain the ratification of the curator within the period set forth in paragraph (1). Should the person under curatorship fail to dispatch a notice to the effect that the ratification was duly obtained within

such period, the contract shall be deemed to have been rescinded.

### **33. Fraud by an General Ward**

Should a General Ward have used fraudulent means to induce the belief that he/she is a person of full capacity, such act of said person may not be rescinded.

## **Section V. Permanent Residence**

### **34. Meaning of Permanent Residence**

A person's base and center of living shall be deemed to be the person's Permanent Residence.

### **35. Place of abode**

Should the Permanent Residence be unknown, the place of abode shall be deemed to be the Permanent Residence.

### **36. Cases where no residence exists within Cambodia**

Should a person have no Permanent Residence in Cambodia, the place of abode in Cambodia shall be deemed to be the person's Permanent Residence, regardless of whether the person is a Cambodian citizen or a foreign national. This shall not apply where the law of permanent address.

## **Section VI. Management of Property in Abstencia and Declaration of Disappearance**

### **Sub-section I. Management of Property in Abstencia**

### **37. Appointment of administrator by the court**

Should a person have left his/her Permanent Residence or place of abode with no expectation of his/her return, if he/she has not appoint an administrator for his/her property, the court may, upon petition of any interested person, the chief of the Commune where the person's residence is located or a public prosecutor, order the appointment of an administrator or take any other measure necessary for the management of such property. The same shall apply where the authority of an appointed administrator has expired during the absence of the

principal.

#### **38. Rescinding of order to manage property**

For situations described in **Article 37 (Appointment of administrator by the court)**, should the absentee subsequently appoint an administrator, the court may rescind the order described therein upon the request of the administrator, an interested person, the chief of the Commune where the person's residence is located or a public prosecutor.

#### **39. Replacement of administrator**

Should an absentee have appointed an administrator, should it be unknown whether the absentee is alive, the court may, upon the petition of any interested person, the chief of the Commune where the person's residence is located or a public prosecutor, order the replacement of the administrator.

#### **40. Authority of administrator**

(1) A court-appointed administrator bears the authority to conduct acts set forth in paragraph (2) of **Article 366 (Scope of agency authorization)**. Should the administrator be required to conduct an act beyond the scope of such authority, the administrator may conduct such act with the permission of a court.

(2) Should it not be known whether the absentee is alive, should the administrator need to conduct an act beyond the scope of the authority specified by the absentee, the administrator may conduct such act through the permission of a court.

(3) The court, where it finds that it is appropriate for remuneration to be paid in consideration of the relationship between the administrator and the absentee as well as other relevant circumstances, may allow reasonable remuneration to be paid to the administrator from the absentee's property.

## Sub-section II. Declaration of Disappearance

### 41. Requirement for a declaration of disappearance

(1) Should the living status of an absentee be unknown for five years, the court, upon petition of his/her spouse, heir, legatee, a designated insurance beneficiary, a parental authority holder, guardian, father, mother or any other person who has an important legal interest in the declaration of disappearance, may issue a judicial declaration of disappearance.

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

### 42. Notification by publication

Proceedings for notification by publication shall be implemented for the purpose of declaring a disappearance.

### 43. Effect of declaration of disappearance

The absentee, in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (1) of **Article 41 (Requirement for a declaration of disappearance)**, shall be deemed to have been deceased from the time at which the period set forth therein expires, or in the event that a judicial declaration of disappearance has been made in accordance with the provisions of paragraph (2) of the same Article, the time at which the peril ceased to exist in respect to any legal relationship existing at or around the Permanent Residence or the place of abode at such time.

### 44. Process upon absentee's return

(1) Should it be proven that the absentee is alive or died at a time other than that set forth in paragraph (1) of **Article 43 (Effect of declaration of disappearance)**, the court shall, upon petition of the

absentee or an interested person, rescind the judicial declaration of disappearance.

(2) A person who has acquired property directly through the absentee based on the effect of a judicial declaration of disappearance shall lose his/her right to the property upon the rescinding of the declaration of disappearance. A person who was unaware that the declaration of disappearance was in fact in error at the time he/she acquired the property shall only be obligated to return such property to the extent that such person is continuing to benefit therefrom.

(3) An act conducted after a declaration of disappearance has been made but prior to its rescinding, and in the belief that the declaration is in effect, shall retain its effect or validity despite the rescindment.

(4) In the event that a declaration of disappearance has been rescinded following the remarriage of the spouse of a person for whom such declaration was made, the prior marriage shall be annulled upon the concluding of the subsequent remarriage.

## Section VII. Presumption of Simultaneous Death

### **45. Presumption of simultaneous death**

Should it be unknown among two or more deceased persons whether one person had survived the death of the other(s), all persons shall be presumed to have died simultaneously.

## **Chapter 2 JURISTIC PERSONS**

### Section I. General Provisions

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

### **46. Definition and types of juristic persons and principles of**

### **incorporation**

(1) Under this Code, an organization granted the status of being subject to rights and Obligations independent of those of the stakeholders comprising such organization shall be referred to as an Incorporated Association, and contributed assets granted the status of being subject to rights and Obligations independent of the contributors of said assets shall be referred to as the Incorporated Foundation.

(2) Under this Code, juristic persons not having profit listed among their objectives shall be referred to as Non-profit Juristic Persons and juristic persons having profit among their objectives as For-profit Juristic Persons. Amongst Non-Profit Juristic Persons, those bearing a specific public interest shall be referred to as Public Interest Juristic Persons.

(3) Under this Code, Incorporated Associations for which the stakeholders are liable for the Obligations of the juristic person to the extent of the amount of property contributed shall be referred to as Limited Liability Incorporated Associations, and those for which the stakeholders are liable for the Obligations of the juristic person to the extent of their entire assets are referred to as Unlimited Liability Incorporated Associations.

(4) No juristic person shall be a stakeholder of another Incorporated Association for which it bears unlimited liability.

(5) A Non-profit Juristic Person shall be incorporated under this Code or other laws.

(6) A For-profit Juristic Person shall be incorporated under other separately stipulated laws.

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

#### **47. Name of a non-profit juristic persons**

(1) No entity other than an Incorporated Association or Incorporated

Foundation shall bear the term Incorporated Association or Incorporated Foundation in their name.

(2) Limited Liability Incorporated Associations and Unlimited Liability Incorporated Associations shall include in their name a statement that they are a Limited Liability Incorporated Association or an Unlimited Liability Incorporated Association, respectively.

#### **48. Foreign juristic persons**

(1) Under this Code, juristic persons incorporated under foreign law shall be referred to as Foreign Juristic Persons.

(2) Foreign Juristic Persons shall not be recognized as juristic persons except for nation states, administrative divisions of nation states, and/or commercial companies. This provided that said juristic persons are able to be recognized as such through Cambodian law or treaty.

(3) Foreign Juristic Persons recognized under paragraph (2) shall enjoy the same private law rights as juristic persons incorporated under corresponding Cambodian law. This shall not apply to rights that foreigners are specifically precluded from or in cases where there is specific contrary provisions under law or treaty.

### **Sub-section III. Registration of Incorporation**

#### **49. Registration of incorporation and time of formation**

(1) A juristic person shall come into existence upon its registration in the registry held at the location of its principal office.

#### **50. Items to be registered**

(1) The following details concerning the juristic person must be stipulated within the registry:

- a. The purpose of organizations;
- b. The name of the organization;

- c. The principal office and any subordinate offices of the organization;
- d. Should the grounds for dissolution have been provided in the Articles of Incorporation, such grounds;
- e. The names and addresses of the directors and auditor(s) This provided that in the case of an Unlimited Liability Incorporated Association, the names and addresses of the stakeholders shall be stated;
- f. Should there be directors without the authority to represent the juristic person, the name(s) of the director(s) who do represent the juristic person; and
- g. Should there be provisions for more than one director to jointly represent the juristic person, such provisions.

(2) Should there be a change to any of the details listed in Paragraph (1), such changes shall be registered in the registry at the location of the principal office within two weeks following its occurrence and within the registry at the location of any other offices within three weeks of the same. Pending such registrations, the changes shall not be set against a third party.

(3) Should there be a provisional disposition suspending the performance of the duties of, or to appoint a substitute for, a registered director, auditor, liquidator or stakeholder, or a change or rescission of such a provisional disposition, registration thereof shall be recorded within the registry at the location of the principal office and the registries of the locations of any other offices. In such case, the second sentence of Paragraph (2) shall apply mutatis mutandis.

#### Sub-section IV. Permanent Residence of Juristic Person

##### **51. Permanent Residence of juristic person**

The permanent residence of a juristic person shall be the location of its principal office.

##### **52. Registration of Office Relocation**

(1) Should a juristic person relocate its principal office, such fact shall be registered within the registry at the former location and the details set forth in **Article 50 (Items to be registered)** shall be registered within the registry of the new location no later than two weeks following the relocation. Should a juristic person relocate an office other than the principal office, such fact must be registered within the registry at its former location within three weeks of relocation and the details set forth in **Article 50 (Items to be registered)** shall be recorded in the registry of the new location within four weeks of the same.

(2) Notwithstanding Paragraph (1), where an office has been relocated within the same jurisdiction of the former registration, such relocation need only be registered once with the relevant authority.

#### **53. Registration of new office establishment**

(1) Upon the establishment of a new office, the details set forth in **Article 50 (Items to be registered)** shall be registered within the registry of the new office location no later than two weeks following such establishment.

(2) For circumstances set forth under Paragraph (1), the fact of such new office registration shall be registered within the registry at the location of the principle office and any other office location no later than three weeks following the establishment of the new office.

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

#### **54. Registration of foreign juristic persons**

(1) The provisions of **Article 50 (Items to be registered)**, **Article 52 (Registration of Office Relocation)** and **Article 53 (Registration of new office establishment)** shall apply to the cases of a foreign juristic person establishing an office in Cambodia.

(2) Should a foreign company establish a first office in Cambodia, a third party may deny the legal status of such juristic person up until

such time as the registration thereof has been made within the registry at the location of such office.

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

##### **55. Inventory of assets and stakeholders lists**

(1) Upon incorporation and within the first three months of each financial year, a juristic person shall prepare an inventory of the assets and keep such list at its office at all times.

(2) An Incorporated Association shall prepare a list of stakeholders, keep such list at its office, and revise such whenever change in stakeholders is made.

##### **56. Number, selection, dismissal and duties of Directors**

(1) A juristic person shall have a board of directors who shall form the executive agency of such juristic person. An Unlimited Liability Incorporated Association, however, shall not have any directors.

(2) A board of directors shall be comprised of one or more directors. In cases of an Incorporated Foundation, the board shall be comprised so that the organization has no less than three directors.

(3) Unless otherwise provided in the Articles of Incorporation, a juristic person's activities shall be determined by a majority of directors should the board of directors be comprised of more than one director.

(4) Directors shall be appointed either through the Articles of Incorporation or a general stakeholders meeting.

(5) Directors of an Incorporated Association may be dismissed through a resolution of a general stakeholders meeting.

##### **57. Duties of directors**

(1) The board of directors shall be subject to an Obligation to execute

the juristic person's business in good faith and in compliance with relevant law and the tenor of the Articles of Incorporation.

(2) Except for as set forth in Paragraph (1), the relationship between board of directors and the juristic person shall be subject to a mandate.

#### **58. Directors' right to represent the juristic person**

(1) Directors represent the juristic person. This provided that such directors do not contravene the tenor of the Articles of Incorporation.

(2) Should there be more than one director, each such director shall bear the right of representation. This provided that it may otherwise be specifically set forth in the Articles of Incorporation.

(3) For Incorporated Associations, director(s) shall comply with resolutions of the general stakeholders meeting.

#### **59. Restrictions on the right of representing a juristic person**

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

#### **60. Provisional directors**

Should there be a vacancy in the board of directors and there is a risk of damage arising from such delay, the court may appoint a provisional director upon petition by an interested person or a public prosecutor.

#### **61. Special representative**

A director shall bear no right of representation should there be a conflict between the interests of the juristic person and the interests of the director. In such case, a special representative shall be appointed using the procedures set forth in **Article 60 (Provisional directors)**.

#### **62. Auditors**

(1) A juristic person shall have one or more auditors. An Unlimited

Liability Incorporated Association, however, shall not be required to have an auditor.

(2) The auditors shall be appointed in accordance with the provisions of the Articles of Incorporation or by resolution of the general stakeholders meeting or a meeting of the board of directors.

(3) No director or employee of a juristic person shall be an auditor.

(4) An auditing juristic person may be an auditor.

### **63. Duties of Auditor**

(1) The auditor shall inspect the organizational activities of the juristic person.

(2) The auditors may request reports on the status of the juristic person's business from the directors and/or employees of the juristic person, and may inspect the status of the juristic person's business and assets.

(3) The auditor shall examine the agenda items and documents that the directors intend to submit to the general stakeholders meeting and meeting of the board of directors. Should the auditors find any items in breach of any law or regulation, the Articles of Incorporation, or to be seriously improper, they shall report such in the general stakeholders meeting or the meeting of the board of directors.

(4) The auditors may state their opinions concerning the appointment, dismissal, and remuneration of auditors at the general stakeholders meeting or meeting of the board of directors.

(5) Should the auditors find that a director has engaged in conduct outside the scope of the objectives of the juristic person or otherwise be in breach of law or the Articles of Incorporation, or find that there is a risk of any of the foregoing, the auditors shall report this to the general stakeholders meeting or the meeting of the board of

directors. In such case, the auditors may convene a meeting of the general stakeholders or meeting of the board of directors should it be necessary for the purpose of making such a report. Moreover, auditors of an Incorporated Foundation shall make the aforementioned report to the supervising authority no later than the time of making such report to the meeting of the board of directors.

(6) Should a director engage in any conduct set forth in Paragraph (5) or should there be a risk that such will occur and that the juristic person will incur serious damage as a result of such conduct, the stakeholders may demand that such director cease such conduct.

(7) Should a suit be filed by the juristic person against a director or by a director against the juristic person, the auditors shall represent the juristic person within such suit.

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

##### **64. Grounds for dissolution**

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

- a. The occurrence of any grounds for dissolution stipulated in the Articles of Incorporation;
- b. The termination of the undertaking that is the purpose of the juristic person or the impossibility thereof;
- c. Bankruptcy; or
- d. A judgment ordering dissolution.

(2) Aside from the grounds prescribed in Paragraph (1), an Incorporated Association shall be dissolved based on the following grounds:

- a. A resolution of the general stakeholders meeting of a Limited Liability Incorporated Association or agreement of all stakeholders of an Unlimited Liability Incorporated Association; or
- b. The number of stakeholders being reduced to one.

(3) A resolution for dissolution by a Limited Liability Incorporated Association under Paragraph (2) Item (a) shall require approval by a majority of all stakeholders themselves with the voting rights of said majority totaling no less than three fourths of the total voting rights.

**65. Suit seeking dissolution**

(1) For a Limited Liability Incorporated Association, stakeholders holding no less than 10% of the total voting rights, stakeholder in the case of an Unlimited Liability Incorporated Association, and directors or auditors in the case of an Incorporated Foundation respectively, may file a petition seeking dissolution of the juristic person.

(2) For cases set forth Paragraph (1), a court may order the dissolution of a juristic person strictly under the following circumstances and in which the reasons for such are considered compelling:

- a. The juristic person is faced with extreme hardship in accomplishing the objectives of its undertaking, and has suffered or is likely to suffer irrevocable damage; or
- b. The management or disposition of the juristic person's property is profoundly improper to the extent that it imperils the continued existence of the juristic person.

(3) Notwithstanding Paragraphs (2) and (3), in cases where the court determines, upon petition by the Minister of Justice or by any stakeholder, creditor or other interested person, that in order to preserve the public interest, they cannot allow the continuing existence of the juristic person for any of the grounds set forth below, the court may issue an order for the dissolution of said juristic person:

- a. The juristic person was incorporated based on an illegitimate objective;
- b. Without legitimate reason, the juristic person has not commenced business within one year of its incorporation, or has ceased to do business for one year or longer; or
- c. Despite a person executing the business of the juristic person

having received a written warning from the Minister of Justice, deviation from or abuse of the authority of the juristic person as prescribed by law or the Articles of Incorporation or actions violating any penal law has continued or been repeated.

(4) Should a petition have been made under Paragraph (3), prior to issuing an order for dissolution, the court may appoint an administrator over the juristic person or take such other measures as it deems necessary to preserve the property of the juristic person based upon the petition by the Minister of Justice or by any stakeholder, creditor or other interested person.

**66. Cases necessitating the liquidation of a juristic person and Liquidator(s)**

Where a juristic person is to be liquidated, except in cases under **Article 64 (Grounds for dissolution)** Paragraph (1) Item (c), it shall be liquidated in accordance with this **Subsection 7 (Dissolution and Liquidation)**. In such cases and for the purpose of the liquidation, the juristic person shall be deemed to have continued to exist up until the conclusion of the liquidation.

**67. Assigning of residual assets**

(1) The assigning of any residual assets following the full payment of the debts of the juristic person shall be governed by the Articles of Incorporation.

(2) In the case of an Incorporated Association, if assignment cannot be determined in accordance with Paragraph (1), such shall be determined via a resolution of the general stakeholders meeting in the case of a Limited Liability Incorporated Association and decision of all the stakeholders in the case of an Unlimited Liability Incorporated Association.

(3) Residual assets for which assignment is not determined through either Paragraphs (1) or (2) shall be deposited into the National Treasury.

**68. Assumption of office by Liquidator(s)**

(1) Should a juristic person be dissolved in accordance with **Article 64 (Grounds for dissolution)**, Paragraph (1) Items (1.) or (2.) or Paragraph (2) Item (1.), the persons listed below shall become the Liquidator(s) in the order indicated:

- a. Persons set forth in the Articles of Incorporation;
- b. Persons appointed via a general stakeholders meeting in the case of a Limited Liability Incorporated Association and via a majority decision of stakeholders in the case of an Unlimited Liability Incorporated Association;
- c. The directors in the case of a Limited Liability Incorporated Association or an Incorporated Foundation and the stakeholders in the case of an Unlimited Liability Incorporated Association.

(2) Should there be no Liquidator as set forth under Paragraph (1), the court may appoint Liquidator(s) upon petition by an interested person.

(3) Should a juristic person be dissolved under **Article 64 (Grounds for dissolution)** Paragraph (1) Item (d) or Paragraph (2) Item (b), upon petition by any interested person or by the Minister of Justice, the court may appoint Liquidator(s).

**69. Dismissal of Liquidator(s)**

(1) The court may dismiss a Liquidator(s) for grave reason upon the petition by an interested person.

(2) Incorporated Associations Liquidator(s) of a Limited Liability Incorporated Association, except for Liquidator(s) appointed by a court, may be dismissed by a resolution of a general stakeholders meeting and by a decision of a majority of the stakeholders of an Unlimited Liability Incorporated Association.

**70. Registration of Liquidator(s) and dissolution**

Except in cases of dissolution under **Article 64 (Grounds for dissolution)** Paragraph (1) Item (c), Liquidator(s) shall register their names and addresses, and the cause and date of dissolution with the registry at the location of the principal office no later than two weeks following dissolution and at all other offices no later than three weeks following dissolution.

#### **71. Duties and powers of Liquidator(s)**

(1) The duties of the Liquidator(s) shall be as follows:

- a. Conclude the remaining business of the juristic person;
- b. Collect all claims and pay all debts of the juristic person;  
and
- c. Deliver residual assets.

(2) Should there be more than one Liquidator(s), the business of the juristic person shall be determined by the decision of a majority of Liquidator(s).

(3) **Article 58 (Directors' right to represent the juristic person)** shall apply mutatis mutandis to Liquidator(s). Should the court appoint multiple Liquidator(s), it may appoint a sole or joint representative Liquidator(s) from among them.

#### **72. Duty to examine and report the juristic person's assets**

(1) Without delay after assuming its position, the Liquidator(s) shall examine the current status of the juristic person's assets, prepare an inventory and balance sheet, and submit such to the court.

(2) In the case of a Limited Liability Incorporated Association, the documents described in Paragraph (1) shall be approved by the general stakeholders meeting prior to being submitted to the court.

(3) For an Unlimited Liability Incorporated Association, the documents set forth in Paragraph (1) shall have been approved by all the stakeholders prior to being submitted to the court.

(4) For an Incorporated Foundation, the documents described in Paragraph (1) shall have been approved by the supervising ministry(s) prior to being submitted to the court.

### **73. Notice to creditors**

(1) No later than two months following the day of its position, the Liquidator(s) shall give notice instructing creditors through publication in an official gazette of the Ministry of Justice, on no less than three occasions, to present their claims within a specified period, which shall be no shorter than two months.

(2) The notices set forth in Paragraph (1) shall include a statement that should the creditors not present their claims within the stipulated period, they shall be excluded from consideration in the liquidation.

(3) Liquidator(s) shall provide separate notice to any known creditors for the presentation of their claims.

(4) Liquidator(s) may not exclude any known creditors from the liquidation.

### **74. Settlement of claims within the presentation period**

(1) The Liquidator(s) shall not make payment to any creditors during the period for presentation of claims prescribed in **Article 73 (Notice to creditors)**. The Liquidator(s) shall not incur any liability for a delay in performance resulting thereby.

(2) Notwithstanding Paragraph (1), the Liquidator(s) may, with the permission of the court, settle any minor claims, secured claims and/or other claims that do not pose a risk of harming the claims of other creditors.

### **75. Payment to excluded creditors**

Creditors who have been excluded from the liquidation process may demand payment only of residual assets that have yet to be distributed.

**76. Settlement of claims**

(1) Juristic persons may settle claims prior to their due date.

(2) In case of Paragraph (1), claims subject to a condition that has an unset period remaining or an otherwise uncertain value shall be paid by the Liquidator(s) in accordance with the value determined by a court appointed valuator.

**77. Disposition of residual assets**

Liquidator(s) shall not dispose of residual assets under **Article 67 (Assigning of residual assets)** until all of the juristic person's debts have been discharged. The Liquidator(s) may dispose of residual assets after retaining an amount deemed to be sufficient to discharge any disputed claims.

**78. Bankruptcy during liquidation**

(1) Should it become apparent during liquidation that the assets of the juristic person are insufficient to cover all of its debts, the Liquidator(s) shall immediately petition for a declaration of bankruptcy and give notice thereof in an official gazette of the Ministry of Justice.

(2) The duties of the Liquidator(s) shall terminate upon the transfer of operations to the bankruptcy administrator.

(3) Should circumstances come under this Article and the Liquidator(s) have already made payment to a debtor or delivered the assets to a person entitled to such, the administrator in bankruptcy may recover said assets.

**79. Termination of liquidation**

(1) Upon terminating liquidation activities, the Liquidator(s) shall prepare an accounting report without delay.

(2) In the case of a Limited Liability Incorporated Association, the Liquidator(s) shall submit the accounting report set forth in Paragraph

(1) to the general stakeholders meeting without delay and shall obtain approval for such therefrom.

(3) For an Unlimited Liability Incorporated Association, the Liquidator(s) shall submit the accounting report set forth in Paragraph (1) to the stakeholders without delay and shall obtain their approval for such.

(4) For an Incorporated Foundation, the Liquidator(s) shall submit without delay the accounting report set forth in Paragraph (1) to the supervising ministry(s) and shall obtain approval for such therefrom.

(5) Liquidator(s) appointed by the court shall submit the accounting report set forth in Paragraph (1) to the court without delay.

#### **80. Registration of conclusion of liquidation**

Once the procedures prescribed under **Article 79 (Termination of liquidation)** have been concluded, the Liquidator(s) shall register the such conclusion of liquidation no later than two weeks therefrom with the registry at location of the principal office, and no later than three weeks thereafter for each registry of every other office.

#### **81. Preservation of documents**

The juristic person's account books, and other important documents relating to its business and liquidation shall be preserved for a period of ten years following the registration of the conclusion of liquidation with the registry for the location of the principal office. The custodian of such documents shall be appointed by the court upon petition by the Liquidator(s) or another interested person.

## **Section II. Incorporated Associations**

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

#### **82. Incorporation and Articles of Incorporation**

(1) In order to establish a Limited Liability Incorporated

Association, the persons wishing to become stakeholders shall jointly prepare and sign the Articles of Incorporation.

(2) The Articles of Incorporation stipulated in Paragraph (1) shall include the following details:

- a. The objectives;
- b. The name;
- c. The location of the principal office;
- d. Stipulation of the total amount of the capital contribution to be secured by the entity in its capacity as a juristic person and its funding. Should there be a contribution of assets other than money, details of the assets that were contributed thereof and their value shall be included, however, if a commitment has been made to the assignment of assets after establishment, the value thereof, and the name or designation of the assignor shall be included with the amount of establishment expenses to be borne by the juristic person also being included;
- e. The accounting year;
- f. Details concerning the directors, auditors and other executive officers;
- g. Stipulations concerning the acquisition and loss of qualification of a stakeholder;
- h. Details concerning accounting;
- i. Details concerning dissolution;
- j. Details concerning the amendment of the Articles of Incorporation; and
- k. Method for providing public notices.

(3) The Articles of Incorporation shall come into effect unless officially notarized.

(4) The Articles of Incorporation shall be held at the principal office and each subordinate office.

### **83. Minimum amount of endowment**

A Limited Liability Juristic Person shall have a capital contribution

of no less than twenty million (20,000,000) riel.

#### **84. Appointment of directors and auditors**

(1) Should a Limited Liability Incorporated Association in the process of incorporation not stipulate its directors or auditors in the Articles of Incorporation, a general stakeholders meeting prior to incorporation may appoint directors and/or auditors.

(2) Stakeholders may convene the general stakeholders meeting set forth in Paragraph (1).

#### **85. Inspection of capital contribution**

(1) In order to obtain an adequate capital amount, the directors shall solicit contributors for the capital contribution amount, and seek and allocate contributions.

(2) Should the Articles of Incorporation include a clause following under the second sentence of **Article 82 (Incorporation and Articles of Incorporation)**, Paragraph (2) Item (d), the directors shall request the court to appoint an inspector in order to inspect the items under said clause without delay.

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

(4) Should the court find on the basis of the inspection that the entry in the Articles of Incorporation was improper, it shall make a ruling ordering an amendment thereof. In such case, the existence of the ruling shall be noticed to the stakeholders, directors, and, in case of amendment relating to contributed capital other than money, to the contributor thereof.

(5) A contributor of capital other than money who has received notice under Paragraph (4) may rescind his/her contribution of such assets no later than one week of the ruling becoming final and binding. In such circumstances, the procedures for the incorporation of the Limited

Liability Incorporated Association may be continued following the amendment of the Articles of Incorporation.

**86. Inspection of establishment procedures**

(1) The directors and managers shall confirm whether or not the total amount of the capital contributions made by a contributor has been settled upon, and whether or not the delivery of the actual capital contribution amount has been completed.

(2) The directors or auditors shall report to the stakeholders should they become aware of any violation of law, breach of the Articles of Incorporation, or any other impropriety in the course of their inspection in accordance with Paragraph (1).

**87. Items to be registered and period of registration**

(1) For Limited Liability Incorporated Associations, in addition to the details stipulated in **Article 50 (Items to be registered)**, the details set forth below shall be registered:

- a. The total amount of the capital contribution;
- b. A provision dealing with the rights of the contributors of the capital contribution;
- c. The procedures for the return of the capital contribution; and
- d. The method for the providing public notice.

(2) Registration of the incorporation of a Limited Liability Incorporated Association shall be executed no later than two weeks of the termination of the procedures set forth in **Article 85 (Inspection of capital contribution)** and **Article 86 (Inspection of establishment procedures)** with the registry at the location of the principal office.

(3) Registration with the registry at the location of subordinate offices shall be executed no later than two weeks from the completion of registration under Paragraph (2).

**88. Liability for warranty of capital contribution contributions**

(1) Should no contributor have been confirmed for any portion of the

capital contribution as of the incorporation of the Limited Liability Incorporated Association, the directors and stakeholders at that time shall be deemed to have jointly become the contributors of such portion. The same shall apply should the actions of any capital contribution contributor be rescinded following the formation of said juristic person.

(2) Should a capital contribution not be paid, or a contribution in kind not be delivered at the time of the incorporation of the Limited Liability Incorporated Association, the directors and stakeholders of said juristic person shall be liable, jointly and severally, at that time for the payment of such unpaid amount, or the value of such undelivered contribution in kind, as the case may be.

(3) Should the value of the assets set forth in the second sentence of **Article 82 (Incorporation and Articles of Incorporation)**, Paragraph (2), Item (d) be significantly below the value stipulated in the Articles of Incorporation at the time of formation of the Limited Liability Incorporated Association, the directors and stakeholders of such juristic person at that time shall be liable with respect to the juristic person, jointly and severally, to pay the amount of said shortfall. Should there have been an inspection by an inspector as set forth under **Article 85 (Inspection of capital contribution)**, such persons shall be exempted from said liability unless they are either the contributor in kind or an assignor of the assets in question.

#### **89. Rights and Obligations of stakeholders**

(1) Stakeholders shall be obligated to pay the expenses of the juristic person.

(2) Stakeholders may exercise their right to vote within the general stakeholders meeting. This right may not be exercised for votes concerning the relationship between the juristic person and the respective stakeholder.

(3) Each stakeholder shall be allotted one voting right. The Articles

of Incorporation may stipulate otherwise in consideration of the contribution amount of each stakeholder.

(4) Stakeholders absent from the general stakeholders meeting may vote via writing or proxy. Should the Articles of Incorporation stipulate any other method for such vote, such other method shall be followed.

#### **90. Disqualification of stakeholders**

(1) Stakeholders may resign at any time. This provided that, except in cases of unavoidable circumstances, stakeholders wishing to resign shall give prior notice in accordance with the provision requiring such notice as set forth in the Articles of Incorporation, if any.

(2) The notice period described in sentence 2 of Paragraph (1) shall not exceed one year.

(3) Apart from Paragraph (1), stakeholders shall be disqualified based on the following grounds:

- a. The occurrence of any grounds provided in the Articles of Incorporation;
- b. The agreement of all stakeholders;
- c. Death of the stakeholder or dissolution; or
- d. Expulsion.

#### **91. Expulsion**

(1) A stakeholder may be expelled by resolution of the general stakeholders meeting but only should legitimate reasons exist. In such case, the juristic person shall provide said stakeholder no less than one week's notice of the general stakeholders meeting, and shall afford the stakeholder the opportunity to defend himself/herself within said meeting.

(2) The resolution stipulated in Paragraph (1) shall require an affirmative vote of no less than one half of all the stakeholders comprising a combined holding of no less than three quarters of the total

voting rights.

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

**92. Regular general stakeholders meeting**

The directors shall hold a regular general stakeholders meeting no less than once per year.

**93. Extraordinary general stakeholders meeting**

(1) The directors may convene an extraordinary general stakeholders meeting whenever they deem such to be necessary.

(2) The directors shall convene an extraordinary general stakeholders meeting should stakeholders holding no less than ten percent of the total voting rights demand the holding of a general meeting, stating the agenda thereof. Should the Articles of Incorporation provide stipulations concerning the aforementioned percentage, such provisions shall be abided by.

(3) Notwithstanding the demand provisions set forth under Paragraph (2), should the directors fail to convene a general stakeholders meeting without delay, the stakeholders making such demand may convene such meeting with the permission of the court.

**94. Convening of general stakeholders meetings**

(1) In order to convene a general stakeholders meeting, notice shall be issued to each stakeholder no later than one week prior to the date of such meeting. Such period may be shortened if so provided under the Articles of Incorporation.

(2) Should it be agreed to by all stakeholders, a general stakeholders meeting may be convened without concluding the convening procedures.

**95. Authority of general stakeholders meeting**

(1) The general stakeholders meeting may pass resolutions only in

accordance with provisions of this law or the Articles of Incorporation.

(2) During the general stakeholders meeting, the directors and auditors shall provide clarification on issues so requested by stakeholders. Should the requested issue not be related to a matter set forth in the agenda, the directors and/or managers shall not be obligated to provide such an explanation if its provision would cause serious degradation to the common interests of the stakeholders, would necessitate investigation, or for other relevant legitimate reasons.

(3) In case of Paragraph (2), should stakeholders give notice in writing of the matters to be discussed at the general stakeholders meeting within a time reasonably in advance of said meeting, the directors and auditors may not refuse to provide a clarification on such issue by citing the grounds that an investigation would be required for such clarification.

#### **96. Matters that may be resolved by a general stakeholders meeting**

The general stakeholders meeting may only pass resolutions with respect to issues for which prior notice has been given in accordance with **Article 94 (Convening of general stakeholders meetings)**. This shall not apply in cases where such matters are otherwise addressed within the Articles of Incorporation.

#### **97. Amendment of Articles of Incorporation**

(1) The Articles of Incorporation of a Limited Liability Incorporated Association may only be amended by the affirmative vote of stakeholders holding no less than three fourths of the total voting rights. Should provisions of the Articles of Incorporation provide otherwise, such provision shall be adhered to.

(2) Amendment of the Articles of Incorporation shall only be valid if officially notarized.

#### **98. Preparation and approval of accounting documents**

(1) For each accounting year, the directors shall prepare the

documents set forth below, together with detailed supplementary statements denoting any relevant important facts thereof:

- a. Balance sheet;
- b. Profit and loss statement;
- c. Business report; and
- d. Proposal relating to disposition of profits or handling of losses.

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

#### **99. Auditing of accounting documents**

(1) The directors shall submit the documents set forth in Paragraph 1 of **Article 98 (Preparation and approval of accounting documents)** so that they may be audit by the auditors.

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

(3) The directors shall submit the documents described in Paragraph (1) of **Article 98 (Preparation and approval of accounting documents)** to the auditors no later than five weeks prior to the commencement of audit by the auditors, and the supplementary statements for said documents no later than three weeks prior to commencement.

(4) The auditors shall submit their audit report to the directors no later than four weeks of their receipt of the documents set forth in Paragraph (3) excluding the supplementary statements thereto.

(5) The auditors shall submit their audit report to the directors no later than four weeks of their receipt of the documents set forth in Paragraph (3) excluding the supplementary statements thereto.

#### **100. Disclosure of accounting documents**

(1) A Limited Liability Incorporated Association shall maintain the documents set forth in Paragraph 1 of **Article 98 (Preparation and approval of accounting documents)** together with the audit report for a period of five years, calculated from the time of the submission of the audit report to the directors at the principal office, and copies thereof for a period of three years at all subordinate offices.

(2) The stakeholders and the creditors of the juristic person shall be entitled to examine the documents described in Paragraph (1) or to receive a certified copy or extract thereof during normal business hours of the juristic person. Any expense fees stipulated by the juristic person in the case of certified copies or extracts shall be paid.

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

##### 101. **Incorporation and Articles of Incorporation**

(1) In order to establish an Unlimited Liability Incorporated Association, the persons seeking to become stakeholders shall jointly prepare and sign the Articles of Incorporation.

(2) The Articles of Incorporation shall include the following details:

- a. The Purpose;
- b. The name;
- c. The names and addresses of the stakeholders; and
- d. The location of the principal office and other subordinate offices.

(3) The Articles of Incorporation shall not take effect unless officially notarized.

(4) The Articles of Incorporation shall be maintained at the principal office and each subordinate office.

##### 102. **Particulars to be registered and period of registration**

(1) In addition to the details set forth in **Article 50 (Items to be**

**registered**), for an Unlimited Liability Incorporated Association the details set forth below shall be registered with the registry at the location of the principal office:

- a. If there are non-representative stakeholders of the juristic person, the names of such stakeholders who do represent the juristic person; and
- b. If there are provisions for more than one director to jointly represent the juristic person, such provisions.

(2) The details set forth in Paragraph (1) shall be registered with the registry at each subordinate office no later than two weeks following registration under Paragraph (1).

### **103. Liability of stakeholders**

(1) Should an Unlimited Liability Incorporated Association be unable to cover its liabilities in full with existing assets, the stakeholders shall be jointly and severally liable to cover such liabilities.

(2) Paragraph (1) shall apply equally should compulsory execution against the assets of an Unlimited Liability Incorporated Association be ineffective.

(3) Paragraphs (1) and (2) shall not apply should a stakeholder prove that the Unlimited Liability Incorporated Association possesses the capacity to cover said liabilities and moreover that compulsory execution is self-evident.

(4) Stakeholders of an Unlimited Liability Incorporated Association may invoke the defenses available to the juristic person against its creditors.

(5) Should the Unlimited Liability Incorporated Association bear the rights of set-off, termination, or rescission in relation to its creditors, the stakeholders shall be entitled to deny performance vis-à-vis such creditors.

(6) Stakeholders joining an Unlimited Liability Incorporated Association subsequent to its incorporation shall be liable for all liabilities of the juristic person that arose prior to their joining.

(7) Stakeholders who resign shall be liable for liabilities of said juristic person that arise prior to the registration of their resignation with the registry at the location of the principal office of the juristic person.

(8) Should the creditors of the juristic person have not made a demand or given notice of demand against said juristic person within 2 years of the registration, the liabilities of the stakeholder set forth under Paragraph (7) shall be extinguished once two years have passed from said registration.

(9) The stakeholders shall bear the expenses of the juristic person in accordance with the provisions of the Articles of Incorporation.

**104. Disqualification of stakeholders**

(1) Except as otherwise provided in the Articles of Incorporation, a stakeholder may resign at any time.

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

(3) Aside from Paragraphs (1) and (2), stakeholders shall be disqualified based on the following grounds:

- a. The occurrence of any grounds for such provided in the Articles of Incorporation;
- b. The agreement of all the stakeholders;
- c. Expulsion;
- d. Death;
- e. Bankruptcy; or
- f. Being subject to a judgment ordering the commencement of guardianship.

**105. Expulsion**

A stakeholder may be expelled unanimously by other stakeholders only should legitimate reasons exist. Expulsion shall only come into effect upon notice thereof being given to the expelled stakeholder.

**106. Execution of business**

(1) The stakeholders shall execute the business of the Unlimited Liability Incorporated Association.

(2) Unless otherwise provided in the Articles of Incorporation, the business of an Unlimited Liability Incorporated Association shall be carried out in accordance with the decisions of the majority of stakeholders.

(3) Should the Articles of Incorporation stipulate for the stakeholders to carry out the business of the Unlimited Liability Incorporated Association, such stakeholders shall execute said business.

(4) Should more than one stakeholder be stipulated in accordance with Paragraph (3), the business of the Unlimited Liability Incorporated Association shall be carried out in accordance with the decision of the majority of such stakeholders unless otherwise provided in the Articles of Incorporation.

(5) Notwithstanding Paragraphs (2) and (4), any stakeholder may carry out the routine business of an Unlimited Liability Incorporated Association. Should there be stipulations as set forth in Paragraph (3), only the stakeholders so stipulated may carry out such routine business. That said, this shall not be limited to circumstances where another stakeholder states an objection thereto prior to the termination of such routine business.

**107. Representation of juristic person**

(1) The stakeholders shall represent the Unlimited Liability Incorporated Association. Should provisions coming under Paragraph (3)

of **Article 106 (Execution of business)** exist, only stakeholders stipulated therein shall represent the juristic person.

(2) Should more than one stakeholder represent the juristic person under Paragraph (1), each of those stakeholders shall represent the juristic person. Provision may be made in the Articles of Incorporation or by agreement of all the stakeholders for the representation of the juristic person by specified stakeholders.

(3) Stakeholders representing the juristic person shall be subject to the same provisions applicable to directors.

#### **108. Reports and investigations**

(1) Stakeholders may demand that other stakeholders report on the progress of business operations or may themselves examine the business conditions and assets of the Unlimited Liability Incorporated Association. Should a stipulation have been made coming under Paragraph (3) of **Article 106 (Execution of business)**, such a demand for reports or examination may only be made vis-à-vis the stakeholders so stipulated.

(2) Should any shareholder engage in activities outside the scope of the Objectives of the juristic person or otherwise in violation of law or the Articles of Incorporation, or should there be a risk of any of the foregoing occurring, and there is also a risk that serious damage will be incurred by the juristic person as a result of such conduct, the remaining shareholders may demand that said shareholders cease such conduct.

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

#### **109. Amendment of Articles of Incorporation**

(1) Amendment of the Articles of Incorporation shall require a consensus of all shareholders.

(2) Notwithstanding Paragraph (1), should there be a provision in the Articles of Incorporation that the Articles of Incorporation may be

changed by agreement of not less than a certain percentage of the persons comprising the shareholders, such provision shall be followed.

(3) An amendment of the Articles of Incorporation shall only be valid if officially notarized.

### Section III. Incorporated Foundations

#### **110. Incorporation and Articles of Incorporation**

(1) An Incorporated Foundation may be incorporated, limited to Objectives in the public interest, by preparing Articles of Incorporation and obtaining the permission of the supervising ministries.

(2) The Articles of Incorporation stipulated in Paragraph (1) shall include the following information:

- (a) The Objectives;
- (b) The name;
- (c) The location of the principal office;
- (d) Declaration of the total amount of the capital contribution and funding. Should there be a contribution of assets other than money, the assets so contributed and their value shall be included, and should a promise have been made for the assignment of assets following incorporation, the value thereof, and the name or designation of the assignor shall be included with the amount of incorporation expenses to be borne by the juristic person also being included;
- (e) The accounting year;
- (f) Directors, auditors and other officers;
- (g) Details relating to accounting;
- (h) Details relating to dissolution;
- (i) Details relating to amendment of Articles of Incorporation;  
and
- (j) Method for the providing of public notice.

(3) The Articles of Incorporation shall not come into effect unless officially notarized.

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

**111. Minimum amount of asset base**

An Incorporated Foundation shall maintain capital contribution amount of no less than two hundred million (200,000,000) riel.

**112. Supplementation of Articles of Incorporation**

Should the proposed founder of an Incorporated Foundation pass away prior to stipulating the name, office, or method for appointing and/or revoking directors, the court may determine such matters upon petition by an interested person or public prosecutor.

**113. Mutatis mutandis application of provisions governing gifts and testamentary gifts**

(1) Should a contribution of assets for the purpose of incorporating an Incorporated Foundation be made through a disposition inter vivos, the provisions of Book Five, Chapter Three (Gifts) shall apply mutatis mutandis to such matters.

(2) Should a contribution of assets be made via bequeathment for the purpose of establishing an Incorporated Foundation, the provisions of **Book Eight, Chapter Three, Section VI (Testamentary Gifts)** shall apply mutatis mutandis to such matters.

**114. Time of vesting of contributed assets**

(1) Should a contribution of assets for the purpose of establishing an Incorporated Foundation be made through a disposition inter vivos, the contributed assets shall be vested in the juristic person upon its registration as prescribed in **Article 49 (Registration of incorporation and time of formation)**.

(2) Should a contribution of assets be made via bequeathment for the purpose of establishing an Incorporated Foundation, the contributed

assets shall be deemed to have been vested in the juristic person upon the bequeathment coming into effect.

**115. Particulars to be registered and time of registration**

(3) In addition to the information prescribed under **Article 50 (Items to be registered)**, the following information shall be registered in respect to an Incorporated Foundation:

- a. The total amount of the capital contribution;
- b. The method for providing public notice; and
- c. The date on which permission was obtained from the supervising authority.

(1) Registration of the incorporation of a foundation shall be effective upon the registry at the location of the principal office within two weeks of the granting of permission by the supervising authority.

(2) Registration shall be effected for each subordinate office within two weeks following the registration under Paragraph (2).

**116. Preparation and approval of accounting documents**

(1) Each financial year, the directors shall prepare the documents set forth below, together with schedules providing important supplemental facts for the contents thereof:

- a. Balance sheet;
- b. Profit and loss statement;
- c. Business report; and
- d. Proposal relating to disposition of profits or treatment of losses.

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

**117. Auditing of accounting documents**

(1) The directors shall submit the documents set forth in Paragraph

(1) of **Article 116 (Preparation and approval of accounting documents)** for auditing by the auditors.

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

(3) The directors shall submit the documents set forth in Paragraph (1) of **Article 116 (Preparation and approval of accounting documents)** to the auditors no later than five weeks prior to the commencement of the audit by the auditors, and no later than three weeks prior to said commencement for the schedules to said documents.

(4) The auditors shall submit their audit report to the directors within four weeks of the date of their receipt of the documents described in Paragraph (3) excluding the schedules thereto.

#### 118. **Disclosure of accounting documents**

(1) An Incorporated Foundation shall maintain the documents set forth in Paragraph 1 of **Article 116 (Preparation and approval of accounting documents)** together with the audit report for a period of five years, calculated beginning from the submission of the audit report to the directors at their principal office copies thereof for a period of three years at any subordinate office.

(2) The creditors of the Incorporated Foundation shall be entitled to examine the documents set forth in Paragraph (1) or receive a certified copy or extract thereof during the normal business hours of the juristic person, subject to the paying of the charges stipulated by the juristic person in the case of certified copies or extracts.

## **BOOK 3 REAL RIGHTS**

### **Chapter 1 GENERAL PROVISIONS**

## Section I. Things

### 119. **Definition of Object**

Under this Code, an Object shall be a tangible object in the form of a gas, liquid or solid.<sup>1</sup>

### 120. **Movables and Immovables**

(1) Objects shall be deemed as either Movable or Immovable.

(2) An Immovable shall encompass land or any Object immovably fixed to land such as buildings or other structure, crops, timber, and similar Objects.

(3) A Movable Object shall be any Object that is not otherwise deemed to be an Immovable Object.

(4) Except as otherwise provided by special law, provisions pertaining to Movables shall apply *mutatis mutandis* to controllable intangible property.

### 121. **Component of an Object**

A component of an Object that is inseparable from said Object without destroying the Object or altering its inherent nature may not be the subject of rights apart from the rights of the Object itself.

### 122. **Component of land and the principle rule**

Objects attached to land or comprising a part thereof; particularly buildings or constructed immovable structures upon such land, or seeds planted within said land, unharvested crops or timber upon said land; are components of the land unless having been severed from the land, and may not, except as otherwise provided by law or regulation, be subject to rights apart from those of the Object itself.

### 123. **Component of a land and exceptional rule**

Should the right holder bear a right in relation to another person's

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

land enforces his/her right upon any constructed buildings or structures, grown timber, crops or other such Objects on the land, those Objects shall not be deemed to be components of said land. The same shall apply to Objects attached to the land on temporary basis.

**124. Building built based on exercising of a right or use the land owned by another**

For the purposes of **Article 123 (Component of a land and exceptional rule)**, buildings or other structure built on land by a right holder, as well as developed timber, crops, or other such Objects, shall be deemed as a component of said right to the land of another party.

**125. Components of building that is a component of land owned by another**

Materials used to construct a building, as well as fixtures, furniture, signs and ornaments that inseparable from the building without destroying it or altering its inherent nature, shall be deemed to be components of said building, and shall not be subject to rights apart from those of the building itself.

**126. Principal Object and Accessory Object**

(1) An Object that is associated with a Principal Object through the owner of said Principal Object so that it may continuously serve the economic purpose of the Principal Object but does not in itself form a component of the Principal Object shall be referred to as an Accessory Object.

(2) The creation and assignment of rights pertaining to a Principal Object shall extend to any Accessory Objects unless otherwise specifically agreed to.

**127. Right to obtain fruits**

(1) Natural Fruits shall come under the Ownership of the person or persons entitled to receive said Natural Fruits once severed from the Source Object.

(2) Legal Fruits shall be assigned in proportion to the number of days based on the duration of the existence of the rights to receive said Fruits.

(3) Legal fruits shall refer to rent and other such money or goods received as compensation resulting from the use of the Object.

**128. Right to obtain fruits**

(1) Natural Fruits shall come under the Ownership of the person or persons entitled to receive said Natural Fruits once severed from the Source Object.

(2) Legal Fruits shall be distributed in proportion to the number of days based on the duration of the existence of the rights to receive said Fruits.

**129. Right to demand reimbursement of costs**

A person bearing an Obligation to return Fruits may demand reimbursement for normal costs incurred in acquiring said Fruits. The amount of such reimbursement shall not exceed the value of the Fruits to be returned.

## Section II. Real Rights

**130. Definition of real right**

A Real Right shall be defined as the right to directly control an Object that may be asserted against any person.

**131. Statutory nature of real right**

No Real Right may be created except as for the types and contents permitted under this Code or under any special law. A Real Right permitted under customary law shall be valid under this Code to the extent that such Real Right does not conflict with the provisions of this Code nor any special law.

**132. Types of real rights**

The following real rights are established by this Code:

1. Ownership

2. Possession
3. Usufructuary real rights
  - a. Perpetual lease
  - b. Usufruct
  - c. Right of use/right of residence
  - d. Easements
4. Security rights
  - a. Right of retention
  - b. Statutory lien
  - c. Pledge
  - d. Hypothec
  - e. Security as Transfer

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

#### 133. **Creation, transfer and alteration of real rights by agreement**

The creation, transfer, or alteration of a Real Right shall take effect in accordance with the agreement between the parties.

#### 134. **Perfection**

(1) Except for rights of possession, rights of retention, rights of use, or rights of residence; the creation, assignment or alteration of a Real Right pertaining to an Immovable shall not be asserted against a third party unless said right is registered in accordance with the provisions of law and ordinances regarding registration.

(2) The transfer of a Real Right for a Movable shall not be asserted against a third party unless the Movable has been delivered.

#### 135. **Requisites of transfer of title by agreement pertaining to an immovable**

Notwithstanding **Article 133 (Creation, transfer, or alteration of Real Rights by agreement)** and **Article 134 (Perfection)**, transfers of title<sup>2</sup>

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<sup>2</sup> In this context, Title refers to its ordinary use in Cambodia, specifically as a 'Certificate Acknowledging Immovable Ownership', 'Immovable Possessory Right Title', 'Land Possessory Right and Use Title'

by agreement pertaining to an Immovable, shall come into effect only upon registration of the transfer of the right in accordance with provisions of law and ordinances regarding such registration.

**136. Merger of rights**

(1) Should Ownership or other Real Rights created over one Object have become vested in a single person, such other Real Rights shall be extinguished thereupon. This shall not apply if the Object or other Real Rights are subject to rights of a third party.

(2) Should a Real Right other than Ownership or other rights created over that Real Right have become vested in a single person, such other rights shall be extinguished. The second sentence of paragraph (1) shall apply mutatis mutandis to such case.

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

**137. Presumptions regarding registration**

(1) Should a right be registered in an Immovables registry, it is presumed that such right belongs to the person to whom it is registered.

(2) Should a previously registered right have been expunged from the Immovables registry, it is presumed that such right has been extinguished.

## **Chapter 2 OWNERSHIP**

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

**138. Definition of ownership**

Ownership refers to the right of an owner to freely use, receive income and benefits from, and dispose of an Object owned by said owner to the extent allowable under existing laws and regulations.

**139. Scope of ownership of land**

(1) Ownership of land shall extend to all areas above and below the surface of such land to the extent that the owner derives benefit therefrom to the extent allowable under existing laws and regulations.

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

**140. Injunction against nuisance**

(1) Should a nuisance, that is incurred by the land of another due to activities involving gas, steam, odor, smoke, soot, heat, sound, vibration or other disturbances, be within the normal scope of normal use of the land of the person causing said nuisance, and is not otherwise prohibited by law or regulation, the owner of the affected land may not seek an injunction against such activities.

(2) In case of paragraph (1), an owner of land that is substantively and severely harmed by such nuisance may demand appropriate compensation from the person causing such nuisance. This shall not preclude the owner of said land from demanding damages through torts.

**141. Discovery of cultural artifact or minerals in the ground**

(1) A landowner shall not assert the Ownership over any type of statue, bas-relief, antiquity, or other cultural artifact discovered in the ground. Such items shall be deemed as assets of the state, and the owner of the land shall be obligated to return the artifacts to the Ministry of Culture and Fine Arts.

(2) A landowner shall not assert Ownership over minerals in the ground, the nature of which is governed by a separate law. Such minerals shall comprise assets of the state with the right to mine and acquire them coming under the Ownership of the person to whom the mining rights have been granted by the government.

**142. Right to cut trees growing across boundary**

Should a branch of a tree grow across a boundary from an adjacent land, or should the roots of a tree grow across the boundary from adjacent

land, the landowner may receive the Fruits therefrom or eliminate such branch and/or roots.

#### Section IV. Relationship Between Adjacent Properties

##### 143. **Right to use adjoining land**

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

##### 144. **Right of way for enclosed land**

(1) A parcel of land that is enclosed and lacks access to a public thoroughfare, or where the agricultural or industrial use thereof is significantly hampered due to an insufficient access to a public thoroughfare shall be referred to as Enclosed Land.

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

(3) The right of way shall, in principle, be created along the direction or path that minimizes the distance from the Enclosed Land to the public thoroughfare. Notwithstanding the provisions of the prior sentence, the right of way shall be positioned so as to minimize the burden on the owner of the neighboring property.

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

**145. Obligation to accept naturally flowing water**

(1) The owner of a low-lying parcel of land must accept water flowing naturally from high lying land. The owner of the low-lying land shall not construct any bank, dam, wall, or other type of structure that blocks the flow of water onto the land. The owner of the high-lying land shall not take any action that increases the water burden on the owner of the low-lying land.

(2) Should the flow of water through the low lying land be obstructed due to force majeure without fault of any party, the owner of the high lying land may carry out construction at his/her own expense so as to allow the flow to continue.

**146. Right to use rainwater**

An owner of high lying land is entitled to use and/or divert a water source existing on his/her property as well as any rainwater falling upon the property in accordance with the third sentence of paragraph (1) of **Article 145 (Obligation to accept naturally flowing water)**.

**147. Obligation to preserve flow of water**

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

**148. Right to establish an irrigation channel**

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

**149. Right to drain water after irrigation**

A landowner is entitled to drain any water that remains following irrigation through any low lying land in return for the payment of

compensation to the owner of said lower-lying land.

**150. Right to drain water of flooded land**

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

**151. Right to install and use of sluice**

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

(2) A landowner accepting the installation of equipment on his/her land is entitled to demand the person installing the equipment to allow equal use of the sluice provided he/she pays half of the cost of construction and maintenance thereof. In such case, the person installing such equipment shall not bear an Obligation to pay the compensation mentioned in paragraph (1), and may demand the return of any compensation paid.

**152. Nuisance to livelihood**

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

**153. Duty to erect blinds for windows**

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

154. **Trees planted near the boundary**

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

**Section V. Right to Demand Based on Ownership**

155. **Right to demand return based on ownership**

An owner may demand the possessor return an Object. This shall not apply where the possessor is entitled to possess the Object in place of the owner.

156. **Possessor and fruits**

(1) A possessor in good faith is entitled to receive the Fruits arising from the possessed Object.

(2) Should a bone fide possessor fails in a lawsuit in which his/her title to possess an Object has been disputed, he/she shall be deemed to be mala fide possessor retroactively as from the time of the filing of the lawsuit.

(3) Should a possessor return an Object to an owner, should any of the Fruits have been produced during a time in which the possessor was mala fide, he/she shall return the Fruits obtained therefrom and provide compensation therefor in the value of any Fruits lost or not collected due to the actions of the possessor.

157. **Responsibility for loss of or damage to a possessed Object**

Should a possessor be at fault for the loss of or damage to an Object, or for inhibiting the return of the Object, should the possessor be mala fide when such cause occurred, the possessor shall provide compensation for all damage arising therefrom, however, should the possessor be a

possessor in good faith, the possessor shall provide compensation only to the extent at which he/she continued to receive the benefits therefrom. That said, a possessor without intention of ownership shall make compensation for all damage regardless of whether or not the possession was in good faith.

**158. Possessor's right to demand reimbursement for expenditures**

(1) A possessor who returns an Object to an owner may demand that the owner reimburse him/her in the amount of necessary costs that the possessor has expended upon the Object for its maintenance and/or the preservation thereof. Should the possessor have collected and consumed the Fruits of said Object, he/she shall be solely responsible for customary and necessary costs of maintenance and/or the preservation of the Object.

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

(3) Where a possessor is to return land to the owner, if there exist buildings, unharvested crops or unharvested timber that a good faith possessor constructed or planted thereon, the owner shall provide compensation, at the owner's discretion, for either the expenditures made by the possessor for these buildings, crops or timbers, or the increase in value in these buildings, crops or timbers attributable to such expenditures, to the extent that the increase in value continues to exist. Notwithstanding the provisions set forth in paragraphs (1) and (2) above, where the possessor is a possessor in bad faith, the owner may elect to either remove the constructed buildings, planted but unharvested crops or unharvested timber, or assume the ownership thereof. Where the landowner elects for removal, the possessor must

remove the buildings, crops or timber without receiving compensation. Should the owner elect to assume the ownership of the buildings, crops or timber, the owner must compensate the possessor for expenditures made by the possessor or for the increase in the value of the buildings, crops or timbers that include the original value of these Objects and shall be calculated without considering the added value to the land. In this case, the court may grant the owner a grace period of a reasonable length to make such compensation.

**159. Right to demand abatement or precautions against obstruction of the exercising of ownership based on ownership rights**

(1) Should the exercise of ownership be obstructed, the owner may demand that the person causing such obstruction cease such hindrances.

(2) Should the exercise of ownership be realistically in danger of being obstructed, the owner may demand that the person causing such threat of obstruction prevent such hindrance.

**Section VI. Acquisition of Ownership**

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

**160. Acquisition of ownership over immovables**

In addition to acquisition through contract, succession or other causes set forth in this Section IV, ownership over an immovable may also be acquired via the provisions set forth in this Code and other laws.

**161. Immovable without owner**

An immovable without an owner shall be the property of the state.

**162. Prescriptive acquisition of ownership over an immovable**

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

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

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

**163. Retroactive effect of prescriptive acquisition**

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

**164. Invocation of prescriptive acquisition**

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

(2) Prescriptive acquisition may be invoked only by a prospective prescriptive acquirer, a person who has received a perpetual lease, usufruct, right of use/right of residence, easement, contractual lease, hypothec or pledge from a prospective prescriptive acquirer, or other person having a legitimate interest under the law for the invocation of prescriptive acquisition.

(3) Should a prospective prescriptive acquirer invoke prescriptive acquisition, any third party shall also receive the benefit thereof. Should a person other than the prospective prescriptive acquirer, but who has the right to invoke prescriptive acquisition, properly invoke prescriptive acquisition, such invocation shall be effective only concerning the relationship between the invoking person and the original owner.

**165. Renunciation of benefits of prescriptive acquisition**

The benefits arising from prescriptive acquisition may not be renounced

in advance. A prescriptive acquisition that has already been completed may be renounced.

**166. Persons affected by renunciation of benefits of prescriptive acquisition**

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

**167. Grounds for interruption of prescriptive acquisition**

Prescriptive acquisition shall be interrupted by any of the following:

- a. Loss of possession with the intention of ownership;
- b. The filing of a lawsuit or equivalent exercise of legal rights;
- c. An act of execution or preservative relief; or
- d. Acknowledgment.

**168. Persons affected by interruption of prescriptive acquisition**

Should an interruption of prescriptive acquisition be in effect against a prospective prescriptive acquirer, other persons may not negate the effect of such interruption. Should an interruption of prescriptive acquisition be in effect against a person other than the prospective prescriptive acquirer but has the right to invoke prescriptive acquisition, the interruption shall be effective only concerning the relationship between the original owner and the person bearing the right to invoke prescriptive acquisition.

**169. Loss of possession with intention of ownership**

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

**170. Lawsuit**

A lawsuit that is dismissed without prejudice or withdrawn shall not interrupt any prescriptive acquisition.

**171. Rescission of act of execution or act of preservative relief**

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

**172. Calculating of prescriptive acquisition period following interruption**

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

(2) The prescription period for prescriptive acquisition that has been interrupted through the filing of a lawsuit shall be calculated anew commencing from the date on which the decision of the court becomes final and binding.

**173. Suspension upon demand**

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

(2) Should the lawsuit fail to interrupt the prescription period as a result of its dismissal without prejudice or withdrawal, a demand shall be deemed to have run continuously from the day of service of the complaint upon the counterparty to the day of dismissal or discontinuance of the action. In such case, the period of prescription shall not be deemed to have been completed until six months after the dismissal or withdraw the lawsuit.

(3) Should the original owner asserts his/her right as a defendant

in a lawsuit, the demand shall be deemed to run continuously during the pendency of the lawsuit commencing from the time the assertion was made. In such case, the period for prescriptive extinction of the claim against the defendant shall not complete until six months passes after the judgment in the lawsuit becomes final and binding.

**174. Suspension of prescriptive acquisition period against minor or General Ward**

Should the original owner be a minor or General Ward, and have no legally appointed representative within six months prior to the completion of the prescription period for prescriptive acquisition, such period shall not be deemed to have been completed until six months after the minor or adult in guardianship attains capacity or obtains a legally appointed representative.

**175. Suspension of prescriptive acquisition period between minor or General Ward and legally appointed representative**

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

**176. Suspension of prescriptive acquisition period between spouses**

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

**177. Suspension of prescriptive acquisition period in case of natural disaster**

Should an original owner be unable to interrupt the prescription period of a prescriptive acquisition due to natural disaster or other force majeure, such period shall not be deemed to have been completed until six months after the disaster or force majeure has ceased to exist.

**178. Prescriptive acquisition of rights relating to an immovable**

(1) A person who peaceably and openly exercises for his/her own benefit a right relating to an immovable such as a perpetual lease, usufruct, right of use/right of residence, easement, contractual lease or pledge shall obtain such right after either 10 years or 20 years, in accordance with the classifications set forth in **Article 162 (Prescriptive acquisition of ownership over an immovable)**. However, should it meet the requirements under **Article 300 (Prescriptive Acquisition of easement)**, such may be obtained through prescriptive acquisition.

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

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

**179. Ownership of alluvial deposit**

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

**180. Ownership of alluvial deposit**

With regard to an enlargement of the land along a riverbank as a result of the gradual and natural conveyance of an alluvial deposit from the opposite riverbank through the natural water flow, the owner of the parcel of land on the enlarged riverbank shall receive all benefits from the conveyed alluvial deposit. The owner of the land on the opposite riverbank may not demand the return of the lost soil.

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

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

**182. Ownership of island or alluvial bed in the middle of a navigable river**

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

**183. Ownership of an island or alluvial bed in the middle of a non-navigable river**

An island or alluvial bed that forms in the middle of a non-navigable river shall belong to the owner of the riverbank corresponding to the side on which it forms. Should an island or alluvial bed form more or less in the center of the river, such formation shall belong to the owners of both riverbanks using the centerline of the river as the dividing line of ownership.

**184. Ownership of islands**

Should a river form a new branch and cuts off land belonging to a riverbank owner, thereby creating an island, the owner of the riverbank shall not lose ownership of such land, even should the island be formed in the middle of a river navigable by boats or rafts.

**185. Ownership of a former riverbed after the creation of new channel**

Should a river navigable by boats or rafts abandon its existing riverbed and flow through a new channel, the riverbank owners may acquire ownership of the former riverbed up to the centerline of said riverbed thereof. The riverbank owners shall pay the price determined by an expert appraiser. On the application of the capital or provincial

authority or of an interested party, the price of the old riverbed shall be determined by an expert appraiser appointed by the court located in that jurisdiction. However, should the riverbank owners not indicate their respective intention to acquire the former riverbed, the former riverbed shall be sold via public auction by the capital or provincial authority. The money paid by the riverbank owners or received from the sale of the former riverbed shall be distributed to the owners of the land lost due to the new channel in proportion to the value of the land lost.

**186. Affixture of a movable to an immovable**

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

Sub-section II. Acquisition of Ownership over Movables

**187. Acquisition of ownership over movables**

In addition to acquisition through contract, inheritance or other causes set forth in this Section IV, ownership over a movable may also be acquired via the provisions set forth in this Code and other laws.

**188. Ownership of movables without owner**

Ownership of a movable without an owner shall be that of the person who first commences the possession thereof with the intention of ownership. This shall not apply if otherwise provided for by law or regulations in relation to the protection of wild life.

**189. Ownership of escaped animals**

A person who commenced possession in good faith of any escaped animal other than livestock raised by another or birds other than poultry

raised by another shall acquire ownership thereof unless the person who raised such animals or birds demands their return within one month of the time of their escape.

**190. Ownership of fish living in pond**

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

**191. Ownership of lost objects**

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

(2) The chief of the police shall retain custody of the lost object and give public notice of its discovery, and if the identity of the owner is not determined within six months, the finder shall acquire ownership of the lost object. However, should the finder fail to turn over the lost object within seven days of finding it, the finder shall not acquire ownership, and instead its ownership shall revert to that of the state. Such shall also apply to cases wherein the finder does not claim the lost object from the chief of the police within two months after acquiring ownership.

(3) Should the lost object be of a kind that is unable to be kept in custody, the chief of the police may sell it and keep custody of the proceeds of the sale. Said sale proceeds shall be handled in the same manner as the lost object itself.

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

**192. Ownership of buried treasure**

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

**193. Bona fide acquisition of ownership of movables**

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

**194. Transfer of stolen or lost property**

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

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

**195. Prescriptive acquisition of ownership over movables**

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

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

**196. Prescriptive acquisition of rights regarding movable and other property rights**

A person who peaceably and openly exercises for his/her own benefit a pledge, contractual lease or other right regarding a movable or other property right<sup>3</sup> shall obtain such rights after either 10 years or 20 years, in accordance with the classifications set forth in **Article 195 (Prescriptive acquisition of ownership over movables)**.

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

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

**198. Attachment, mixture, consolidation of movables**

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

(2) Should the principal movable of attached movables be undistinguished from the other movables, ownership of the composite movable shall be shared among the owners of the component movables in proportion to the respective values thereof at the time they became attached.

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis*

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<sup>3</sup> As used in this translation, the term 'property right' shall include rights over property (*rights in rem*), rights arising from an Obligational relationship (*rights in personam*), intellectual property rights, shares in a company, etc., and can be contrasted with 'non-property rights' such as individual rights or other rights purely inherent to one's identity or status.

mutandis where two or more movables become mixed or consolidated with each other such that they cannot be separated.

**199. Processing of movable**

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

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

**200. Effect of amalgamation of movable**

(1) Should ownership of an Object be extinguished due to attachment, mixing, consolidation or processing, all prior rights that existed over such Object are also extinguished.

(2) The rights of another party that have already been established over an Object held by a person who acquired ownership of a composite, mixed, consolidated or processed Object shall continue to exist over the newly created Object. In cases where the newly created Object is held by joint owners, such rights shall continue to exist over the person's ownership share.

**201. Amalgamation and compensation therefor**

A person who loses rights as a result of attachment, mixing, consolidation or processing of a movable may demand compensation from the person acquiring rights over said movable and benefiting therefrom, in accordance with the provisions of this Code relating to unjust enrichment. However, demands for the restoration of the *status quo ante*

shall not be permitted.

## Section VII. Joint Ownership

### **202. Definition of joint ownership**

Joint ownership shall be the circumstance in which ownership of a single Object that is owned by multiple persons for which the size of each owner's ownership interest is limited to such owner's share in the Object.

### **203. Equality of shares of joint ownership**

All shares of the joint owners are presumed to be equal.

### **204. Disposal of joint ownership**

Each joint owner may transfer or provide his/her share as security. A creditor of a joint owner may attach the joint owner 's share.

### **205. Use of jointly owned Object**

A joint owner may use the entire jointly owned Object in accordance with his/her share.

### **206. Preservation of jointly owned Object**

Each joint owner can independently perform acts of preservation on the jointly owned Object.

### **207. Change in use of jointly owned Object**

No joint owner shall be able to dispose of or significantly alter the jointly owned Object without the consent of the other joint owners.

### **208. Administration of jointly owned Object**

Except as provided in **Article 206 (Preservation of jointly owned Object)** and **Article 207 (Change in use of jointly owned Object)**, all matters relating to the administration of the jointly owned Object shall be determined by the majority of the joint owner based on the value of each joint owners share.

### **209. Liabilities for jointly owned Object**

(1) Each joint owner shall bear the expenses for administration, taxes

and other costs in relation to the jointly owned Object in proportion to his/her share of ownership thereof.

(2) Should a joint owner incur a cost in an act of preservation or administration, or for taxes or other charges in excess of his/her share of the jointly owned Object, he/she may seek compensation from each other joint owner for such excess expenditure in accordance with their respective joint ownership share.

(3) The claim of compensation for expenditures described in Paragraph (2) may be made against a successor-in-interest acquires the share from another joint owner.

**210. Renunciation and other matters of joint ownership**

Should a joint owner renounce his/her share or die without an heir, his/her share shall devolve to the other joint owners.

**211. Demand for partition of jointly owned Object**

(1) Each joint owner may at any time demand the partitioning of the jointly owned Object. This assumes that the joint owners may agree to prohibit such partitioning for a period of time not exceeding five years.

(2) The non-partition agreement described in Paragraph (1) may be renewed, but the duration of the renewed agreement shall not exceed five years in duration.

**212. Method of partitioning for jointly owned Object**

Where joint owners cannot reach an agreement regarding the partitioning of a jointly owned object, a joint owner may file an action for partitioning. In such case, the court may order the partitioning of the physical object or, where there is a danger of the partitioning of the physical object causing significant loss to the value thereof and where proper grounds exist, the court may order that the object be sold through compulsory sale and the proceeds be allocated to the joint owners in accordance with their respective share, or may order that one or more

joint owners transfer their shares to the other joint owners in exchange for compensational payments.

**213. Claims regarding joint ownership**

(1) Should a joint owner have a claim against another joint owner in regards to preservation, administration, or obligations in relation to the jointly owned Object, he/she may, upon demand, for partitioning satisfaction out of the portion that is to accrue to the Obligor.

(2) If for the purpose of obtaining the satisfaction described in paragraph (1) it is necessary to sell that portion of the jointly owned Object that is to accrue to the Obligor, the Obligee may demand such sale.

**214. Quasi joint ownership**

The provisions regarding joint ownership shall apply mutatis mutandis to cases in which multiple persons share property rights other than ownership. This shall not apply where otherwise provided for by law.

**Section VIII. Indivisible Joint Ownership**

**215. Definition of indivisible joint ownership**

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

**216. Indivisible joint ownership of partition wall**

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

**217. Repair and improvement of indivisibly and jointly**

**owned partition wall**

Persons who share indivisible joint ownership of a partition wall shall be responsible for the repair and improvement thereof in accordance with their respective rights. An indivisible joint owner may be exempted from bearing the expenses for repair or improvement of the partition wall by renouncing his/her indivisible joint ownership interest. This shall not apply where such partition wall constitutes a part of a building.

**218. Use of indivisibly and jointly owned partition wall**

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

**219. Structure against indivisibly and jointly owned partition wall**

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

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

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

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

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

**221. Increasing height of indivisible jointly owned partition wall**

An indivisible joint owner may increase the height of an indivisibly and jointly owned partition wall. However, the costs of increasing such height and of maintaining the higher part of the wall shall be borne by the indivisible and joint owner who increased the wall's height.

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

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

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

**223. Indivisible and joint ownership of enclosure**

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

**224. Expenses for preservation of enclosure**

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

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

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

**225. Enclosure not indivisibly and jointly owned**

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

**226. Indivisibly and jointly owned hedge**

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

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

## **Chapter 3 POSSESSORY RIGHTS**

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

**227. Definition of possession**

(1) Possession shall refer to the holding of an Object .

(2) Holding shall mean the state of controlling an Object as a matter of fact, whether directly or indirectly.

**228. Direct possession and indirect possession**

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

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

**229. Assignment of possession**

(1) Possession is assigned by delivery of the possessed Object. This form of assignment of possession is referred to as Actual Delivery.

(2) Possession may be assigned without actual transfer, by agreement of the parties alone. In this case, the assignee of possession acquires the indirect possession through the directed possession by the assignor. This form of assignment of possession is referred to as Agreement on Possession .

(3) Should the assignee of possession currently, actually hold the Object directly, possession may be assigned by agreement of the parties alone. In this way, the assignor of possession loses the indirect possession that he/she had through the holder of the Object. This form of assignment of possession is referred to as Summary Delivery.

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

**230. Extinguishment of possession**

Possession shall be extinguished when the possessor ceases to hold the Object. This provided that such shall not apply, where the possessor has been dispossessed of the Object, if the possessor repossesses the Object or the possessor files an action for recovery of possession of the Object within one year of such dispossession.<sup>4</sup>

**231. Extinguishment of possession of an indirect possessor**

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

- a. If the authority of the direct possessor to possess on behalf of the indirect possessor and duty of direct possessor to

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<sup>4</sup> This sounds like the English action in detinue, but the translator has not used this term because return as used later in this law extends to immovable as well as Object, unlike detinue which is limited to Object.

possess on behalf of the indirect possessor extinguish;

- b. If a state is recognized that the direct possessor has not agree with the possession of the indirect possessor; or
- c. If the direct possessor inadvertently losses possession of the Object.

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

**232. Possession with or without intention of ownership**

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

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

**233. Defective possession**

(1) Possession that is acquired with knowledge that one has no right of possession to it is referred to as Possession in Bad Faith and possession acquired without knowledge that one has no right of possession to it as Possession in Good Faith. If the lack of knowledge results from negligence, the possession is referred to as Negligent Possession.

(2) Peaceable Possession shall refer to possession acquired and maintained without violence. This provided that such will still be peaceful possession if a person who has initially acquired possession peacefully uses violence to protect such possession against unlawful infringement by a third party.

(3) Open possession shall refer to possession without concealment, so that persons having rights over the possessed Object can know or see the fact of such possession.

(4) Defective Possession refers to possession in bad faith, to possession that despite being in good faith is negligent, to possession that is not peaceful and/or to possession that is not open.

#### **234. Presumptions**

(1) Possessors are presumed to be in possession with the intention of ownership over the Object.

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

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

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

#### **235. Succession to possession**

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

(2) If he/she asserts the possession of his/her predecessor together with his/her own, he/she also succeeds to any defective in the possession of the predecessor. Consequently if there are defective in

the possession of the predecessor, even if the successor's possession is non-defective, the two possessions together will be defective.

#### Section IX. Rights to Demand Protection of Possession

##### **236. Rights to demand protection of possession**

A possessor, whether direct or indirect, may demand return of the dispossessed Object or removal of disturbance or prevention of disturbance to possession in accordance with those set forth in **Article 237 (Right to demand return of Object in possession)** through **Article 241 (Relation with actions on title)**.

##### **237. Right to demand return of Object in possession**

(1) A possessor who has been dispossessed of an Object may demand return of said Object.

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

(3) An action for return of an Object in possession must be filed no later than one year from the dispossession.

##### **238. Right to demand removal of disturbance**

(1) Should a possessor's possession have been disturbed, he/she may demand removal of such disturbance.

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

**239. Damages**

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

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

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

**240. Right to demand prevention of disturbance to possession**

(1) Should there be a danger of disturbance to possession, the possessor may demand prevention of such disturbance. This provided that the court, in lieu of preventing the disturbance, may require the depositing of appropriate security.

(2) An action for prevention of disturbance may be brought so long as the danger of disturbance exists. This provided that in cases where there is a danger that the Object possessed will be damaged in the course of construction work, the action may not be brought after the lapse of one year from the commencement of such work, or after the completion thereof.

**241. Relation with actions on title**

(1) Ownership, perpetual lease, usufruct, pledge, lease, and other rights that legally justify the holding of an Object are referred to as Title<sup>5</sup>.

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<sup>5</sup> This term is different from the ordinary used title in Cambodia such as 'Certificate Acknowledging Immovable Ownership', 'Immovable Possessory Right Title', 'Land Possessory Right and Use Title'

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

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

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

## Section II. Protection of Special Occupants of Immovable

### **242. Protection of occupant of immovable holding a certificate of occupancy**

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

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

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

### **243. Protection of occupant of immovable prior to the enforcement of the Land Law**

(1) A person who despite being in continuous, peaceful and undisputed occupancy of an immovable that is legally capable of being occupied by

a private person for a period of five years prior to the Land Law coming into force, has neglected to register such occupancy based on the Land Law, is permitted to exercise a right to demand protection of possession against a third party who infringes such occupancy.

(2) A person who begun continuous occupation of an immovable prior to the Land Law coming into force, and obtained a permit from a governmental authority to extend his/her occupation for a period required for the acquisition of complete ownership is also permitted to exercise a right to demand protection of possession against a third party who infringes such occupancy.

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

## **Chapter 4 PERPETUAL LEASES**

### **244. Definition of perpetual leases**

Perpetual Lease shall refer to a long-term lease of an immovable for a term of no less than 15 years.

### **245. Formation of perpetual lease**

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

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

### **246. Requirements for perfection of perpetual lease**

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

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

(3) The provisions of **Article 598 (Conditions for perfection of Lease of immovables)** shall apply to the perpetual lease without register up to 15 years.

**247. Term of perpetual lease**

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

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

**248. Rent**

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

(2) If there is no stipulation of time for payment of rent, the lessee shall pay the rent at the end of each year. This provided that should there be a harvest season, the payment shall be made without delay after such season.

**249. Right to demand increase or decrease of rental**

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

**250. Perpetual lessor's right of termination**

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

**251. Perpetual lessee's right of termination**

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

**252. Assignment of perpetual leases**

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

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

(3) A perpetual lease may be inherited.

**253. Perpetual lessee's real property right type claims**

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

**254. Termination of perpetual lease**

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

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

(3) A special agreement may be made in spite of paragraphs (1) and (2). This provided that such special agreement shall not be held up against third parties unless it is registered.

**255. Mutatis mutandis application of provisions relating to leases**

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

## **Chapter 5 USUFRUCT**

**256. Definition of usufruct**

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

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

**257. Contractual usufruct and statutory usufruct**

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

(2) Usufructs established by law shall be subject to the provisions of this **Chapter 5 (Usufruct)** unless otherwise provided by law.

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

**258. Formation of usufruct**

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

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

of the applicable period noted below, counting from the date of the notice:

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

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

**259. Requirements for perfection of usufruct**

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

(2) Should the ownership of the immovable that is the subject of a usufruct be assigned, the registered usufruct may be held up against the transferee if it is registered.

**260. Term of usufruct**

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

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

**261. Right to collect natural fruits**

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

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

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

(4) Notwithstanding the provisions of paragraph (1), if there is a

perfected lease on the land that is the subject of the usufruct, the right of lessee to collect the natural fruits shall not be affected.

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

**262. Right to collect legal fruits**

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

**263. Assignment of usufruct**

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

**264. Lease of usufruct immovable**

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

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

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

**265. Usufructuary's real property right of claim**

A usufructuary may exercise the same rights to demand return, the removal of disturbance and prevention of infringements of the usufruct as the owner.

**266. Usufructuary's duty to report**

(1) If a third party asserts any rights over the immovable that is the subject of the usufruct, the usufructuary shall report without delay to the owner. However, this provision shall not apply in cases where

the owner is already aware of such fact.

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

**267. Demand for extinguishment of usufruct**

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

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

**268. Extinguishment of the usufruct by the death of the initial usufructuary or the expiry of the term of the condition**

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

**269. Effect of extinguishment of usufruct**

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

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

(3) A special agreement may be made in spite of paragraphs (1) and (2). This provided that such special agreement cannot be held up against third parties unless it is registered.

**270. Loss of building that is the subject of the usufruct**

(1) If a building above ground is the sole subject of the usufruct and

such building is destroyed, the usufruct may not be exercised over the land.

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

**271. Allocation of expenses**

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

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

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

**272. Allocation of taxes and other imposts and insurance premiums**

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

**273. Mutatis mutandis application of the provisions of perpetual lease**

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

## **Chapter 6 RIGHT OF USE AND RIGHT OF RESIDENCE**

### **274. Definition of right of use and right of residence**

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

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

### **275. Contractual right of use and right of residence and statutory right of use and right of residence**

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

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

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

### **276. Formation of rights of use and rights of residence**

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

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

**277. Requirements for perfection of rights of use and rights of residence**

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

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

**278. Term of right of use or right of residence**

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

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

**279. Expansion of family**

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

**280. Assignment of usufruct**

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

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

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

Holders of rights of use or rights of residence may exercise the same rights to demand return, to remove disturbance and to prevent disturbance in relation to an infringement of his/her rights of use and rights of residence as those of the owner.

**282. Demand for extinguishment of right of use or right of residence**

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

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

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

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

**284. Allocation of expenses**

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

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

**Chapter 7 EASEMENTS**

## Section I. General Rules

### **285. Definition of easement**

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

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

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

### **286. Formation of easement**

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

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

### **287. Requirements for perfection of easement**

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

(2) An easement that has been registered may be held against a person acquiring the Servient Land.

### **288. Scope of persons entitled to enjoy the benefit of an easement**

In addition to the owner of the dominant land, a lessee, perpetual lessee, usufructuary or holder of a right of use or right of residence over the

dominant land is entitled to enjoy the benefit of an easement. This shall not apply where otherwise provided in the contract creating the easement.

**289. Appurtenant nature of easement**

(1) An easement passes along with the ownership of the dominant land if the ownership of the dominant land is assigned. This shall not apply where otherwise provided in the contract creating the easement.

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

**290. Obligations of the Servient Land owner**

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

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

**291. Obligations of the easement holder**

(1) The easement holder may not use the Servient Land beyond the scope provided in the contract creating the easement. The easement for using the water created at a water source includes the right to way over the land where the water source is.

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

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

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

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

**292. Right of easement holder to erect structures on Servient Land**

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

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

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

**293. Allocation of expenses of structures**

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

(2) If there is special agreement for the owner of the Servient Land to pay the expenses of construction and maintenance of structures and such agreement is registered, the burden thereof shall transferred to any person who acquires ownership of the Servient Land.

**294. Easement holder's real right of claim**

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

**295. Relinquishment of ownership of Servient Land in favor of easement holder**

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

(2) Relinquishment refers to the relinquishment by the owner of the ownership of the Servient Land based on his/her unilateral Declaration of Intent and the transfer of such ownership to the easement holder.

**296. Prescription of the term of easement**

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

(2) Should a term not be prescribed in the contract of creation of easement, the owner of the Servient Land may apply to the court for extinguishment of the easement. The court shall decide whether or not to extinguish the easement through a consideration of the facts of the case such as the circumstances of the creation, past duration, existence or inexistence of the consideration.

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

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

**298. Extinguishment of easement by joint owners**

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

(2) A single joint owner of the Servient Land may not extinguish an easement in respect of his/her share.

**299. Subdivision or partial assignment of land and easements**

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

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

**Section II. Easements and Prescription**

**300. Prescriptive Acquisition of easement**

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

(2) Continuous Easement refers to an easement where without human action being required, the easement has materialized only because of the location of the place, and without interruption has been providing a benefit to the dominant land and imposing a burden on the Servient Land.

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

**301. Prescriptive Acquisition of easement by one joint owner of dominant land**

(1) If one joint owner of the dominant land acquires an easement by

prescription, the other joint owners shall also acquire such easement.

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

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

### **302. Commencement of extinctive prescription of easement**

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

### **303. Interruption or suspension of extinctive prescription of easement where the dominant land is joint owner**

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

### **304. Extinctive prescription of part of easement**

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

### **305. Prescriptive acquisition by occupant of Servient Land and the fate of easements**

(1) If the occupant of the Servient Land satisfies the conditions for prescriptive acquisition, the easement shall thereby be extinguished.

(2) If the easement holder exercises the easement within the period of occupancy required for prescriptive acquisition, the Servient Land

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

## **Chapter 8 OWNERSHIP AND OTHER REAL RIGHTS OF THE STATE, BUDDHIST TEMPLES, MINORITY ETHNIC GROUPS AND OTHER COMMUNITIES**

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

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

## **Chapter 9 RIGHTS CREATED BY CONCESSION**

### **307. Rights created by concession**

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

# **BOOK 4 OBLIGATIONS**

## **Chapter 1 GENERAL PROVISIONS**

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

#### **308. Definition of Obligation**

(1) An Obligation shall be a legal relationship that joins a particular person with another specified person through the former person assuming a certain Obligation with respect to the latter specified person.

(2) The person assuming the Obligation shall be referred to as the

Obligor, and the person receiving benefit from the performance of such Obligation shall be referred to as the Obligee.

(3) An Obligee shall retain the rights corresponding to the Obligation assumed by the Obligor.

### **309. Causes of Obligation**

(1) An Obligation may arise from a contract, unilateral legal act, management of affairs without mandate, unjust enrichment, tortious act, and/or legal provisions.

(2) An Obligation arising from a contract or unilateral legal act shall be an Obligation created based on the intention of one or both parties.

(3) An Obligation arising through the management of affairs without mandate, unjust enrichment, tortious act or legal provisions shall be an Obligation created by law. The provisions set forth in **Chapter Three (Execution of Contract) through Chapter Seven (Easements)** of this Book shall apply mutatis mutandis to an Obligation created by law.

### **310. Definition of declaration of intent**

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

(2) A declaration of intent shall come into effect upon the serving of notice thereof to the other party.

### **311. Definition of contract**

A contract shall mean the matching of intentions held by two or more parties for the purpose of creating, amending or extinguishing an Obligation.

### **312. Definition of unilateral legal act**

(1) A unilateral legal act shall be an act that creates, amends or extinguishes an Obligation through the unilateral expression of intent

to dispose of property or through the exercise of a right granted through contract or legal provision.

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

## Section II. Types and Terms of Obligations

### **313. Types of Obligations**

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

### **314. Obligation to deliver specified Object**

Should the subject of an Obligation include the delivery of a specified Object, the Obligor shall preserve such Object with the care of a good manager until the delivery thereof.

### **315. Obligation to deliver Object of a specific class or type**

(1) Should the Object to be delivered under the Obligation be described only with reference to its class and/or type, and different quality levels exist for such Object, the Obligor shall be obligated to deliver an Object of a quality decided between the parties. Should no such quality designation be reached for the Object, the Obligor shall be obligated to deliver an Object of medium quality.

(2) With regard to Obligations for the delivery of Object, where the Obligor has specified the Object to be delivered and has completed all requisites for the delivery of such Object, the Obligor is only obligated to subsequently deliver that specified Object.

### **316. Monetary Obligation**

(1) Should the subject of an Obligation include the payment of monies, the Obligor may effect such payment in any desired currency according to his/her preference. However, the Obligee and the Obligor shall agree

that the payment will be effected in a specific currency.

(2) Should the specified currency of the Subject of the Obligation have ceased to be a legal tender at the time at which the Obligation comes due, the Obligor shall execute payment in another currency.

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to cases where the delivery of foreign currency is the subject of an Obligation.

### **317. Monetary Obligations in foreign currency**

(1) Even should the amount of an Obligation be specified in terms of a foreign currency, the Obligor may chose to payment in the Cambodian currency according to the foreign exchange rate at the location where the Obligation is performed once comes due. However, should the Obligee and the Obligor agree otherwise, such agreement shall prevail.

(2) Should the Obligor be tardy in performing such Obligation, should the Obligor execute payment in the Cambodian currency, the Obligee may demand that the Obligor calculate the amount of payment based on the foreign exchange rate in effect at the time the Obligation became due or at the time the Obligor effects actual payment, according to the Obligee's preference. However, if the Obligee and the Obligor agree otherwise, such agreement shall prevail.

### **318. Legal interest rate**

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

### **319. Interest on interest**

Should the payment of interest be in arrears for one or more years and the Obligor has failed to pay such interest after having received a demand for payment from the Obligee, the Obligee may include the amount of such interest in the principal.

### **320. Selective Obligations**

Should the subject of an Obligation be determined by choosing from among two or more methods of performance, the Obligor shall have the right to choose from among the methods. However, the Obligor may grant the right to choose to the Obligee or to a third party through specific agreement thereto.

**321. Exercising of right to choose**

(1) The right to choose shall be exercised through the serving of notice to the other party. Should the Obligor bear the right to choose, such right shall be deemed have been exercised through the delivery of the property chosen by the Obligor. Should a third party bear the right to choose, the right to choose shall be exercised through the serving of notice to either the Obligor or the Obligee.

(2) The choice shall be retroactively effective to the time that the Obligation arose.

**322. Transfer of right to choose**

(1) Once an Obligation has become due, should either the Obligor or the Obligee holding the right to choose receives a demand from the other party instructing the right holder to make a choice within a reasonable fixed period of time and said right holder fails to make a choice within such period, the right to choose shall be deemed to have been transferred to the other party.

(2) Should the right to choose be vested with a third party, should the third party receive notice from the Obligor or the Obligee instructing said third party to make a choice within a reasonable fixed period of time and said third party fails to make a choice within such period, the right to choose shall be deemed to have been transferred to the Obligor.

**323. Determination of selective Obligations when performance is impossible**

(1) Should one of the acts of performance subject to a choice by the Obligor become impossible due a cause not attributable to either party

on or after the date of formation, the subject of the Obligation shall be comprised of the remaining acts of performance. In such case, paragraph (2) of **Article 321 (Exercising of right to choose)** shall apply *mutatis mutandis*.

(2) Should a method of performance become impossible due to the fault of the party holding the right to choose, such right to choose shall be transferred to the other party.

(3) Should any act of performance become impossible due to the fault of an Obligor who does not hold the right to choose, the party who holds the right to choose may select the method of performance that has been rendered impossible and demand compensation for subsequent damages from the Obligor.

(4) Should any act of performance become impossible due to the fault of an Obligee not holding the right to choose, the Obligor who holds the right to choose may choose the method of performance that was rendered impossible, and thereafter be released from the Obligation.

#### **324. Obligation with a plurality of parties**

(1) Should there be several Obligees of a single Obligation, unless otherwise agreed by such Obligees, each Obligee shall have a right to the Obligation in an equal proportion.

(2) Should the performance of an Obligation be indivisible by its nature or by Declaration of Intent by the parties, should there be several Obligees of the Obligation, each Obligee may demand performance on behalf of all the Obligees and the Obligor may effect performance to any Obligee on behalf of all the Obligees.

(3) With regards to an Obligation set forth in paragraph (2), the act by or circumstances occurred to an Obligees of an indivisible Obligation may not be effective to other Obligees. In cases where the Obligor has renewed the contract with, or been exempted from the performance for one of the Obligees of an indivisible Obligation,

if the Obligor has performed part or the whole of an Obligation upon claims by other Obligees, the Obligor may seek compensation from the above- mentioned Obligee for the benefits which may be distributed to such Obligee if such Obligee had not lost its right to the Obligation.

- (4) Should there exist joint liability or multiple Obligors for an Obligation, the provisions of **Article 921 (Definition of joint Obligation)** through **Article 937 (Indivisible Obligations, pseudo-joint Obligations, divisible Obligation)** shall apply.

### Section III. Conditions, Time and Period

#### Sub-section I. Conditions

##### **325. Definition of conditions**

(1) The contracting party may impose conditions concerning the occurrence or extinguishment of the effectiveness of the contract. In cases of a unilateral legal act, conditions may be imposed only when the conditions are not unduly detrimental to any other party.

(2) Conditions are defined as events that occur at a future time and whose occurrence are uncertain.

(3) Should an Obligation or a right that has arisen out of a contract or a unilateral legal act be subject to a condition precedent, the Obligation or right shall come into effect upon the fulfillment of said condition. On the other hand, should an Obligation or right arise from a contract or a unilateral legal act be subject to a condition subsequent, such Obligation or contract shall terminate upon the fulfillment of said condition.

##### **326. Disposition of rights subject to conditions**

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

regarding inheritance.

**327. Impairment of Right Subject to Condition**

(1) Neither party to an Obligation subject to a condition may, while such condition is pending, impair the benefits that other parties may stand to receive should the condition be met.

(2) Should a third party impair the benefits referred to in paragraph (1), should such third party's act constitute a tortious act, such third party shall be liable for damages.

**328. Constructive fulfillment of conditions**

If a party for whom the fulfillment of a condition would be detrimental or intentionally obstructs the fulfillment of such condition, the other party may assume the condition to have been fulfilled.

Sub-section II. Time

**329. Definition of time**

(1) Should the effect of a contract be subject to a specified commencement time, the contract shall not come into effect until such commencement time has occurred. Should performance under a contract be subject to a specific commencement time, the Obligee shall not require the Obligor to perform the Obligation prior to said commencement time.

(2) Should the effect of a contract be subject to a specific termination time, said contract shall terminate upon such time occurring.

(3) With regards to a unilateral legal act, a commencement time stipulated in paragraph (1) or a termination time stipulated in paragraph (2) may be imposed, unless it is unduly detrimental to another party.

**330. Beneficiary of time determination**

(1) Time is presumed to be set out in the beneficial interest of the

Obligor.

(2) Benefit from the time determination may be waived, provided that it is not unduly detrimental to any other party. However, should another party suffer damage due to such waiver, the waiving party shall be liable for such damages.

**331. Forfeiture of time benefit**

The Obligor shall forfeit the benefit from time under the following circumstances:

- a. Should the Obligor have been declared to be bankrupt;
- b. Should the Obligor have destroyed or diminished the value of the security;
- c. Should the Obligor have failed to furnish the security that the Obligor was obligated to furnish; or
- d. Should an event that was agreed to between the parties have occurred.

Sub-section II. Period

**332. Designation of period**

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

**333. Calculation of period defined in terms of seconds, minutes or hours**

Should a period have been fixed in terms of hours, minutes or seconds, such period shall be computed from the first moment to the last moment.

**334. Calculation of period defined in terms of days, weeks, months or years**

(1) Should a period have been defined in terms of days, weeks, months or years, the first day of such period shall not be included in its computation. This provided that this shall not apply if the period begins at the stroke of midnight.

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

(3) Should the last day of the period fall on a national holiday, Sunday or any other holiday established by law or ordinance, said period shall terminate at the end of the subsequent business day.

### **335. Calculation of period by solar calendar**

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

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

## **Chapter 2 DECLARATION OF INTENT AND CONTRACT**

### **Section I. Formation of Contract**

#### **336. Formation of contract via Offer and Acceptance**

(1) A contract shall come into effect once an Offer and the Acceptance thereto conform to each other.

(2) Notwithstanding the provisions of paragraph (1), a contract in which one of the parties bears an Obligation to transfer or to acquire ownership of an immovable shall come into effect only upon such contract having been executed in the form of a notarized document.

#### **337. Definition of Offer and Acceptance**

(1) An Offer is defined as an invitation to enter into a contract based on the Offeror's intention to be legally bound by the other party's Acceptance thereof.

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

(3) An Acceptance is the expression of an intention of a party to agree to an Offer received from another party.

(4) An Acceptance shall take effect upon its reaching the party who made the Offer. However, an Acceptance shall not take effect if a notice of revocation of the Offer reaches simultaneous with or prior to the notice of Acceptance.

**338. Offer with Acceptance Period and revocation of Offer**

(1) An Offer may be made subject to an Acceptance period. An Acceptance Period shall, where it is unclear whether the Offeror has set another date, be computed from the day of the dispatch of the Offer.

(2) An Offer that specifies an Acceptance Period cannot be revoked.

(3) Should the Offeror not receive notice of Acceptance within the Acceptance Period described in paragraph (1), the Offer shall automatically lapse upon the expiration of the Acceptance period. The Offer shall also lapse should a notice of refusal from the other party reach the Offeror, even where such notice is received within the specified Acceptance period.

**339. Offer with no Acceptance Period and revocation of Offer**

(1) An Offer that states no Acceptance Period and is made *inter praesentes*, and the Offeree is able to respond immediately, shall lapse unless it is accepted forthwith by the Offeree.

(2) An Offer that states no Acceptance Period and is made *inter absentes* cannot be revoked by the Offeror during a reasonable period of time.

(3) A revocation of an Offer shall not take effect unless notice

thereof reaches the Offeree prior to the Offeree's dispatch of a notice of Acceptance.

**340. Formation of contract upon receipt of Acceptance**

A contract shall be deemed to have been formed upon the notice of Acceptance being received by the Offeror.

**341. Delayed Acceptance**

(1) Should a notice of Acceptance to an Offer with a stated Acceptance Period reach the other party after the passing of the Acceptance Period and the Offeror was able to determine that the notice of Acceptance was dispatched at a time for which could be expected that the notice of Acceptance would reach the Offeror within the Acceptance Period under normal circumstances, the Offeror must dispatch a notice of delayed Acceptance to the Offeror without delay. If the Offeror fails to dispatch such notice, the delayed Acceptance shall be deemed to be effective.

(2) The Offeror may regard the notice of Acceptance reaching the Offeror after the Acceptance Period as a new Offer.

**342. Acceptance of Offer with modification**

(1) An Acceptance to which the acceptor has attached any type of condition or any other substantial modification shall not be a valid Acceptance, and such purported Acceptance shall be regarded as a new Offer. A contract shall be formed only once the original Offeror accepts such new Offer.

(2) Should the condition or modification attached to the Acceptance not substantially change the original Offer, the Acceptance shall be deemed to be valid unless the Offeror immediately raises an objection. The contents of such contract shall incorporate the conditions or modifications contained in the intended Acceptance unless the Offeror immediately raises an objection thereto.

**343. Formation of contract through acts recognized as Acceptance**

In the event that a notice of Acceptance is not required as a manifest intention of the Offeror or under applicable trade customs, the contract shall be formed once the act that is recognized as an Acceptance has been performed.

**344. Revocation of Offer made to unspecified party**

An Offer made to an unspecified party made through advertising or other method may be revoked only through the use of the same method employed to make such Offer.

**Section II. Defective Declaration of Intent and Validity of Contract**

**345. Defective Declaration of Intent**

Under the following circumstances, a person who declares their intention to accept an Offer may rescind the contract due to the Declaration of Intent being defective pursuant to the provisions set forth in this **Section 2(Defective Declaration of Intent and Validity of contract)** and **Section 3(Invalidity and Rescission)**:

- a. Where the Declaration of Intent was made as the result of an error;
- b. Where the Declaration of Intent was made as the result of the other party's fraud, duress or misrepresentation; or
- c. Where the Declaration of Intent was made as the result of the other party's act with the aim to obtain excessive profits and exploits the situation.

**346. Mistakes**

(1) Should a party make a mistake on the substantial terms of the contract, if the other party could have been aware of such mistake, the counter-party may rescind the contract on the grounds of the defect in the Declaration of Intent.

(2) Should a party make a mistake in the terms of the contract that such party deems important or important for the formation of the contract, if the counter-party could have been aware of the importance

of such term and the mistake of the party, the party making the mistake may rescind the contract on the grounds of defect in the Declaration of Intent.

(3) Should both parties make a mistake on the substantial terms of the contract that both parties deem important or important for the formation of the contract, each party may rescind the contract on the ground of the defect of the Declaration of Intent, although a party could not be aware of such mistake of the party.

(4) The rescission of the contract on the grounds of mistake may be asserted against a third party. However the rescission may not be asserted against third party if the third party acts in good faith without negligence.

#### **347. Fraud**

(1) A person who makes a Declaration of Intent because of the fraud of the other party, the person may rescind the contract on the grounds of a defect in the Declaration of Intent.

(2) Should a party make a Declaration of Intent due to fraud by a third party, the party may rescind the contract on the grounds of a defect in the Declaration of Intent only if the other party knew or could have known of the fraudulent act.

(3) A rescission of a contract due to fraud may be asserted against a third party. However, should the third party have acted in good faith and without negligence, the rescission of the contract cannot be asserted against such third party.

#### **348. Misrepresentation**

(1) Where a fact asserted by a party in the course of the formation of the contract is false and the counter-party made a Declaration of Intent based on said fact, if such party had known that such fact was false, the counter-party may rescind the contract on the ground of the

defect of the declaration.

(2) The provisions of paragraph (1) above do not preclude the party who made a Declaration of Intent from claiming compensation for damages from the party who made the misrepresentation if such party negligently committed such error.

(3) Rescinding of a contract on the grounds of misrepresentation may be asserted against a third party. However, if the third party acted in good faith and without negligence, the rescission of the contract shall not be asserted against such party.

#### **349. Abuse of circumstances**

(1) Should, in the course of the formation of a contract, a contracting party used his/her superior economic or social position relative to the other party or used other circumstances so that the other party could not contest the contract, the counterparty may rescind the contract based on a defect in the Declaration of Intent.

(2) The rescission of a contract set forth in the provisions of paragraph (2) may not be asserted against a third party who has acted in good faith and without negligence.

#### **350. Duress**

A person who makes a Declaration of Intent as a result of duress exerted by the counterparty or a third party may rescind the contract on the grounds of defect in the Declaration of Intent.

#### **351. Act of receiving excessive benefits**

Should a party enter into a contract while taking advantage of the other party's economic difficulties, ignorance or inexperience, and receive excessive benefits from said contract, the counter-party may rescind the contract on the grounds of defect in the Declaration of Intent.

#### **352. Mental reservations**

Should a contract be formed by the Declaration of Intent made by a party who knows that it does not reflect the true intentions of the declarant, the contract shall not be void. However, if the other party is aware also that such Declaration of Intent does not reflect the true intention of the declarant, the declarant may reject the performance of the contract.

**353. Fictitious Declaration of Intent**

(1) A contract formed through a fictitious Declaration of Intent made in collusion with another party shall be void.

(2) The nullification of the contract set forth under paragraph (1) shall not be asserted against a third party with interests in the contract based on the fictitious Declaration of Intent. This provision shall not apply should the third party be unaware of the said Declaration of Intent in malice or by gross negligence.

**354. Contracts contravening law or public order and good morals**

(1) Even should the declarations of intention of both parties be made without defect, the contract therefrom shall be void should any of the following circumstances apply:

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

(2) Should a portion of a contract violate a mandatory provision of law or public order and good morals, and should the remainder of the contract would not affect the reasonable expectations of the parties, only the portion of the contract in violation of such provision of law or public order and good morals shall be void.

**355. Initial impossibility**

(1) Even should it was impossible to perform the stipulations of a

contract at the time of its formation, such contract shall not be void due to such impossibility. However, this provision shall not preclude either contracting party to the contract from rescinding the contract on the grounds of their being an error if the requirements for such grounds are met.

(2) Should a party have been able to know that the provisions of a contract were impossible at its inception, and another party suffers any damages due to the formation of such contract, the initiating party shall be liable for the damages of the other party in accordance with **Article 398 (Requirements for damages)**.

### Section III. Invalidity and Rescission

#### **356. Definition of Act**

An Act under **Section 3 (Nullity and Reversion)** shall refer to any contract or a unilateral legal act.

#### **357. Nullity**

Any person may seek to nullify an Act should the provisions of said Act be inconsistent with the mandatory provisions of law, public order and good morals. Any person may seek to nullify an act should the act be inconsistent with the forms required by this law or other laws.

#### **358. Voidable acts**

(1) A voidable act shall be effective until the person bearing the right of rescission exercises said right.

(2) Should a person having a right of rescission rescind a voidable act, said act shall be deemed void retroactively.

(3) Should a person bearing the right of rescission ratify a voidable act, such act shall be deemed valid definitively.

**359. Person having right of rescission**

(1) Should an act be rescindable based on the grounds of a defective Declaration of Intent as set forth in **Article 346(Mistake)** through **Article 351(Conduct resulting in excessive benefits)** of this code. Such rescission may be effected by the person who made the defective Declaration of Intent or his/her legal representative. This right of rescission may also be executed his/her heir or the person who has succeeded him/her status under the contract.

(2) A rescission of an act based on the incapacity or minority or other limitation on the capacity to act may be carried out by the relevant person through his/her legal representative or curator. The heir or general legatee of such person may also exercise their right of rescission.

**360. Method of rescission or ratification**

Should another party to a voidable act be identified, the rescission or ratification shall be carried out with notification to said party. Such rescission or ratification shall come into effect upon the notification thereof reaching said party.

**361. Person bearing right of ratification and conditions of ratification**

(1) Ratification of a voidable act shall be carried out by a person bearing a right of rescission. Should the rescission be of an act that was based on a defective Declaration of Intent, the ratification may be carried out once the person bearing said rescission right learns of the cause of the rescission, or should the rescission be based on an act of an General Ward, the ratification shall be carried out once the circumstances giving rise to the rescission are no longer present.

(2) Sentence 2 of paragraph (1) shall not apply where ratification has been carried out by a legal representative of the General Ward or a curator.

**362. Statutory ratification**

A voidable act shall be deemed ratified should any of the following actions have occurred subsequent to the time for ratification pursuant to the provisions of **Article 361 Person bearing right of ratification and conditions of ratification**):

- a. Full or partial performance of an Obligation arising due to a voidable act or the giving of security for such Obligation;
- b. Exercising of a right obtained through a voidable act or a demand for performance by another party; or
- c. Total or partial transfer, or other such disposition, of a right obtained through a voidable act.

This shall not apply should it be specifically stated upon such fact occurring that ratification has not been carried out.

**363. Extinctive prescription of right of rescission**

(1) A right of rescission, as well as the right to demand the return of unjust enrichments that accompanies the exercising of the rescission, shall be extinguished if it is not exercised within three years of the date on which ratification has been performed. Provisions regarding the interruption of prescription shall not apply to this period.

(2) Notwithstanding the provisions of paragraph (1), a right of rescission shall be extinguished ten years from the date of the occurrence of act subject to rescission.

(3) Should multiple people have the right of rescission for the same act, the provisions of paragraphs (1) and (2) above shall apply to each person's right of rescission.

**Section IV. Agency**

**364. Definition of agency**

Agency is defined as a relationship wherein a representative enters into a contract with another party by stating that he/she is acting on behalf of a principal within the scope of an agency authorization, and the

effects of the contract are effective directly upon the principal.

**365. Creation of an agency authorization**

An agency authorization shall be created through a contract between the principal and the agent or statutorily.

**366. Scope of agency authorization**

(1) The scope of an agency authorization is established through the contract that confers such agency upon the agent. Where an agency authorization is established statutorily, the scope of the agency authorization shall be made through the provisions of such relevant statutes.

(2) Should there be no provisions regarding the scope of an agency authorization, the agent is entitled to conduct any acts to preserve or improve the Object or right that forms the subject of said agency. This shall not apply to acts of improvement that would alter the nature of such Object or right.

**367. Limitations on agency authorization**

(1) An agent is not entitled to conduct acts bearing a conflict of interests between the interests of the principal and the interests of the agent, even where such acts are otherwise within the scope of the agency authorization. This shall not apply should the principal consent thereto.

(2) Transactions between the agent and the principal are presumed to involve conflicting interests between the principal and the agent.

(3) Should an agent represent both a principal and a third party, paragraphs (1) and (2) shall apply *mutatis mutandis* to all acts giving rise to a conflict of interests between the principal and the third party.

**368. Grounds for extinction of agency**

(1) Agency conferred by a principal via contract shall be extinguished

by any of the following:

- a. Death, bankruptcy or dissolution of the principal;
- b. Death or bankruptcy of the agent, or a restriction upon the agent's capacity to act; or
- c. Termination of the trust, employment or other legal relationship that gave rise to the agency authorization.

(2) An agency created statutorily shall be extinguished as specified by the relevant statutes.

**369. Agency without authorization**

(1) Should a person commit an act as an agent for another without having an agency authorization, the effects of said act shall not be attributable to the principal. This provision shall not apply should the act be ratified by the principal.

(2) The counter-party to an act of agency without authorization may not effect such act, but this provision shall not prevent the counter-party from exercising his/her rights to have the agent be liable according to the provisions of **Article 371(Liability of person acting without agency authorization)**.

**370. Ratification of acts performed without agency authorization, and right of rescission of the counter-party**

(1) The effect of ratification shall not be asserted against a counter-party unless such ratification is exercised upon the counter-party.

(2) An act conducted in the absence of an agency authorization and is then subsequently ratified shall be valid retroactive to the time it is conducted. Should rights accrue to a third party in the interim between the time that act was conducted and the time of ratification, such rights shall not be infringed upon.

(3) The counter-party to an act conducted in the absence of an agency authorization may demand that the principal indicate within a

reasonable period of time, designated by said counter-party, whether the principal ratifies such act. Should the principal not respond within the established period of time, ratification shall be deemed to have been rejected.

(4) The counter-party to a contract executed without agency authorization may choose to rescind the contract up until it is ratified by the principal. The principal shall not ratify an act conducted without an agency authorization once rescinded by the counter-party.

**371. Liability of person acting without agency authorization**

Should a person executing a contract as an agent for another be unable to establish the existence of an agency authorization or obtain ratification from the principal, such person shall be liable for either performing the Obligations under such contract or paying damages, as chosen by the counter-party. Should the other party have known of the lack of agency authorization at the time the contract was formed, the person acting without agency authorization shall be exempted from such liability. Should the person acting without agency authorization have acted without negligence in regard to the absence of agency authorization, and the counter-party's ignorance as to the lack of agency authorization was due to negligence, such person shall not be liable under the provisions of this Article.

**372. Agency by estoppel**

(1) Should an agent execute a contract outside the scope of the agency authorization, and the counter-party believed without negligence that the agent was authorized to enter into such contract, the principal shall be liable for the contract.

(2) Should, after the extinction of an agency authorization, the former agent enter into a contract with another party as the agent of the former principal, the former principal shall be liable for said contract. This shall not apply where the counter party knew of the extinction of the agency authorization, or where the counter-party's ignorance of such extinction was due to their own negligence.

(3) Should, despite the absence of an agency authorization, the principal give the impression that an agency authorization has been conferred on another person, or allows another person to give the impression that he/she has received an agency authorization, the principal is liable to the counter-party for performance of the contract. This provision shall not apply if the counter-party knew of the absence of an agency authorization, or where the counter-party's ignorance of the absence of an agency authorization was due to their own negligence.

### **373. Acts of undeclared agency**

(1) Should an agent engage in a transaction with the intent of acting on behalf of a principal without disclosing such intent, the other party can treat the contract as executed between such party and the agent. However, where the other party knew at the time the contract was executed] that the agent was acting on behalf of the principal, the other party can treat the contract as executed only between such party and the principal.

(2) The other party can treat the contract as executed between such party and the principal where such party knows the existence of the principle, after engaged in a transaction with the agency without disclosing the intention of acting on behalf of a principle.

### **374. Defective act of agency**

(1) Should the validity of the contract executed by the representative be effected due to mistakes, fraud or duress that was unknown due to negligence, the presence and absence of such shall be determined in relation to the Agent.

(2) Should applying the provision of paragraph (1), where the principal has authorized the agent to execute a particular contract, the principal cannot assert the agent's ignorance of facts if they were known to the principal. This provision shall also apply in case where the principal was ignorant due to the principal's own negligence.

**375. Capacity of agent**

A principal shall not confer an agency authorization on a person who has a limited legal capacity. Should a principal do so, the contract executed between such agent and a counter-party may not be rescinded by the principal on account of the agent's limited legal capacity.

**376. Sub-agency**

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

**377. Liability of an agent where a sub-agent has been appointed**

(1) Should an agent appoint a sub-agent under the circumstances described in the second sentence of **Article 376 (Sub-agency)**, such agent shall be responsible to the principal for the appointment and supervision of the sub-agent.

(2) Should an agent appoint a sub-agent at the behest of the principal, the agent shall not be responsible for the conduct of the sub-agent unless the agent knew the sub-agent to be unfit or untrustworthy, and the agent failed to either notify the principal of such fact or dismiss the sub-agent.

(3) Should an agent appoint a sub-agent under circumstances other than sentence 2 of **Article 376 (Sub-agency)**, the acts of the sub-agent shall not be imputed upon the principal. Should another party be unaware of the sub-agent's lack of authority, and such ignorance is not the result of his/her own negligence, such party may demand that the agent be liable for performance under the contract or pay damages.

**378. Status of sub-agent**

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

(2) A sub-agent shall bear the same rights and Obligations as an agent

with respect to the principal.

(3) Section IV shall apply *mutatis mutandis* to the relationship between the principal and sub-agent, who shall be deemed to be an agent for purposes thereof.

## Section V. Contracts Benefiting a Third Party

### **379. Definition**

(1) Parties to a contract can agree to confer a right or benefit arising under the contract upon a third party. In such case, the person performing an Obligation under the contract for the benefit of a third party shall be referred to as the Contract Donor, and the counter-party to such contract shall be referred to as the Contract Donee. The person to receive the right or benefit thereunder shall be referred to as the Third-party Beneficiary.

(2) A Third-party Beneficiary shall be have the right to make a direct demand on the Contract Donor for performance.

### **380. Third-party Beneficiary**

At the time of the contracts formation, the Third-party Beneficiary need not exist should the requirements identifying the Third-party Beneficiary be clearly stated. Should a Third-party Beneficiary not exist at the time for the performance of the Obligation by the Contract Donor, the promise to perform the contract for the benefit of a third party shall become null, and the Contract Donor may be exempted from responsibility upon performance of the contract with respect to the Contract Donee.

### **381. Declaration of Intent to receive a benefit**

(1) A Contract Donee may, at any time prior to an intended Third-party Beneficiary's declaration of its intention of accepting benefit to the Contract Donor or the Contract Donee, withdraw the promise to perform the contract for the benefit of the third party via notification to the Contract Donor and the Third-party Beneficiary.

(2) Once the Third-party Beneficiary declares an intention to accept the right or benefit, the parties to the contract may not thereafter alter or extinguish the Third-party Beneficiary's right.

**382. Defense of Contract Donor**

A Contract Donor under contract to confer a right or benefit on a Third-party Beneficiary may assert against the Beneficiary any defenses arising under the contract.

**383. Invalidity, rescission or termination of contract**

(1) Should grounds for invalidity or rescission of the contract exist between the Contract Donee and Contract Donor, either party may assert the invalidity of or seek to rescind the contract in accordance with the provisions of Section III or Chapter Two of this Book concerning invalidity and rescission, notwithstanding the existence of any special agreement in the contract conferring a right or benefit upon a third party.

(2) A Contract Donor may terminate the contract on the grounds of the Contract Donee's breach thereof. Should the Contract Donor's breach be grounds for termination, and the Third-party Beneficiary has already declared an intention to accept the right or benefit, the Contract Donee can terminate the contract only with the consent of the Third-party Beneficiary.

## **Chapter 3 PERFORMANCE OF CONTRACT**

**384. Obligor's duty to perform Obligation**

(1) An Obligor shall perform its contractual Obligations in accordance with the purpose of the contract and the principle of good faith.

(2) The Obligation of a party is extinguished by the performance that complies with the standard established in paragraph (1).

**385. Right to demand performance of an Obligation**

(1) An Obligee has the right to demand that the Obligor perform the Obligation whether in the form of a filed lawsuit or otherwise.

(2) Notwithstanding the provision of paragraph (1), an Obligee shall not file a lawsuit demanding performance should the parties to the contract have agreed to not seek judicial enforcement of performance.

(3) Even if a lawsuit seeking judicial enforcement of performance is barred under paragraph (2), should the Obligor carry out such performance voluntarily, the Obligee may receive and retain the benefits thereof.

**386. Defense of simultaneous performance**

Each party to a bilateral contract may refuse to perform its own Obligation until the other party tenders the performance of its Obligation. This shall not apply where the time for performance of the other party's Obligation has yet to occur.

**387. Defense of insecurity**

A party to a bilateral contract who is required to perform an Obligation in advance of the other party may refuse to perform the Obligation if there is a significant risk that the other party will not substantially perform its Obligation in accordance with its intended purpose. This shall not apply should the other party provide security or otherwise take measures to eliminate such risks.

**388. Application of provisions relating to performance as a grounds for extinction of Obligation**

In addition to the provisions of this Chapter, the provisions of Section I of Chapter Seven of this Book regarding performance shall also apply to the performance of contract.

**Chapter 4 REMEDIES FOR BREACH OF CONTRACT**

## Section I. General Rules Concerning Non-Performance

### **389. Definition and types of non-performance**

Non-performance is defined as an Obligor's failure to perform an Obligation arising under a contract. The types of non-performance are as follows:

- a. Cases in which performance cannot be carried out by the established time for performance due to a delay in performance;
- b. Cases in which performance is impossible;
- c. Cases in which full and complete performance in accordance with the intended purpose of the Obligation is not carried out; and
- d. Other cases in which performance is not carried out in accordance with the intended purpose.

### **390. Remedies for non-performance**

Should an Obligor fail to perform an Obligation, the Obligee may demand compulsory performance, payment of damages, or termination of the contract in accordance with the provisions set forth in Sections II through IV of this Chapter IV.

### **391. Delayed performance**

An Obligor shall be liable for delayed performance if he/she fails to perform the Obligation as set forth below:

- a. Where performance is to occur at a specified time, when such time has arrived;
- b. Where performance is to occur at a time that is uncertain, when the Obligor knows that such time has arrived; or
- c. Where no time for performance is specified, when the Obligor receives a demand for performance.

### **392. Impossibility of performance**

(1) Should it be physically impossible to perform an Obligation, the performance shall be deemed impossible. Performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint.

(2) Should it be established prior to the time of performance that performance will be impossible at the time of performance, such performance shall be deemed impossible at the time that such impossibility is established.

### **393. Incomplete performance**

Incomplete performance refers to cases in which an Obligation has been performed but the act of performance remains incomplete, where only partial performance was carried out or where, for any other reason, complete performance in accordance with the intended purpose of the Obligation was not carried out.

### **394. Other non-performance**

In addition to the types of non-performance described in **Article 391 (Delayed performance)** through **Article 393 (Incomplete performance)**, should there be a breach of any other Obligations arising under the contract, the contract shall be considered to be non-performed.

### **395. Multiple remedies**

Should multiple remedies be available to the Obligee, the Obligee may select any or all of such remedies so long as they are not in mutually exclusive.

## **Section II. Compulsory Performance**

### **396. Court order for specific performance**

Should an Obligor not voluntarily perform an Obligation, the Obligee may seek an order of compulsory performance from the court, except where the nature of the Obligation does not permit for compulsory performance. The provisions set forth in the Code of Civil Procedure shall apply to the proceedings of compulsory performance.

### **397. Relationship to demand for performance and other remedies**

Should an Obligor fails to perform an Obligation, the Obligee may demand damages either in lieu of performance or together with performance so long as there is no conflict between these two demands.

## Section III. Damages

### **398. Requirements for damages**

(1) Should an Obligation fail to be performed, the Obligee may demand damages from the Obligor for any resulting damage. Should the Obligor prove that the non-performance was not the fault of the Obligor, the Obligor shall not be liable for damages.

(2) Should an Obligor use another individual as an assistant to assist in carrying out the performance of the Obligation, the Obligor may not avoid liability unless the Obligor proves that the Obligor was not negligent in the selection and supervision of said assistant and that the assistant was not at fault for the failure.

### **399. Special rules for monetary Obligations**

(1) Should the subject of the Obligation be the payment of money, the Obligor shall not be exempted from payment of interest for any delay even if the Obligor proves that the delay in payment was the result of force majeure. The interest for the delay shall be calculated based on the legal rate of interest. Should an agreed-upon interest rate exceed the legal interest rate, the agreed-upon interest rate shall prevail.

(2) The Obligor shall be exempted from liability for damages beyond interest for the delay if the Obligor is able to prove that the Obligor was not at fault for the non-performance.

### **400. Concept of damages**

(1) The Obligee may demand as damages: (a) compensation for the benefit of performance that would have been received under the contract; as well as (b) expenditures that were used due to the non-performance to the extent that such expenditures do not duplicate amounts received as benefit from the performance damages; and (c) additional expenditures or burdens resulting from non-performance.

(2) The court may, based on a petition the Obligee, order payment of damages for emotional distress. The amount of damages payable for

emotional distress shall be determined by the court in consideration of the surrounding circumstances.

#### **401. Scope of damages**

The Obligor shall provide compensation for the following types of damages:

- a. Normally occurring damages suffered by the Obligee due to non-performance;
- b. Regarding special damages suffered by the Obligee due to special circumstances, such damages shall be compensated for should the occurrence of such special damages have been possibly anticipated by the parties when the contract was executed. This shall not apply where the parties did not take the possible occurrence of special damages into consideration when the contract was executed; and
- c. Notwithstanding items (a) and (b), where the non-performance is the result of the Obligor's malicious intent or actions in bad faith, the court may, upon the Obligee's demand for damages, order that the Obligor pay to the Obligee as damages the profits or benefits obtained by the Obligor from the conduct comprising the non-performance.

#### **402. Grounds for reduction of damages**

(1) Should the Obligee's negligence or fault have contributed to the occurrence of non-performance or damages, the court may reduce the amount of damages to be paid by the Obligor to the extent that the Obligee's conduct contributed thereto.

(2) Should damages have been expanded due to the Obligee's negligent failure to mitigate damages, the court may reduce the amount to be paid by the Obligor in proportion to the amount of the damages that could have been mitigated by the Obligee.

#### **403. Liquidation of Damages**

(1) The Obligor and Obligee may separately and in advance establish conditions for the payment of damages and the amount to be paid.

(2) A special agreement exempting the Obligor from liability for intentional non-performance or the result of gross negligence shall be void.

(3) Should the parties have agreed to the amount of damages, the court shall not increase or reduce the agreed-upon amount. However, if the amount fixed by the parties as liquidated damages is either grossly higher or grossly lower than the amount of damages calculated in accordance with the provisions of **Article 401 (Scope of damages)**, the court may increase or decrease the liquidated damages amount fixed by the parties.

(4) The liquidation of damages does not preclude a claim for performance or for termination of the contract. An amount fixed and agreed to by the parties as damages for delays shall not be binding on the parties should the Obligee seek the termination of the contract and compensation for damages as a substitute for performance in reference to the Object comprising the subject matter of the contract.

(5) The penalty for breach of contract shall be presumed to constitute liquidated damages.

#### **404. Compensation in money**

Compensation for damages for non-performance shall be made by the Obligor in money. This shall not apply if the parties agree otherwise.

#### **405. Subrogation by compensation**

Should an Obligee have received as damages compensation for the value of the Object or right comprising the subject matter of the Obligation, the Obligor shall be automatically subrogated to the position of the Obligee in regard to that Object or right.

#### **406. Extinctive prescription**

The period of extinctive prescription applicable to the right to demand compensation for damages based on non-performance is five years from

the time when the damages occurred.

#### Section IV. Termination of Contract

##### **407. Termination for non-performance**

Should one of the parties to a bilateral contract commit a material breach of the contract, the other party may terminate the contract immediately.

##### **408. Material breach of contract**

(1) A material breach of contract occurs where, as a result of one party's breach of a contract, the purpose of the contract for the other party cannot be achieved. This shall be deemed to occur in any of the following situations:

- a. Where after a failure to perform at the specified time, the other party demands that the non-performing party perform the Obligation by establishing a period of performance of reasonable length, and the Obligation is not performed within such period;
- b. Where a party fails to perform at the specified time, and the purpose of the contract cannot be achieved if performance is not made at the specified time;
- c. Where it is impossible to carry out the essential act of performance; and
- d. Where the magnitude of the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

(2) The non-performing party may not prevent termination of the contract based on the reasons set forth in paragraph (1) on the ground that the non-performance occurred without fault on his/her part.

##### **409. Method of exercise of right of termination**

(1) A party bearing the right to terminate a contract may terminate the contract by expressing an intention to terminate to the other party. Such an intention may be expressed by means other than a lawsuit.

(2) An expression of an intention to terminate may not be revoked or withdrawn.

(3) An declaration of an intention to terminate may be subject to a condition precedent.

#### **410. Termination in cases of multiple parties**

(1) Should one of the parties comprise multiple persons, termination of the contract must be effected by all of such persons to the other party or by the other party to all of such persons.

(2) In the case described in paragraph (1), where the right of termination is extinguished as to one person, it is extinguished as to all persons.

#### **411. Effect of termination**

(1) Termination of a contract relieves both parties of their Obligations under the contract except for the duty to pay damages.

(2) Upon termination, a party that has received all or part of a performance under the contract shall return those items received as performance to the other party and return the other party to the other party's original state. Should both parties be required to return the other party to the party's original state, these Obligations shall be carried out simultaneously.

(3) A party required to return money as a result of termination shall return the money with interest computed from the date on which the money was received. A party required to return property or other benefit due to termination shall return any benefit received thereby.

(4) The legitimate interests of third parties may not be prejudiced by a termination.

#### **412. Right of termination when subject matter is destroyed**

(1) Should, due to the intentional act of a person bearing a right of termination, an Object comprising the subject-matter of a contract be lost, destroyed or rendered incapable of being returned, or where such Object is changed into an Object of a different type due to processing or reworking, the right of termination shall be extinguished.

(2) Should a right of termination be exercised by a person who is incapable of returning said Object under the circumstances described in paragraph (1), the value of the Object shall be paid in money; such value not exceeding the actual price thereof.

(3) Should an Object have been destroyed or rendered incapable of being returned due to the negligence of or any other reason attributable to the other party, the person possessing a right of termination is not obligated to return the price of the Object pursuant to the provisions of Paragraph (2).

#### **413. Extinctive prescription**

The period of extinctive prescription of the right of termination based on non-performance as well as the right to demand actions to return to the original state that existed prior to the execution of the contract is five years from the time when the non-performance occurred.

#### **414. Agreed-upon right of termination and termination by agreement**

(1) The parties to a contract may agree under the contract that either one or both of the parties shall be given a right of termination. The provisions of **Article 409 (Method of exercise of right of termination)** through **Article 412 (Right of termination when subject matter is destroyed)** pertaining to termination granted by law shall apply *mutatis mutandis* to the method and effect of an agreed-upon right of termination unless the parties agree otherwise.

(2) Even in the absence of a contractual provision regarding a right of termination, the parties to a contract may agree to terminate the contract. However, the legitimate interests of third parties may not

be prejudiced thereby.

## **Chapter 5 BURDEN OF RISK**

### **415. Extinction of Obligation in case of impossibility of performance**

If performance of an Obligation has become impossible without the fault of the Obligor, the Obligation shall be extinguished and the Obligee may not demand performance thereof.

### **416. Burden of risk in a contract to transfer title to specific property**

(1) Should the subject matter of a bilateral contract be to transfer title to specified object and said object is destroyed, lost or damaged without the faults of either party, the Obligor shall bear the risk thereof, and may not demand counter-performance.

(2) The risk of destruction, loss or damage of the object comprising the subject matter of the contract shall be transferred to the Obligee upon any of the following events unless otherwise provided for in the contract:

- a. When the Obligor delivers the object or transfers the registration of the title thereto to the Obligee, or substantial control over the object is otherwise judged to be shifted to the Obligee;
- b. When the Obligor has made a proper tender of performance; or
- c. When the Obligee has unreasonably refused to accept the performance of the Obligor.

### **417. Burden of risk associated with other types of rights**

The provisions of **Article 416 (Burden of risk in a contract to transfer title to specific property)** shall apply *mutatis mutandis* to the establishment or transfer of real property rights other than ownership, claims or other rights.

### **418. Burden of risk where the subject matter of contract constitutes Object of a specific class or type**

(1) Should the subject matter of a bilateral contract constitute the transfer of title to Object of a specific class or type and the Object to be delivered has not yet been specified, even if the Object which the Obligor was preparing for a tender of performance was destroyed or lost without the fault of the Obligor, the Obligation shall not be extinguished, and the Obligor remains obligated to perform under the contract.

(2) The provisions of **Article 416 (Burden of risk in a contract to transfer title to specific property)** shall apply *mutatis mutandis* after the Object to be delivered has been specified.

#### **419. Contracts subject to conditions precedent**

Should property that is the subject of a bilateral contract with conditions precedent be destroyed, lost or damaged prior to the fulfillment of the conditions without fault of the Obligor, the risk of such destruction, loss or damage shall be borne by the Obligor. The provisions of **Article 415 (Extinction of Obligation in case of impossibility of performance)** shall apply *mutatis mutandis* once the conditions have been fulfilled.

#### **420. Risk liability in bilateral contracts involving commission or omission of act**

Should one of the parties to a bilateral contract have an Obligation to perform or not perform a certain act and the performance of said Obligation becomes impossible due to no fault of either party, the Obligation shall be extinguished. In such case, the Obligor may not demand counter-performance.

#### **421. Impossibility due to fault of Obligee**

Should performance of an Obligation in a bilateral contract become impossible at no fault of the Obligor but due to the fault of the Obligee, the Obligor shall not lose the right to demand counter-performance. However, should the Obligor receive benefit from being exempted from his/her Obligation, he/she must deliver such benefits to the Obligee.

## **Chapter 6 EFFECT OF OBLIGATIONS TO THIRD PARTIES**

### **Section I. Subrogation of Obligor's Claim by Oblige**

#### **422. Subrogation of Obligor's Claim by Oblige**

(1) An Oblige may, where necessary to preserve his/her claim, exercise a right held by the Obligor in place of the Obligor. This shall not apply rights that are personal and exclusive to the Obligor, rights the exercise of which are entrusted at the complete discretion of the Obligor, or rights that cannot be subject to attachment.

(2) An Oblige may, when necessary to receive satisfaction of a claim held by the Oblige, exercise via subrogation a right possessed by the Obligor having a close connection to such claim.

#### **423. Requisites for exercising a right of subrogation**

**Section II.** In order for an Oblige to exercise a right provided for in **Article 422 (**

(1) **Subrogation of Obligor's Claim by Oblige**), the Obligor shall not have previously exercised such right.

(2) An Oblige may not exercise via subrogation a right possessed by the Obligor prior to the Oblige's own claim having come into effect unless given permission by a court. This shall not apply to an act of preservation.

#### **424. Defense of third-party Obligors**

A third-party Obligor facing the exercising of an Oblige's right of subrogation may assert against such subrogating Oblige any defense possessed by the third-party Obligor against his/her own Oblige.

#### **425. Relationship between subrogating Oblige and Obligor**

Should an Oblige notify the Obligor of the Oblige exercising the Obligor's rights via subrogation, the Obligor may not re-exercise such rights against a third-party Obligor. This shall not preclude the Obligor from accepting performance made by the third-party Obligor.

**426. Effect of Obligee's right via subrogation**

(1) The effect of an Obligee's exercise of a right via subrogation in relation to a right held by the Obligor shall inure directly to the Obligor.

(2) Should the Obligor be unable to accept performance from a third party Obligor, an Obligee who exercises a right via subrogation can demand that the third-party Obligor tender performance directly to the Obligee.

**427. Effects of exercising of right of subrogation and other Obligees**

Should performance be received by a subrogating Obligee from a third-party Obligor through the exercising of a right of subrogation, the Object delivered as such performance shall be preserved for the benefit of all Obligees until it is delivered to the Obligor. This shall not apply in cases described in paragraph (2) of **Article 422 (Subrogation of Obligor's Claim by Obligee)**.

**Section III. Rescission Right for Fraudulent Acts**

**428. Requirements for rescission of fraudulent act**

(1) An Obligee may petition the court to order that an act conducted by an Obligor with the knowledge that the act would infringe on the Obligee's claim be rescinded, and persons who received benefit from such act or subsequent possessors return the Object delivered or make restitution for the value thereof.

(2) The rescission referred to in paragraph (1) shall be denied if the person who received benefit from the Obligor's act or a subsequent acquirer was unaware of the infringement at the time of the Obligor's act or at the time of the subsequent acquisition. However, the Obligee may seek nullification in relation to a benefiting person or subsequent acquirer who paid no consideration for the benefit or the acquisition even if such person was unaware of the infringement of the Obligee.

(3) The provisions of paragraphs (1) and (2) shall not apply to acts that were not intended for the acquisition of a property right.<sup>6</sup>

**429. Claims to be preserved**

The provisions of **Article 428 (Requirements for rescission of fraudulent act)** shall also apply to an Obligee having a non-monetary claim. Such claim must be transformed into a monetary claim by the end of the oral argument proceedings on which the judgment of rescission is based.

**430. Method for rescission of fraudulent act**

Should no other appropriate method exist to achieve restitution from a person receiving benefit from the Obligor's act or a subsequent acquirer, an Obligee who exercises a right of rescission may demand that the benefiting person or subsequent acquirer deposit the Object obtained.

**431. Effect of rescission of fraudulent act**

A rescission conducted pursuant to the provisions of **Article 428 (Requirements for rescission of fraudulent act)** shall inure to the benefit of all Obligees.

**432. Period for exercising of right of rescission of fraudulent acts**

(1) The right of rescission established in **Article 428 (Requirements for rescission of fraudulent act)** shall expire if it is not exercised within one year of the time that the grounds for rescission were first discovered by the Obligee. The same shall apply if not exercised within three years of the occurrence of the act giving rise thereto.

(2) The provisions of law pertaining to an interruption in the period of extinctive prescription shall not apply to the expiration period of a right of rescission as set forth in paragraph (1).

## **Chapter 7 EXTINCTION OF OBLIGATION**

**433. Grounds for extinction of Obligation**

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<sup>6</sup> See the footnote to Article 195 for an explanation of 'property right.'

Obligations shall be extinguished based on the following grounds:

- a. Performance, set-off, release, novation or merger as provided in Sections I (Performance) through V (Merger) of this Chapter;
- b. Impossibility of performance through no fault of the Obligor as provided in Chapter Five (Burden of risk) of this Book;
- c. Fulfillment of a condition subsequent as provided in Section III (Condition, Time and Period) of Chapter One, or through termination of the contract as provided in Section IV (Termination of Contract) of Chapter Four;
- d. Extinctive prescription as provided in Chapter Eight (Extinctive Prescription); or
- e. Exercise of a right of rescission pursuant to the provisions of Section III (Invalidity and Rescission) of Chapter Two.

## Section I. Performance

### Sub-section I. General provisions regarding performance

#### **434. Performing person**

(1) An Obligation may be performed by a third party as well as by the Obligor.

(2) Should the purpose of the Obligation not be able to be achieved through the performance of a third party, the third party shall not perform the Obligation unless the Obligee consents.

(3) The Obligor and the Obligee may agree to prohibit performance by a third party.

#### **435. Authority of disposition of performing person**

(1) Performance made by a person who neither owns the Object delivered for the purpose of performance nor has the authority to dispose of such Object shall not be considered to be valid performance.

(2) Should the person making performance not own the Object delivered for the purpose of performance, he/she shall not recover such Object

until valid performance has been made. However, the owner of such Object may recover the Object from the person receiving the invalid performance.

(3) Should a person carrying out performance lack the capacity to dispose of the Object delivered for the purpose of performance, such person may rescind such act of performance. Paragraph (2) shall apply *mutatis mutandis* to the return of an Object delivered for the purpose of performance.

**436. Good faith consumption, transfer or acquisition by bona-fide Obligee**

(1) For cases set forth in paragraphs (2) and (3) of **Article 435 (Authority of disposition of performing person)**, should the Object delivered for the purpose of performance constitute a movable object and the Obligee has consumed or transferred in good faith the Object received as performance, such performance shall be deemed valid and the performing person may not demand the return of such Object.

(2) For cases set forth in paragraph (1), the owner of the Object delivered for the purpose of performance may demand reimbursement for such Object from the receiver of said performance, unless such receiver acquired ownership of the Object in accordance with the provisions set forth in **Article 193 (Bona fide acquisition of ownership of movables)**. An Obligee who has compensated the owner of the Object delivered for the purpose of performance may demand reimbursement for such compensation from the Obligor.

**437. Power to accept performance**

(1) Performance is invalid unless it is carried out on behalf of the Obligee or another person authorized to receive such performance.

(2) Should the Obligor perform his/her Obligation for a person not having the power to receive performance, the Obligor must once more make performance for the Obligee upon the Obligee's request. The person who made performance may demand that the unauthorized receiver of the

performance return the Object delivered for the purpose of the performance.

**438. Restriction of power to accept performance**

(1) Should a claim held by an Obligee be subject to attachment through a ruling of the court, the Obligee shall not have the power to accept performance made by the Obligor, and the Obligor shall not make performance to the Obligee.

(2) Paragraph (2) of **Article 437 (Power to accept performance)** shall apply *mutatis mutandis* to cases in which an Obligor barred from making payment makes performance to his/her Obligee.

**439. Performance to pseudo claim holder**

(1) Performance made to a person who appears to be the Obligee but who in fact is not the true Obligee shall be treated as valid if the performing party believed the receiver to be the true Obligee and such belief was not the result of gross negligence.

(2) In cases set forth in paragraph (1), the true Obligee may not demand that the Obligor make performance again. The true Obligee may demand that the person receiving the performance return the Object delivered for the purpose of performance.

**440. Manner of performance**

An Obligor shall perform in good faith the Obligations in accordance with the purpose of said Obligations.

**441. Partial performance**

An Obligee shall not be required to accept partial performance. However, should an Obligee accept performance knowing that it is partial, the performance shall be considered effective to the extent to which it is accepted.

**442. Performance with substitute Object**

(1) Should, with the consent of the Obligee, an Obligor perform a

substitute act of performance that differs from the originally intended act of performance, it shall have the same effect as a valid performance.

(2) An Obligee and Obligor may agree to a substitute act of performance being made in place of the originally intended act of performance. In such case the Obligor may choose to perform either the originally intended act of performance or the agreed substitute act of performance, except where the right to choose has been given to the Obligee.

**443. Time of performance, performance before set time**

(1) An Obligor shall perform Obligations at the time of performance as determined in each Item of **Article 391 (Delayed performance)**.

(2) Performance may be made prior to the time it is due as set forth in provisions of paragraph 2 **Article 330 (Beneficiary of time determination)**.

**444. Hours of performance**

An Obligor shall execute performance during regular business hours in accordance with prevailing customs and in good faith.

**445. Place of performance**

Should the place of performance not be agreed upon between the parties, performance of an Obligation to deliver specific Object shall be made at the place where the Object was located at the time the Obligation arose. For all other Obligations, the performance shall be made at the current residence of the Obligee.

**446. Costs of performance**

In the absence of an agreement regarding the costs of performance, such costs shall be borne by the Obligor. However, should an increase in the costs of performance be due to a change in the residence of the Obligee or to some other act of the Obligee, such cost amount of the increase shall be borne by the Obligee.

**447. Delivery of receipt**

The performing party may demand a bill of receipt from the person accepting performance.

**448. Return of documents**

Should documents evidencing the Obligation exist, the performing party may demand the return of such documents once the full Obligation has been performed.

Sub-section II. Assignment of Performance

**449. Assignment via designation**

(1) Should an Obligor owe to the same Obligee multiple Obligations of the same kind, if a tender of performance is not sufficient to discharge all of the Obligations, the performing party may at the time of performance designate the Obligation to which the performance shall be applied.

(2) Should the performing party not make the designation described in paragraph (1), the party accepting the performance may make the assignment at the time performance is accepted. Provisions for statutory assignment shall apply should the performing party make an immediate objection to such assignment.

(3) The assignment described in paragraphs (1) and (2) shall be made via notice to the counter-party.

**450. Statutory assignment**

Should neither the performing party nor the party receiving performance make an assignment of performance, the performance shall be assigned according to the following rules:

- a. Between the Obligations that are due and those that are yet to be due, the former shall have priority;
- b. Should all of the Obligations be due or not due, the Obligation as to which discharge would confer the greatest benefit for the Obligor shall have priority;

- c. Should the Obligor benefit equally from the discharge of any of the Obligations, the Obligation which first became due or will become due shall have priority; and
- d. Among multiple Obligations that are equal in regard to the benefit of discharge for the Obligor and that become due at the same time, performance shall be assigned based on to the amount of each Obligation.

**451. Order of assignment among costs, interests and principal**

Should an Obligor of one or more Obligations be obligated to pay interest and costs in addition to the principal, performance that is insufficient to discharge all of these shall be assigned in the order of costs, interest and principal. However, should the Obligor and the Obligee have agreed otherwise, such agreement shall prevail.

**452. Performance for two or more Obligees**

The provisions of **Article 449 (Assignment via designation)**, **Article 450 (Statutory assignment)** and **Article 451 (Order of assignment among costs, interests and principal)** shall apply *mutatis mutandis* should the Obligor owe multiple Obligations to different Obligees and the Obligation, as to which the Obligor's performance was directed, cannot be determined.

Sub-section II. Tender and Deposit

**453. Definition and basic effect of tender of performance**

(1) Tender of performance shall mean that the Obligor has completed the preparations necessary for performance and has asked the Obligee to accept such performance.

(2) Even should the Obligor have made a tender of performance, if an Obligee does not take necessary actions to accept performance, the Obligor shall be relieved of any liability for non-performance.

(3) Should the Obligor bearing a monetary Obligation with interest accruing thereon provide a tender of performance, if the Obligee does not accept such performance, the Obligor shall not be subsequently

required to pay interest thereon.

**454. Method of tender**

A tender of performance must constitute an actual tender of performance in accordance with the intended purpose of the Obligation. Should the Obligee have refused in advance to accept the tender of performance, or an act on the part of the Obligee is necessary for performance, it shall be sufficient for the Obligor to give notice to the Obligee that preparations for performance have been completed and demand the Obligee's acceptance of performance.

**455. Effect of tender**

Should an Obligee not accept a tender of performance, the following shall occur in addition to that described in Article **453 (Definition and basic effect of tender of performance)**:

- a. Where the Obligor bears the risk in a bilateral contract, the risk shall be transferred to the Obligee;
- b. The Obligee shall lose the right to put forth a defense of simultaneous performance for a bilateral contract; and
- c. The Obligor may become exempted from the Obligation by carrying out a deposit.<sup>7</sup>

**456. Delayed receipt**

(1) Should the Obligee have in advance refused to accept performance, or where tender of performance has been made to the Obligee, if performance is not accepted due to the fault of the Obligee, the Obligor may demand damages from the Obligee for any injury incurred due to such non-acceptance.

(2) Should the Obligee's non-acceptance of a tender of performance constitute a material breach of the Obligee's contractual duties, the Obligor may terminate the contract.

**457. Deposit**

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<sup>7</sup> In this context, deposit refers to the placement of the object of performance into the possession of another on behalf of the Obligor.

(1) An Obligor may be exempted from an Obligation by depositing the Object that is the subject of the Obligation with an authorized depository office in the following situations:

- a. Where the performing party has made a tender of performance, but the Obligee refuses to accept or is unable to accept such performance; or
- b. Where the identity of the Obligee cannot be determined for reasons not the fault of the Obligor.

(2) The performing party may recover the Object deposited up until the time that the Obligee has accepted the deposit or a judgment declaring the deposit valid has become final and binding. In such case, the deposit shall be deemed to have not occurred. This shall not apply where a pledge or hypothec has been extinguished as a result of the deposit.

(3) The details and procedures governing deposits shall be prescribed in the Law on Deposits.

#### **458. Obligor's right to sell**

Should the Object comprising the subject matter of the Obligation be unsuitable for deposit, or be in danger of perishing or being damaged, the Obligor may, with the permission of the court, sell the Object via public auction and deposit the proceeds with an authorized depository office, and the same shall apply should the cost of preserving the Object be prohibitive.

### Sub-section III. Subrogation by performance

#### **459. Subrogation through performance**

(1) A person who has been discharged through his/her own performance or other expenditure and thereby obtained the right to demand indemnification from the Obligor may exercise via subrogation the claims held by the Obligee and all other rights associated therewith.

(2) The provisions of **Article 503 (Requirement for Assertion of**

**Assignment of Nominative Claim against Third Parties)** shall apply *mutatis mutandis* to situations described in paragraph (1).

(3) The notification described in **Articles 913 (Requirements for indemnification)** and **Article 933 (Notification as requirement for indemnification)** may substitute for the notification set forth in paragraph (2). However, should a date-certified instrument be demanded in reference to provisions to which paragraph (2) hereof applies *mutatis mutandis*, the notification described in this paragraph shall also be provided through an instrument bearing a fixed date.

#### **460. Scope of subrogation and relationships among subrogees**

(1) A person who has been subrogated to an Obligee through **Article 459 (Subrogation through performance)** may exercise, within the scope of indemnification that can be demanded based on his/her own right, any and all rights that were possessed by the Obligee by virtue of the automatic effect of the claim or that derive from a security interest. This shall not apply to the rights that directly accompany the contractual position of the Obligee under the contract.

(2) The following conditions shall apply to any subrogee:

- a. Unless the existence of a subrogation is entered in the registration accessory of a statutory lien, pledge for an immovable or hypothec that is created over any of the Obligor's objects, a guarantor or third party security provider shall not assert his/her subrogation upon an Obligee against a third-party acquirer who acquires an immovable that is the object of such a statutory lien, pledge or hypothec;
- b. A third-party acquirer who acquires an Object that is the subject of a security right from an Obligor shall not be subrogated to an Obligee concerning a guarantor;
- c. A third-party acquirer who acquires an Object that is the subject of a security right of an Obligor shall be subrogated to an Obligee concerning other third-party acquirers who acquire the objects of other security interests from such Obligor in proportion to their respective values of the

acquired Objects;

- d. The provisions of item (c) shall apply *mutatis mutandis* to the relationship between third party security providers as described in **Article 766 (Definition of security provider and Third Party acquirer)**; or
- e. If between guarantors and third party security providers, subrogation to the position of an Obligee shall be made in accordance with the number of persons within each group. However, should there be multiple third-party security providers, subrogation to the position of Obligee shall be made in accordance with the respective prices of the Objects provided as security by each third-party security provider in relation to the portion of the Obligation remaining after subtracting the portion for which a group of guarantors is responsible.

**461. Partial subrogation**

(1) Should subrogated performance of a portion of an Obligation have been made, the subrogee shall exercise the rights of the Obligee together with the Obligee to the extent of the partial performance. However, should the subrogee seek to execute these rights, the Obligee's consent must be obtained, and, at the request of the Obligee, such rights or ranking shall be transferred to the Obligee at no cost to the extent of the remaining Obligation.

(2) In the cases set forth in paragraph (1), only the Obligee may terminate the contract on the grounds of non-performance. However, in such case the subrogee shall be compensated to the extent of the subrogee's performance and interest thereon.

**462. Subrogated performance by a third party and certificate of object of security**

(1) An Obligee who has received full performance via subrogated performance shall deliver to the subrogee a certificate of claim and any object of security possessed by the Obligee.

(2) Should subrogated performance have been made with respect to a portion of the claim, the Obligee shall indicate on the claim instrument that subrogation had been carried out and shall ensure that the subrogee supervises the preservation of the security object possessed by the Obligee.

**463. Obligation to preserve security for benefit of subrogee**

Should a person exist who could subrogate an Obligee pursuant to the provisions of **Article 459 (Subrogation through performance)**, and the security right has been lost or diminished due to an intentional or negligent act of the Obligee, the person qualified to invoke such subrogation may be exempted from his/her own responsibility or seek damages to the extent that such person is no longer able to receive indemnification due to such loss or diminution.

**Section II. Set-off**

**464. Conditions of statutory set-off and set-off contract**

(1) Should two persons bear mutual Obligations having similar subjects, if both Obligations are due for performance, one party may extinguish mutual Obligations to the extent that their respective amounts are equal by making a Declaration of Intent of set-off.

(2) The parties may enter into a set-off agreement to extinguish the mutual Obligations even if both Obligations are not of a similar subject matter. However, the right of a third party shall not be infringed upon thereby.

**465. Method of set-off**

(1) A set-off shall be effected by a party's declaration to set-off to the other party.

(2) A Declaration of Intent to set-off may be subject to a condition precedent, but it shall not be subject to a condition subsequent or to a fixed time.

**466. Timing of effect of set-off**

Should the requirements for set-off be satisfied, if a party declares a set-off, the set-off shall retroactively extinguish the two Obligations as of the time that the Obligations became suitable for a set-off.

**467. Limitations of set-off**

(1) Should either or both of the Obligations be unsuitable for set-off in light of the nature of the Obligation(s), a set-off shall not be executed.

(2) Should there be an agreement between the parties to not declare a set-off, both parties shall be prohibited from declaring a set-off. However, such an agreement may not be asserted against a bona fide third party.

**468. Set-off when a counter-Obligation is subject to defense**

(1) A party may not execute a set-off should the corresponding Obligation owed by the counter-party be subject to any form of defense exercisable by counter-party.

(2) An Obligation for which the period of prescription or the period for exercise has elapsed may be set off by the Obligee should the requirements for set-off have been met prior to the elapsing of such respective period.

**469. Set-off of Obligations arising through tort**

An Obligor who bears an Obligation arising through tort shall not seek extinction of such Obligation via set-off.

**470. Obligations prohibited from attachment**

Should attachment of an Obligation be prohibited, the Obligor may not seek the extinction of such Obligation through set-off.

**471. Obligations subject to attachment orders**

(1) Should an Obligation be subject to an order of attachment

initiated by a third party, the Obligor may set off such Obligation only against a counter-Obligation borne by the counter-party and obtained prior to such attachment once the counter-Obligation has become due. This shall not apply in cases where such counter-Obligations will come due later than the Obligation borne and to be set off by the Obligor.

(2) The second sentence of paragraph (1) shall not apply should there be an agreement between the parties allowing a set-off of Obligations irrespective of the time for performance thereof.

**472. Assignment in cases of set-off**

Should one or both of the parties to a set-off be liable for more than one Obligation suitable for set-off, the party declaring the set-off may designate the Obligations which are to be extinguished by the set-off. If a set-off is declared without the designation described in the first sentence of this Article, the provisions regarding assignment of performance shall apply *mutatis mutandis*.

### Section III. Release

**473. Release of Obligation**

An Obligation is extinguished once an Obligee expresses to the Obligor the intention to release the Obligor from the Obligation.

**474. Partial release**

An Obligee may declare a partial release from an Obligation.

**475. Limitations on release**

Should an Obligation be subject to attachment by a third party or the capacity of the Obligee to dispose of the Obligation be restricted for any other reason, the Obligee may not release the Obligor from such Obligation.

### Section IV. Novation

**476. Meaning of novation**

(1) Novation shall refer to a contract that extinguishes the original Obligation and creates a new Obligation between the same Obligee and Obligor in its stead.

(2) The original Obligation shall be extinguished at the moment that the novation contract described in paragraph (1) comes into effect.

#### **477. Non-extinction of original Obligation**

Should an Obligation created by a novation contract not come into effect due to the Obligee of the original Obligations not being expected or if the new Obligation is impossible to perform from the beginning, the original Obligation is not extinguished.<sup>8</sup>

#### **478. Transfer of security rights**

(1) Should it be agreed to between the parties to the novation a contract, a pledge, hypothec or other security right established in regard to the original Obligation may be transferred to the new Obligation to the extent to which it falls within the scope of the original Obligation. However, a security right provided by a third party shall not be transferred without the third party's consent.

(2) With regard to a quasi-loan for consumption, the agreement mentioned in the first sentence of paragraph (1) shall be presumed to exist.

### **Section V. Merger**

#### **479. Merger of claim and Obligation**

(1) Should an Obligation and a claim corresponding to such Obligation belong to a sole and same person, such Obligation and claim shall be extinguished via merger.

(2) Should the claim mentioned in paragraph (1) be the object of a right possessed by a third party, such claim shall not be extinguished

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<sup>8</sup> Note: This article appears to have been inaccurate in both the original Khmer and respective Japanese version.

via merger.

## **Chapter 8 EXTINGTIVE PRESCRIPTION REGARDING CLAIMS**

### **480. Definition of extinctive prescription regarding claim**

Extinctive prescription regarding a claim shall refer to the extinction of a claim based on an Obligee's failure to exercise the claim within a certain period.

### **481. Commencement of extinctive prescription period for claims**

Extinctive prescription regarding a claim shall commence at the time that the claim is capable of being exercised.

### **482. Extinctive prescription period for general claim**

The extinctive prescription period for claims shall be five years, except as otherwise provided in this Code or other law or regulation.

### **483. Short extinctive prescription period**

The extinctive prescription period for a claim pertaining to the price of products sold or service provided by a manufacturer or merchant to a non-merchant shall be two years.

### **484. Extinctive prescription period for established claims**

(1) The extinctive prescription period for a claim that is definitively established through a final and binding judgment, a judicial settlement or other determination having the effect of a final and binding judgment shall be five years from the time at which it was definitively established, even should it be a prescription period of less than five years.

(2) The provisions of paragraph (1) shall not apply should the time for performance have not occurred by the time of the claim being definitively established.

### **485. Retroactive effect of extinctive prescription regarding claims**

The effect of extinctive prescription against a claim shall be

retroactive from the date of commencement for the period thereof.

**486. Invocation of extinctive prescription regarding claim**

(1) A court shall not render a judgment based on extinctive prescription regarding a claim unless extinctive prescription has been invoked by a party.

(2) Extinctive prescription in relation to a claim may only be invoked by an Obligor, a joint Obligor, a guarantor, a third party security provider or a third party acquirer as specified in **Article 766 (Definition of security provider and Third Party acquirer)**, or other person possessing a legally recognized interest in the invocation of such extinctive prescription.

(3) Should extinctive prescription regarding a claim be invoked by an Obligor, any third parties shall also receive the benefit of the extinctive prescription. Should the extinctive prescription regarding the claim be invoked by a person having a right to do so other than the Obligor, the invocation shall only be effective between such person and the Obligee.

**487. Renunciation of benefit of extinctive prescription regarding claims**

The benefits arising from extinctive prescription shall not be renounced in advance. The benefits of extinctive prescription, the period for which has already been completed, may be renounced.

**488. Scope of persons for whom effect of renunciation of benefits from extinctive prescription regarding claim extends**

A renunciation of the benefit of extinctive prescription of a claim shall be effective only in regards to the relationship between the Obligee and the renouncing party having the right to invoke extinctive prescription.

**489. Grounds for interruption of extinctive prescription of claims**

Extinctive prescription regarding a claim shall interrupted due to the

occurrence of any of the following events:

- a. Filing of a lawsuit, participation in a bankruptcy proceeding, or the equivalent exercise of a claim;
- b. An act of execution or issuance of preservative relief; or
- c. Partial repayment, payment of interest, provision of security or acknowledgement of the existence of the claim through any other method.

**490. Effect of interruption of extinctive prescription regarding claim and scope of persons**

Should extinctive prescription regarding a claim be interrupted against an Obligor, other persons shall not contest the effects of such interruption. Should extinctive prescription regarding a claim be interrupted against a person who is not the Obligor and has a right to invoke extinctive prescription, the interruption is effective only in regards to the Obligee and such person entitled to invoke extinctive prescription.

**491. Lawsuit**

A judicial action does not interrupt extinctive prescription in cases where the action is dismissed without prejudice or discontinued.

**492. Rescission of act of execution or preservative relief**

Should an act of execution or preservative relief be rescinded upon the motion of a rights-holder or for failure to comply with conditions imposed by law, any interruption of extinctive prescription effected by such act shall be deemed to have not occurred.

**493. Act of execution or preservative relief conducted as against person other than Obligor**

An act of execution or preservative relief conducted as against a person other than the Obligor shall interrupt any extinctive prescription in relation to the Obligor only should the Obligor be notified of such act.

**494. Calculation of extinctive prescription period regarding claim following interruption**

(1) Any interrupted extinctive prescription period shall begin anew from the time that the grounds for interruption have terminated.

(2) An extinctive prescription period that was interrupted due to the filing of a lawsuit shall begin anew from the time that the judgment resolving said lawsuit becomes final and binding.

**495. Suspension of completion of extinctive prescription period upon demand with or without filing of lawsuit**

(1) Should a rights-holder demand satisfaction of such right within six months of the completion of an extinctive prescription period, the extinctive prescription period shall not be completed as against such person until six months has lapsed from the time of the notice of said demand. However, a subsequent demand for satisfaction by the rights-holder shall not delay the completion of the extinctive prescription.

(2) Even should a lawsuit not have the effect of interrupting the extinctive prescription period due to the dismissal without prejudice or discontinuation of said lawsuit, a demand shall be deemed to have been provided continuously from the time the complaint was served upon the defendant until the time the lawsuit was dismissed or discontinued. In such case, the extinctive prescription period shall not be completed pertaining to the person who brought the lawsuit until six months has elapsed from the date of dismissal or discontinuation.

(3) Should the rights-holder assert his/her right as a defendant in litigation, such assertion shall be deemed a continuous demand while the lawsuit is pending from the time at which it was made. In such case, the extinctive prescription period shall not be completed as against such person until six months have elapsed from the date on which the judgment in the case had become final and binding.

**496. Suspension of completion of extinctive prescription period regarding rights pertaining to minors or General Wards**

Should there be no legal representative for a minor or General Ward

within the six months prior to the completion of an extinctive prescription period, the extinctive prescription period for claims shall not be perfected against such person until six months elapses from the time at which such person either attains the age of majority or a legal representative is retained on that person's behalf.

**497. Suspension of completion of extinctive prescription regarding rights between spouses**

Should one spouse possess a right with respect to the other, extinctive prescription regarding such right shall be not completed until six months has elapsed following the dissolution of marriage.

**498. Suspension of completion of extinctive prescription due to natural disaster**

Should a rights-holder be unable to interrupt extinctive prescription within six months prior to the completion of the extinctive prescription period due to a natural disaster or other *force majeure*, extinctive prescription shall not be completed until six months has elapsed from the time that such *force majeure* ceases.

**499. Performance in order to satisfy right subject to extinctive prescription**

A person who provides performance in order to satisfy a right subject to completed extinctive prescription shall not thereafter seek repayment even if the performance is provided without knowledge of the fact that such right was subject to a completed extinctive prescription.

**500. Extinctive prescription for property rights other than claims and ownership**

Except as otherwise provided in this Code or in other law or regulation, the period for extinctive prescription regarding property rights, other than claims and ownership, shall be 10 years. The provisions pertaining to extinctive prescription regarding claims shall apply *mutatis mutandis* to extinctive prescription for property rights other than claims and ownership.

## Chapter 9 ASSIGNMENT OF CLAIMS AND ASSUMPTION OF OBLIGATIONS

### Section I. Assignment of Claims

#### **501. Assignability of claims and special agreements prohibiting assignment**

(1) A claim may be assigned unless the nature of the claim does not permit such assignment. In such a case, the assignee shall become a new Obligee.

(2) Assignment of a claim may be prohibited by a declaration of intent by the party(s), even where the nature of the claim permits the assignment.

(3) The Declaration of Intent referred to in paragraph (2) shall be asserted against a third party having no knowledge thereof. This shall not apply should the third party's lack of knowledge be the result of the third party's gross negligence.

#### **502. Establishment of assignment of claim**

The assignment of a claim shall take effect only through agreement between the Obligee seeking to assign the claim and the assignee. However, in order to assert the assignment of a claim against the Obligor or a third party, the conditions established in **Article 503 (Requirement for Assertion of Assignment of Nominative Claim against Third Parties)** must be met.

#### **503. Requirement for Assertion of Assignment of Nominative Claim against Third Parties**

(1) The assignment of a nominative claim may not be asserted against the applicable Obligor or any other third party unless the assignor has given notice thereof to the Obligor or the Obligor given consent thereto to the assignor or the assignee.

(2) The notice or consent described in paragraph (1) shall not be asserted against a third party unless the notice or consent has been

made using an instrument bearing a fixed date.

**504. Priority among multiple assignments**

(1) Should one claim have been assigned multiple times, the priority among such assignments shall be determined based on the chronological order of the times at which the competing notices using the instruments bearing a fixed date reach the Obligor, or the times at which the Obligor has given consent using instruments bearing a fixed date. In such case, the Obligor must perform the Obligations borne to the Obligee having the priority position.

(2) For situations set forth in paragraph (1), should the chronological order among the notifications or consents not be clearly determined, they shall be deemed to have arrived or been given at the same time. In such case, each assignee may demand full performance from the Obligor in relation to the assigned Obligation. Should the Obligor perform the Obligations to one of the Obligees, the Obligation shall be deemed extinguished.

(3) In case set forth in paragraph (2), the Obligor shall be relieved of the Obligation by depositing the Object comprising the subject of the Obligation.

**505. Effect of notification and consent**

(1) Should the Obligor have been provided with the consent described in **Article 503 (Requirement for Assertion of Assignment of Nominative Claim against Third Parties)** without raising any objection, even if there are grounds which could have been raised as a defense against the assignor, s/he may not raise such grounds as a defense against the assignee. However, if the Obligor has paid any money or delivered any Object or assumed a new Obligation to or for the benefit of the assignor in order to obtain extinction of his/her Obligation, the Obligor may recover the money paid or other Object delivered, or may deem that the new Obligation had not been assumed, as the case may be.

(2) Should the assignor have merely provided notice of the assignment,

the Obligor may raise any grounds as a defense against the assignee, which accrues with respect to the assignor before s/he receives such notice as a defense against the assignee.

**506. Assignment of negotiable claim**

The conditions governing the assignment of a claim payable to order or other claim regarding which securities representing such claim have been issued shall be established separately through special law.

**Section II. Assumption of Obligations**

**507. Ability to assume Obligation**

(1) An Obligation that can be performed by a third party, other than the Obligor, can be assumed by such third party.

(2) The assumption of an Obligation by a third party may be prohibited through a declaration of intent by a party(s).

**508. Establishment of assumption of Obligation**

The assuming of an Obligation shall take effect based on the agreement of Obligor and the person assuming the Obligation or between the Obligee and such person.

**509. Rights of Obligee**

(1) An Obligee's rights against the Obligor shall not be extinguished through the assumption of the Obligation. In such case, the Obligor and the party assuming the Obligation are jointly and severally liable with respect to the Obligee.

(2) A party who assumes an Obligation may exempt the Obligor therefrom with the consent of the Obligee.

**510. Defenses following assumption of Obligation**

Should an Obligation be assumed, the assuming party may assert against the Obligee any defense possessed by the Obligor up to the time that the assumption was formed.

**511. Assumption of performance**

Should a person assume responsibility for the performance of an Obligation based on an agreement between the Obligor and the assuming party without assuming the Obligation itself, the Obligee may not demand performance from the assuming party.

**Section III. Assignment of Contractual Position**

**512. Assignment of contractual position**

(1) A party that has executed a contract with another party may assign to a third party his/her position under such contract. This shall not apply where assignment is impossible due to the nature of the contract. Moreover, the assignment of a party's contractual position may be prohibited based on the agreement of the parties. In such case, the provisions of paragraph (3) of **Article 501 (Assignability of claims and special agreements prohibiting assignment)** pertaining to the assignment of Obligations shall apply *mutatis mutandis*.

(2) Should the assignment of a contractual position be substantially disadvantageous to the other party of the contract, the party seeking to assign the contractual position shall obtain the approval of the assignment from the other party to the contract.

**513. Establishment of assignment of contractual position**

The assignment of a contractual position shall take effect only upon the agreement of the assignee and the party to the contract seeking to assign the contractual position. However, in order to assert the assignment against the counter-party to the contract or a third party, the requisites for assertion set forth in **Article 503 (Requirement for Assertion of Assignment of Nominative Claim against Third Parties)** pertaining to assignment of claims must be met.

**514. Effect of assignment of contractual position**

Should a contractual position have been assigned, all rights and Obligations possessed by the assignor shall be transferred to the

assignee unless a specific declaration of intent is made to the contrary. In such case, the provisions of **Article 505 (Effect of notification and consent)** pertaining to the assignment of claims and of **Article 510 (Defenses following assumption of Obligation)** pertaining to the assumption of Obligations shall apply *mutatis mutandis*.

## **BOOK 5 PARTICULAR TYPES OF CONTRACTS / TORTS**

### **Chapter 1 SALE**

#### **Section I. General Provisions**

##### **515. Nature of sale**

A Sale shall be a contract whereby one party, referred to as the Seller, is obligated to transfer ownership or other property rights to the counter-party, referred to as the Buyer, and the Buyer is obligated to pay a purchase price to the Seller.

##### **516. Formation of sales contract**

A sales contract shall be formed based solely on an agreement between the parties thereto unless otherwise provided by law. The parties may require the execution of a notarized document or a written document signed by the parties in their individual capacities as a condition for the formation of such contract.

##### **517. Unilateral promise to sell or purchase**

(1) Should a unilateral promise be made with respect to either a sale, such sale shall come into effect at the time that the person to whom such promise is made declares to the person putting forth the promise his intention to complete the sale.

(2) Should no period be specified for the expression of the intention set forth in paragraph (1), party expressing the unilateral promise may provide notification to the counter-party demanding an expression of intent within a fixed period of reasonable duration regarding whether

the counter-party intends to complete the sale. Should the counter-party fail to express such intent within such period, the promise shall lapse.

**518. Earnest money**

Should the Buyer have paid earnest money to the Seller, the Buyer may terminate the contract by releasing such earnest money, and the Seller may terminate the contract by refunding twice the amount of such earnest money. However, neither party may terminate the contract once the other party has initiated performance thereof.

**519. Sale after tasting**

(1) A sale of Object of a type that are customarily tasted prior to purchase shall be formed once the prospective Buyer accepts the sale after having carried out such tasting.

(2) Should no period be fixed for the prospective Buyer's acceptance, the Seller may issue a notice to the prospective Buyer demanding a definitive answer within a fixed period of a reasonable length regarding whether the prospective Buyer accepts the sale. Should the prospective Buyer fail to provide a response within such period, the prospective Buyer shall be deemed to have refused to enter into the sale.

**520. Sale following Trial**

(1) A sale following a trial shall come into effect once the prospective Buyer accepts the sale within the trial period or once the trial period has lapsed without the prospective Buyer's expression of any intention in regard to sale. Should the prospective Buyer refuse to receive the delivery of the Object, the sale contract shall be deemed to have not been formed.

(2) Should no trial period be fixed, the prospective Seller may provide notice to the prospective Buyer demanding a definitive answer within a fixed period of reasonable length regarding whether the prospective Buyer accepts the sale. Should the prospective Buyer continue to use the Object without providing an answer within such

period, the prospective Buyer shall be deemed to have accepted the sale.

**521. Sales price**

(1) The parties to a sale shall fix within the contract the amount of the sales price or establish a formula to determine such amount.

(2) The sales price amount may be determined based on the present or future market price of certain property or based on an appraisal by a third party appointed through a method designated by the parties. Should the appraisal of a third party be based on a mistake, or where the appraisal appears to violate principles of fairness, the party to the contract who would be harmed as a result thereof may object to such appraisal.

(3) The parties to the contract may fix the sales price to a certain Principal amount or based on indefinite or lifetime installment payments. However, should a third party appraise the sales price in accordance with the provisions of paragraph (2), the sales price shall be fixed as a set Principal amount, except where the parties have explicitly authorized a third party.

**522. Sales Expenses**

Unless otherwise agreed to between the parties, the cost of preparing written instruments and other expenses incurred in connection with the execution of a contract of sale shall be borne equally by both parties.

**523. *Mutatis mutandis* application to other types of contracts in which either or both parties provide consideration**

The provisions of this Chapter shall apply *mutatis mutandis* to contracts of value, in addition to sales contracts, in which either or both parties provide consideration.

**Section II. Parties to and Object Covered by Sales Contracts**

**524. Parties to sales contract**

Any natural or juristic person may sell or purchase any property except

when prohibited by law.

**525. Persons who may not be Buyers (1)**

(1) An administrator appointed by law, court order or contract shall not be a Buyer, either directly or through a third party, of property that the administrator has been entrusted to sell.

(2) Paragraph (1) shall apply *mutatis mutandis* to government officials responsible for the execution or administration of a compulsory sale.

(3) Should a sale be conducted in violation of the provisions of paragraphs (1) and (2), such sale may be rescinded only by the person who owned the property prior to sale or by the heir of such person or such person's successor in interest.

**526. Persons who may not be Buyers (2)**

(1) A judge, prosecutor, court clerk or other court official may not be a Buyer, either directly or through a third party, of property to which civil actions are pending before the court at which such person works or practices.

(2) Paragraph (1) shall apply *mutatis mutandis* to lawyers and notaries public becoming Buyers of Object or rights involved in cases in which they are retained.

(3) Should a sale be conducted in violation of paragraphs (1) and (2), such sale may be rescinded only by the Seller, the opposing party in a case involving the property, or their respective heirs or successors in interest.

**527. Object that may be sold**

Any good or right, including one that comes into existence at a future time, may be the object of a contract of sale, except for Object or rights that are not transferable by their nature, or those for which transfer is prohibited by law.

### Section III. Effect of Sales Contracts

#### **528. Transfer of title**

(1) With respect to the transfers of title to Object under a contract of sale, the general rules provided for in **Article 133 (Creation, transfer and alteration of real rights by agreement)**, **Article 134 (Perfection)**, **Article 135 (Requisites for Transferring Real Rights of Immovables by Agreement)**, **Article 160 (Acquisition of Ownership over Immovables)** and **Article 187 (Acquisition of ownership over movable)** of this code shall apply to contracts of sale.

(2) Should the Object of sale be rights other than titles to property, the general rules regarding the transfer of each right shall apply to each contract with respect to the transfer of such rights.

#### Sub-section I. Obligations of Seller

#### **529. Seller's duty to provide explanation**

The Seller is required to provide the Buyer with a clear explanation concerning: (i) the contents of the Obligations to be assumed by the Buyer; and (ii) the legal circumstances surrounding the property comprising the object of sale, and, specifically in the case of a sale of immovable property, the state of the title, encumbrances, boundaries, and other relevant matters.

#### **530. General Obligations of Seller**

The Seller shall owe to the Buyer, in accordance with the terms of the contract and the provisions of this Code: (i) an Obligation to transfer the sold property right; (ii) an Obligation to deliver the Object; (iii) an Obligation to preserve such property until delivered; and (iv) an Obligation to deliver instruments required as evidence of title thereto.

#### **531. Obligation to transfer the right and warranty liability of Seller**

(1) The Seller shall owe an Obligation to transfer the property right of the subject of the sale to the Buyer.

(2) In the event that a right belonging to a third party is the object of sale, the Seller is obligated to acquire such right and thereafter transfer it to the Buyer.

(3) Should, in the case set forth in paragraph (1), the Seller be unable to acquire such right and thereafter transfer it to the Buyer, the Buyer may terminate the contract. In such a case, should the Buyer not have been aware at the time the contract was executed that said right did not belong to the Seller, the Buyer may also demand compensation for damages.

**532. Rescission of contract by Seller who sells right of another party**

(1) Should the Seller be unaware at the time the contract is executed that the property right to be sold does not belong to the Seller, and should the Seller be subsequently unable to acquire the right and transfer it to the Buyer, the Seller may terminate the contract by compensating the Buyer for any damages.

(2) In the case set forth in paragraph (1), should the Buyer be aware at the time the contract is executed that the right to be sold did not belong to the Seller, the Seller may terminate the contract without compensating the Buyer for damages.

**533. Warranty liability of Seller when portion of rights sold belongs to third party**

(1) Should a portion of the property rights comprising the object of a sale belong to a third party and the Seller is unable to subsequently acquire and transfer said portion to the Buyer, the Buyer may demand a reduction in the purchase price proportional to the percentage of said property.

(2) In the case set forth in paragraph (1), the Buyer may terminate the contract should the Buyer be unaware at the time the contract was

executed that the relevant portion of the property rights did not belong to the Seller and it is judged that the Buyer would not have purchased said right if the object of the sale comprised the remaining part alone.

(3) In the cases set forth in paragraphs (1) and (2), should the Buyer be unaware at the time the contract was executed that a portion of the property rights that are the object of sale did not belong to the Seller, the Buyer may also demand compensation for damages.

(4) Should the Buyer be unaware at the time the contract was executed that a portion of the property rights that are the object of sale did not belong to the Seller, the Buyer's rights as provided for in paragraphs (1), (2) and (3) must be exercised within one year from the date that the Buyer came to be aware of such fact; and should the Buyer be aware at the time the contract was executed that part of said property rights did not belong to the Seller, the Buyer's rights must be exercised within one year from the date of the execution of the contract.

**534. Seller's warranty liability when encumbrance exists**

(1) Should the property comprising the Object of sale be subject to a perpetual Lease, usufruct, right of use, easement, Leasehold, right of retention or pledge, and due to such encumbrance(s) the Buyer is unable to enjoy the use of all or a part of such property or receive profits therefrom, the Buyer may demand compensation for damages from the Seller should the Buyer have been unaware of the existence of such encumbrance at the time the contract was executed.

(2) In the case set forth in paragraph (1), should the purpose of the contract be unable to be achieved due to the existence of the encumbrance, the Buyer may terminate the contract if the Buyer was unaware of the existence of the encumbrance at the time the contract was executed.

(3) The rules set forth in paragraphs (1) and (2) shall also apply in cases where an easement that was represented as existing with regard to the immovable comprising the object of sale does not in fact exist.

(4) In the case set forth paragraphs (1), (2) and (3), the Buyer's rights to terminate the contract and to demand compensation for damages must be exercised within one year from the date that the Buyer learned of such fact.

**535. Seller's warranty liability when security right exists**

(1) Should an immovable to be sold through the sales contract be subject to a statutory lien, a pledge that bars the Obligee from using or receiving benefit from the property, or a hypothec, if the Buyer has lost ownership due to the exercise of such security interest, the Buyer may terminate the contract.

(2) Should any costs or expenses be incurred by the Buyer in the process of preserving ownership, the Buyer may demand reimbursement for such costs and expenses from the Seller.

(3) In either of the cases set forth in paragraphs (1) and (2), the Buyer may demand compensation for any damages sustained therefrom.

(4) Should the Buyer of the immovable property subject to the protections set forth in paragraph (1) bought at the price which is deducted the price of the claim which is secured by the protections, shall not have the rights mentioned in paragraph (1) through (3).

**536. Seller's warranty liability in case of compulsory sale by public auction**

(1) In the case of a compulsory sale, the purchaser may, in accordance with the provisions of **Article 531 (Obligation to transfer the right and warranty liability of Seller)** through **Article 535 (Seller's warranty liability when security right exists)**, either terminate the contract or demand a reduction in the purchase price from the Obligor.

(2) In the case set forth in paragraph (1), should the Obligor be insolvent, the purchaser may demand from any Obligee to whom any share of the proceeds has been distributed the return of some or all of such proceeds.

(3) For the cases set forth in paragraphs (1) and (2), should the Obligor be aware of the existence of grounds for the warranty liability and nevertheless fail to disclose such to the auctioning authority or should the Obligee have been aware of such non-disclosure and nonetheless demanded a compulsory sale, the purchaser may demand damages from such parties.

**537. Warranty by Seller of a claim**

(1) The Seller of a claim shall be liable as to the existence of such claim.

(2) Should the Seller of a claim warrant the solvency of the Obligor, such Seller shall be presumed to have warranted the Obligor's solvency at the time the contract was executed.

(3) Should the Seller of a claim that has yet to come due warrant the future solvency of the Obligor, such Seller shall be presumed to have warranted the Obligor's solvency as of the date on which the Obligation is to be performed.

**538. Agreement regarding discharge from or limitation on warranty liability**

Even should it be agreed to between the Seller and the Buyer that the Seller's liability arising from the warranties set forth in **Article 531 (Obligation to transfer the right and warranty liability of Seller)** through **Article 537 (Warranty by Seller of a claim)** be discharged or limited, the Seller may not be relieved of liability in regards to any fact of which the Seller was aware and nevertheless failed to disclose, or in regards to any right that the Seller created in favor of, or assigned to, any third party.

**539. Obligation to deliver non-defective Object**

(1) The Seller bears an Obligation to deliver to the Buyer property that conforms to the contract.

(2) Except where the parties have agreed otherwise, the Object delivered to the Buyer shall be deemed to be non-defective Object in any of the following situations:

- a. Where the Object does not conform to the quantity, quality and description required by the contract;
- b. Where the Object differs from that which the Seller held out to the Buyer as a sample or model in terms of quantity, quality or description;
- c. Where the Object does not fit to the particular purpose expressly or impliedly made known to the Buyer when the contract was executed;
- d. Where the Object does not fit to the purposes for which Object of the same description would ordinarily be used; or
- e. Where the Object is not contained or packaged in the manner usual for such Object or in a manner adequate to preserve and protect the Object.

**540. Liability for Warranty of Non-defective Object**

(1) Should the Object be defective in any respect at the time that risk passes to the Buyer, even if the existence of such defect becomes apparent only after the passage of such risk, the Buyer may, in accordance with the terms of the contract and the provisions of this Code, demand that substitute Object be delivered or that such defect be remedied, terminate the contract or reduce the purchase price in relation to the Seller.

(2) The Seller shall bear the Liability for a Warranty against Defective Object described in paragraph (1) in relation to any defect that occurs due to a breach of any of the Seller's Obligations, including any defect that occurs following the time indicated in paragraph (1).

(3) Should the Seller warrant that for a certain period of time after delivery the Objects will remain fit for their ordinary purpose or for some particular purpose, or will retain specified qualities or characteristics, if a breach of such warranty occurs, the Seller shall bear the same liability as for a warranty against defects.

(4) Should, at the time the contract is executed, the Buyer be aware that the Object were defective in any respect, or be unaware of such defect as a result of gross negligence, the Seller shall not bear liability for a warranty against defect with respect to such defect.

**541. Seller's right to remedy defects**

(1) Should the Seller have delivered the Object prior to the date of delivery, he/she may, up to such delivery date, remedy any defect in the Object delivered so long as the Buyer's interests are not unfairly prejudiced thereby. However, the Buyer shall not be precluded from exercising the right to demand compensation for any damages.

(2) The Seller may, even after the date of delivery, remedy at his/her own expense any defect in the Object so long as the Buyer's interests are not unfairly prejudiced thereby. However, the Buyer shall not be precluded from exercising the right to terminate the contract and the right to demand compensation for damages therefrom.

**542. Buyer's right to demand complete performance**

(1) The Buyer may demand that the Seller perform its Obligations. This shall not apply where the Buyer has resorted to a remedy that is inconsistent with such demand.

(2) Should the Object be defective in any respect, the Buyer may demand that the Seller deliver substitute Object. This shall not apply should the supplying of Object of the same type cause an undue burden upon the Seller in consideration of the surrounding circumstances.

(3) Should the Object be defective in any respect, the Buyer may demand that the Seller remedy the defects. This shall not apply where remedying the Object would cause an undue burden upon the Seller in consideration of the surrounding circumstances.

(4) The Buyer may fix an additional period of a reasonable length for the Seller's performance of its Obligations. Unless the Buyer has

received notice from the Seller that the Seller does not intend to perform within such period, the Buyer may not resort to any remedy for breach of contract during such period. This shall not deprive the Buyer of the right to demand compensation for damages incurred due to delayed performance.

**543. Buyer's right to terminate**

Should the delivered Object be defective in any respect and such defect prevents the achievement of the Buyer's purpose in entering into the contract, the Buyer may terminate the contract.

**544. Buyer's right to demand a reduction in purchase price**

Should the delivered Object be defective in any respect, regardless of whether or not the purchase price has already been paid, the Buyer may demand a reduction in the purchase price in accordance with the difference between the value of the Object actually delivered and the value that non-defective Object would have had at the time of delivery. However, should the Seller have remedied the defect in accordance with **Article 542 (Buyer's right to demand complete performance)**, or should the Buyer have refused to accept an offer by the Seller to remedy the defect without good cause, the Buyer may not demand a reduction in purchase price.

**545. Buyer's right to demand damages**

The Buyer may demand compensation for damages in accordance with the provisions set forth in Section III, Chapter Four of Book Four independent of or together with any remedies provided for in **Article 542 (Buyer's right to demand complete performance)** through **Article 544 (Buyer's right to demand a reduction in purchase price)**.

**546. Special provisions regarding excess or deficiency in area of land**

(1) Should the total area of specified land be indicated and a sale has been executed based on a fixed price per unit area, but the actual property area is less than the indicated area, the Buyer may demand, in accordance with the provisions set forth in **Article 542 (Buyer's right to demand complete performance)** through **Article 545 (Buyer's right to**

**demand damages**): (i) delivery of the deficient portion; (ii) a reduction in the purchase price in proportion to the deficiency; or (iii) termination of the contract; and/or (iv) compensation for damages, unless otherwise agreed to between the parties.

(2) Should the total area of specified land be indicated and a sale has been executed based on a fixed price per unit area, but the actual property area exceeds the indicated area, if the Seller was unaware of such excess without negligence on his/her part, the Seller may demand an increase in the purchase price in proportion to the excess amount of land, unless otherwise agreed to between the parties.

(3) Should the total area of specified land be indicated and a sale has been executed based on a single price for the entire parcel of land, even if the actual area is less than the indicated area, the Buyer may not demand: (i) delivery of the deficient portion; (ii) a reduction in the purchase price in proportion to the deficiency; (iii) termination of the contract; and/or (iv) compensation for damages. This shall not apply in cases where: (i) the Seller knew of such deficiency in the actual land area; (ii) the Seller guaranteed the accuracy of the indicated size of the area; and/or (iii) the deficiency exceeds five percent of the indicated area.

(4) Should the total area of specified land be indicated and a sale have been executed based on a single price for the entire parcel, the Seller may not demand an increase in the purchase price even if the actual land area exceeds the indicated area. This shall not apply where the excess exceeds five percent of the indicated area, and the Seller was ignorant of such fact without negligence on his/her part.

(5) Should the Seller demand an increase in the purchase price based on the provisions of paragraphs (2) or (4), the Buyer may terminate the contract.

**547. Period for exercise of rights**

(1) The rights provided for in **Article 542 (Buyer's right to demand**

complete performance) through **Article 544 (Buyer's right to demand a reduction in purchase price)** and **Article 546(Special provisions regarding excess or deficiency in area of land)** must be exercised within one year. However, the provisions of **Article 482 (Extinctive prescription period for general claim)** shall apply to the right to demand damages described in paragraph (1) and the second sentence of paragraph (2) of **Article 546 (Special provisions regarding excess or deficiency in area of land)**.

(2) The period described in the first sentence of paragraph (1) shall be computed, for the Buyer, from the date that the Buyer knew or should have known of the existence of the defect or damage; and, for the Seller, from the execution date of the contract.

**548. Special provisions regarding discharge from or limitation on Conforming Object Warranty Liability**

Notwithstanding the Seller and the Buyer agreeing to discharge or limit the Seller's Liability for Warranty against Defect arising from the provisions set forth in **Articles 540 (Liability for Warranty of Non-defective Object )**, the Seller shall not be relieved of liability in regards to any defect for which the Seller had knowledge and nevertheless failed to disclose.

**549. Obligation to deliver Object**

(1) The Seller shall bear the Obligation to deliver the Object to the Buyer at the time and place provided for in the contract.

(2) Should only the time of payment of the purchase price be provided for within the contract, such time shall be presumed to apply to the delivery of the Object.

(3) Should the contract not provide for either a time of delivery or a time for the payment of the purchase price, the Seller shall bear the Obligation to deliver the Object immediately upon the Buyer's demand for delivery.

(4) Should the place of delivery not be provided for in the contract, the Seller shall effect the delivery, in the case of the sale of a specified Object, at the place where such specified Object were located at the time of the formation of the contract, and in such other cases, at the domicile of the Buyer.

(5) Costs arising from delivery shall be borne by the Seller unless otherwise agreed to by the parties. However, should the delivery costs increase due to a change of the Buyer's address, or any act by the Buyer, the increased costs shall be borne by the Buyer.

#### **550. Manner of Delivery**

Delivery of the Object of sale shall be effected through the actual delivery, summary delivery, assignment of possession by direction, or assignment of possession by agreement in accordance with the provisions described in **Article 229 (Assignment of possession)**. The delivery of an immovable may be executed through the actual delivery of the keys to the structures comprising or residing on such immovable, or of the documents evidencing title thereto.

#### **551. Defenses for simultaneous performance and insecurity**

(1) The Seller may refuse to transfer the right or to deliver the Object of the sale until the Buyer tenders payment of the purchase price. This shall not apply should the Buyer's Obligation have yet to become due or should it be agreed that the Obligation to transfer the right or to deliver the Object of sale is to be performed prior to payment of the purchase price.

(2) Even should the Seller have granted the Buyer a grace period for the payment of the purchase price, if the Buyer becomes insolvent following the execution of the contract, or has concealed his/her insolvency prior to execution of the contract, the Seller may refuse to transfer the right and/or deliver the Object of sale. This shall not apply should the Buyer have provided the Seller with security or otherwise undertaken measures that have extinguished such insecurity.

**552. Obligation to preserve Objects of sale**

(1) The Seller of a specified Object shall preserve such Object with the care of a good manager until it is delivered. The same shall apply with respect to the Seller of an Object of a specific type after specification thereof.

(2) Should an Object of sale be destroyed, lost or damaged due to the Seller's failure to conform to its care Obligation set forth in paragraph (1), the Seller shall be liable to the Buyer in accordance with the terms of the contract and the provisions of Section III, Chapter Four of Book Four of this Code.

**553. Right to acquire fruits**

Should an Object of sale produce natural fruits before it is delivered to the Buyer, such fruits shall belong to the Seller unless otherwise agreed to between the parties. The same rule shall apply where the Object produces rents or other legal fruits.

Sub-section II. Obligations of Buyer

**554. General Obligations of Buyer**

The Buyer is obligated to pay the purchase price to the Seller and to receive the Object that the Buyer has purchased.

**555. Obligation to pay purchase price**

(1) The Buyer bears the Obligation to pay the purchase price agreed upon in the contract at the time and place agreed to in said contract.

(2) Should the sales contract of a movable provide only a time for the delivery of Object of sale under the contract or the sales contract of an immovable provide only a time for the acts required for the registration of said immovable Object of sale under the contract, such time shall be presumed to apply to the payment of the purchase price.

(3) Should the contract provide for neither a time for delivery of a movable Object or for acts required to register an immovable Object

of sale under the contract, nor a time for the payment of the purchase price, the Buyer shall bear an obligation to pay the purchase price immediately upon the Seller's demand for payment.

(4) Should the place for executing payment of the purchase price not be provided for under the contract, if the purchase price is to be paid concurrent with the delivery of the Object or acts required to register the immovable Object of sale under the contract, the Buyer shall pay the purchase price at the place at which the Seller delivers the movable Object or completes the acts required for the registration of Object of sale under the contract for immovable Objects.

**556. Damages for delayed payment**

Even should the payment of the purchase price be delayed, the Buyer shall not be required to pay damages for the delayed performance until he/she receives delivery of the Object of sale.

**557. Right to refuse payment when third party claims interest in Object of sale**

(1) Should a third party claim interest in any Object of sale, thereby resulting in a risk to the Buyer of the loss of all or part of the right purchased by the Buyer, the Buyer may refuse to pay the purchase price in proportion to the extent of such risk. This shall not apply should the Seller have provided the Buyer with adequate security.

(2) In the cases set forth in paragraph (1), the Seller may demand that the Buyer deposit an amount of the purchase price.

**558. Defenses of simultaneous performance and insecurity**

(1) The Buyer may refuse to pay the purchase price until the Seller tenders performance of his/her Obligation. This shall not apply if the Seller's Obligation has yet to become due or where it has been agreed that the Obligation to pay the purchase price shall be fulfilled prior to the Seller's performance.

(2) Notwithstanding the Buyer granting the Seller a grace period for

performance, should there be a significant risk of the Seller's non-performance, the Buyer may refuse to pay the purchase price. This shall not apply where the Seller has provided the Buyer with security or has otherwise taken actions that have extinguished such insecurity.

**559. Delayed Receipt**

(1) In the event of a delay in the performance of the Buyer's Obligation to receive the Object, the Seller may demand compensation for damages or terminate the contract in accordance with the provisions set forth in Sections III and IV, Chapter Four of Book Four.

(2) In the case set forth in paragraph (1), should the Object be destroyed, lost or damaged due to reasons other than the Seller's negligence, the Buyer shall assume the risk of such destruction, loss or damage.

(3) Should the Buyer refuse to receive delivery of the Object despite the Seller having tendered delivery thereof, the Seller may deposit the Object or sell it in accordance with the provisions of **Article 457 (Deposit)** and **Article 458 (Obligor's right to sell)**.

Section IV. Termination of Contract by Exercise of Repurchase Right

**560. Special agreement for repurchase**

(1) The Seller may, based on a special agreement for repurchase that is clearly provided for in a written contract of sale, terminate the contract by returning the purchase price paid by the Buyer and the costs described in **Article 563 (Exercise of Repurchase)**.

**561. Period for repurchase**

(1) No period for repurchase shall exceed five years with respect to immovable Objects of sale and two years with respect to movable Objects of sale. Should a longer period have been fixed, it shall automatically be reduced to five years with respect to immovable Objects or two years with respect to movable Objects.

(2) Once a period has been fixed for repurchase, it cannot subsequently be extended.

(3) Should no period have been fixed for repurchase, the Seller must exercise the right of repurchase within the period set forth in paragraph (1) of this article.

**562. Perfection against third parties of special agreements for repurchase**

(1) The Buyer may exercise any and all rights as owner. However, should such exercise contravene the purpose of the special agreement for repurchase, the Buyer shall be liable for non-performance.

(2) The special agreement for repurchase shall be effective against third parties only if registered concurrent with the execution of the sale contract.

**563. Exercise of Repurchase**

(1) The Seller shall not repurchase the Object sold unless he/she tenders the purchase price and all costs incurred in connection with the contract within the period of repurchase.

(2) Should the Buyer or a subsequent transferee have incurred costs in connection with the Object, if they are necessary costs, the Seller shall provide reimbursement for the entire amount thereof, while if they are merely useful expenditures, the Seller must provide reimbursement of, at the Seller's election, either the amount of such expenditures which the Buyer or the person who bought the Object from the Buyer made, or the increase in the value of the Object attributable to such expenditures to the extent that such increase in value continues to exist.

**564. Sale including special agreement for repurchase of jointly owned Objects**

(1) Should joint owners sell all of a jointly owned Object by entering into a single contract that includes a special agreement for repurchase,

if one of the joint owners demands repurchase either of only his/her share or of the entire jointly owned Object, the Buyer need not respond to such demand.

(2) Should all joint owners sell their respective shares of the jointly owned Object by entering into separate contracts that include a special agreement for repurchase, each joint owner may repurchase his/her respective share separately from the other joint owners.

**565. Effect of non-exercise of right of repurchase**

Should a Seller not exercise a right of repurchase within the period fixed in accordance with **Article 561 (Period for repurchase)**, the right of repurchase shall be extinguished, and the Buyer's ownership shall not thereafter be subject to a demand for repurchase.

## **Chapter 2 EXCHANGE**

**566. Construal**

An exchange shall become effective through the mutual promise by the parties to transfer any property right other than money.

**567. Mutatis mutandis application of provisions relating to sale**  
Rules relating to sale shall apply *mutatis mutandis* to exchange.

## **Chapter 3 GIFT**

**568. Definition**

A gift shall refer to a contract coming into effect upon one party manifesting the intention to transfer property to another gratuitously, and the other party accepting such transfer.

**569. Transfer of ownership**

Transfer of the ownership of an Object pursuant to a contract of gift shall be subject to the general principles provided in **Article 133 (Creation, transfer and alteration of real rights by agreement)**, **Article 134 (Perfection)**, **Article 135 (Requisites of transfer of title**

by agreement pertaining to an immovable), Article 160 (Acquisition of ownership over immovables) and Article 187 (Acquisition of ownership over movables).

**570. Gifts not in writing**

Even should a promise of gift be made, if not put into writing, either party to the gifting contract may revoke the contract by withdrawing his/her manifestation of intent. This provided that the manifestation of intent shall not be withdrawn in respect to any portion of the gift for which performance has been completed.

**571. Rescission of gift on account of breach of trust**

(1) Should the recipient commit a serious breach of trust in relation to the donor, the donor shall be entitled to rescind the gift.

(2) Rescission of a gift under paragraph (1) in respect to any portion of the gift for which performance has been completed may be declared only within a period of 5 years following the occurrence of the serious breach of trust.

**572. Rescission of gifts on account of poverty of donor**

(1) Should the donor be reduced to a state of extreme poverty and no longer able to maintain the living standards of himself, and persons for whom he/she has Obligation to provide support, following the declaring of an intent to gift, the donor shall be entitled to rescind such gift.

(2) Rescission of a gift under paragraph (1) in respect to any portion of the gift for which performance has been completed may be declared only within a period of 5 years following said performance.

**573. Effect of rescission of gift**

In the event of a rescission of gift under **Article 571 (Rescission of gift on account of breach of trust)** and **Article 572 (Rescission of gifts on account of poverty of donor)**, the donor shall be entitled to demand the return of the gift in accordance with the provisions relating to

the return of unjust enrichment.

**574. Alleviation of warranty liability**

The donor shall not bear warranty liability for any defect in or absence of the Object or right that is the subject matter of the gift. This provided that it shall not apply if the donor has knowledge of the defect or absence, and fails to inform the recipient thereof.

**575. Periodic gifts**

Periodic gifts shall lose their effect upon the death of the donor or recipient.

**576. Encumbered gifts**

(1) A gift for which the recipient is obliged to carry out a specified performance in order to receive the gift shall be referred to as an encumbered gift.

(2) In the case of an encumbered gift, the donor shall assume the same warranty liability as a Seller to the extent of the encumbrance.

(3) In the case of an encumbered gift, should one party perform, such party shall be entitled to demand that the other party perform.

(4) In the absence of specific agreement, one party to a contract of encumbered gift may withhold his/her performance until the other party performs.

(5) Should the recipient not execute the encumbrance, the donor of an encumbered gift shall be entitled to terminate the contract of gift in accordance with the provisions relating to termination.

**577. Gift on donor's death**

(1) A gift that is to become effective upon the death of the donor shall be referred to as a Gift upon Donor's Death.

(2) The provisions relating to testamentary gifts shall apply *mutatis*

*mutandis* to the effect of a Gift upon Donor's Death.

## **Chapter 4 LOAN FOR CONSUMPTION**

### **Section I. Definition and Formation of Loans for Consumption**

#### **578. Definition of loan for consumption**

A loan for consumption is a contract whereby one party, referred to as the Lender, assumes an Obligation to entrust the free use of money, foodstuffs, paddy or other fungible objects for a specified term to another party, referred to as the Borrower, who assumes the Obligation to return objects of the same type, quality and quantity as those received from the Lender upon the expiry of the said term.

#### **579. Formation of contract of loan for consumption**

A loan contract for consumption shall be formed through the agreement of the Lender and the Borrower alone.

#### **580. Revocation of unwritten contract of a loan for consumption**

Both parties shall be entitled to revoke at any time a contract of a loan for consumption without interest that is not in writing. This provided that it shall not apply to any portion of the object of the loan that has been delivered by the Lender.

#### **581. Termination for deterioration of Borrower's creditworthiness**

(1) Should, following the formation of a contract of loan for consumption but prior to delivery of the Object thereof, the economic situation of the Borrower deteriorate and performance of the Obligation to return becomes doubtful, the Lender shall be entitled to terminate the contract.

(2) Should a Lender who has terminated a contract under paragraph (1) receive interest, commission or other compensation in advance, such Lender shall return the same to the Borrower.

#### **582. Quasi-loan for consumption**

(1) Should a person who assumes an Obligation to deliver money or other fungible Object, other than pursuant to a loan for consumption, agrees with the Obligee to make such Object the subject of a loan for consumption, a loan for consumption shall be formed thereby.

(2) In cases set forth in paragraph (1), any security right for the original Obligation shall be presumed to be transferred to the new Obligation.

## Section II. Loans for Consumption With Interest

### **583. Claim for interest**

(1) Interest shall refer to an amount of money or other Objects calculated by multiplying a certain percentage by the number of Objects loaned and delivered to the Borrower as compensation therefor.

(2) In respect to paragraph (1), the Objects loaned and delivered to the Borrower shall be referred to as the Principal, and the percentage multiplied by the number of Objects constituting the Principal shall be referred to as the Interest Rate.

(3) The parties to a loan for consumption contract may by agreement bring into existence a claim having as its subject the payment of interest. This shall assume that a claim for interest shall not come into effect unless it is in writing and bears the signature of the Borrower.

(4) Should an agreement to bring into existence a claim for interest not be made in writing, and the Borrower, with awareness of the applicability of the Sentence 2 of Paragraph (3), voluntarily pays the interest, the claim shall be valid to the extent of such payment.

### **584. Legal interest rate<sup>9</sup> and agreed-on interest rate**

(1) The interest rate shall be that provided by law or by agreement of the parties.

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<sup>9</sup> See Article 315.

(2) Should the parties have agreed to the payment of interest, or the payment of interest is required by law, and interest rate has not been specified by the parties, the interest rate set forth in this Code or by special law shall apply.

(3) Should the interest rate agreed to by the parties exceed the interest rate provided by law, it shall have no effect unless the format of the contract complies with the form provided in paragraph (3) of **Article 583(Claim for interest)**.

#### **585. Limitations on interest**

(1) The maximum interest rate refers to the upper limit for an interest rate that may be legally agreed to by the parties, as provided by law or ordinance.

(2) The interest rate agreed to by the parties may exceed the legal rate provided in paragraph (2) of **Article 584(Legal interest rate and agreed-on interest rate)**, but may not exceed the maximum interest rate.

(3) Should the agreement of the parties provide for an interest rate exceeding the maximum interest rate, such agreement shall be invalid in respect to the portion of interest that exceeds the maximum interest rate, and the Borrower shall only be obliged to pay interest calculated on the basis of the statutory maximum interest rate.

(4) Should interest in excess of the maximum interest rate have already been paid, such excess portion shall be deemed to have been allocated towards the repayment of the Principal. If, even after such allocation of the excess portion to payment of the Principal, there still remains a surplus with the Lender, this must be returned to the Borrower together with damages in the form of interest at the legal interest rate calculated from the date of the payment that led to the surplus and until the date of the return of the surplus.

(5) In the enforcement of this Article, should there be a difference

between the amount of Principal stipulated under the contract and the number or amount of Objects actually delivered by the Lender to the Borrower, such as in the case of a Lender deducting the amount of interest that will accrue in the future from the stipulated Principal in advance and delivering the remainder to the Borrower, the number or amount of Objects actually delivered shall be taken as the Principal amount.

(6) In the enforcement of this Article, money and all other Objects other than Principal received by the Lender in relation to the loan for consumption contract shall be deemed to be interest, regardless of whether they are described as inducements, rewards, commissions, survey fees or otherwise. This provided that it shall not apply to contract execution fees and expenses of repayment.

**586. Time of payment for interest and statutory compound interest**

(1) Unless otherwise specifically provided, interest shall be payable upon the expiration of each year following the delivery of the object. This assumes that should the object be required to be returned prior to the expiry of one year from delivery, interest shall be paid at the time of return.

(2) Should more than one year's interest be in arrears, and the Borrower does not pay such interest despite notice from the Lender, the Lender may compound such interest into the Principal.

**Section III. Lender's Obligation to Lend**

**587. Obligation to lend object**

(1) The Lender assumes an Obligation to allow the Borrower to use the Objects in a manner that does not violate the contract.

(2) From the time of delivery of the object, the Borrower may freely use, profit from and dispose of the Objects loaned and shall bear any risk of destruction or loss thereof or damage thereto that is not attributable to the fault of the Lender.

**588. Lender's warranty liability for Objects delivered belonging to another person**

(1) In the case of a loan for consumption contract with interest, a Lender who delivers Objects that are not his/her own property shall be obliged either to acquire the ownership thereof and transfer it to the Borrower, or to substitute other Objects owned by the Lender. This provided that the Borrower shall not be entitled to demand delivery of substitute Objects after consuming the Objects.

(2) Should the Lender be unable to fulfill the Obligation described in paragraph (1), the Borrower shall be entitled to terminate the contract.

(3) In cases set forth in paragraphs (1) or (2), a Borrower who has accepted delivery of loaned Objects without knowing that the Lender had no title thereto may demand compensation for damages from the Lender.

(4) In the case of a loan for consumption contract without interest, the provisions of paragraphs (1), (2) and (3) shall apply *mutatis mutandis* if the Lender has delivered Objects belonging to another person with knowledge that he/she had no right to dispose of them and without disclosing such fact to the Borrower.

(5) Should a Borrower of Objects owned by a person other than the Lender return the Objects delivered or the value thereof to the owner, he/she shall be exempted from the Obligation to return such Objects vis-à-vis the Lender, except where substitute Objects have been delivered and accepted by the Borrower in accordance with paragraphs (1) or (4).

**589. Right of termination by Lender who has delivered Objects belonging to another person**

A Lender who has unknowingly delivered Objects belonging to another person and who is unable to transfer the ownership of those Objects or substitute Objects to the Borrower may terminate the contract. This

provided that if the Borrower, in good faith, has a claim for compensation for damages under Article 588(**Lender's warranty liability for Objects delivered belonging to another person**), such termination shall only be permitted upon such damages having been compensated.

**590. Loan for consumption of defective Objects and Lender's warranty liability**

(1) In the case of a loan for consumption contract with interest, should there be a hidden defect in any Object delivered by the Lender, the Borrower who has received the Object without knowing of the defect may demand replacement with an Object without defect and compensation for any damages.

(2) In the case of a loan for consumption contract without interest, a Borrower who has received defective Objects may return the value of the defective Objects. This provided that should the Lender have known of the defect but did not advise the Borrower thereof, paragraph (1) shall apply *mutatis mutandis*.

**Section IV. Borrower's Obligation to return**

**591. Borrower's Obligation to return**

(1) The Borrower bears an Obligation to return on the return date Objects of the same type, quality and quantity as those received via delivery from the Lender.

(2) The Borrower of a loan for consumption with interest must pay interest according to the provisions of **Article 584 (Legal interest rate and agreed-on interest rate)** through **Article 586 (Time of payment for interest and statutory compound interest)**.

**592. Return in form of value**

(1) Should the Borrower become unable to return the Objects loaned in accordance with **Article 591 (Borrower's Obligation to return)**, the Borrower shall be obliged to pay the value of the Objects loaned on the date of return at the place of return.

(2) Should, in a case set forth in paragraph (1), the date or place of return have not been specified, an amount of money equivalent to the value of the Objects loaned on the date and at the place of the conclusion of the contract shall be payable.

**593. Change in value of currency**

Except where provided for through specific agreement, even should the value of a currency or Object fluctuates prior to the date of return, the Borrower must return the same number or unit of currency or Object that were delivered to him.

**594. Time of return**

(1) Should the parties have stipulated a date of return, the Lender shall not be permitted to demand the return of the object prior to said date. This provided that it shall not apply if the Borrower has been served with a bankruptcy notice or causes the destruction or diminishment of the security in accordance with **Article 331 (Forfeiture of time benefit)**.

(2) Should the parties have not stipulated the date of return, the Lender may give notice of a demand of return within a reasonable period of time designated by him/herself.

(3) In the case of a loan for consumption contract without interest, the Borrower may return the object at any time.

(4) In the case of a contact of loan for consumption with interest, the Borrower may return the object prior to the agreed date of return. This provided that if damage is thereby caused to the Lender, the Borrower must compensate for such damage in accordance with **Article 330 (Beneficiary of time determination)**.

**595. Place of return**

Should there has been no agreement between the parties concerning the place of return, the Borrower shall return the Object by bringing it

to the Permanent Residence of the Lender.

## **Chapter 5 LEASE**

### **Section I. General Provisions**

#### **596. Definition of Lease**

(1) A Lease shall be a contract whereby one party allows another party to use and profit from a certain Object in return for compensation.

(2) Objects comprising the subject of a Lease may be movable or immovable property.

#### **597. Formation of Lease**

A Lease shall come into effect upon one party promising to allow the other party to use and take profit from a certain Object, and the other party promising to pay rent in exchange.

#### **598. Conditions for perfection of Lease of immovables**

(1) A Lease of an immovable may be held against a subsequent acquirer of any real property right over the immovable by virtue of the fact that the Lessee has occupied, and continuously used and profited from the leased immovable.

(2) A Lessee actually occupying a leased property may exercise the same rights as the owner to demand return of a dispossessed Object, for the removal of disturbance, for the prevention of disturbance, and/or against any infringement of the Lease rights.

#### **599. Lease period**

(1) A Lease may be entered into with or without stipulated period.

(2) A Lease of an immovable not in writing shall be deemed to be a Lease without a stipulated period.

(3) A Lease of an immovable for a period of 15 years or more shall

comply with the provisions set forth in **Article 244 (Definition of perpetual leases)**.

## Section II. Effect of Lease

### **600. Rights and Obligations of Lessee to use and profit in accordance with normal methods**

(1) The Lessee shall have the right and Obligation to use and profit from the leased property in a manner that is consistent with the contract and the nature of the Object.

(2) Should the Lessee infringe upon the Obligations described in paragraph (1), the Lessor may terminate the contract.

(3) The Lessor shall not interfere with the use or deriving of profits by Lessee in a normal manner.

### **601. Lessee's Obligation of care as a prudent manager**

(1) The Lessee bears the Obligation to manage the leased Object with the care of a prudent manager.

(2) Should the Lessee violate the Obligation described in paragraph (1), the Lessor may terminate the contract.

### **602. Obligation to repair**

The Lessor bears the Obligation to carry out repairs required for the use and profit from the leased Object.

### **603. Preservative action by lessor**

(1) The Lessee shall not obstruct any action by the Lessor that is required to preserve the Leased Object.

(2) Should the Lessor proposes to take action to preserve the leased Object against the wishes of the Lessee, and as a result of such action it becomes impossible for the Lessee to achieve the objectives for which he/she entered into the Lease, the Lessee may demand a reduction of the

rental or may terminate the contract.

**604. Right of Lessee to demand reimbursement for costs**

(1) Should the Lessee incur any necessary costs that should be borne by the Lessor, the Lessee may immediately demand reimbursement from the Lessor for such costs.

(2) Should the Lessee pay for improvements or other beneficial outlays, the Lessee may demand upon the termination of the Lease that the Lessor reimburse the Lessee for the amount actually disbursed by the Lessee or the increase in value of the Object, at the discretion of the Lessor, so long as the increase in value of the Leased Object remains in effect. However, upon application by the Lessor, the court may grant a reasonable time for such reimbursement.

**605. Lessor's liability for defects in Leased Object**

(1) Should the Lessee not have examined the Leased property as to whether it is compliant with the conditions mentioned in the written contract upon accepting delivery of the Object, the Lessee shall not demand that the Lessor be responsible for the difference between the conditions stated in the written contract and the actual state of the leased Object, which could have been easily found.

(2) Should there be a hidden defect in the leased Object of which the Lessee was unaware, the Lessee may demand the repair of such defect or the replacement of such Object with a non-defective Object and compensation for damages.

(3) The Lessor may repair a defect at the Lessor's own expense as long as such does not unduly harm the Lessee's interest. This provided that it does not bar any claim by the Lessee for damages.

(4) In lieu of making a demand as set forth under paragraph (1), the Lessee may demand a reduction of the rent commensurate retroactive to the time that the Lessee received the delivery of the Leased Object.

(5) Should, as a result of a hidden defect, it be impossible for the Lessee to achieve the purpose for which he/she entered into the Lease, the Lessee may terminate the contract.

(6) Any demand for repair, replacement, reduction of rent and/or termination shall be made no later than one year from the time that the Lessee became aware or should have become aware of the fact giving rise to such demand.

**606. Right of claim for reduction of rental or termination due to decrease in income**

(1) Should a Lessee who has leased land with the objective of profiting therefrom receive less profit than the amount of the rental due to force majeure, he/she may demand that the rent be reduced to the amount of such profit.

(2) In cases set forth in paragraph (1), should a Lessee receive profits less than the amount of the rent for two or more consecutive years due to force majeure, the Lessee may terminate the Lease contract.

**607. Right of claim for reduction of rental or termination for partial loss of Leased property**

(1) Should a part of the Leased Object be destroyed or lost for reasons other than negligence on the part of the Lessee, the Lessee may demand a reduction in rent proportional to the part that has been destroyed or lost.

(2) In cases set forth in paragraph (1), should the remaining portion alone be insufficient to enable the Lessee to achieve the purpose for which the Lease was entered into, the Lessee may terminate the Lease contract.

**608. Transfer of Lease rights and sub-lease**

(1) Except in the case of perpetual Lease, the Lessee shall not be permitted to transfer his/her Lease right, or to sub-lease the leased Object, without the permission of the lessor.

(2) Should, contrary to paragraph (1), the Lessee allow a third party to use or profit from the leased Object, the Lessee may terminate the Lease contract.

**609. Sub-lease**

(1) Should a Lessee lawfully sub-leases the leased Object, the sub-lessee shall assume the Lease Obligations directly vis-à-vis the Lessor. An advance payment to the sub-lessor shall not be held as payment of the sub-lease rents to the Lessor.

(2) The provisions of paragraph (1) shall not prevent the Lessor from exercising his/her rights against the Lessee.

**610. Obligation to pay and time of payment of rents**

(1) The Lessee assumes an Obligation to pay rent to the Lessor at the agreed time.

(2) Should there be no specific provision in the contract concerning the time of payment of rent, it shall be paid at the end of each month in the case of movables and buildings, and at the end of each year in the case of land. This provided that if there is a harvest season the rent shall be paid without delay upon the close of such season.

**611. Lessee's Obligation to report**

Should repairs be required for the leased Object or a third party asserts any rights over it, the Lessee shall report without delay to the Lessor, except where the Lessor is already aware of such fact.

**Section III. Termination of Lease**

**612. Expiration of term**

A Lease for which a term has been provided shall terminate upon the expiration of such term.

**613. Refusal to renewal of immovable Lease**

In the case of the Lease of an immovable Object, the parties shall be deemed to have agreed to a renewal of the term of such Lease unless a party has declared his/her intention to refuse to renew no later than three months prior to the expiration of the term of the Lease, in the case of a building, and no later than one year prior to the expiration of the term of the Lease in the case of land. This provided that the Lease once renewed shall be a Lease without fixed term.

**614. Tacit renewal**

For a Lease of a movable Object, should the Lessee continue to use or profit from the leased Object after the expiration of the Lease term, and moreover, the Lessor is aware of this fact and makes no objection, the Lease shall be presumed to have been renewed as a Lease without fixed term and with conditions identical to those of the former Lease except in relation to the term.

**615. Notice of termination of Lease without fixed term**

(1) Should no term be fixed for a Lease in the contract, either party may give notice of termination at any time. If the notice of termination does not fix a time of termination of the Lease contract, or the period from the time of the notice until the time of termination stated therein is less than the applicable period set forth below, the Lease contract shall terminate upon the expiration of the applicable period set forth below:

- a. 1 day in the case of movables;
- b. 3 months in the case of buildings; and
- c. 1 year in the case of land.

(2) In the case of a Lease of land that has a harvest season, the notice of termination shall be given after the end of the harvest season and prior to the commencement of the subsequent cultivation.

**616. Reservation of right of termination**

Even where the parties have fixed a term for the Lease, should one or both parties have reserved the right to cancel the Lease within such term, the provisions of **Article 615 (Notice of termination of Lease**

without fixed term) shall apply *mutatis mutandis*.

**617. Non-retroactivity of termination**

Termination of a Lease shall not be retroactive.

**618. Obligation to return Leased Object**

(1) Upon termination of a Lease, the Lessee shall restore the leased Object to its original condition and return it to the Lessor immediately.

(2) Except for wear and tear arising through normal use, the Lessee shall be liable for repairs or pay compensation for all damage arising due to fault on his/her part.

**619. Lessee's right of removal**

Upon the termination of the Lease, the Lessee may remove any Object that has been attached to the leased Object.

**620. Successor's right to terminate after death of Lessee**

The Lessee's successor(s) may terminate the Lease contract should the successor(s) not wish to continue the Lease.

**621. Period for exercise of right to claim damages and/or reimbursement of expenses**

Any claim by the Lessor for damages for losses arising from the Lessee's use or profit taking in breach of the purpose of the contract, and any claim by the Lessee for reimbursement of expenses disbursed by the Lessee, shall be made no later than one year following the return of the leased Object to the Lessor.

**Section IV. Profit-sharing Lease**

**622. Definition of profit-sharing Lease**

A contract whereby a landowner (Lessor) lends land or livestock to another person (Lessee) and allows the Lessee to profit therefrom subject to the sharing of the profits with the Lessor is referred to

as a Profit-Sharing Lease.

**623. Method of sharing profits**

Unless otherwise agreed, it shall be deemed that profits shall be shared equally.

**624. Lessee's right to dispose of profits**

The Lessee may only dispose of any profits distributable to himself/herself after completing the distribution of profits that are due to the Lessor.

## **Chapter 6 LOAN FOR USE**

**625. Definition of Loan-for-Use**

A Loan-for-Use refers to a contract pursuant to which one party allows another party to use and profit from a certain Object free of charge.

**626. Conditions for formation of loan for use**

A Loan-for-Use shall come into effect by virtue of one party receiving a certain Object from another party, subject to a promise to return it after using and profiting from it free of charge.

**627. Borrower's Obligations**

(1) The Borrower shall manage the Object borrowed with the care of a good manager.

(2) The Borrower shall use and profit from the Object borrowed in a manner that is consistent with the contract or the nature of the Object itself.

(3) The Borrower shall not allow any third party to use or profit from the borrowed Object without the permission of the Lender.

(4) The Lender may terminate the contract if the Borrower breaches the provisions of paragraphs (1), (2) or (3).

**628. Allocation of expenses**

(1) The Borrower shall bear the normal necessary expenses in relation to the borrowed Object.

(2) Should the Borrower disburse necessary expenses other than the normal necessary expenses, such as major repairs, or beneficial expenses such as for improvements of the Object borrowed, the Borrower may demand upon the termination of the loan that the Lender reimburse the Borrower either for the amount actually disbursed by the Borrower or the increase in value of the Object borrowed, at the discretion of the Lender, so long as the increase in value of the Object borrowed remains in effect. This provided that upon application by the Lender, the court may permit a reasonable time for such reimbursement.

**629. Warranty liability of Lender**

The Lender assumes no liability for any warranties against any defect in the Object borrowed or deficiency in the title thereto. Provided that this shall not apply where the Lender was aware of such defect or deficiency but failed to disclose such to the Borrower thereof.

**630. Termination of Loan-for-Use for expiry of term or completion of use and taking of profits**

(1) A loan for use with a specified term shall terminate upon the expiration of said term.

(2) Should no term have been specified by the parties, but the purpose of the Loan-for-Use has been specified, the Loan-for-Use shall terminate upon the completion of its use and taking of profits in accordance with such purpose. This provided that if the use and taking of profits have not been completed on account of neglect by the Borrower, the loan for use shall terminate upon the expiration of a sufficient time for such use and taking of profits.

**631. Lender's notice of termination**

(1) Should neither the term nor the purpose be specified, the Lender may give notice of termination of the loan for use at any time.

(2) Even before the expiration of the term or the completion of use and taking of profits, should the Lender have urgent and unforeseeable need for the loaned Object, he/she may give notice of termination for the loan.

**632. Borrower's notice of termination**

Regardless of whether a term has been specified, the Borrower may give notice of termination for the loan. This provided that should the Lender be benefiting from such time, the Borrower shall be liable to compensate the Lender for any damage arising from the notice of termination.

**633. Termination of Loan-for-Use upon the death of the Borrower**

A loan for use shall terminate upon the death of the Borrower.

**634. Obligation to return borrowed Object**

(1) Upon termination of the Loan-for-Use, the Borrower shall restore the borrowed Object to its original state and immediately return it to the Lender.

(2) Except for wear and tear arising from normal use, the Borrower shall be liable to repair or pay compensation for all damage arising due to any cause attributable to the fault of the Borrower.

**635. Borrower's right of removal**

Upon termination of the Loan-for-Use, the Borrower may remove any Object that has been attached to the borrowed Object.

**636. Period for exercise of right to claim damages and/or reimbursement of expenses**

Claims by the Lender for damages arising from the Borrower's use or profit taking in breach of the purpose of the contract, and claims by the Borrower for reimbursement of expenses disbursed by the Borrower, shall be made no later than one year following the return of the borrowed Object to the Lender.

## Chapter 7 MANDATE

### **637. Definition of mandate**

Mandate shall refer to a contract whereby one party, referred to as the Mandator, grants to another party, referred to as the Mandatary, the power to administer business on behalf of the Mandator.

### **638. Principles of gratuitous mandates**

(1) A mandate may be for value or gratuitous. If no intention is manifested that the mandate be for value, it shall be presumed to be gratuitous. **Article 644(Mandatary's right to demand remuneration)** shall govern remuneration in the event that the mandate is for value.

### **639. Formalities of contract**

A contract of a Mandate shall be formed through the agreement of the parties alone.

### **640. Mandatary's Obligation of care**

- a. The Mandatary shall assume an Obligation to administer the mandated business with the care of a good manager complying with the main purpose of the mandate. This provided that such shall not prevent the parties from agreeing on a lesser standard of care for the Mandatary.
- b. Should the Mandatary breach the Mandatary's Obligation of care under paragraph (1) and thereby inflict damage on the Mandator, the Mandator may claim compensation for such damages from the Mandatary. In such a case, should the Mandate be deemed gratuitous, the court may reduce the amount of compensation.

### **641. Mandatary's Obligation to report**

A Mandatary shall, if so requested by the Mandator, report the current status of the administration of the mandated business at any time, and shall provide a full account without delay upon termination of the Mandate.

**642. Mandatary's Obligation to deliver**

(1) The Mandatary shall deliver to the Mandator monies and other Objects that he/she has received in the course of administering the mandated business. The Mandatary shall also deliver any fruits to the Mandator.

(2) The Mandatary shall transfer to the Mandator rights that the Mandatary has acquired in his/her name on behalf of the Mandator.

**643. Mandatary's liability to compensate for money spent**

Should the Mandatary have consumed monies for his/her personal benefit that the Mandatary was to deliver to the Mandator, or any monies that were to be used for the benefit of the Mandator, the Mandatary shall pay interest for the period from the day of such consumption. In such cases, should any damages still remain, the Mandatary shall be liable to compensate for such damages.

**644. Mandatary's right to demand remuneration**

(1) Except as provided by special agreement, the Mandatary shall not claim remuneration from the Mandator.

(2) Should the Mandatary be due to receive remuneration, the Mandatary may not claim the same until and unless he/she has performed the mandated Obligations. This provided that if the remuneration is specified with reference to a specific period, the Mandatary shall claim the same after the expiration of such period.

(3) Should a Mandate terminate during its performance due to reasons not attributable to the Mandatary, the Mandatary may demand remuneration in proportion to the performance already completed.

**645. Advance payment of expenses by Mandator**

Should costs be incurred in the administering of the mandated business, the Mandator must, at the request of the Mandatary, pay in advance for such costs.

**646. Mandatary's right to demand reimbursement for expenses**

(1) Should the Mandatary have incurred costs deemed necessary for the administration of the mandated business, the Mandatary may claim reimbursement for those costs from the Mandator and any interest on such costs calculated from the day the costs were incurred.

(2) Should the Mandatary have incurred any Obligation found to be necessary for the administration of the mandated business, the Mandatary may demand the Mandator to perform the Obligation on Mandatary's behalf, or, should the Obligation have yet to come due, to render reasonable security therefor.

(3) Should the Mandatary suffer any loss due to the administration of the mandated business without negligence on the part of the Mandatary, he/she may claim compensation for such loss from the Mandator. This provided that where such loss to arise from the intentional action or negligence of a third party, the Mandatary may only claim compensation from the Mandator to the extent that the Mandatary is unable to receive compensation from such third party.

**647. Termination of mandate**

(1) A mandate may be terminated by either party at any time.

(2) Should a party terminate a mandate at a time that is detrimental to the other party, the terminating party shall compensate for the damages suffered by the other party. This provided that it shall not apply where there are unavoidable grounds for such termination.

**648. Non-retroactivity of termination**

Should a mandate be terminated, such termination shall not be retroactive. This provided that it shall not preclude a claim for damages where a party has been negligent.

**649. Grounds of termination of mandate**

(1) In addition to termination pursuant to **Article 647 (Termination of mandate)**, a mandate shall terminate based on the following grounds:

- a. Death of the Mandator or Mandatary;
- b. Declaration of bankruptcy of Mandator or Mandatary;
- c. Commencement of a general guardianship or curatorship for the Mandator;
- d. Commencement of a general guardianship or curatorship for the Mandatary;
- e. Dissolution of the Mandator or Mandatary should either be a juristic person;
- f. Merger with another entity for the Mandator or Mandatary should either be a juristic person; or
- g. The occurrence of any other grounds agreed to by the parties.

(2) Even should the grounds described in items (a) through (g) of paragraph (1) exist, the parties may agree that the Mandate will not terminate. This provided that it shall not apply in the cases of death or commencement of guardianship of the Mandatary, or dissolution or merger of the Mandatary should it be a juristic person.

**650. Obligations of Mandatary in emergency after termination of mandate**

In cases where a Mandate has been terminated, should there be pressing circumstances, the Mandatary or his/her heir or legal representative shall effect any necessary dispositions until such time when the Mandator or his/her heir or legal representatives is able to take charge of the mandated business.

**651. Conditions for perfection of termination of Mandate**

Regardless of whether it relates to the Mandator or to the Mandatary, no grounds for termination of a Mandate may be asserted against the other party unless said other party is given notice thereof or is aware thereof.

## **Chapter 8 CONTRACTS FOR WORK**

**652. Definition of contract for work**

A Contract for Work shall refer to a contract whereby one party (the

Contractor) assumes the Obligation to complete the agreed upon work and the other party (the Principal) assumes the Obligation to pay remuneration for the results of such work.

**653. Time of payment of remuneration**

Remuneration shall be paid concurrent with the delivery of the Object of the work. This provided that if no delivery of an Object is required, the Contractor may demand the remuneration following the completion of the work.

**654. Obligation to complete work without defect**

(1) The Contractor assumes an Obligation vis-à-vis the Principal to complete the work without defects.

(2) Work shall be deemed to be defective should it not conform to the nature of work agreed to. Should the nature of the work have not been agreed to, work shall be deemed to be defective if it is not fit for the purpose assumed in the contract, and should no specified use be assumed in the contract, the work shall be deemed to be defective if it is not fit for normal use.

(3) Work shall be deemed to be defective if the Contractor produces work that is different from that ordered or deficient in quantity.

**655. Demand for subsequent completion**

(1) Should the work be defective, the Principal may demand that the Contractor perform a subsequent completion within a reasonable time designated by the Principal. In such case, the Contractor, at his/her option, may either remedy the defect or re-perform said work.

(2) The Contractor may refuse to perform subsequent completion if the cost thereof is excessive in comparison with the detriment resulting from the defect.

(3) Should the Contractor redo the work, he/she may demand that the Principal return the defective work.

**656. Remedy of defect by Principal**

(1) After the completion of a reasonable period of time fixed for the subsequent completion of the work, the Principal may remedy any defect himself and demand payment of the cost of rectification by the Contractor.

(2) Should the subsequent completion be unsuccessful, or should relying on the Contractor in effecting the subsequent completion of the work be judged to be unduly detrimental to the Principal, the Principal may remedy the defect him/herself and demand payment for the cost thereof from the Contractor.

(3) In cases falling under paragraphs (1) or (2), the Principal may demand that the Contractor pay the cost of remedy in advance.

(4) The provisions of paragraph (1), (2) or (3) shall not apply to cases where the Contractor has refused to effect subsequent completion on the basis of paragraph (2) of **Article 655 (Demand for subsequent completion)**.

**657. Principal's right of termination**

(1) The Principal may terminate the contract on the grounds of defect in the work in accordance with the provisions of **Book Four, Chapter Four, Section IV (Termination of contract)**. The same shall apply to cases where subsequent completion by the Contractor is unsuccessful or where relying on the Contractor to effect subsequent completion of the work is judged to be unduly detrimental to the Principal.

(2) The provisions of paragraph (1) shall not apply to buildings or other structures on land. Should, due to a major defect, the structure have no usable value to the Principal, the provisions of paragraph (1) shall apply.

**658. Right of Principal to demand reduction in price**

(1) Following the completion of a reasonable period of time fixed for

subsequent completion of the work, the Principal may demand a reduction in the remuneration for the work on the grounds of defect in the work through a declaration of intent to the Contractor. The same shall apply to cases where subsequent completion by the Contractor has been unsuccessful or where relying on the Contractor to effect subsequent completion of the work is judged to be unduly detrimental to the Principal.

(2) In response to the demand by the Principal described in paragraph (1), the remuneration for the work shall be reduced according to the ratio of the value of the defective work to the value of the work without defect.

**659. Principal's right to demand damages**

(1) In lieu of or in addition to exercising his/her rights provided in **Article 655 (Demand for subsequent completion)** through **Article 658 (Right of Principal to demand reduction in price)**, a Principal may demand payment for damages in accordance with the provisions of **Book Four, Chapter Four, Section III (Damages)**. This provided that a demand for damages in lieu of subsequent completion may only be made in cases where, after the completion of a reasonable time fixed for the subsequent completion of the work, subsequent completion by the Contractor has been unsuccessful or where relying on the Contractor to effect the subsequent completion of the work is judged to be unduly detrimental to the Principal.

(2) Should the cost of subsequent completion be considered to be excessive in comparison with the detriment resulting from the defect, the Principal may not demand as damages under paragraph (1) the amount of the cost of rectification of the defect.

**660. Treatment of cases where the defect is the result of materials or directions of the Principal**

(1) The provisions of **Article 655 (Demand for subsequent completion)** through **Article 659 (Principal's right to demand damages)** shall not apply in cases where the defect in the work arose as a result of the nature

of the materials provided by the Principal or the directions given by the Principal. This provided that mere wishes expressed by the Principal shall not be deemed to be directions.

(2) The provisions of paragraph (1) shall not apply should the Contractor have been aware that the materials or directions were not appropriate, and did not advise the Principal to such effect.

**661. Period for exercise of rights**

(1) The rights provided in **Article 655 (Demand for subsequent completion)** through **Article 658 (Right of Principal to demand reduction in price)** shall be exercised within a period of 1 year.

(2) The period described in paragraph (1) shall be computed beginning from the time at which the Principal became aware or ought to have become aware of the defect.

**662. Special agreements exempting warranty liability**

Even should a special agreement have been made exempting or limiting any liability provided in **Article 655 (Demand for subsequent completion)** through **Article 658 (Right of Principal to demand reduction in price)**, the Contractor shall not be entitled to any exemption or limitation of liability in respect to any fact of which he/she was aware but did not disclose to the Principal.

**663. Principal's right of termination while work is uncompleted**

So long as the Contractor has not completed the work, the Principal may terminate the contract at any time by paying damages.

## **Chapter 9 CONTRACT OF EMPLOYMENT**

**664. Contract of Employment**

(1) A Contract of Employment shall be formed through the promising by one party to perform services under employment, and another party to pay wages for such services.

(2) The party who promises to perform services under employment shall be referred to as the Employee and the counter-party as the Employer.

**665. Specification of working conditions**

(1) At the time of conclusion of the Contract of Employment, the Employer shall specify the wages, working hours and other working conditions for the Employee.

(2) The Employee may terminate the Contract of Employment immediately should the actual working conditions differ from those specified in accordance with paragraph (1).

**666. Obligation for care relating to safety**

When establishing and managing the location, facilities and equipment to be used for the Employee's work, the Employer shall be obliged to safeguard the worker's life, health, and similar aspects from danger.

**667. Personal exclusivity of employment contract**

(1) Without permission from the Employee, the Employer shall not assign his/her rights to a third party.

(2) Without permission from the Employer, the Employee may not procure a third party to perform services in his/her place.

(3) Should a party breach paragraph (1) or paragraph (2), the Contract of Employment may be terminated.

**668. Application of Labor Law**

Employment contracts shall be governed by the provisions of the Labor Law in addition to those of this Code.

## **Chapter 10 DEPOSITS**

### **Section I. General Provisions Relating to Deposits**

**669. Definition of Deposit Contract**

(1) Deposit Contract shall refer to a contract whereby one party, the Depositary, accepts an Object into his/her custody for a certain period of time from another party, the Depositor, and promises to return said Object to the Depositor upon the termination of the custodial period.

(2) Except should there be a specific agreement, the Depositor assumes no Obligation to pay remuneration to the Depositary. This provided that the Depositary may demand reasonable remuneration from the Depositor even in the absence of specific agreement should the Depositary have executed the Deposit Contract as its own business or where there is a provision of law to this effect.

**670. Fundamental aspects of Deposit Contracts**

(1) A Deposit Contract shall be formed by virtue of the receipt of the delivery by the Depositary of an Object comprising the Object of the Deposit Contract in accordance with an agreement.

(2) Should an Object already be in the possession of the Depositary, the Deposit Contract shall be formed by virtue of the agreement to the effect that a deposit relationship shall be formed. Should the Object be in the possession of a third party, the Deposit Contract shall be formed at the time that possession is assigned via direction.

**671. Effectiveness of consensual contract of bailment**

Should there be only an agreement between the parties to form a Deposit Contract in the future, either party may revoke such agreement at any time up until the delivery of the Object of the Deposit Contract. This provided that in the case of a promise to form a Deposit Contract for value, if in breach of such promise the party who is to become the Depositary causes damage upon the other party by refusing to receive the delivery of the Object of deposit, he/she shall compensate the other party for such damage unless he/she has good reason for such refusal.

**672. Deposit Contract concluded by non-owner**

Even should the Depositor not be the owner of the Object of the deposit, the Deposit Contract shall be deemed to have been validly formed. In

such case, even if a suit claiming return of the Object is filed by the owner against the Depositary, the Depositary may return the Object to the Depositor. This provided that it shall not apply where the owner's claim is found to be valid.

**673. Depositary's duties**

(1) A Depositary shall be obligated to maintain custody of the deposited Object with the care of a good manager.

(2) The Depositary shall not use the deposited Object without the consent of the Depositor.

**674. Liability of Depositary**

(1) The Depositary shall be liable to pay damages should he/she destroy, loses or damage the deposited Object. This provided that it shall not apply if the Depositary proves that such destruction, loss or damage was not the result of negligence on his/her part.

(2) In the case of a deposit effected at the request of the Depositary, the Depositary shall not be exempted from liability for the destruction of, loss of or damage to the Object of deposit unless he/she proves force majeure.

(3) In the case of hotels, lodging houses, restaurants, bathhouses or other facilities where guests congregate, the owner of the facility who accepts deposit of Objects by guests shall not be exempted from liability for destruction of, loss of or damage to the object of the Deposit Contract unless he/she proves force majeure.

**675. Reduction of liability of gratuitous Depositary**

In the case of a gratuitous Deposit Contract, the court may reduce the liability of the Depositary in damages, taking into account the financial situation of both the parties and other circumstances generally.

**676. Mitigation of liability where valuables not declared**

The court may reduce the liability of the Depositary in damages should the Depositor have deposited cash, negotiable instruments or other valuable items without declaring the type and value thereof to the Depositary.

**677. Duty of personal custody**

(1) The Depositary shall not, without the permission of the Depositor, entrust the custody of the Object of the Deposit Contract to any third party.

(2) Should the Depositary be permitted to entrust the custody of the Object of deposit to a third party, the Depositary shall be liable for the choice of and the supervision of the sub-depositary.

**678. Sub-deposit**

(1) The provisions of **Chapter 10 (Deposit)** shall apply *mutatis mutandis* to the relationship between the Depositary and the sub-Depositary.

(2) The sub-Depositary shall have the same rights and Obligations as the Depositary vis-à-vis the Depositor.

(3) Should the sub-depositary return the Object of the Deposit Contract to the Depositor, he/she shall be exempted from any Obligation to return it to the Depositary.

**679. Depositary's notice Obligation**

Should a third party asserting rights with respect to the deposited object have brought a lawsuit against the Depositary, or has effected an attachment, the Depositary must notify the Depositor of such fact without delay.

**680. Depositor's demand to return**

Even if the parties specify the time for the return of the deposited Object, the Depositor may demand the return of the Object at any time.

**681. Return by Depositary**

(1) Should the parties have not specified the time for the return of the deposited Object, the Depositary may return the same at any time.

(2) Should the timing of the return be specified, the Depositary shall not return the deposited Object prior to the due date unless due to unavoidable circumstances.

**682. Components of Obligation to return**

(1) The Depositary assumes the Obligation to return to the Depositor the same identical Object received at the time of the deposit.

(2) Should the Depositary not be liable for the destruction of, loss of or damage to the Object of deposit, the Depositary shall be obliged to deliver to the Depositor any insurance money or other Objects received as a subrogated Object that was destroyed, lost or damaged.

**683. Treatment of fruits**

Should the Depositary receive any fruits or income from the Object of the deposit, the Depositary shall deliver such to the Depositor.

**684. Deposit of money**

(1) Should a Depositary accept a deposit of money, the Depositary shall maintain custody of it in the manner prescribed in the Deposit Contract. In such a cases, the Depositary shall not bear any Obligation to pay interest, except if specifically agreed to.

(2) Should the money be able to be kept as a bank deposit, the provisions of **Article 683 (Treatment of fruits)** shall apply to interest.

**685. Expenses of return of Object**

In the case of a gratuitous Deposit Contract, the Depositor shall bear the cost of return for the Object of Deposit Contract. This provided that where the Depositary changes the location of the object, the Depositary shall bear any increase in the cost of return resulting therefrom.

**686. Obligation of Depositor to reimburse for expenses**

(1) The Depositor shall be required to pay any expenses for the keeping of the Object of the Deposit Contract.

(2) The Depositary may demand that the Depositor compensate him for any damages suffered on account of the Object of the Deposit Contract not attributable to negligence on the part of the Depositary.

**687. Place of return**

In the absence of any specified provision in the Deposit Contract, the Object of the Deposit Contract shall be returned at the place where it was to be kept. This provided that should the Depositary have changed the location of the Object based on reasonable grounds, it may be returned at its current location.

**688. Depositary's right of retention**

The Depositary may retain the Object of the Deposit Contract until such time as the Depositor pays any expenses and damages prescribed in paragraphs (1) and (2) of **Article 686 (Obligation of Depositor to reimburse for expenses)**.

Section II. Mingling of objects of deposit

**689. Mingling of objects of deposit**

Should a Depositary have accepted for deposit Objects of the same type from multiple Depositors and under the contract such Objects were able to be mingled together without allotment, each Depositor shall have a right proportionate to the quantity of his/her own Object over the whole of the Objects kept by the Depositary.

Section III. Deposits for consumption

**690. Deposits for consumption**

Should there be provision in the Deposit Contract permitting the Depositary to consume the Object of the Deposit Contract, the Depositary

assumes an Obligation to return an Object of identical type and quantity to the Depositor.

**691. Mutatis mutandis application of provisions governing Loans for Consumption**

The provisions governing Loans for Consumption shall apply *mutatis mutandis* to a Deposit Contract for Consumption under **Article 690 (Deposits for consumption)**. This provided that should no time of return be provided within the contract, the Depositor may demand return at any time.

**Section IV. Deposit of Object in dispute**

**692. Definition of Deposit of Object in Dispute**

Deposit of an Object in Dispute shall refer to an agreement by a number of persons to the Deposit Contract with a third party an Object to which the said parties are disputing the right of possession or ownership pending the conclusive determination as to the holder of such rights.

**693. Parties to Deposit Contract for Object in Dispute**

(1) Should an Object for which multiple parties are claiming rights be in the possession of another party, the disputing parties, with the consent of the possessor of the Object, may conclude an agreement to place the Object in the custody of a third party. In such case, the the Deposit Contract shall come into force at the time of delivery of the Object in dispute by the current possessor to the third party.

(2) In case set forth paragraph (1), the disputing parties may also conclude a deposit agreement deeming the current possessor as the Depository of the Object in dispute.

**694. Conditions for validity**

A Deposit Contract for an Object in Dispute shall be invalid unless all parties claiming rights over said object consent thereto.

**695. Principle of compensation**

For Deposits of Objects in Dispute, the Depositors shall assume an Obligation to pay remuneration to the Depositary. Should there be no agreement by the parties as to remuneration, the Depositary may demand a reasonable amount of remuneration from the Depositors.

**696. Return of Object in dispute**

Upon the termination of the dispute, the Depositary shall return the Object to the party found to be entitled to it.

**697. Termination of deposit agreement concerning Object in dispute**

The Depositary shall not return the Object in dispute to the Depositors prior to the resolution of the dispute unless all Depositors agree thereto.

**698. Deposit of object in dispute by court order**

Should a dispute over possession or ownership of an Object be pending before a court, the court may order the Object in dispute to be placed in the custody of a third party even in the absence of agreement by the parties.

## **Chapter 11 PARTNERSHIP**

**699. Definition of partnership**

A Partnership Contract shall refer to a contract for the establishment of an organization without juristic person status for the purpose of carrying out a common undertaking with contributions by each party thereto.

**700. Establishment of partnership**

(1) A Partnership shall refer to an organization established by agreement of partners to contribute to and carry out a common undertaking.

(2) Contributions to be made by each partner may take the form of services in lieu of property rights.

(3) Should a partner contributing money be late in his/her payment, in addition to interest in arrears, he/she shall be liable for any damages suffered by the partnership as a result of such delay.

(4) Should any acts establishing a partnership by any party among the parties who agreed to establish the partnership become null and void or are rescinded under the provisions **Section 2 (Defective Declaration of Intent and the validity of the contract)** of **Chapter 2 in Book Four**, the partnership shall be deemed to have been established by the remaining parties. This provided that should, due to the absence of the withdrawn party, the objective of the partnership be unattainable, the partnership shall be deemed to not have been established.

#### **701. Joint ownership of partnership property**

(1) The contributions of the partners and all other partnership property shall be jointly owned by all the partners.

(2) No partner shall seek partition of the partnership property prior to the dissolution of the partnership. This provided that, should all the partners agree, a partner may seek partition of the partnership property prior to the dissolution of the partnership.

(3) A partition described in the provisions of paragraph (2) shall not be set up against a third party who has entered into a transaction with the partnership prior to the partition.

(4) The partners shall not dispose of their shares in the partnership property.

#### **702. Method of conducting business**

(1) In the absence of any provision in the contract that mandate the business of the partnership to a particular partner or a third party, each partner shall have the power to conduct said business. This provided that the business conduct of the partnership shall be determined by a majority of the partners.

(2) Should the conducting of the partnership's business be mandated via contract to more than one partner or a third party, said conducting shall be determined by a majority of said persons.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any partner or manager of the business may conduct the ordinary business of the partnership in his/her own capacity. This provided that it shall not apply should any other partner or manager object thereto before the completion of such business.

**703. *Mutatis mutandis* application of provisions governing mandate**

The provisions of **Article 640 (Mandatory's Obligation of care)** through **Article 646 (Mandatory's right to demand reimbursement for expenses)** shall apply *mutatis mutandis* to managing partners of a partnership.

**704. Resignation or dismissal of managing partner**

(1) A managing partner shall not resign without good reason. Moreover the managing partner shall not be dismissed without good reason.

(2) The approval of a majority of the other partners shall be obtained in order to dismiss a managing partner for good reason.

**705. Right to inspect status of business and assets**

Whether or not a managing partner, all partners shall have the right to inspect the business and partnership assets.

**706. Right to demand dividends, ratio for distribution of profits and losses**

(1) The partners shall periodically calculate the profits and losses of the business, and may demand a dividend in the event of profit.

(2) Should the partners have not stipulated the ratio of distribution of profits and losses, it shall be based on the value of each partner's contribution.

(3) Should a stipulation have been made as to the distribution ratio

for either profits or losses alone, such ratio shall be presumed to apply to both profits and losses.

**707. Apportionment of losses among partners vis-à-vis creditor**

(1) An Obligation arising from the acts of the partnership is a joint-Obligation of the partners, but such Obligation shall be performed initially from the partnership property. Should the partnership property be insufficient to perform all Obligations, each partner shall fulfill such Obligation from his/her own property.

(2) Unless otherwise agreed, the proportion of each partner's liability shall be decided according to his or her contribution.

**708. Prohibition of set-off of partnership's claim**

A debtor of the partnership shall not set off his/her debt against a claim that the debtor holds against a partner.

**709. Voluntary withdrawal**

(1) Should no period have been stipulated in the contract for the duration of the partnership, or should such duration be stipulated to be the life of a certain partner, any partner may withdraw from the partnership at any time. This provided that no partner may withdraw at a time that would be unfavorable to the partnership, except due to unavoidable circumstances.

(2) Even should a duration have been stipulated for the partnership, any partner may withdraw due to unavoidable circumstances.

(3) Withdrawal shall be effected via a Declaration of Intent to all the other partners.

**710. Involuntary withdrawal**

In addition to the cases set forth in **Article 709 (Voluntary withdrawal)**, a partner shall withdraw from the partnership upon the occurrence of any of the following events:

- a. Death of the partner;

- b. Bankruptcy;
- c. Being served with a declaration of commencement of guardianship; or
- d. Expulsion.

**711. Expulsion**

Expulsion of a partner may be executed only based on reasonable cause and with the consent of all other partners. This provided that the expulsion shall not be set up against the expelled partner until he/she has been given notice thereof.

**712. Return of shares to withdrawing partner**

(1) Accounts shall be taken between a withdrawing partner and the other partners on the basis of the status of the partnership property at the time of withdrawal.

(2) Regardless of the type of contribution, the share of a withdrawing partner shall be returned in cash.

(3) With regards to any matter that has yet to be concluded at the time of withdrawal, the account shall be taken upon the conclusion of such matter.

(4) An expelled partner's share shall be returned to him/her together with interest at the legal interest rate calculated from the date of notice of expulsion up to the return of the share.

**713. Dissolution of partnership**

(1) A partnership shall be dissolved upon the occurrence of any of the following events:

- a. The termination, or the impossibility of conclusion, of the business that was the objective of the partnership;
- b. Unanimous agreement of the partners;
- c. Reduction of the number of partners to one person; or
- d. The expiration of the duration for the partnership as stipulated in the partnership agreement.

(2) Should there be unavoidable circumstances, any partner may demand dissolution of the partnership.

(3) A demand under paragraph (2) shall be effected through a declaration of intent to all the other partners.

**714. Non-retroactivity**

The dissolution of a partnership shall not be retroactive.

**715. Liquidator(s)**

(1) Should a partnership be dissolved, liquidation shall be carried out by all partners jointly, or by a liquidator(s) appointed by the partners.

(2) Unless otherwise provided in the partnership contract, the appointment of a liquidator(s) shall be determined by a majority of the partners.

**716. Conducting of business by Liquidator(s)**

Should there be more than one Liquidator, **Article 702 (Method of conducting business)** shall apply *mutatis mutandis*.

**717. Resignation or dismissal of liquidator(s)**

Should a liquidator(s) have been selected from among the partners by unanimous agreement of the partners, the provisions of **Article 704 (Resignation or dismissal of managing partner)** shall apply *mutatis mutandis*.

**718. Duties and powers of Liquidator(s) and method for distribution of surplus property**

(1) The provisions of **Article 71 (Duties and powers of Liquidator(s))** shall apply *mutatis mutandis* to the duties and powers of the Liquidator(s).

(2) Surplus property shall be distributed in proportion to the value

of each partner's contribution.

## Chapter 12 LIFE ANNUITY

### 719. Definition of Life Annuity Contract

(1) A Life Annuity Contract shall refer to a contract pursuant to which one party, the Annuity Debtor, promises to assume an Obligation to deliver money periodically to another party, the Annuity Creditor, or to a third party, until the death of the Annuity Debtor, Annuity Creditor or third party, and in exchange the Annuity Creditor promises to assume the burden of the Obligation to pay the Principal as consideration thereto.

(2) A Life Annuity Contract shall be invalid unless in writing.

(3) An Annuity Creditor shall acquire a statutory lien over the Principal delivered by the other party in exchange for the life annuity. An Annuity Creditor receiving periodic payments shall be considered to come under **Article 797 (Statutory lien for sale of movables)** or **Article 802 (Statutory lien for construction work for immovable property)** in accordance with the type of Object.

### 720. Calculation of life annuity

A life annuity shall be calculated on a daily basis.

### 721. Non-performance of annuity Obligation

(1) Should the Annuity Debtor neglect to regularly deliver the annuity or fail to perform any other duties, the counter-party may terminate the Life Annuity Contract and demand the Principal to return the counter-party to his/her prior state. This provided that the counter-party shall return to the Annuity Debtor the sum of periodic payments made up until the termination minus the interest made on the Principal.

(2) The provisions of paragraph (1) shall not preclude a claim for damages.

**722. Death attributable to fault of Annuity Debtor**

Should the death of a person on whose death the life annuity is to be terminated occur due to a cause attributable to fault on the part of the Annuity Debtor, the court, on the application of the Annuity Creditor or his/her successor, may declare that the life annuity shall continue to exist for a reasonable period.

**723. Testamentary gift of life annuity**

The provisions of this **Chapter 12 (Life annuity)** shall apply *mutatis mutandis* to a testamentary gift of a life annuity.

## **Chapter 13 SETTLEMENT**

**724. Definition**

A Settlement shall be a contract involving mutual promises by parties to a dispute to terminate such dispute through concessions.

**725. Subject matter of settlement**

(1) In order to enter into a settlement, the parties must have the authority to perform the subject of the settlement.

(2) A Settlement purporting to validate legal relations that are invalid based on a breach of statutory law or public order and good morals shall be invalid.

**726. Penalty clause**

A Settlement contract may include provisions for a penalty to be imposed on a party breaching such contract.

**727. Effect of settlement**

Should, by virtue of the Settlement, it be admitted that one of the parties possesses the right in dispute, or that the other party does not possess such right, and thereafter it is confirmed that in fact that the first-mentioned party did not possess the right in question or that the other party did possess such right, said right shall be treated as

having been transferred to the first-mentioned party, or extinguished, as the case may be, by virtue of the settlement.

**728. Mistake relating to rights and other matters in dispute**

Even should one of the parties have entered into a Settlement based on a mistake as to the ownership of the right or a fact that forms the basis of the calculation of the matter in dispute, if the parties have executed the Settlement by making concessions concerning the ownership of the relevant right or the existence of the fact or the value in question, the settlement shall not be rescinded on the grounds of a mistake as to the ownership of the right, the existence of the fact or the value in question.

## **Chapter 14 NEGOTIORUM GESTIO**

**729. Duty of Negotiorum Gestio Manager**

(1) Negotiorum Gestio shall refer the management of the business on behalf of another person despite not having authorization to do so with the person conducting such management being referred to as the Manager.

(2) The Manager shall take the care of a prudent manager and manage the business in accordance with the nature of the business, using the method that best conforms to the interests of that other party (the Principal).

(3) Should the Manager be aware of or should be aware of the intentions of the Principal, he/she shall conduct the management in accordance with such intentions.

**730. Urgent Management of Business**

Should a Manager engage in Negotiorum Gestio in order to allow a Principal to escape imminent danger to the Principal's person, reputation or property, the Manager shall not be liable to compensate for damages resulting from such danger unless he/she has acted in bad faith or with gross negligence.

**731. Manager's Obligation to give notice**

The Manager shall give notice without delay to the Principal of his/her commencement of management. This shall not apply where the Principal is already aware of such fact.

**732. Manager's Obligation to continue management**

A Manager must continue *Negotiorum Gestio* until the Principal or his/her heirs or legal representatives can take on management of such business. This provided that if it is evident that the continuation of *Negotiorum Gestio* is contrary to the intentions of the Principal, or is disadvantageous to the Principal, such management shall be terminated.

**733. Application *mutatis mutandis* of provisions governing mandates**

The provisions of **Article 641 (Mandatory's Obligation to report)** through **Article 643 (Mandatory's liability to compensate for money spent)** shall apply *mutatis mutandis* to *Negotiorum Gestio*.

**734. Manager's right to demand reimbursement of expenses**

(1) Should a manager have incurred necessary or beneficial costs on behalf of the Principal, the Manager may claim for reimbursement of those costs from the Principal.

(2) Should the Manager have incurred beneficial Obligations on behalf of the Principal, the provisions of paragraph (2) of **Article 646 (Mandatory's right to demand reimbursement for expenses)** shall apply *mutatis mutandis*.

(3) Should the Manager have engaged in *Negotiorum Gestio* against the intentions of the Principal, the provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* solely to the extent that the Principal is actually enriched thereby.

**735. Manager's right to demand remuneration**

A Manager may demand that the Principal pay the amount of normal remuneration for the management of the business carried out by the Manager after the Principal became aware of such *Negotiorum Gestio*, in

cases where such management is included in the occupation or business of the Manager.

## Chapter 15 UNJUST ENRICHMENT

### **736. Requirements concerning and effect of unjust enrichment**

(1) A person who has benefited from the property or labor of others without legal cause and has thereby caused loss to said other parties shall assume an Obligation to return that benefits to the extent that the benefits exists.

(2) Should a person receive performance under a contract, if such contract is or becomes void, the person receiving the performance shall assume an Obligation to return said benefit from performance to the person who tendered such performance, in the same manner as under paragraph (1).

### **737. Obligation to return benefit received mala fide**

(1) Should a person receiving benefit under **Article 736 (Requirements concerning and effect of unjust enrichment)** have been aware that there was no legal cause or that the contract was void, said person shall be obliged to return any benefit existing at the time he/she became aware of said fact together with interest thereon.

(2) A person who has received benefit under a contract that has been invalidated due to intent or negligence of such person shall be obliged to return such benefit together with interest in the same manner as under paragraph (1)

(3) The person receiving the benefit under paragraphs (1) or (2) shall be obliged to compensate for any damages suffered by the person who incurred the loss.

### **738. Discharge when there is no Obligation**

A person who tenders any Object as performance of an Obligation that does not exist may demand the return of the Object tendered. This

provided that, where such person was aware at the time of performance that the Obligation did not exist, he/she may not demand the return of the Object tendered.

**739. Performance before due date**

Should an Obligor have tendered anything as performance of an Obligation that has yet to come due, the Obligor may not demand the return of the Object tendered. This provided that, if the Obligor tendered any Object without being aware that the Obligation has yet to come due, the Obligee must return the benefits gained as a result of receiving performance prior to the due date.

**740. Performance of Obligation of another**

(1) Should a party that is not an Obligor have tendered an Object as performance of an Obligation under the mistaken belief that the Obligation is his/her own, such party may demand the return of the Object tendered by such performance. This provided that, should the Obligee, being unaware of the mistake on the part of the person who tenders the Object as performance and believing that this constitutes a valid performance of the Obligation, destroys the documentary evidence of the existence of the Obligation or waives security there over, the person who tenders an Object as performance shall not demand the turn of the Object tendered by such performance.

(2) The provisions of paragraph (1) shall not preclude the person who performed such Obligation from exercising his/her right of subrogation against the Obligor.

**741. Performance for illegal cause**

Under **Chapter 15 (Unjust Enrichment)**, should a demand by a person who has suffered loss seek the return of benefits from another and such demand would be in breach of public order and good morals or any law regarding public order, such demand shall be prohibited.

## **Chapter 16 TORTS**

**742. Definitions of intent and negligence**

For the purposes of this Chapter, an intentional or negligent act is either of the following types of acts:

- a. An act that harms another where the actor has foreseen that a particular result would occur but accepted the occurrence of such result; or
- b. An act with respect to which: (i) a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from such act, but failed to foresee the results due to an absence of due care; and (ii) the actor obligated to prevent the occurrence of such result but neglected to fulfill such duty.

**743. Elements of general tort and burden of proof**

(1) A person who intentionally or negligently infringes on the rights or benefits of another in violation of law shall be liable for the payment of damages occurring as a result.

(2) Paragraph (1) shall apply *mutatis mutandis* to cases where damages have occurred due to non-performance of a certain act with respect to which the actor is obligated to perform such act.

(3) Except as otherwise provided in this Code or in other laws, the person seeking damages must prove the intent or negligence of the tortious actor, the causal relationship between the actions of the tortious actor, the damages that occurred, and the damages suffered by the injured party.

**744. Damages for non-economic harm**

The person liable under the provisions of **Article 743 (Elements of general tort and burden of proof)** must also pay damages other than property damage.

**745. Lack of competence to assume liability**

(1) A minor under the age of 14 shall not be held liable for tortious acts.

(2) A person who, due to mental defect or other reason, lacks the capacity to understand the legal ramifications of their actions when committing a tortious act shall not be held liable in tort. This shall not apply where the person's condition was invited through intent or negligence.

**746. Liability of persons having a duty to supervise**

(1) A person who has a legal duty to supervise a minor under the age of 14 or a person who, due to mental defect, lacks the capacity to understand the legal ramifications of their actions is liable for damages caused to others by the actions of the minor or person lacking capacity.

(2) A person who has a legal duty to supervise a minor 14 years old or older is jointly liable with the minor for damages caused to others by the actions of the minor.

(3) A person under a duty of supervision who is liable for damages pursuant to paragraph (2) may avoid liability by proving that he/she had fulfilled his/her duty to provide regular and consistent supervision.

**747. Employer's liability**

(1) A person who uses an Employee to perform work is liable for damages caused in violation of law to another in the performance of that work by the Employee through the Employee's intent or negligence.

(2) A person charged with supervising an Employee in place of the Employer bears the same liability as the Employer. This shall not apply where supervision was properly performed.

(3) An Employer or substitute supervisor may demand compensation from the Employee in proportion to the Employee's degree of negligence.

**748. Tortious act of juridical person**

(1) Should a director or other legal representative of a juristic person intentionally or negligently causes harm to another in violation of law in the exercise of such person's duties, the juristic person shall be liable for the payment of damages.

(2) A juristic person that pays damages in accordance with paragraph (1) may demand compensation from the representative who committed the tortious act.

**749. Tortious acts of public official**

(1) Should a public official who exercises the public authority possessed by the national government or a governmental entity intentionally or negligently harm another in violation of the law in the course of his/her public duties, the national government or governmental entity is liable for the payment of damages.

(2) In the case described in paragraph (1), the national government or governmental entity may demand compensation from the public official should the official's act constitute a serious breach of the official's duty to avoid a tortious result.

**750. Liability of animal possessor**

The possessor of an animal is liable for damages for any harm caused to another by the possessed animal.

**751. Product liability**

(1) Should an unreasonably dangerous defect exist in a manufactured movable and harm results to another due to such defect, the manufacturer of the movable shall be liable for damages. This shall not apply where the defect could not have been discovered based on the scientific standards existing at the time of manufacture.

(2) The manufacturer of a movable that contains a defective part or material shall be liable for the same damages as the manufacturer.

(3) For the purposes of this Article, the importer of an imported movable shall be deemed as the manufacturer.

(4) For the purposes of This Article, a person who affixes his/her name on a movable as a manufacturer or distributor shall be deemed the manufacturer.

**752. Liability for dangerous items**

A person who owns or manages an automobile or other transportation apparatus, an explosive item, a radioactive substance, a toxic chemical, a toxic organism or any other highly dangerous item shall be liable for damages for any harm caused to another thereby. This shall not apply where the harm occurred due to unavoidable circumstances, or where there was no failure in the person's management of the dangerous item and the harm was caused by an act of the injured party or a third party.

**753. Liability for structure affixed to land**

(1) Should harm result due to a defect in the installation or control of a structure affixed to or appurtenant to land, the person managing said structure and the owner of the structure shall be jointly liable for damages. However, the person managing the structure shall be exempted from liability if he/she proves that he/she exercised proper control over the structure.

(2) The relative proportions of liability between the person managing the structure and the owner of the structure shall be determined in accordance with their relative contributions to the defect in the installation or control of the structure.

**754. Joint tort**

(1) Should harm be caused jointly by the acts of several persons, each actor is jointly liable for the resulting harm.

(2) In the case set forth in paragraph (1), should a joint tortfeasor prove his/her individual percentage contribution to the damages, such actor shall be liable only for that percentage of the total damages.

This shall not apply where it is determined that the actors engaged in a conspiracy or otherwise colluded in causing the harm.

(3) Should a joint tortfeasor voluntarily pay the entire amount of damages, the joint tortfeasor may demand indemnification from the other jointfeasors in accordance with their respective contributions to the damages.

**755. Definitions of justifiable self-defense and emergency escape**

(1) An act of justifiable self-defense is a harmful act that is made against an unlawful harmful conduct and is necessary in order to defend the physical well-being or the property of oneself or another from such conduct, and involves a situation in which the harmful conduct and the act of self-defense are closely related in time and there is no disparity in the means of self-defense employed and the severity of the harmful conduct.

(2) An act of emergency escape is an act that causes harm to another but was necessary in order to defend the physical well being or the property of oneself or another from a present or impending danger, and involves a situation in which there is no disparity in the means of emergency escape and the severity of the danger.

**756. Grounds for excuse from illegality or responsibility**

(1) A tortfeasor shall be excused from responsibility for harm caused by the tortfeasor where the injured party consented to or assumed the risk of such harm. This shall not apply where such consent or assumption of risk contravenes prevalent social standards.

(2) A person who causes harm while engaged in justifiable self-defense or emergency escape shall not be held responsible for harm that results therefrom. In such case, the person committing the unlawful act that gives rise to such justifiable self-defense or emergency escape shall be held responsible for the resulting harm.

(3) A person who commits an act that is deemed reasonable and

acceptable under prevalent social standards shall not be held responsible for the harm caused thereby.

**757. Principle of monetary damages and exceptions**

(1) Damages shall be paid in money in principle.

(2) Should money not provide an appropriate remedy, the injured party may demand restitution or injunctive relief.

(3) A person who suffers harm to their honor or reputation may demand, in addition to damages, that the tortfeasor take measures to restore the injured party's honor or reputation, such as in the form of a published apology.

**758. Calculation of damages**

(1) When calculating the economic loss caused by a tortious act, the difference between the economic situation that would be presumed to exist had the tortious act not occurred and the actual economic situation after the tortious act occurred shall be calculated using statistics and other materials to the greatest extent possible.

(2) When calculating the mental or emotional distress caused by a tortious act, damages shall be determined by taking into account such factors as the degree of culpability of the tortious actor, the type and degree of harm, and the tortious actor's conduct after committing the tortious act.

**759. Damages for harm caused by loss or destruction of an Object**

Should an Object be destroyed or damaged through a tortious act, the injured party may seek compensation for the price of the damaged or destroyed Object, the cost of repair, or other such consequential remedies.

**760. Damages for wrongful death**

(1) Should an injured party die as the result of a tortious act, such injured party shall acquire a right to demand damages for economic harm

and emotional distress suffered prior to death. As used herein, economic harm shall include medical expenses which have already been paid or which the injured party is obligated to pay from the date of the tortious act until the date of death, as well as other expenditures, income which the injured party was unable to receive between the date of the tortious act and the date of death.

(2) Should a person who is obligated by law, custom or contract to provide support to a dependent dies as the result of a tortious act, the dependent may demand damages for economic harm suffered as a result of the injured party's death. As used herein, economic harm includes support that the dependent was unable to receive as a result of the injured party's death, expenditures made in place of the injured party, funeral expenses and other such expected financial benefits or reimbursements.

(3) Should the injured party die as a result of a tortious act, the injured party's spouse, relatives within the first degree of consanguinity and relatives living in the same household as the injured party may demand damages for the emotional distress they have suffered due to the injured party's death.

**761. Damages for bodily harm**

Should an injured party suffer bodily harm as a result of a tortious act, the injured party may demand damages for economic harm and emotional distress suffered thereby. As used herein, economic harm includes medical expenses already paid or expected to be paid in the future, loss of income while receiving medical treatment, future income that cannot be received due to the residual effects of the injury and other such matters. As used herein, emotional distress includes emotional distress suffered while receiving medical treatment, future emotional distress, and other similar forms of emotional distress.

**762. Damages for mental or emotional distress caused by injury to honor or reputation**

Where a person's honor or reputation is damaged by a tortious act, the

injured party may seek damages for mental or emotional distress accompanying the decline in such person's social standing.

**763. Set-off of losses and benefits**

Should an injured party receive a gain or benefit from the result of a tortious act, the amount of such gain or benefit shall be deducted from the amount of recoverable damages when such damages are calculated.

**764. Set-off for contributory negligence**

Should the negligence of the injured party or that of a person under a duty to supervise the injured party have contributed to the occurrence or aggravation of the injury, the court may take the degree of contribution of such negligence into account when calculating the amount of recoverable damages.

**765. Extinctive prescription**

The right to demand damages on account of a tortious act shall be extinguished by prescription upon the expiration of three years from the time that the injured party or such party's legal representative became aware that he/she is entitled to seek damages against the tortious actor, or ten years from the time that the tortious act occurred.

## **BOOK 6 SECURITY<sup>10</sup>**

### **Chapter 1 GENERAL PROVISIONS**

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<sup>10</sup> In the translation of this Book, the terms 'debt,' 'debtor,' and 'creditor' are used in lieu of 'Obligation,' 'Obligor' and 'Obligee' (the terms used in the Khmer original). Because it is assumed that cases to which this Book will apply will typically involve monetary Obligations, it is thought that the use of such terms will aid in understanding the underlying concepts. However, regardless of terminology, the provisions of this Book should be understood to apply to both monetary and non-monetary Obligations.

**766. Definition of security provider and Third Party acquirer**

(1) A person who creates a real security right over his/her own property so as to secure the debt of another shall be referred to as a Security Provider.

(2) A person who receives the assignment of the Object of a real security right created by a Debtor to secure his/her own debt shall be referred to as a Third Party Acquirer.'

**767. Types of real security rights**

(1) The types of real security rights shall be limited to those established under the Civil Code or through special laws, and no other type of real security may be created.

(2) The five types of real security rights established under the Civil Code shall be: (i) rights of retention; (ii) statutory liens; (iii) pledges; (iv) hypothecs; and (v) security rights by way of transfer of title.

**768. Object of real security rights**

An Object or right that cannot be transferred shall not comprise the Object of a real security right. However, the lack of transferability of an Object shall not prevent the creation of a right of retention with regards thereto.

**769. Subordinate nature of real security rights**

(1) A real security right shall be established in order to secure an existing debt. A real security right may also be established in order to secure a debt to be incurred in the future should it be specifiable.

(2) Should a debt not be formed due to the absence of the necessary elements thereof, a real security shall not be formed as well.

(3) Should a debt be void or rescinded due to a defective declaration of intent or other reason, the real security right in reference thereto shall also be void.

(4) Should a debt be extinguished due to satisfaction, prescription or other causes, the real security right thereto shall also be extinguished.

(5) The provisions set forth in paragraphs (1) through (4) shall not apply to a floating hypothec created to secure multiple debts to be accrued under a continuing contract.

**770. Subordinate nature of real security when a secured claim is assigned to another**

(1) Should a claim secured through a real security be assigned, unless otherwise set forth in the declaration of intent, the real security shall be assigned to the assignee of the claim. However, should it be necessary for the holder of the real security right to possess the Object of the real security right, the assignee of the claim shall be required to acquire possession thereof.

(2) The provisions of paragraph (1) shall not apply to claims that are secured through a floating hypothec.

**771. Indivisibility of real security right**

The effect of a real security right shall extend over the whole of the Object or right comprising the Object of the security right until the holder of the real security right has received full satisfaction of the secured claim.

**772. Power to extend the effect of real security**

Except for cases referred to in **Article 807 (Power to pursue Third Party acquirers)** in relation to statutory liens and **Article 894 (Disposition of Object by creator of the security right)** in relation to a right of security by way of transfer of title, should the Object of a real security right be transferred to a Third Party, the holder of the real security right may assert the effect of his/her security right against such Third Party. This provided that such holder fulfils and complies with the established requirements for such assertion.

**773. Enforcement of real security right**

Should the holder of a real security right not receive satisfaction of the secured claim, he/she may enforce the real security right in accordance with procedures established by law.

**Chapter 2 RIGHT OF RETENTION**

**774. Meaning of right of retention**

(1) Should a person possessing an Object belonging to another have a claim arising in regard to such Object, such person may retain the Object until such claim has been satisfied. However, should the claim have yet to come due, the right of retention shall not exist.

(2) The provisions of paragraph (1) shall not apply where the possession commenced as a result of a tortious act.

**775. Preferential application of fruits<sup>11</sup>**

(1) The holder of a right of retention may collect fruits produced by the Object retained and apply them to satisfy the secured claim in preference to other creditors.

(2) The fruits referred to in paragraph (1) shall first be applied towards the payment of interest and the surplus, if any, then shall be applied towards the principal of the claim.

**776. Duty of holder of right of retention to preserve the Object retained**

(1) The holder of a right of retention shall possess the Object retained with the care of a good manager.

(2) The holder of a right of retention shall not use, lease or give as security the Object retained without the consent of the Debtor. However, the holder of a right of retention may use the Object retained so long as such use is necessary to preserve the Object.

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<sup>11</sup> See Article 127 for the definition of 'fruit.'

(3) Should the holder of a right of retention violate the provisions of paragraphs (1) and (2), the Debtor may demand the extinction of the right of retention.

**777. Right to demand reimbursement of expenditures**

(1) Should the holder of a right of retention have defrayed necessary expenses in regard to the Object retained, he/she may seek reimbursement for such expenses from the owner of the Object.

(2) Should the holder of a right of retention have defrayed beneficial expenses in regards to the Object retained, he/she may seek reimbursement from the owner of the Object for, at the holder's discretion, either the amount defrayed or the amount by which the value of the Object has increased, so long as the increase in value remains in effect. A court may, upon petition by the owner, grant him reasonable time for reimbursement.

**778. Extinctive prescription regarding claim**

The exercising of a right of retention shall not interrupt or suspend a period of extinctive prescription with regards to the secured claim.

**779. Extinction of right of retention through furnishing of security**

The Debtor may demand the extinction of a right of retention upon the furnishing of adequate security.

**780. Extinction of right of retention through loss of possession**

(1) A right of retention shall be extinguished through the loss of possession of the Object retained. This shall not apply to cases where the Object retained has been leased or pledged with the consent of the Debtor in accordance with the provisions of paragraph (2) of **Article 776 (Duty of holder of right of retention to preserve the Object retained)**.

(2) Even should the holder of a right of retention lose possession of the Object retained, if the holder of the right of retention regains

possession of the Object retained pursuant to the provisions of **Article 237 (Right to demand return of Object in possession)** possession shall be deemed to have continued uninterrupted.

## **Chapter 3 STATUTORY LIENS**

### **Section I. General Provisions**

#### **781. Definition of statutory liens**

(1) An Obligee holding a statutory lien has a right to obtain satisfaction for the claim from the assets subject to statutory lien in preference to other Obligors.

(2) A statutory lien held by an Obligee over the entire property of the Obligor shall be referred to as a General Statutory Lien.

(3) A statutory lien held by an Obligee over specific property of the Obligor shall be referred to as a Special Statutory Lien. In such case, a statutory lien over a specific movable held by the Obligee shall be referred to as a Statutory Lien Over a Movable, whereas the statutory lien over a specific immovable held by the Obligee shall be referred to as a Statutory Lien Over an Immovable.

#### **782. Extension of Security Interest to Proceeds of Collateral**

(1) Statutory liens may also be exercised against Objects, including monies that the Obligor is to receive as a result of sale, lease or loss of, or damage to, the Object of the statutory lien. This provided, however, that it shall not apply once payment or delivery of the monies or other Object has been made to the Obligor.

(2) The provisions of the preceding paragraph shall likewise apply to the consideration for real rights established by the Obligor to the Object of the statutory lien.

### **Section II. General Statutory lien**

**783. Definition of general statutory lien**

A person who has a claim that arose through any of the causes listed below shall have a statutory lien over the entire property of the Obligor:

- a. Expenses for common benefit;
- b. Claims held by employees;
- c. Funeral expenses; or
- d. Supply of daily necessities.

**784. Statutory liens for expenses for common benefit**

(1) Statutory liens for expenses for common benefit shall exist with respect to the expenses for preservation, liquidation or distribution of the property of the Obligor incurred for the common benefit of all Obligees.

(2) With respect to expenses that were for the benefit of only a portion of the Obligees, a statutory lien shall exist solely for Obligees who received a benefit as a result of such expenses.

**785. Statutory lien for claims held by employee**

Statutory liens for claims held by an employee shall exist with respect to any and all claims that the employee possesses under the labor contract.

**786. Statutory lien for funeral expenses**

(1) Statutory liens for funeral expenses shall exist with respect to expenses incurred for a funeral conducted in accordance with the deceased Obligor's status.

(2) The statutory lien under the preceding paragraph shall also exist with respect to expenses incurred for a funeral conducted in accordance with the status of a deceased relative to whom the Obligor was bound to support.

**787. Statutory lien for supply of daily necessities**

Statutory liens for the supply of daily necessities shall exist with

respect to the supply of food, drink and other daily necessities for subsequent six months required for the household of the Obligor or his/her relatives who reside with the Obligor, and whom the Obligor is bound to support and the servants of the same.

### Section III. Statutory lien Over Movables

#### **788. Definition of statutory lien over movables**

A person bearing a claim that arose from causes listed below shall have a statutory lien over certain movables of the Obligor:

- a. Lease of immovable property;
- b. Transportation of passengers or luggage;
- c. Preservation of movables;
- d. Sale of movables; or
- e. Supply of seeds, seedlings, or fertilizer and/or breeding stocks, progeny, or forage of creatures.

#### **789. Statutory lien for leasing of immovable property**

Statutory liens for the leasing of immovable property shall exist with respect to the movables of the Lessee in connection with Obligations of the Lessee that arose through the lease relationship, including rent for said immovable property.

#### **790. Scope of Objects of statutory lien for lease of immovable properties - normal case**

(1) The statutory lien of a Lessor of land shall exist with respect to movables furnished for such land or buildings provided in the use of such land, movables provided for the use of that land, and fruits of that land in the possession of the Lessee.

(2) A statutory lien for a Lessor of a building shall exist with respect to movables furnished to such building by the Lessee.

#### **791. Scope of subject matter of statutory lien for lease of immovable properties - assignment or sublease**

In the cases of assignment of a Lessee's rights or subleasing, the statutory lien of the Lessor shall extend to the movables of the assignee

or sub-lessee. The same shall apply to monies that the assignor or sub-lessor is to receive.

**792. Scope of statutory lien for lease of immovable properties**

Should all of the Lessee's property be liquidated, the statutory lien of the Lessor shall exist only with respect to Obligations, including rent, for the previous term, current term and following term, and Obligations to compensate for damages that arose in the previous and current terms.

**793. Scope of statutory lien for lease of immovable properties in cases of deposit**

In cases where a lessor has received a security deposit, he/she shall have a statutory lien solely in respect to the portion of his/her claim that will not be satisfied by that security deposit.

**794. Statutory lien for transportation**

Statutory liens for transportation shall exist with respect to luggage in the possession of the transporter in connection with the transportation charges for passengers or luggage and expenses incidental thereto.

**795. Bona fide acquisition**

The provisions of **Article 193 (Bona fide acquisition of ownership of movables)** regarding bona fide acquisition shall apply *mutatis mutandis* to statutory liens as set forth in **Article 789 (Statutory lien for leasing of immovable property)** through **Article 794 (Statutory lien for transportation)**.

**796. Statutory lien for preservation of movables**

(1) Statutory liens for the preservation of movables shall exist with respect to movables in connection with expenses required for the preservation thereof.

(2) The statutory lien under the preceding paragraph shall also exist in relation to expenses required for the preservation, securing or

execution of rights regarding such immovables.

**797. Statutory lien for sale of movables**

Statutory liens for sale of movables shall exist with respect to movables in connection with the price of those movables and interest on the same.

**798. Statutory lien for supply of seeds, seedlings or fertilizer, and/or breeding stocks, progeny or forage of animals**

(1) Statutory liens for the supplying of seeds, seedlings or fertilizer shall exist, in relation to the price thereof and the interest thereon, with respect to the fruits derived from the land on which they are used for a period of one year from the time of their use.

(2) Statutory liens for the supply of breeding stocks, progeny or forage for animals shall exist, in relation to the price thereof and the interest thereon, with respect to the animals and fruits derived from the creature for which they are used for a period of one year from the time their use.

(3) The statutory lien under the preceding paragraph shall exist, for the supplying of silkworm eggs or mulberry leaves provided for the breeding of silkworms, with respect to the Objects produced from the silkworm eggs or the mulberry leaves.

**Section IV. Statutory lien Over Immovables**

**799. Statutory lien for immovables**

A person who has a claim that arose from the causes listed below shall have a statutory lien over certain immovable property of the Obligor:

- a. The preservation of immovable property;
- b. Construction work for immovable property; or
- c. The sale of immovable property.

**800. Statutory lien for preservation of an immovable**

(1) Statutory liens for the preservation of immovable property shall

exist with respect to such immovable property in relation to the expenses required for the preservation of said immovable property.

(2) The statutory lien under the preceding paragraph shall also exist in relation to the expenses required for the preservation, ratification or execution of rights regarding such immovable property.

**801. Statutory lien for construction work for immovable property**

(1) Statutory liens for construction work for immovable property shall exist, with respect to such immovable property, in relation to the expenses for construction work performed by artisans, engineers and contractors.

(2) The statutory liens under the preceding paragraph exist, in cases where there is a current increase in the value of the immovable property resulting from the construction work, with respect to that increased value.

**802. Statutory lien for sale of an immovable**

Statutory liens for the sale of immovable property shall exist with respect to such immovable property in relation to the price of that immovable property and interest of the same.

**Section V. Order of Priority of Statutory liens**

**803. Order of priority of general statutory liens**

(1) In cases where there is conflict among the general statutory liens, the order of priority shall follow the order listed for each item of **Article 783 (Definition of general statutory lien)**.

(2) Should there be a conflict between a general statutory lien and a special statutory lien, the special statutory lien shall prevail over the general statutory lien. This provided that statutory liens on expenses for the common benefit shall have the effect of prevailing over all Obligees who received the benefit thereof.

**804. Order of priority of statutory liens over movables**

(1) Should there be a conflict among special statutory liens with respect to the same movable, the order of priority shall follow the order listed below:

First rank: Statutory liens for lease of immovable properties or for transportation;

Second rank: Statutory liens for preservation of a movable. This provided that if there are two or more preservers, a new preserver shall prevail over previous preservers; and

Third rank: Statutory liens for sale of a movable or for the supplying of seeds, seedlings or fertilizer, and statutory liens for supply of breeding stocks, progeny or forage of creatures.

(2) Should a person having a statutory lien of the first rank have been aware, at the time that he/she acquired his/her claim, of the existence of a person having a statutory lien of the second or third rank, his/her rank shall be inferior to that of all persons having statutory lien of the second or third rank. A person having a statutory lien of the first rank is also inferior to a person who has preserved the Object for the benefit of statutory lien holder.

(3) First ranking regarding fruits shall belong to the supplier of seeds, seedlings or fertilizer, while the second rank shall belong to the Lessor of the land.

**805. Order of priority statutory liens over immovable properties**

(1) Should there be a conflict among special statutory liens with respect to the same immovable properties, their order of priority shall follow the order of the items of **Article 799 (Statutory lien for immovables)**.

(2) Should successive sales be made with respect to the same immovable Object, the order of priority for the statutory liens among the sellers shall follow the chronological order of the sales.

**806. Statutory liens with same priority**

Should there be two or more holders of a statutory lien with the same priority in respect to the same Object, the holders of statutory liens shall be paid in proportion to the amounts of their claims.

**Section VI. Effect of Statutory lien**

**807. Power to pursue Third Party acquirers**

The holder of a statutory lien shall not exercise the statutory lien with respect to a movable once the Obligors have delivered such movable to the Third Party acquirer.

**808. Relationship to pledge over movable**

Should there be a conflict between a statutory lien and a pledge of a movable, the Pledgee of said movable shall have the same rights as those of the holder of a statutory lien of a first rank under **Article 804 (Order of priority of statutory liens over movables)**.

**809. Effect of general statutory lien**

(1) Holders of a general statutory lien shall not be paid out of the immovable properties unless such is first paid out of property other than immovable properties and any outstanding claims remain.

(2) With respect to immovable property, satisfaction must first be sought out of Objects that are not subject to specific security rights.<sup>12</sup>

(3) Should holders of a statutory lien fail to participate in the distribution in accordance with the provisions of paragraphs (1) and (2), such holders shall not exercise their statutory liens against registered third parties to the extent the holders would have received claims through such participation.

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<sup>12</sup> The term 'specific security right' refers to a statutory lien over a specific immovable, pledge, hypothec or security right by way of transfer of title.

(4) The provisions of paragraphs (1) through (3) shall not apply should a distribution be made from the value of an immovable Object, which is subject to specific security right, prior to that of the value of movables.

**810. Effect of general statutory lien against Third Party**

The holder of a general statutory lien may, even should the right not be registered over an immovable, assert such right against an Obligee who has no specific security right over the immovable. This right shall not be asserted against a registered Third Party.

**811. Effect of statutory liens for preservation of immovables against Third Party**

(1) The effect of a statutory lien for the preservation of an immovable shall not be asserted against a Third Party unless such lien is registered immediately upon the act of preservation being completed.

(2) The amount of increase in the value of the immovable resulting from the preservation shall be determined by an appraiser appointed by the court at the time of participation in the distribution.

**812. Effect of statutory lien for construction work on immovable against Third Party**

(1) The effect of a statutory lien for construction work on an immovable shall not be asserted against a Third Party unless the right is registered immediately upon the construction work having been completed.

(2) The amount of increase in the value of the immovable resulting from the construction work performed shall be determined by an appraiser appointed by the court at the time of participation in the distribution.

**813. Relationship between hypothec and statutory liens for preservation of an immovable or construction work on an immovable**

A statutory lien registered in accordance with **Article 811 (Effect of statutory liens for preservation of immovables against Third Party)** and

**Article 812 (Effect of statutory lien for construction work on immovable against Third Party)** may be exercised in preference to a hypothec.

**814. Effect of statutory lien for sale of immovable against Third Party**

The effect of a statutory lien for sale of an immovable shall not be asserted against a Third Party unless a statement announcing that the sales price or interest thereon has not been paid is registered simultaneously with the execution of the sales contract.

**815. *Mutatis mutandis* application of provisions regarding hypothec**

In addition to the provisions of this Chapter, the provisions of **Article 846 (Scope of effect of hypothec)** through **Article 848 (Effect of hypothec over fruits)**, **Article 851 (Order of priority of hypothecs)**, **Article 852 (Scope of claims secured)**, **Article 853 (Compulsory sale of hypothecated property)** and **Article 859 (Sub-hypothecation)** through **Article 863 (Ranking of disposal of hypothec)** regarding hypothec shall apply *mutatis mutandis* to the effect of statutory liens.

## **Chapter 4 PLEDGE**

### **Section I. General Provisions**

**816. Meaning of pledge**

A Pledgee shall have the right to possess the Object received from the Obligors or third parties as security for their claims, and to have their own claims paid in preference to other Obligees of the Object.

**817. Extension of security interest to the proceeds of the collateral**

(1) A pledge may also be exercised against money or other Objects that the Pledgor is entitled to receive due to the sale or loss of, or damage to the Object pledged. This shall not be exercised once such money or other Objects have been paid or delivered to the Pledgor.

(2) The same shall apply to money to be paid for real rights

established by a Pledgor over the Object pledged.

**818. Formation of pledge and requirements of delivery**

(1) A pledge shall be created upon the Object to be pledged being delivered to the Pledgee by the Obligor or a Third Party who provides the security.

(2) The delivery referred to in Paragraph (1) shall include summary delivery provided by Paragraph (3) of **Article 229 (Assignment of possession)**.

**819. Prohibition against Pledgor retaining direct possession**

A Pledgee shall not allow the Pledgor to reacquire direct possession of the Object pledged.

**820. Scope of secured claim**

Pledges shall secure the principal, interest, penalties, expenses for executing the pledge, expense for preserving the Object pledged and compensation for damages arising from a failure to perform Obligations or latent defects in the Object pledged. This provided that it shall not apply if the act establishing the pledge stipulates otherwise.

**821. Retention of Object pledged**

A Pledgee may retain the Object pledged until the claims provided for in **Article 820 (Scope of secured claim)** have been satisfied. This provided that the right cannot be asserted against Obligees who have priority over the Pledgee.

**822. Priority right to receive satisfaction from fruits**

(1) A Pledgee may collect fruits begotten from the Object pledged and appropriate the same to the satisfaction of his/her claim in preference to other Obligees.

(2) The fruits described in paragraph (1) must first be appropriated to the payment of interest on the claim, and any remainder then must be appropriated towards the satisfaction of the principal.

**823. Pledgee's duty to preserve Object pledged**

(1) A Pledgee shall possess the Object pledged with the duty of care of a good manager.

(2) Should a Pledgee violate the provisions of paragraph (1), the Obligor may demand the extinction of the pledge.

**824. Pledgee's right to reimbursement**

(1) Should a Pledgee have incurred necessary expenses in regards to the Object pledged, he/she may seek reimbursement for such expenses from the owner.

(2) Should a Pledgee have incurred beneficial expenses in regards to the Object pledged, he/she may seek reimbursement from the owner of, at the Pledgee's discretion, either the amount incurred or the amount by which the value of the Object has increased, so long as the increase in value remains in effect. The court may upon petition by the owner grant him/her reasonable time for reimbursement.

**825. Extinctive prescription of claim**

The exercise of a pledge shall not preclude the continuing of extinctive prescription on the claim.

**826. Sub-pledge**

(1) A Pledgee may sub-pledge the pledged Object in order to secure his/her own debt with the consent of the Pledgor.

(2) A Pledgee may, within the duration of the original pledge, sub-pledge the pledged Object in his/her own capacity. In such case, the Pledgee shall be responsible for damages even those due to *force majeure* that would not have otherwise occurred had the Object not been sub-pledged.

(3) Should the Object pledged be sold through compulsory sale and the price apportioned, the sub-Pledgee may receive full satisfaction of

his/her claim from and to the extent of the amount to be apportioned to the Pledgee. However, during the period that the claim of the sub-Pledgee is yet to be due, the sub-Pledgee may only demand that the amount to be received be officially deposited.

**827. Prohibition against forfeiture agreement**

Unless otherwise provided for in this Code or other law, a Pledgor shall not, either by an act of creation of a pledge or by a contract made prior to the due dates for performance, agree that the Pledgee shall acquire ownership of the Object pledged or dispose of it in a manner other than that provided for by law.

**828. Third Party Pledgors' rights to obtain reimbursement**

Should persons who have created pledges to secure the Obligations of others have performed those Obligations or have lost ownership of the pledged Object due to the execution of the pledges, they shall have the right to obtain reimbursement from the Obligors in accordance with the provisions regarding guarantee Obligations.

**Section II. Pledge Over Movable**

**829. Requirements for perfection of pledges**

The Pledgee of a movable shall not assert the pledge against a Third Party unless he/she is in continuous possession of the pledged Object.

**830. Loss of possession**

The Pledgee of movables may, should the pledged Object be usurped, recover the Object solely through the bringing of actions for the recovery of possession.

**831. Use of or receipt of benefits from Object pledged by Pledgee**

(1) A Pledgee may not use or lease the Object pledged without the consent of the Obligor. However, the Pledgee may use the Object pledged so long as such use is necessary to preserve the Object.

(2) Should a Pledgee violate the provisions of paragraph (1), the

Obligor may demand the extinction of the pledge.

**832. Summary enforcement of pledge**

(1) Should the claims of Pledgees of movables not be performed, they may, limited to cases where there are reasonable grounds, demand from a court immediate appropriation of the Object pledged to the performance of the claims in accordance with the evaluation of an appraiser. In such case, the Pledgees of movables must notify the Obligors in advance of such demand.

(2) In the case referred to in paragraph (1), should the value of the Object pledged as determined by the appraiser exceed the amount of the debt, the Pledgee of the movable shall return the excess amount to the owner of the pledged Object.

**833. Order of priority of pledges over movable**

Should more than one pledge be created with respect to the same movable, the order of priority of those pledges shall follow the chronological order of their creation.

**Section III. Pledge Over Immovable**

**834. Pledgee's right to use and receive profits**

(1) The Pledgee of an immovable may use and receive the profits of the immovable in accordance with its ordinary use.

(2) With respect to the land to which a pledge for an indefinite period of time has been created to secure the claim, should the Pledgee use the land for cultivation, if the time for harvest of the crops which the Pledgee seeded or planted is coming within no later than a year, the Pledgee may use the land till the time for harvest of said crops even if the pledge has been extinguished through the performance.

(3) With respect to the land to which a pledge for a definite period of time has been created to secure a claim, should the Pledgee use the land for cultivation, if the time for harvest of the crops which the Pledgee seeded or planted is coming within no later than a year, the Pledgee may use the land till the time for harvest of the crops, even though the pledge may have been extinguished by performance before such

due time. However, the Pledgee must return the land immediately after receiving the performance even if the time for harvest will be arriving within one year following the due time for such performance.

**835. Management expenses**

The Pledgee of an immovable shall pay the expenses for management and otherwise bear responsibility in relation to the immovable.

**836. Interest**

The Pledgee of an immovable shall not demand interest on his/her claim.

**837. Validity of special provisions**

The provisions of **Article 834 (Pledgee's right to use and receive profits)** through **Article 836 (Interest)** shall not apply where otherwise provided for through the act of creation of the pledge.

**838. Duration**

(1) The duration of a pledge of an immovable shall not exceed five years. Should the pledge of an immovable be created for a longer period, such period shall be reduced to five years.

(2) The pledge of an immovable may be renewed. However, the renewal period shall not exceed five years from the time of renewal.

**839. *Mutatis mutandis* application of provisions regarding hypothec**

In addition to the provisions of this Section, the provisions of Chapter Five (Hypothec) shall apply *mutatis mutandis* to pledges of immovables.

**Section IV. Pledges of Rights**

**840. Subject of pledges of rights**

(1) Pledges may have property rights<sup>13</sup> as their Object.

(2) In addition to the provisions of Section IV, the provisions of Sections I, II and III shall apply *mutatis mutandis* to the pledges set

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<sup>13</sup> See the footnote to Article 195 for the explanation of 'property right.'

forth in paragraph (1).

**841. Requirements for perfection of pledge over nominative claim**

(1) Should a pledge be created over a nominative claim, such pledge shall not be asserted against third parties, including Third Party Obligors, unless notice of the creation of the pledge is provided to such Third Party Obligors or the Third Party Obligors acknowledge the claim.

(2) The notice or acknowledgement set forth in paragraph (1) may not be asserted against a Third Party other than the Obligor unless the notice or acknowledgement has been made using an instrument bearing a fixed date.

**842. Enforcement of pledge through collection of claim**

(1) A Pledgee may directly collect the claim that is the Object of the pledge.

(2) Should monies be the Object of a pledged claim, the Pledgee may collect the same to the extent of the portion that corresponds to the amount of the Pledgee's own claim.

(3) In the case set forth in paragraph (2), should the due date of the pledged claim under the preceding paragraph arrive prior to the due date of the claim of the Pledgee, the Pledgee may have the Third Party Obligor have the amount to be paid to the Pledgee deposited. In such cases, the pledge shall exist over the amount so deposited.

(4) Should the Object of the claim not be money, the Pledgee shall have a pledge over the Object to be received as satisfaction thereof.

## **Chapter 5 HYPOTHEC**

### **Section I. Nature of Hypothec**

**843. Nature of hypothec**

(1) A Hypothec Right Holder shall have the right to receive performance of his/her claim in preference to other Obligees out of the immovable properties that the Obligor or a Third Party provided to secure the Obligation without transferring possession.

(2) A perpetual lease or usufruct may also be made the Object of a hypothec. The provisions of Chapter Five shall apply *mutatis mutandis* in such case.

(3) Should a special law allow a certain type of property other than immovable property to be the Object of a hypothec, such law shall apply.

## Section II. Creation of Hypothec

### **844. Creation of hypothec**

A hypothec shall be created through an agreement reached between a Creditor and Debtor and/or Third Party that furnishes immovable property as security.

### **845. Asserting hypothec**

A Hypothec Right Holder shall not assert the hypothec against a Third Party who is not the Hypothecator unless the instrument creating the hypothec is notarized and registered in the land registry.

## Section III. Effect of Hypothec

### **846. Scope of effect of hypothec**

(1) A hypothec shall extend to all Objects that are attached to and form part of the land comprising the Object of the hypothec when the hypothec is created, including buildings residing thereon. The hypothec shall also extend to Objects that are attached to the land following the creation of the hypothec.

(2) A contract creating a hypothec may not contain any provision that is contrary to the provision set forth in paragraph (1).

**847. Effect of hypothec on land over building owned by Third Party**  
Should, based on a perpetual lease, usufruct or leasehold, a Third Party own a building on the land comprising the Object of the hypothec, the hypothec shall not extend to such building.

**848. Effect of hypothec over fruits**

The provisions of **Article 846 (Scope of effect of hypothec)** shall not apply to the fruits produced from the immovable comprising the Object of the hypothec. This shall not apply once the immovable is subject to an order of attachment.

**849. Extension of security interest to the proceeds of the collateral**

(1) A hypothec may also be exercised against money or other Objects that the hypothecator is entitled to receive due to the sale or loss of, or damage to, the Object thereof. However, this may not be exercised once such money or other Object have been paid or delivered to the Hypothecator.

(2) A hypothec may be enforced against fruits that are produced after the Object of the hypothec is subject to an order of attachment.

**850. Right of reimbursement of a Third Party security provider**

Should a person who creates a hypothec to secure the Obligations of others perform those Obligations or have lost ownership of the hypothecated immovable as a result of the enforcement of the hypothec, he/she shall have the right to obtain reimbursement from the Obligors in accordance with the provisions regarding guarantee Obligations.

**851. Order of priority of hypothecs**

Should multiple hypothecs have been created on an immovable in order to secure multiple debts, the order of their priority shall be based on the order of their registration.

**852. Scope of claims secured**

(1) Should the Hypothec Right Holder have the right to demand periodic payments, including interest, he/she may exercise their hypothec solely with respect to payments that have fallen due in the most recent two years. This provided that if special registration is effected with respect to prior periodical payments that have fallen due, the Hypothec Right Holder may exercise their hypothecs as from the time of said registration.

(2) Should the Hypothec Right Holder have the right to demand compensation for damages resulting from breach of Obligations, the provisions of paragraph (1) shall apply to the damages of the most recent two years. This provided that the aggregate period including the interest and other periodical payments shall not exceed two years.

#### Section IV. Enforcement of Hypothec

##### **853. Compulsory sale of hypothecated property**

In the event of a failure to perform in relation to a debt, a Hypothec Right Holder may apply to the court for compulsory sale of the hypothecated immovable.

##### **854. Compulsory sale of buildings owned by Third Party**

(1) Should the Hypothecator or a Third Party erect a building on land after it is been hypothecated, and the Hypothecator owns such building, the Hypothec Right Holder may demand the compulsory sale of the building together with the hypothecated land. However, should the price of the land together with the building thereon be less than the price of the land as a vacant plot, the Hypothec Right Holder may demand that the hypothecator remove the building prior to the compulsory sale of the land.

(2) Should a Third Party own the building on the hypothecated land based on a perpetual lease, usufruct or leasehold, if the Third Party cannot assert such perpetual lease, usufruct or leasehold against the Hypothec Right Holder, the Hypothec Right Holder may demand the compulsory sale of the building together with the hypothecated land.

**855. Third Party acquirer's application to purchase**

A Third Party acquirer of a hypothecated immovable may purchase the immovable through a compulsory sale.

**856. Third Party acquirer's right to reimbursement**

Should a Third Party acquirer have incurred necessary or beneficial expenses in regards to a hypothecated immovable, he/she may obtain reimbursement out of the proceeds of the sale of the immovable in preference to the Hypothec Right Holder.

**857. Simultaneous or staggered application of proceeds in case of joint hypothec**

(1) Should two or more immovables be hypothecated to secure the same claim and their proceeds from compulsory sale are to be applied simultaneously to its satisfaction, the burdens of satisfaction of the claim shall be allocated in proportion to the value of each immovable.

(2) Should the proceeds of only one of the immovables be sufficient to obtain full satisfaction of the claim of the Hypothec Right Holder. In such case, the Hypothec Right Holder next in rank may exercise the right of the prior Hypothec Right Holder via subrogation to the extent of the amount that the prior Hypothec Right Holder would have received out of the other immovables in accordance with the provisions of paragraph (1).

**858. Joint hypothec - registration of subrogation**

A person enforcing a right of hypothec via subrogation in accordance with the provisions of paragraph (2) of **Article 857 (Simultaneous or staggered application of proceeds in case of joint hypothec)** must enter such subrogation in the registry of the hypothec.

**Section V. Disposal of Hypothec**

**859. Sub-hypothecation**

(1) A Hypothec Right Holder may hypothecate his/her right of hypothec

in order to secure the debt of him/herself or another. This is referred to as Sub-hypothecation.

(2) Should a hypothecated Object be sold through compulsory sale and the proceeds be apportioned, the sub-pledgee of the hypothec may receive full satisfaction of his/her claim from and to the extent of the amount to be apportioned to the Hypothec Right Holder. However, during the period that the claim of the sub-pledgee of the hypothec has yet to come due, the sub-pledgee of the hypothec may only demand that the amount to be received be officially deposited.

#### **860. Transfer or waiver of hypothec**

(1) A Hypothec Right Holder may transfer or waive his/her right of hypothec for the benefit of another creditor(s) of the same debtor.

(2) A transferee of a right of hypothec may exercise the received right of hypothec as security for his/her own debt. In such case, the provisions of paragraph (2) of **Article 859 (Sub-hypothecation)** shall apply *mutatis mutandis*.

(3) A person waiving a right of hypothec shall not thereafter assert the right of hypothec against the creditor(s) for whose benefit the waiver was made.

#### **861. Transfer, waiver or change of ranking**

(1) A Hypothec Right Holder may transfer or waive his/her priority ranking for the benefit of another Hypothec Right Holder of the same debtor. Moreover, a Hypothec Right Holder may change the priority of his/her ranking among multiple Hypothec Right Holders with the consent of the other Hypothec Right Holder. However, should such a change affect the interests of another party, such party's consent must be obtained.

(2) Should the Object of a right of hypothec be sold through compulsory sale and the proceeds apportioned among multiple Hypothec Right Holders, a transferee of a priority ranking in regards to the right of hypothec may receive full satisfaction of his/her claim from and to the extent

of the total amount to be apportioned thereof.

(3) Should the Object of a right of hypothec be sold through compulsory sale and the proceeds apportioned among multiple Hypothec Right Holders, a Hypothec Right Holder who has received a waiver of a priority ranking in regards to the right of hypothec may, as between himself and the Hypothec Right Holder who has waived the priority ranking, receive equal repayment from and to the extent of the total amount to be apportioned to both of them.

(4) A Hypothec Right Holder who consents to a change in priority ranking may enforce the right of hypothec in accordance with such consent.

**862. Effect of disposal of hypothec**

(1) The disposal of a hypothec described in Article **859 (Sub-hypothecation)**, Article **860 (Transfer or waiver of hypothec)** and Article **861 (Transfer, waiver or change of ranking)** shall be null unless it is notarized and entered in the registration thereof.

(2) The disposal of a hypothec shall not be asserted against the principal Debtor, a Guarantor, Hypothecator or their respective successors unless the principal debtor is notified of such disposal or acknowledges thereto.

(3) Should the principal debtor receive notice of or consents to the disposal of a right of hypothec as described in paragraph (2), repayment made without the approval of a person receiving the benefit of such disposal shall not be asserted against such person.

**863. Ranking of disposal of hypothec**

Should, in the cases set forth in Article **859 (Sub-hypothecation)**, Article **860 (Transfer or waiver of hypothec)** and Article **861 (Transfer, waiver or change of ranking)**, the Hypothec Right Holder have disposed of his/her right of hypothec for the benefit of two or more persons, the rank of priority of the rights of the persons benefiting from such

disposal shall be determined by the order of entries in the registration of the hypothec.

## Section VI. Extinction of Hypothec

### Sub-section I. Extinction upon demand

#### **864. Payment of price**

Should a Third Party who has purchased ownership of or perpetual lease or usufruct on the hypothecated immovable pay the price thereof to the Hypothec Right Holder at the request of the Hypothec Right Holder, the hypothec shall be thereby extinguished for the benefit of said Third Party.

### Sub-section II. Extinction by prescription

#### **865. Extinctive prescription of hypothec**

No hypothec shall be extinguished by prescription in relation to the Obligors and Hypothecators unless it is extinguished simultaneously with the claim the hypothec secures.

#### **866. Extinction of hypothec by acquisition of hypothecated immovable by acquisitive prescription**

Should a person who is neither an Obligor nor a Hypothecator have possessed the hypothecated immovable property in complete conformity with the requirements for acquisitive prescription, the hypothec shall be extinguished thereupon. This shall not apply where a Third Party acquirer of the hypothecated immovable property acquire the immovable with knowledge of the existence of the hypothec.

## Section VII. Revolving Hypothec

#### **867. Definition of Revolving Hypothec**

(1) A hypothec may be created between a Creditor and a Debtor to secure

unspecified claims, up to the limit of the maximum amount that may occur through the specific type of continuous transactions. A hypothec of such nature shall be referred to as a Revolving Hypothec.

(2) The scope of the unspecified claims that are secured by a Revolving Hypothec must be set forth in the agreement creating the Revolving Hypothec.

**868. Scope of secured claims**

A Revolving Hypothec Right Holder may exercise his/her Revolving Hypothec Right up to the maximum amount with respect to all fixed payments of principal as well as periodical payments, including interest and compensation for damages resulting from failure to perform Obligations.

**869. Amendment of the scope of secured claims**

(1) The parties to a Revolving Hypothec agreement may, through their mutual agreement, amend the scope of the claims secured by the Revolving Hypothec during the period of time until the principal settled upon.

(2) Amendments pursuant to paragraph (1) shall not require the consent of subordinate Hypothec Right Holder or any other Third Party.

(3) An amendment pursuant to paragraph (1) must be registered before the principal settled upon.

**870. Amendment of maximum amount**

(1) The parties to a Revolving Hypothec agreement may, through mutual agreement, amend the maximum amount of the Revolving Hypothec.

(2) The consent of interested parties must be obtained in the event of an amendment as set forth in paragraph (1).

(3) An amendment set forth in paragraph (1) shall not be asserted against any Third Party other than those persons who have consented pursuant to paragraph (2), unless the amendment is registered.

**871. Date for fixing principal**

(1) With respect to the principal secured by a Revolving Hypothec, the date on which the principal is to be fixed may be prescribed or amended.

(2) The provisions of paragraph (2) of **Article 869 (Amendment of the scope of secured claims)** shall apply *mutatis mutandis* to paragraph (1).

(3) The date set forth in paragraph (1) must be within five (5) years of the date on which it is prescribed or amended.

(4) The amendment of the date set forth in paragraph (1) must be registered prior to said date.

**872. Assignment of secured claim or assumption of debt**

(1) A person who acquires a claim from a Revolving Hypothec Right Holder before the principal has been fixed shall not exercise the Revolving Hypothec with respect to such claim. A person who makes payment for or on behalf of an Obligor before the principal is fixed also may not exercise the Revolving Hypothec through subrogation by performance.

(2) Should an Obligation be assumed before the principal is fixed, the Revolving Hypothec Right Holder of the hypothec shall not exercise his/her Revolving Hypothec with respect to the Obligation of the person who assumes the Obligation.

**873. Inheritance of revolving Hypothec Right Holder or debtor**

(1) Should a succession have commenced in connection with the Revolving Hypothec Right Holder before the principal has been fixed, the Revolving Hypothec shall secure the claims that exist at the time of the commencement of the succession. The Revolving Hypothec shall also secure the claims that the successor, prescribed by agreement between the successors and the Revolving Hypothecator, acquires after the commencement of the succession.

(2) Should a succession have commenced in connection with a Debtor before the principal is fixed, the Revolving Hypothec shall secure the debts that exist at the time of the commencement of the succession. The Revolving Hypothec shall also secure the debts that are incurred by the successor, prescribed by agreement between the Revolving Hypothec Right Holder and the Revolving Hypothecator, after the commencement of the succession.

(3) The provisions of paragraph (2) of **Article 869 (Amendment of the scope of secured claims)** shall apply *mutatis mutandis* to the agreement set forth in paragraph (1) or (2).

(4) Should an agreement set forth in paragraph (1) or (2) not be registered within six (6) months of the commencement of the succession, the principal to be secured shall be deemed to have been fixed at the time that succession was commenced.

**874. Merger of revolving Hypothec Right Holder or debtor**

(1) Should a merger have occurred in connection with a corporate Revolving Hypothec Right Holder before the principal is fixed, the Revolving Hypothec shall secure the claims that exist at the time of the merger, and shall also secure the claims acquired after the merger by the surviving corporation or the corporation established as a result of the merger.

(2) Should a merger have occurred in connection with a corporate debtor before the principal is fixed, the Revolving Hypothec shall secure the debts that exist at the time of the merger, and shall also secure the debts incurred by the surviving corporation or the corporation that is established as a result of the merger.

(3) In the event of paragraph (1) or paragraph (2), the Revolving Hypothecator may demand the secured principal be fixed. This provided that it shall not apply in the case of paragraph (2) if the debtor is the Revolving Hypothecator.

(4) Should a demand pursuant to paragraph (3) have been made, the principal secured shall be deemed to have been fixed at the time of the merger.

(5) A demand pursuant to paragraph (3) shall not be made should two (2) weeks have passed from the date that the Revolving Hypothecator has become aware of the merger. The same shall apply should one (1) month have passed from the date of the merger.

**875. Division of revolving Hypothec Right Holder or debtor before fixing**

(1) Should a division occur for a corporate Revolving Hypothec Right Holder before the principal is fixed, the Revolving Hypothec shall secure the claims that exist at the time of the division, as well as the claims acquired after the division, by the corporation that divided, or the corporation that was established or assumed the business as a result of the division.

(2) Should a division occur in connection with a corporate debtor before the principal has been fixed, the Revolving Hypothec shall secure the debts that exist at the time of such division, as well as the debts that are incurred after such division, by the corporation that divided or the corporation that was established or assumed the business as a result of the division.

(3) The provisions of paragraphs (3), (4) and (5) of **Article 874 (Merger of revolving Hypothec Right Holder or debtor)** shall apply *mutatis mutandis* to paragraphs (1) and (2) hereof.

**876. Disposition of Revolving Hypothec**

(1) The Revolving Hypothec Right Holder cannot make any disposition as set forth in paragraph (1) of **Article 860 (Transfer or waiver of hypothec)**, or paragraph (1) of **Article 861 (Transfer, waiver or change of ranking)**, prior to the fixing of the principal. This provided that it shall not prevent a disposition as set forth in **Article 859 (Sub-hypothecation)**.

(2) The provisions of paragraph (3) of **Article 862 (Effect of disposal of hypothec)** shall not apply to repayments made prior to the fixing of the principal in the case set forth in the provisions of paragraph (1).

**877. Transfer of Revolving Hypothec**

(1) Prior to the principal being fixed, a Revolving Hypothec Right Holder may transfer a Revolving Hypothec with the approval of the Revolving Hypothecator.

(2) A Revolving Hypothec Right Holder may divide her/his Revolving Hypothec into two Revolving Hypothecs, and transfer one of these in accordance with paragraph (1). In such event, should that Revolving Hypothec have been subject to the rights of a Third Party, the rights of said Third Party shall be extinguished in connection with the Revolving Hypothec that was transferred.

(3) The Revolving Hypothec Right Holder must obtain the approval of the Third Party set forth in paragraph (2) in order to make the transfer set forth therein.

**878. Partial transfer of Revolving Hypothec**

Prior to the principal being fixed, a Revolving Hypothec Right Holder may, with the approval of the Revolving Hypothecator, effect a partial transfer of the Revolving Hypothec and co-own the same with the acquiring party.

**879. Joint ownership of Revolving Hypothec**

(1) The joint owners of a Revolving Hypothec shall receive payment in proportion to the amounts of the claims held by each. This provided that should, prior to fixing the principal a different ratio is prescribed or it is prescribed that one of the parties shall receive payment in preference to other parties, the payment shall be received as so prescribed therein.

(2) A joint owner of a Revolving Hypothec may obtain the consent of the other joint owners and transfer his/her rights under the Revolving Hypothec in accordance with the provisions of paragraph (1) of **Article 877 (Transfer of Revolving Hypothec)**.

**880. Effect of transfer of Revolving Hypothec by a Revolving Hypothec Right Holder who has accepted a transfer or waiver of the order of priority of a hypothec**

Should a Revolving Hypothec Right Holder who has accepted a transfer or waiver of the order of preference for a hypothec have transferred or partially transferred his/her Revolving Hypothec, the acquiring party shall acquire the benefit of the transfer or waiver of that order of preference.

**881. Joint Revolving Hypothec**

The provisions of **Article 857 (Simultaneous or staggered application of proceeds in case of joint hypothec)** and **Article 858 (Joint hypothec - registration of subrogation)** shall apply with respect to Revolving Hypothecs, given that this shall be limited to cases where, concurrent with the establishment of the same, it is registered that a Revolving Hypothec has been established on several immovable properties to secure the same claim.

**882. Amendment, transfer or fixing of a joint Revolving Hypothec**

(1) Any amendment to the scope of claims secured by or the Debtors or maximum amount of a Revolving Hypothec registered pursuant to **Article 881 (Joint Revolving Hypothec)**, or the transfer or partial transfer thereof, shall be null unless registered in connection with all of the immovable Objects.

(2) The principal secured under a Revolving Hypothec that has been registered pursuant to **Article 881 (Joint Revolving Hypothec)** shall be set even should cause for such settlement have occurred in connection with only one immovable.

**883. Aggregate Revolving Hypothec**

A person who has Revolving Hypothecs on several immovable properties may exercise his/her preference right in respect to proceeds of each immovable property up to the respective maximum amounts, except in cases provided for in **Article 881 (Joint Revolving Hypothec)**.

**884. Demand for fixing of principal**

(1) The Revolving Hypothecator may demand the settling of the principal to be secured should three years have passed since the creation of the Revolving Hypothec. This provided that it shall not apply should a date have been prescribed on which the principal is to be fixed.

(2) The Revolving Hypothecator may demand the fixing of the principal to be secured should, as a result of a change in the scope of claims to be secured, termination of transaction, or other cause, it become certain that no more principal will arise for which security is necessary.

(3) The Revolving Hypothec Right Holder may demand the setting of the principal to be secured. This provided that it shall not apply should a date have been prescribed on which the principal is to be settled upon.

(4) Should a demand be made pursuant to paragraph (1), (2) or (3), the principal to be secured shall be set with the expiration of two weeks from the time of the demand.

**885. Cause for fixing of principal**

(1) In addition to cases in which a demand for settlement has been made as set forth in **Article 884 (Demand for fixing of principal)**, the principal to be secured under a Revolving Hypothec shall be set under the following circumstances:

- a. If the Revolving Hypothec Right Holder has made a petition for compulsory sale of the immovable under the hypothec, provided that it shall be limited to cases in which the compulsory sale procedures have commenced;
- b. If the Revolving Hypothec Right Holder has effected an

attachment for delinquent taxes against the hypothecated immovable properties;

- c. If two weeks have passed since the Revolving Hypothec Right Holder became aware that compulsory sale procedures have been commenced or attachment for delinquent taxes has been made against the hypothecated immovable properties; or
- d. If the Debtor or the Revolving Hypothecator has received a declaration of bankruptcy.

(2) Should the effect of a compulsory sale or attachment pursuant to paragraph (1)(c) or a declaration of bankruptcy pursuant to paragraph (1)(d) have been extinguished, the setting of the principal shall be deemed to not have occurred. This provided that it shall not apply if a Third Party has acquired the Revolving Hypothec or the rights created over the same on the basis that the principal has been set.

**886. Demand for reduction of maximum amount**

(1) Once the principal has been set, the Revolving Hypothecator may demand a reduction in the maximum amount of that Revolving Hypothec based on the amount of the Obligations actually in existence plus the amount of the periodical payments including interest and the amount of damages due to default in Obligations that may arise in the subsequent two years.

(2) In relation to reductions in the maximum amount of Revolving Hypothecs for which registration under **Article 881 (Joint Revolving Hypothec)** has been effected, the demand under the paragraph (1) shall be sufficient if made with respect to one of those immovable properties.

**887. Demand for extinguishing of Revolving Hypothec**

(1) Should the amount of the debt existing following the fixing of the principal exceed the maximum amount of the Revolving Hypothec, the person who created the Revolving Hypothec to secure the debts of another, or the Third Party who has acquired ownership or perpetual lease, or the leasehold that can be asserted against third parties with respect to hypothecated immovable properties, may, by paying or depositing an

amount equivalent to the maximum amount, demand that the Revolving Hypothec be extinguished. In such event, the payment or deposit shall have the effect of performance.

(2) A Revolving Hypothec that has been registered as prescribed in **Article 881 (Joint Revolving Hypothec)** shall be extinguished should a demand set forth in paragraph (1) be made against one of the immovable Objects.

(3) The principal debtor, Guarantor or their successor in interest shall not demand the extinguishment as prescribed in paragraph (1).

(4) A Third Party who has acquired ownership or another right set forth in paragraph (1) that is encumbered by a condition precedent shall make a request for extinguishment as prescribed in paragraph (1) during the period in which the existence or absence of said condition remains undetermined.

## **Chapter 6 TRANSFER AS SECURITY<sup>14</sup>**

### **Section I. Definition of Transfer as Security**

#### **888. Definition of Transfer as Security**

(1) A Transfer as Security shall mean the transfer of ownership of a prescribed movable owned by a Debtor or a Third Party, to the Creditor, for the purposes of securing a debt. In such event, the ownership over the property shall be re-transferred to the person who provided the security once the debt has been paid in full.

(2) It shall be possible to have more than one movable for which the scope is defined according to the type of movable, the location or other standards, be the Object of a Transfer as Security as one aggregate movable, even if there are changes in the individual movables included

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<sup>14</sup> This is essentially the same as a common law chattel mortgage, and only applies to movables.

therein.

## Section II. Formation of Security Interest Under a Transfer as Security

### **889. Creation of security interest under a Transfer as Security**

A security interest under a Transfer as Security shall be created through an agreement between the Creditor and the Debtor or the Third Party providing the movable(s) for the Transfer as Security.

### **890. Perfection of security interest under a Transfer as Security**

A security interest under a Transfer as Security shall not be asserted against a Third Party other than the creator of the security right unless possession of the Object is assigned pursuant to **Article 229 (Assignment of possession)**.

## Section III. Effect of Security Interest Under a Transfer as Security

### **891. Extent of effect of security interest under a Transfer as Security**

(1) A security interest under a Transfer as Security shall extend to all Objects that are affixed to and form part of the Object of the security interest of the Transfer as Security at the time of the creation thereof. It shall also extend to all Objects that are affixed to the Object subsequent to the creation of the security interest under the Transfer as Security.

(2) Provisions to the contrary may be set forth in the agreement creating the security interest under the Transfer as Security.

### **892. Effect of security interest under a Transfer as Security on fruits**

(1) Should the creator of the security right or a Third Party, upon instruction from the creator of the security right directly possessing the Object, the provisions of **Article 891 (Extent of effect of security interest under a Transfer as Security)** shall not apply to the fruits thereof. This provided that it shall not apply once the holder of the

security interest under the Transfer as Security has demanded delivery of the Object pursuant to paragraph (2) of **Article 898 (Conversion to cash or conclusive transfer of ownership)**.

(2) Should the holder of the security interest under the Transfer as Security or a Third Party on instruction from said holder who directly possesses the Object, the provisions of **Article 822 (Priority right to receive satisfaction from fruits)** concerning pledges shall apply *mutatis mutandis* to fruits produced from the Object.

**893. Extension of security interest to the proceeds of the collateral**

(1) The security interest under a Transfer as Security may be exercised against money or other Objects to be received by the creator of the security right, as a result of sale, loss or destruction of, or damage to the Object of the Transfer as Security. This provided that it shall not be exercised against money or other Object once such Object has been paid or delivered to the creator of the security right.

(2) Notwithstanding the provisions of paragraph (1) above, should the Object under the Transfer as Security consist of the movables prescribed in paragraph (2) of **Article 888 (Definition of Transfer as Security)**, and the creator of the security right plans to sell the Object to another, the security interest under the Transfer as Security shall not be exercised against the sale proceeds.

**894. Disposition of Object by creator of the security right**

(1) Should a creator of a security right, who continues his/her direct possession over the Object even after the security interest under a Transfer as Security has been created, assigns said Object to a Third Party, or has created a real security right over said Object in favor of a Third Party, if said Third Party satisfies the requirements set forth in **Article 193 (Bona fide acquisition of ownership of movables)**, the Third Party may assert its rights against the holder of the security interest under the Transfer as Security.

(2) Notwithstanding the provisions of paragraph (1) above, should the

Objects under the Transfer as Security consist of movables prescribed in paragraph (2) of **Article 888 (Definition of Transfer as Security)**, and the creator of the security right plan to sell the Object to another, and should the creator of a security right, who continues to be in direct possession of the Object following the creation of the Transfer as Security, sell the Object to a Third Party, the holder of the security interest under the Transfer as Security shall not be able to assert his/her security interest against the Third Party regardless of whether the Third Party satisfies the requirements set forth in **Article 193 (Bona fide acquisition of ownership of movables)**.

(3) Should another person on instruction from the creator of the security right continue with direct possession over the Object even after the security interest under a Transfer as Security has been created, if the creator of the security right assigns said Object to a Third Party or creates a real security right over said Object in favor of a Third Party, the provisions of paragraph (1) or (2) shall apply *mutatis mutandis*.

#### **895. Extent of secured claim**

The security interest under the Transfer as Security shall secure the principle, interest, penalty, expenses for enforcing the security interest under the Transfer as Security, the expenses for preserving the Object, as well as compensation for damage resulting from default on Obligations, or any hidden defect in the Object. This shall not apply when otherwise provided for in the act of creation.

#### **896. Special provisions in the event that the holder of the security interest under the Transfer as Security takes direct possession of the Object**

Should the holder of the security interest under the Transfer as Security or a Third Party on instruction from the holder take direct possession of the Object, the provisions of **Article 821 (Retention of Object pledged)**, **Article 823 (Pledgee's duty to preserve Object pledged)**, and **Article 824 (Pledgee's right to reimbursement)** shall apply *mutatis mutandis*.

**897. Disposition of Object by holder of security interest under the Transfer as Security**

(1) Should the holder of the security interest under the Transfer as Security, who is in direct possession of the Object, assign the Object to a Third Party, or creates a real security right in favor of a Third Party, if the Third Party satisfies the requirements set forth in **Article 193 (Bona fide acquisition of ownership of movables)**, the Third Party may assert said rights against the creator of the security right.

(2) Should a Third Party have direct possession over the Object through the instruction from the holder of the security interest under the Transfer as Security, who transferred ownership of the Object to another Third Party or provided it as security for another Third Party, the provision of Paragraph (1) shall apply *mutatis mutandis*.

**Section IV. Enforcement of the Security Interest Under Transfer as Security**

**898. Conversion to cash or conclusive transfer of ownership**

(1) Should the debt not be discharged, the holder of the security interest under the Transfer as Security may, by giving notice to the creator of the security right, take measures, in his own capacity, to convert the Object to cash, or obtain ownership of the Object conclusively.

(2) Should, in the event of paragraph (1), the Object be held in the direct possession of the creator of the security right or a Third Party upon instruction by the creator of the security right, a demand for delivery of the Object may be made upon such person.

(3) Should, in the event of paragraph (1), the price of the Object exceed the amount of debt payable, the holder of the security interest under the Transfer as Security must pay the creator of the security right the difference as settlement.

**899. Right of retrieval of a creator of the security right**

The creator of the security right may, even if the due date of the debt has passed and until the settlement payment set forth in paragraph (3) of **Article 898 (Conversion to cash or conclusive transfer of ownership)** is made, tender the entire amount of the debt and show proof thereof to the holder of the security interest under the Transfer as Security, and retrieve the Object under the Transfer as Security. This provided that should the price of the Object encumbered by the security interest under the Transfer as Security not exceed the amount of the debt that is payable, the preceding shall not apply after the holder of the security interest under the Transfer as Security has notified the creator of the security right to that effect.

## **Chapter 7 GUARANTY**

### **Section I. Formation of Guaranty**

**900. Formation of contract of guaranty**

(1) A guaranty shall be formed when: (i) a prospective Guarantor undertakes a Obligation towards the Obligee that in the event the Obligor fails to perform his/her Obligation, the prospective Guarantor will perform in whole or part such Obligation together with the Obligor; and (ii) the Obligee accepts such undertaking.

(2) A rider providing security for loss, which shall constitute a guaranty Obligation independent from the underlying Obligation, may be executed as part of a contract of guaranty. This shall be limited to situations in which the provision of security for loss or guaranty constitutes part of the business of the person assuming the Obligations imposed by such rider.

(3) Should the assumption of the guaranty Obligation not constitute part of the business of the prospective Guarantor, the Obligee shall provide the prospective Guarantor with any and all material information concerning the guaranty Obligation to be assumed, thereby giving the

prospective Guarantor a chance to fully deliberate.

(4) Should the Obligee fail to carry out the duty described in paragraph (3), the Guarantor may rescind the contract of guaranty.

**901. Form of contract of guaranty**

(1) A guaranty undertaking not recorded in an instrument or document may be revoked at any time. This shall not apply where the Guarantor has voluntarily sought to perform the guaranty Obligation.

(2) The provisions of paragraph (1) shall also apply to a guaranty undertaking made in connection with a monetary Obligation where the amount of the guaranty Obligation is not stipulated in the Guarantor's handwriting.

(3) The contents of the guaranty Obligation shall be specifically described in the guaranty instrument or document.

**902. Floating guaranty**

(1) Notwithstanding the provisions of paragraphs (2) and (3) of **Article 901 (Form of contract of guaranty)**, a floating guaranty contract that guarantees the performance of unspecified future Obligations accruing from a certain continuing legal relationship shall be valid and effective only if the continuing legal relationship forming the basis of the underlying Obligations is specified.

(2) Should the term of the guaranty not be stated in the floating guaranty contract, the Guarantor may, once a reasonable period of time has elapsed since the date of execution of the contract, terminate the floating guaranty contract, and such shall not be retroactive.

(3) Should the principal Obligor's business or financial position have deteriorated substantially since the date of execution of the floating guaranty contract, the Guarantor may immediately terminate the floating guaranty contract, and such termination shall not be retroactive.

(4) Upon the death of a Guarantor under a floating guaranty contract, only the floating Guarantor's Obligations regarding the underlying Obligations in existence at the time of the Guarantor's death shall be subject to succession.

## Section II. Effect of Guaranty

### **903. Scope of guaranty**

(1) A guaranty Obligation shall include interest accruing on the underlying Obligation, penalties, damages and all other charges incidental to the underlying Obligation.

(2) A guaranty contract may specify the amount of penalties or damages payable for non-performance of the guaranty Obligation.

### **904. Nature of guaranty**

(1) Should an underlying Obligation not exist, a guaranty shall not be created. However, a guaranty may be created with regard to an underlying Obligation that could arise in the future or an underlying Obligation subject to a condition.

(2) Should the Guarantor's burden be more onerous than that of the underlying Obligation with respect to either the Object or the terms and conditions of the Obligation, the Guarantor's Obligation shall be reduced in accordance to the scope of the underlying Obligation.

(3) The extinction of the underlying Obligation shall operate to extinguish the guaranty Obligation as well.

(4) A demand for performance or any other grounds for interruption of a prescription period against the principal Obligor shall also be effective against the Guarantor.

(5) Except as otherwise provided for in the guaranty contract, once the claim owed to the principal Obligor has been assigned, the claim owed to the Guarantor shall also be deemed to have been assigned to the

assignee.

**905. Rights of Guarantor**

(1) The Guarantor is entitled to invoke prescriptive extinction of the underlying Obligation.

(2) The principal Obligor's waiver of the benefit of prescription shall not be effective upon the Guarantor.

(3) The Guarantor may raise any defenses available against the principal Obligor.

(4) Should the principal Obligor be entitled to rescind or terminate his/her Obligations, the Guarantor may refuse to perform the guaranty Obligation.

(5) Should the principal Obligor be entitled to a set-off the underlying Obligation by virtue of a counter-Obligation owed by the Obligee, the Guarantor may refuse to perform the guaranty Obligation to the extent that the underlying Obligation would be extinguished by the exercising of the set-off.

**906. Guaranty of voidable Obligation**

Should a Guarantor, who offers a guaranty or security against loss as part of his/her business, assume a guaranty Obligation regarding a voidable Obligation while aware of the grounds for rescission of the contract giving rise to the underlying Obligation, the Guarantor shall be presumed to have assumed an independent Obligation regarding the same Object as that of the underlying Obligation.

**907. Qualification as Guarantor**

(1) Should an Obligor have a duty to furnish a Guarantor for the Obligee, the Guarantor must be a person of full legal capacity who has sufficient financial ability to effect performance.

(2) Should the Guarantor cease to fulfill the conditions set forth

in paragraph (1), the Obligee may demand that the Obligor replace the Guarantor with a person who fulfills such conditions.

(3) Should the Obligor be unable to furnish a Guarantor who fulfills the conditions set forth in paragraph (1), the Obligee may demand that the Obligor furnish other security in lieu thereof.

(4) This Article shall not apply in cases where the Obligee has designated the Guarantor.

**908. Meaning of joint guaranty and principle of joint guaranty**

(1) A Guarantor shall not: (i) demand from the Obligee a demand of performance from the principal Obligor in preference to the Guarantor; or (ii) exempt him/herself from enforcement of the guaranty Obligation by establishing that the principal Obligor has sufficient resources to tender performance and is easily subject to execution.

(2) In the absence of an agreement to the contrary, the Guarantor shall be bound to perform the guaranty Obligation jointly and severally with the principal Obligor.

**909. Effect of events occurring with respect to Guarantor**

Events that occur with respect to the Guarantor shall have no effect in respect to the principal Obligor. This shall not apply to a demand or other grounds for the interruption of prescription that is made or occurs to a Guarantor who has been commissioned by the principal Obligor.

**910. Co-Guarantors**

(1) Should multiple persons undertake to be Guarantors in a contract, each Guarantor shall be obligated in respect to the entire amount of the underlying Obligation.

(2) In the absence of an agreement to apportion the guaranty Obligation among the co-Guarantors and limit each co-Guarantor's liability vis-à-vis the Obligee to their apportioned share, the burden

of the guaranty Obligation shall be presumed to be shared equally among all co-Guarantors.

### Section III. Indemnification

#### **911. Commissioned Guarantor's right to indemnification**

(1) Should a Guarantor commissioned by the principal Obligor have effected performance on behalf of the principal Obligor or has otherwise extinguished the underlying Obligation at his/her expense, the Guarantor is entitled to demand indemnification from the principal Obligor.

(2) The Guarantor described in paragraph (1) may demand indemnification of the actual amount paid by him and interest accruing thereon from the time of payment, as well as compensation for damages.

(3) A Guarantor commissioned by a principal Obligor may preemptively exercise his/her right to indemnification in any of the following cases:

- a. Where the Guarantor has, without negligence on his/her part, received the issuance of a judgment ordering performance to the Obligee, and such judgment has become final and binding;
- b. Where the principal Obligor has been declared bankrupt, and the Obligee does not file for a distribution in the bankruptcy procedure;
- c. Where the underlying Obligation has come due; or
- d. Where the deadline for performance of the underlying Obligation is not fixed, its maximum period of performance cannot be established, and five years have elapsed since the date of execution of the guaranty contract.

(4) A principal Obligor who has received a demand for indemnification from the Guarantor pursuant to paragraph (1) may, so long as the Obligee has not received full and complete performance of the Obligation, demand that the Guarantor furnish security or procure a discharge from the Obligation for the benefit of the principal Obligor.

(5) In the case set forth paragraph (4), the principal Obligor may relieve himself of liability for indemnification by making a deposit with an official depository office, furnishing security to the Guarantor or procuring a discharge from the Obligation for the benefit of the Guarantor.

**912. Voluntary Guarantor's right to indemnification**

Should a Guarantor who not commissioned by the principal Obligor have effected performance on behalf of the principal Obligor or have otherwise caused the principal Obligor to be released from the underlying Obligation at the Guarantor's expense, the principal Obligor shall indemnify the Guarantor to the extent that the principal Obligor was enriched thereby. However, should the guaranty have been provided against the will of the principal Obligor, the principal Obligor shall indemnify the Guarantor to the extent that the principal Obligor continues to be enriched.

**913. Requirements for indemnification**

(1) Should the Guarantor have, without notifying the principal Obligor that he/she received a demand for performance from the Obligee, effected performance of the Obligation or otherwise procured the discharge thereof at his/her own expense, and if the principal Obligor has had any means of defense against the Obligee, the principal Obligor may set it up against the Guarantor's demand for indemnification. However, should the means of defense so set up be a set-off, the Guarantor may demand that the Obligee perform the counter-Obligation that might have been extinguished if it had been set-off.

(2) Should, as a result of the Guarantor's failure to notify the principal Obligor that he/she has procured the discharge of the Obligation at his/her own expense, the principal Obligor have also effected in good faith performance of the Obligation or otherwise procured a discharge at the principal Obligor's expense, the principal Obligor may treat his/her performance or other act of discharge as effective.

**914. Right to indemnification of Guarantor on behalf of one of several Obligors**

A Guarantor on behalf of one of several joint Obligors or Obligors of an indivisible joint Obligation may obtain indemnification from the other Obligors in proportion to their respective shares.

**915. Right to indemnification of co-Guarantors**

(1) Should one of several co-Guarantors have effected performance of the guaranty Obligation or otherwise procured a common discharge thereof at his/her own expense, such Guarantor may demand indemnification from the other Guarantors in proportion to their respective share of the burden.

(2) In the case set forth in paragraph (1), the Guarantor may demand indemnification with respect to the actual amount paid and interest accruing thereon, as well as compensation for damages.

(3) Should a co-guaranty contain an agreement to apportion the guaranty Obligation among the co-Guarantors and limit each co-Guarantor's liability vis-à-vis the Obligeé to the apportioned share thereof, if one of the co-Guarantors has procured at his/her own expense a common discharge of the Obligation in excess of his/her share of the burden, the provisions of **Article 912 (Voluntary Guarantor's right to indemnification)**, **Article 913 (Requirements for indemnification)** and **Article 914 (Right to indemnification of Guarantor on behalf of one of several Obligors)** shall apply *mutatis mutandis*.

**Section IV. Subrogation**

**916. Subrogation following performance**

(1) A Guarantor who has effected performance of the underlying Obligation or otherwise procured discharge thereof at his/her own expense shall acquire the Obligeé's rights in connection with the underlying Obligation, and shall be entitled to exercise, in lieu of the Obligeé, the security interests securing such rights.

(2) In the case described in paragraph (1), a Guarantor who has obtained a partial discharge may exercise the Obligee's rights and the associated security interests concurrently with the Obligee in proportion to the value of the discharge obtained by the Guarantor. In such case, the right of termination shall be exercised solely by the Obligee. However, in the event of termination, shall return to the subrogor the amount for which the discharge was obtained and interest thereon.

**917. Duty to deliver documents**

(1) An Obligee who has obtained full satisfaction by virtue of the Guarantor's performance, or other expenditure, shall deliver to the Guarantor the instrument certifying the underlying Obligation and the property held in the Obligee's possession as security.

(2) Should the Guarantor's performance or other expenditure have been made with respect to only part of the Obligation, the Obligee shall record the fact of the subrogation in the instrument and allow the Guarantor to supervise the preservation of the property held as security in the Obligee's possession.

**918. Duty to preserve security**

An Obligee who has obtained satisfaction by virtue of the Guarantor's performance, or other expenditure, shall be obligated to preserve the security for the benefit of the Guarantor who made such performance or other expenditure.

**919. Ranking of subrogors**

(1) A Guarantor who effects performance, or other expenditure, shall not thereafter be subrogated to the rights of the Obligee as against a third-party acquirer of an immovable provided as security unless is registered after such performance or other expenditure.

(2) A Guarantor shall be subrogated to the rights of the Obligee in relation to a Third Party security provider only in accordance with the proportion of the number of Third Party security providers to that of

Guarantors.

**920. *Mutatis mutandis* application of provisions regarding subrogation of performing party**

With respect to subrogation arising out of a Guarantor's performance or other expenditure, in addition to the provisions set forth in Section VI, the provisions of Sub-section IV, Section I, Chapter Seven of Book Four shall apply *mutatis mutandis*.

## **Chapter 8 JOINT OBLIGATION**

### **Section I. Creation of Joint Obligation**

**921. Definition of joint Obligation**

(1) Should multiple persons have assumed a joint Obligation, the Obligee may demand full or partial performance from any individual Obligee or from all Obligees simultaneously or separately.

(2) Should one, several or all joint Obligors have been declared bankrupt, the Obligee may seek satisfaction of the entire amount of the Obligation in the bankruptcy proceedings of each of such Obligors.

**922. Creation of joint Obligations**

(1) A joint Obligation shall be created through the provision of law or by the express or implied agreement between the Obligee and each of multiple Obligors who are acknowledged to have in common an intention to be obligated jointly.

(2) The agreement set forth in paragraph (1) may be reached between the Obligee and all Obligors simultaneously or between the Obligor and each Obligor separately.

(3) The Obligee can exempt any Obligor from the joint liability with the other Obligors.

(4) An Obligor who is exempted from the joint liability shall

thereafter be liable only for such share of the Obligation assumed by the Obligor prior to the exemption.

(5) Each joint Obligor shall be presumed to bear an equal share of the total Obligation.

**923. Nullification or rescision in relation to Obligor**

The existence of grounds for nullification or rescision of an act regarding a joint Obligor shall not affect the validity of the Obligation assumed by the remaining joint Obligors.

**Section II. Effect of Events Occurring Regarding Single Joint Obligor**

**924. Universal effect of demand or other ground for interruption of prescription period**

A demand for performance or other act that serves to interrupt a period of prescription that is made with respect to one joint Obligor shall be effective against all other joint Obligors.

**925. Universal effect of performance**

Where one joint Obligor conducts performance, substitute act of performance or performance by deposit, the Obligation shall thereby be extinguished with respect to the other joint Obligors as well.

**926. Universal effect of offset**

(1) Should one joint Obligor have a claim against the Obligee, the Obligor's offset of the claim against the Obligation shall serve to extinguish the Obligation on behalf of all joint Obligors.

(2) Should the Obligor possessing the claim described in paragraph (1) not exercise an offset of such claim against the Obligation, the other Obligors may refuse to perform with respect to that Obligor's share of the Obligation.

**927. Universal effect of novation**

The execution of a novation between the Obligee and any joint Obligor

shall serve to extinguish the Obligation for all Obligors.

**928. Universal effect of merger**

A merger between the Obligee and any joint Obligor shall be deemed to constitute performance by that Obligor.

**929. Universal effect of exemption**

(1) An exemption given to one joint Obligor with respect to the entire Obligation is effective with respect to the other Obligors only to the extent of the share of the Obligation for which that Obligor was responsible.

(2) Should an exemption with respect to part of the Obligation be given to one joint Obligor, the exemption's effect with respect to the other Obligors shall be proportional to the effect it would have had if it had constituted an exemption with respect to the entire Obligation.

**930. Universal effect of prescription**

(1) Should one joint Obligor invoke the benefit of a prescription that has been perfected with respect to that Obligor, the other Obligors shall be exempted from the Obligation to the extent of the share of the Obligation for which that Obligor was responsible.

(2) In the case described in paragraph (1), where the prescription has been perfected but the benefit of prescription has not been invoked, the other Obligors may invoke such prescription with respect to the share of the Obligation for which the Obligor originally eligible to invoke prescription was responsible.

**931. Principle of relative effect**

Except as provided in **Article 924 (Universal effect of demand or other ground for interruption of prescription period)** through **Article 930 (Universal effect of prescription)**, an event occurring with respect to one joint Obligor shall have no effect with respect to the other Obligors.

### Section III. Indemnification

#### **932. Performing Obligor's right to indemnification**

(1) Should a joint Obligor have obtained a discharge from the Obligation through his/her own performance or other expenditure, and the other joint Obligors have consequently been discharged as well, the joint Obligor may demand indemnification from the other Obligors with respect to their respective shares of the Obligation. Should the performance or other expenditure of a joint Obligor cover only a portion of the Obligation, and that Obligor and the other joint Obligors receive a discharge to that extent, the Obligor may demand indemnification in accordance with the portion of the entire Obligation that was discharged by such performance or expenditure.

(2) The demand for indemnification described in paragraph (1) may include legal interest incurred after the date of discharge through performance or other expenditure, as well as unavoidable expenses and other losses.

#### **933. Notification as requirement for indemnification**

(1) Should a joint Obligor, without notifying the other Obligors of the receipt of a demand for performance by the Obligee, obtain a discharge from the Obligation through his/her own performance or other expenditure, thereby discharging the other joint Obligors as well, another Obligor who had grounds to defend against the Obligee's claim may raise such grounds, to the extent of such Obligor's share of the Obligation, as a defense to a claim for indemnification by the joint Obligor who obtained a discharge from the Obligation through performance or other expenditure. However, should the other Obligor's grounds for defense against the Obligee consist of an offset, the Obligor against whom the defense is raised may demand that the Obligee perform such counter-obligation that should have been extinguished by the offset.

(2) Should a joint Obligor obtain a discharge from the Obligation through his/her own performance or other expenditure and fails to notify

the other Obligors that they are thereby discharged from the Obligation as well, and another joint Obligor thereafter obtains a discharge from the Obligation by tendering performance or other expenditure to the Obligee without knowledge of the discharge obtained as a result of the first joint Obligor's performance or expenditure, the second joint Obligor may deem his/her own performance or other action discharging the Obligation as effective.

(3) Should performance or other expenditure that would discharge the Obligation be made by multiple joint Obligors, if the notification described in paragraphs (1) and (2) is not provided, the discharging performance or other expenditure that is made first in time shall be deemed effective.

**934. Indemnification where joint Obligor lacks financial capacity**

Should a joint Obligor lack the financial capacity to make performance, the amount of that Obligor's liability for performance shall be borne by the Obligor demanding performance and by the remaining joint Obligors having such capacity in proportion to their respective share of the Obligation. However, should the Obligor demanding performance be negligent, such Obligor may not demand performance from the other Obligors for the financially incapable Obligor's share of the Obligation.

**935. Exemption from joint liability and financially incapable Obligor's share**

Should a joint Obligor obtain an exemption from joint liability with other Obligors, if any of the other Obligors lacks the financial capacity to make performance, the Obligee shall assume that share of the performance amount imputed to the financially incapable Obligor for which the Obligor exempted from the joint liability would otherwise be liable.

**Section IV. Subrogation by Performance**

**936. Subrogation**

(1) Should a joint Obligor obtain the right to demand indemnification from the other Obligors, such Obligor shall succeed to the claims possessed by the Obligee against the other Obligors to the extent of such indemnification, and shall be subrogated to the position of the Obligee in regard to any security interests securing such claims.

(2) The provisions of **Book Four, Chapter Seven, Section I, Sub-section IV** shall apply *mutatis mutandis* to the subrogation of an Obligor seeking indemnification.

#### Section V. Other Situations Involving Multiple Obligors

##### **937. Indivisible Obligations, pseudo-joint Obligations, divisible Obligations**

(1) Should multiple Obligors owe the same Obligation to a single Obligee, if the Obligors are not acknowledged to have in common the intention to assume joint and several responsibility with the others, the provisions of **Article 921 (Definition of joint Obligation)** shall apply *mutatis mutandis*. However, should performance of the Obligation be divisible, and divided performances will cause harm to the Obligee, each Obligor shall assume a divided and separate Obligation corresponding to his/her respective share. Should each Obligor's share be unable to be determined, each share shall be presumed to be equal.

(2) In the case set forth in the first sentence of paragraph (1), events occurring with respect to one Obligor shall not affect the other Obligors except in the cases described in **Article 925 (Universal effect of performance)** and paragraph (1) of **Article 926 (Universal effect of offset)**.

(3) Should an Obligor described in the first sentence of paragraph (1) obtain a discharge of the Obligation through his/her own performance or other expenditure, and the other Obligors are thereby discharged as well, if it is necessary to preserve fairness between the performing Obligor and the other Obligors, the performing Obligor may, to the extent necessary to preserve fairness among the Obligors, demand

indemnification from the other Obligors.

## **BOOK 7 RELATIVES**

### **Chapter 1 GENERAL PROVISIONS**

#### **938. Scope of Relatives**

Relatives shall refer persons listed below:

- a. Relatives by consanguinity up to the sixth degree of relationship;
- b. Spouses; and
- c. Relatives by affinity up to the third degree of relationship.

#### **939. Calculation of degrees of relationship**

(1) The degree of relationship shall be determined by counting the number of generations between Relatives.

(2) The degree of relationship between collateral Relatives shall depend on the number of generations ascending from one of the Relatives, or his/her spouse, back to the common ancestor, and then descending from such ancestor to the other relative.

#### **940. Arising of relationship from adoption**

The same relationship as between Relatives by consanguinity shall arise at the time of adoption between the Adoptee, and the Adopter and his/her Relatives by consanguinity.

#### **941. Extinguishment of affinity**

(1) Affinity shall be terminated through divorce.

(2) The same as set forth in paragraph (1) shall apply should, after the death of a spouse, the surviving spouse remarry or declare his/her intention to terminate affinity.

#### **942. Extinguishment of relationship by dissolution of adoption**

The relationship between an Adoptee, his/her spouse, his/her lineal descendants and their spouses on the, and the Adopter and his/her Relatives by consanguinity on the other hand, shall be terminated through the dissolution of the adoption.

**943. Mutual Obligations of respect and prevention of violence within families**

(1) Stakeholders of families shall respect each other's rights and freedoms, and shall support each other.

(2) Family stakeholders shall prevent domestic violence and infringements of each other's human rights.

## **Chapter 2 ENGAGEMENT**

**944. Formation of engagement**

An engagement shall be formed through a promise to marry in the future between a man and a woman, and the performing of an ceremony of engagement.

**945. Return of engagement gift**

Should an engagement be dissolved, the party who has presented an engagement gift to the other party in the expectation of the formation of marriage may demand the return of such gift from the other party.

**946. Liability for improper revocation**

Should an engagement be revoked by one of the parties without good cause, the other party may demand compensation for damage arising from such revocation.

**947. Time limit for filing suit**

A suit relating to **Article 945 (Return of engagement gift)** or to **Article 946 (Liability for improper revocation)** shall be filed no later than one year following the dissolution of the engagement.

## **Chapter 3 MARRIAGE**

### **Section I. Formation of Marriage**

#### **Sub-section I. Requirements for marriage**

##### **948. Marriageable age**

Neither men nor women may marry until they have reached the age of 18. However, should one of the parties have attained the age of majority and the other party be a minor at least 16 years of age, the parties may marry with the consent of the parental authority holders or guardian of the minor.

##### **949. Prohibition against bigamy**

A person who has a spouse may not effect an additional marriage.

##### **950. Period of prohibition for remarriage**

(1) A woman shall not remarry until 120 days have elapsed from the day of the dissolution or annulment of her previous marriage.

(2) The provisions of paragraph (1) shall not apply should the woman already be pregnant prior to the dissolution or annulment of the previous marriage and has given birth, or if she has a doctor's certificate that she is not pregnant.

##### **951. Prohibition against marriage between Relatives by consanguinity**

(1) No marriage may be effected between lineal Relatives by consanguinity, nor between collateral Relatives by consanguinity up to and including the third degree of relationship.

(2) Paragraph (1) shall apply notwithstanding the termination of relationship pursuant to the provisions of **Article 1013 (Dissolution of full adoption)** or **Article 1029 (Effect of dissolution of simple adoption)**.

**952. Prohibition against marriage between Relatives by affinity**

(1) No marriage may be effected between lineal Relatives by affinity. The same shall apply notwithstanding the termination of affinity pursuant to the provisions of **Article 941 (Extinguishment of affinity)**, **Article 1013 (Dissolution of full adoption)** or **Article 1029 (Effect of dissolution of simple adoption)**.

(2) No marriage may be effected between collateral Relatives by affinity up to and including the third degree of relationship. The same shall apply notwithstanding the termination of affinity pursuant to the provisions of **Article 941 (Extinguishment of affinity)**. This provided that should either husband or wife have died, the surviving spouse may marry a person who was a collateral relative by affinity up to and including the third degree of relationship.

**953. Marriage of minors**

(1) Should one of the parties wishing to marry be a minor, the consent of parental authority holders or guardian shall be obtained.

(2) Should one of the parental authority holders not consent, the consent of the other parental authority holder shall be sufficient.

(3) Should the parental authority holders or guardian unreasonably refuse consent, the minor wishing to marry may apply to the court for judgment in place of consent.

**954. Marriage of General Ward**

A General Ward may marry if he/she has the minimum capacity required to effect a marriage. In such case, the consent of the General Guardian shall not be required.

**955. Notification and registration of marriage**

(1) A marriage shall come into effect by virtue of notification, public notice, conclusion of a marriage contract in the presence of the family registration official, and registration of the marriage.

(2) The notification, public notice, conclusion of marriage contract and registration described in paragraph (1) shall be effected in accordance with the procedures prescribed status registration.

**956. Acceptance of notification of marriage**

Notification of marriage may be accepted only after confirming that there is no infringement of **Article 948 (Marriageable age)** through **Article 954 (Marriage of General Ward)**, inclusively.

**957. Formalities of marriage between Cambodians outside Cambodia**

(1) Cambodians abroad wishing to marry may effect notification, public notice and conclusion of the contract of marriage in the presence of a Cambodian Ambassador, Minister or Consul accredited in that country, and registration of the marriage.

(2) The public notice described in paragraph (1) shall be effected through the posting of a notice at the Cambodian diplomatic establishment in the relevant country.

**Sub-section II. Nullity and Annulment of Marriage**

**958. Nullity of marriage**

A marriage shall be treated as void only in the following situations:

- a. Should there be no intention to marry between the parties on the account of a mistake as to the identity of the other party, coercion or other cause;
- b. Should the parties not effect notification, public notice, conclusion of the contract of marriage or registration thereof. This provided that a slight procedural defect alone shall not preclude validity of the marriage.

**959. Annulment of marriage**

Annulment of a marriage shall be effected in accordance with **Article 960 (Annulment of unlawful marriage)** through **Article 963 (Annulment of marriage based on fraud or duress)**.

**960. Annulment of unlawful marriage**

(1) Either party to a marriage, their parents or a public prosecutor may apply to the court for the annulment of a marriage effected in contravention of **Article 948 (Marriageable age)** through **Article 952 (Prohibition against marriage between Relatives by affinity)**. This provided that a public prosecutor may not make such an application after the death of one of the parties.

(2) A spouse or former spouse of the party may also apply for annulment of a marriage effected in contravention of **Article 949 (Prohibition against bigamy)** or **Article 950 (Period of prohibition for remarriage)**.

**961. Extinguishment of right to annul marriage under marriageable age**

(1) No application may be made to annul a marriage effected in contravention of **Article 948 (Marriageable age)** once the under-age party attains a marriageable age.

(2) An underage party to a marriage may apply for annulment of the marriage during a period of 3 months following his/her attainment of the marriageable age, except should he/she have ratified the marriage after attaining the marriageable age.

**962. Annulment of marriage within period of prohibition of re-marriage**

Upon the lapse of 120 days from the day of dissolution or annulment of the previous marriage, or should the woman have become pregnant after her remarriage, no application may be made for annulment of a marriage effected in breach of the provisions of **Article 950 (Period of prohibition for remarriage)**.

**963. Annulment of marriage based on fraud or duress**

(1) A person who has been induced by fraud or duress to effect a marriage may apply to the court for annulment of such marriage.

(2) The right of annulment described in paragraph (1) shall be

extinguished should 3 months have elapsed since the party discovered the fraud or became free of the duress, or should the party have ratified the marriage.

**964. Effect of annulment of marriage**

(1) The annulment of a marriage shall not be retroactive.

(2) Should a party who was unaware at the time of marriage of the existence of a grounds for annulment have acquired property as a result of the marriage, he/she shall return such property to the extent that he/she currently benefits thereby.

(3) A party who was aware at the time of the marriage of the existence of grounds for annulment shall return the whole of the benefit that such party obtained as a result of the marriage. They shall furthermore be liable to compensate the other party for any damage if the other party acted bona fide.

(4) The provisions of **Article 988 (Presumption of paternity)** shall apply *mutatis mutandis* to any child born to the parties of a marriage that is to be annulled.

(5) Should a marriage that ought to be annulled be dissolved, the provisions of **Article 980 (Division of property)** shall apply *mutatis mutandis*.

## Section II. Validity of Marriage

**965. Surname of a married couple**

A married couple may use the surname of the husband or the wife, or their respective maiden names, in accordance with their agreement at the time of the marriage.

**966. Obligation of cohabitation, cooperation and mutual assistance**

The husband and wife shall cohabit, cooperate and assist each other.

**967. Freedom to choose occupation and to participate in social activities**

The husband and wife shall be free to choose their occupation and to participate independently in political, cultural and social activities.

**968. Fictional attainment of majority upon marriage**

In the application of this Code, a minor who marries shall be deemed to have attained his/her age of majority by so doing.

**Section III. The Matrimonial Property System**

**Sub-section I. The Contractual Property System**

**969. Matrimonial property contract and statutory property system**

(1) Prior to or after their marriage, a husband and wife may enter into a contract governing their property relationship. This provided that such contract may not contravene the provisions governing the right to demand support and legally secured portions.

(2) Unless the husband and wife have entered into a contract with regards to their property, their property relationship shall be governed by the provisions of **Sub-section II (The Statutory Property System)**.

**970. Required formalities and conditions for perfection of matrimonial property contract**

(1) A matrimonial property contract shall be concluded in writing.

(2) Should the husband and wife conclude a contract that differs from the statutory property system, such contract shall not be held up against third parties unless it has been registered.

**Sub-section II. The Statutory Property System**

**971. Allocation of expenses of marriage**

Husband and wife shall share the expenses of married life, taking into account their property, income and all other circumstances.

**972. Separate property**

The types of property listed below shall be treated as separate property belonging to one of the spouses alone:

- a. Property held by a spouse prior to marriage;
- b. Property acquired by a spouse during the marriage by gift, succession, or testamentary gift; and
- c. Property obtained as the consideration for disposing of property described in items (a) or (b) above.

**973. Common property**

Common property shall refer to any and all property acquired during the marriage by one or both spouses, other than property described in items (b) or (c) of **Article 972 (Separate property)**.

**974. Management and use of property**

(1) Husband and wife shall have equal rights to use, enjoy the benefits from and manage the common property. Each of them shall also have the right to use, enjoy the benefits from and manage their own property.

(2) Husband and wife shall have the right to use the common property to the extent necessary for their daily life.

(3) Husband and wife shall jointly manage the common property. Either spouse may demand that the other spouse take any measures required in order to secure, maintain and preserve the common property.

(4) Should no agreement concerning the management or use of the common property be reached upon consultation between the spouses or should consultation be unable to be held between the spouses, either spouse may seek judgment by the court concerning such management or use.

**975. Joint liability for Obligations**

Husband and wife shall be jointly liable for the following Obligations:

- a. Expenses for the maintenance of the cohabitation of the husband and the wife, and expenses for the care of children such as education and medical expenses;
- b. Obligations and other liabilities agreed in writing by both spouses with an Obligee during the marriage, and Obligations and other liabilities assumed by one of the spouses with the written consent of the other spouse during the marriage; and
- c. Expenses for the management and maintenance of the common property.

**976.           Disposition of common property of the spouses**

(1) Common property shall not be sold or otherwise disposed of without the consent of both spouses.

(2) Notwithstanding paragraph (1), provided that permission of a court has been obtained, one spouse may sell or otherwise dispose of common property in circumstances where such is unavoidable in relation to the preservation of matrimonial cohabitation and livelihood.

(3) Should one of the spouses sell or otherwise dispose of a common property without the consent of the other spouse nor the permission of a court, the non-consenting spouse may demand that the court nullify such disposition within two years from the date on which said spouse became aware of such disposition if the common property that was disposed of is an immovable, and one year commencing from the date when said spouse became aware of such disposition if the common property that was disposed of is a movable.

**977.           Spouses' right of residence**

(1) A spouse may reside in the separate property of the other spouse if such property has been provided as the matrimonial residence.

(2) In the case set forth paragraph (1), even should the separate property of one spouse that has been provided as the matrimonial residence be disposed of without the consent of the other spouse, the other spouse may continue residing upon such immovable.

## Section IV. Divorce

### Sub-section I. Grounds of Divorce

#### **978. Grounds for divorce**

(1) Husband or wife may bring a suit for divorce only under the following circumstances:

- a. Should the other spouse has committed an act of infidelity;
- b. Should he/she have been deserted without good cause by the other spouse;
- c. Should it have been unknown for a year or more whether the other spouse is alive or dead;
- d. Should the other spouse have been living apart contrary to the spirit of marriage continuously for one year or more; or
- e. Should the matrimonial relationship have otherwise degenerated and there is no prospect of reconciliation.

(2) Even for circumstances falling under paragraph (1), the court, taking account all circumstances, may dismiss a demand for divorce if divorce would cause extreme hardship or anguish upon the other spouse or their children.

(3) Even where the grounds described in item (d) or (e) of paragraph (1) exist, the court may, at its discretion, dismiss a demand for divorce should it find that the demand is in bad faith due to the petitioner having seriously neglected to cooperate with and/or assist the other spouse.

#### **979. Divorce by agreement**

Should both parties to a marriage have agreed to divorce, they may petition the court for divorce. This provided that the court may only grant a divorce after confirming that the parties truly desire to dissolve the matrimonial relationship via divorce.

**980. Division of property**

(1) In case of divorce, the property<sup>15</sup> shall be divided fairly in accordance with the agreement of the parties to the marriage.

(2) Should the spouses be unable to agree through consultation, the property shall be divided in accordance with the following provisions:

a. Each spouse shall retain separate property stated in **Article 972 (Separate property)**;

b. Each spouse shall have the right to receive one half of the common property in addition to his/her separate property. This provided that where there are special circumstances and an application has been filed by one of the parties, the court may divide the common property taking into account all circumstances, including, without limitation, the contribution of each spouse to the acquisition, maintenance and increase of property, the period of the marriage, the living standard during the marriage, the age, mental and physical condition of each spouse, their occupations, income and earning capacity, the welfare of any children, and any other similar factor.

(3) Housework shall be deemed to have the same value as work outside the home.

**981. Divorce and surname**

A wife or husband who has changed his/her surname on account of marriage may again use their maiden name or may use the surname that was being used at the time of the divorce.

Sub-section II. Divorce Procedures

**982. Suit for divorce**

(1) A suit for divorce shall be filed at the court having jurisdiction in accordance with **Article 10 (Special jurisdiction in cases involving divorce, parent-child relationships)** of the Code of Civil Procedure.

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<sup>15</sup> This term refers to all property of both parties inclusively.

(2) Either party to a marriage may file a petition for divorce at the *commune* or *sangkat* council of the domicile or location of residence as prescribed in paragraphs (1) or (3) of **Article 10 (Special jurisdiction in cases involving divorce, parent-child relationships)** of the Code of Civil Procedure. In such case the *commune* or *sangkat* council may attempt conciliation during a period of 15 days following its receipt of the petition. Should conciliation be unsuccessful, the *commune* or *sangkat* council shall forward the complaint to the court immediately as if a suit has been filed.

**983. Provisional disposition**

Should such is necessary, a court which has accepted a suit for divorce, either upon petition of a party may make an order for provisional disposition relating to separation, custody of children, maintenance or management of property, support of a spouse, sharing of expenses of marriage, expenses of education of children, or other similar matters.

**984. Attempt at mediation through court**

(1) Even should one of the parties be strongly demanding divorce, the court may recommend and attempt to persuade the parties to reconcile.

(2) Should no agreement for reconciliation be reached, the court shall try the suit for divorce and render a judgment.

## **Chapter 4 PARENTS AND CHILDREN**

### **Section I. Natural Parent-Child Relationship**

#### **Sub-section I. General Provisions**

**985. Obligation to notify of birth**

(1) The father or mother of a child shall report the birth no later than 30 days from the day of delivery to the *commune* or *sangkat* office. Should neither the father nor the mother be able to report the birth, an adult relative cohabiting with the child's father or mother shall

promptly report the birth.

(2) Should the father and mother neglect to fulfill the Obligation described in paragraph (1) without good cause, they shall be subject to a fine of no more than ten thousand (10,000) riel.

**986. Method for calculation of age**

(1) A person's age shall be counted from the date of birth.

(2) The provisions of **Article 335 (Calculation of period by solar calendar)** shall apply *mutatis mutandis* to the calculation of a person's age.

Sub-section II. Determination of Natural Parents-Child Relationship

**987. Relationship of mother and child**

The woman who gives birth to a child shall be the child's mother.

**988. Presumption of paternity**

(1) A child conceived by a wife during the marriage shall be presumed to be the child of the husband.

(2) A child born 180 days or more after the day on which the marriage was formed or born not later than 300 days after the day on which the marriage was dissolved or annulled shall be presumed to have been conceived during the marriage.

(3) Should a woman who has remarried contrary to the provisions of **Article 950 (Period of prohibition for remarriage)** give birth to a child and the father of the child cannot be determined in accordance with the provisions of paragraphs (1) and (2), the child shall be presumed to be the child of the later marriage.

**989. Denial of paternity**

In cases described in **Article 988 (Presumption of paternity)**, the husband

or the child may deny the paternity.

**990. Suit of denial of paternity by husband**

(1) The husband shall exercise his/her right of denial of paternity under **Article 989 (Denial of paternity)** through a suit against the child.

(2) The husband must file a suit of denial of paternity no later than 6 months after he/she becomes aware of the birth of the child.

(3) Should the husband be a General Ward at the time of the expiration of the period described in paragraph (2), the said period shall be calculated from the time of the judgment rescinding the General Guardianship as set forth in **Article 27 (Rescinding of declaration of commencement of general guardianship)**.

**991. Suit for denial of paternity by child**

(1) A child shall exercise the right of denial of paternity under **Article 989 (Denial of paternity)** through a suit against the putative father.

(2) Should a minor child exercises his/her right of denial of paternity and the child has neither a mother exercising the parental authority over said child nor guardian, the court shall appoint a special representative for the child.

(3) Upon the lapse of 6 months following the attaining of majority by the child, he/she shall not exercise the right of denial of paternity.

(4) Should the child be a General Ward at the time of the expiration of the period described in paragraph (3), said period shall be calculated from the time of the judgment rescinding the General Guardianship as set forth in **Article 27 (Rescinding of declaration of commencement of general guardianship)**.

**992. Retroactive effect of denial of paternity**

A denial of paternity shall have effect retroactive to the time of the birth of the child.

### Sub-section III. Acknowledgement

#### **993. Voluntary acknowledgement**

The father of a child may acknowledge the child. This shall not apply where the child already has a legal father.

#### **994. Capacity to acknowledge**

Even should the father be a minor or a General Ward, the consent of his/her legal representative shall not be required for acknowledgement.

#### **995. Acknowledgement by father**

(1) The father may acknowledge a minor child.

(2) A father may also acknowledge a child in the womb with the consent of the mother.

#### **996. Acknowledgement of child who has attained majority and of deceased child**

(1) A father may only acknowledge a child who already attained the age of majority with the consent of such child.

(2) A father may acknowledge a deceased child only if such child has a lineal descendant or descendants. This provided that if any of such descendants are adults, their consent must be obtained.

(3) Paragraph (2) of **Article 997 (Formalities of acknowledgement)** shall apply *mutatis mutandis* to consents under paragraphs (1) and (2).

#### **997. Formalities of acknowledgement**

(1) Acknowledgements shall be made by means of filing with a family registration official. It may also be made via will or testament.

(2) The mother's consent provided in paragraph (2) of **Article 995**

**(Acknowledgement by father)** may be effected by signature on the acknowledgement form.

**998. Notification of birth and effect of acknowledgement**

A person who files a notification of birth as the father, allows his/her name to be entered into the birth register as the father and himself affixes his/her signature or thumbprint shall be deemed to have effected an acknowledgement of being the father of the child.

**999. Retroactivity of acknowledgement**

An acknowledgement shall have effect retroactive to the time of birth of the child. This provided that such shall not prejudice any rights already acquired by any third party.

**1000. Prohibition of revocation**

A father who has effected an acknowledgement cannot rescind such acknowledgement.

**1001. Suit of acknowledgement**

(1) A child may file a suit for acknowledgement. This provided that a child who has not consented to acknowledgement under paragraph (1) of **Article 996 (Acknowledgement of child who has attained majority and of deceased child)** may not file such a suit.

(2) Should a child be deceased, its lineal descendant may file an acknowledgement suit.

(3) The child or its lineal descendant must file the acknowledgement suit no later than 1 year after becoming aware of the father.

(4) Should the child or its lineal descendant be a minor or a General Ward at the time of becoming aware of the father, the period described in paragraph (3) shall be computed from the time of attaining majority or the time of the judgment rescinding the General Guardianship as set forth in **Article 27 (Rescinding of declaration of commencement of general guardianship)**, as the case may be.

(5) Should the child or its lineal descendant become aware of the father after the death of the father, an acknowledgement suit may be filed up to 1 year following the death of the father.

(6) A suit described in paragraph (1) or (2) may be filed by the legal representative of the child or lineal descendant in place thereof.

#### Sub-section IV. Suit Confirming Absence of Parenthood

##### **1002. Suit confirming absence of parenthood**

(1) In cases where a person is noted in the birth register as the father despite there being no presumption of paternity, or as the mother despite the fact that she did not give birth to the child, the child may file a suit against such person seeking confirmation of the absence of paternity or maternity, as the case may be.

(2) A person noted in the birth register as the father despite there being no presumption of paternity may file a suit seeking confirmation of the absence of paternity.

(3) A person noted in the birth registry as the mother despite the fact that she did not give birth to the child may file a suit seeking confirmation of the absence of maternity.

(4) A suit under paragraph (2) or (3) may not be filed in cases where legal paternity or maternity has arisen on account of intentional or gross negligence on the part of the registered father or mother, or where 20 years have elapsed since the birth of the child or the day on which the acknowledgement came into force.

(5) Should the child be a minor, the parent who is not the counter-party to the suit shall represent the child. Should there be no such parent, if the parent cannot represent the child or if the suit seeking confirmation of absence of parenthood is against both of the parents, the court shall appoint a special representative for the child.

**1003. Retroactivity of confirmation of non-existence of parenthood**

A confirmation of non-existence of parenthood shall have retroactive effects up to the time of birth. This provided that such shall not prejudice any rights already acquired by any third party.

Sub-section V. Suit Seeking Confirmation of Maternity

**1004. Suit by child seeking confirmation of maternity**

(1) A child may file a suit seeking confirmation of maternity against the woman who gave birth to said child.

(2) Should the child is deceased, its lineal descendant may file the suit described in paragraph (1).

(3) The child or its lineal descendant shall file a suit under paragraph (1) no later than 1 year after becoming aware of the mother.

(4) Should the child or its lineal descendant be a minor or a General Ward at the time of becoming aware of the mother, the period described in paragraph (3) shall be computed from the time of attaining the age of majority or the time of the judgment rescinding the General Guardianship as set forth in **Article 27 (Rescinding of declaration of commencement of general guardianship)**, as the case may be.

(5) Should the child or its lineal descendant become aware of the mother after the death of the mother, a suit described in paragraph (1) may be filed up to 1 year following the death of said mother.

(6) A suit described in paragraph (1) or (2) may be filed by a legal representative of the child or lineal descendant in place thereof.

**1005. Suit by mother seeking confirmation of maternity**

(1) A mother may file a suit seeking confirmation of maternity against a child to whom she gave birth.

(2) A mother may also bring a suit under paragraph (1) if the child is deceased, but only should the child have a lineal descendant.

(3) A mother must file a suit under paragraph (1) no later than 1 year after becoming aware of the child.

(4) Should the mother have become aware of the child after the death of the child, she must file suit under paragraph (1) no later than one year after the death of said child.

(5) Should the mother be a General Ward at the time of the expiration of the period described in paragraph (3) or (4), said period shall be computed from the time of the judgment rescinding the General Guardianship as set forth in **Article 27 (Rescinding of declaration of commencement of general guardianship)**.

(6) Should the child or lineal descendant who is the counter-party to a suit under paragraph (1) have attained majority, the mother shall not file the suit without the consent of the child or lineal descendant, as the case may be.

(7) Even should it be proved that the woman gave birth to the child, the court may dismiss the mother's suit if confirmation of maternity would be contrary to the interests of the child or the child's lineal descendant, as the case may be.

**1006. Retroactivity of confirmation of maternity**

A confirmation of maternity shall have effect retroactive to the time of birth. This provided that such shall not prejudice any rights already acquired by any third party.

Section II. Adoption  
Sub-section I. Full Adoption

**1007. Formalities for establishment of full adoption**

Should the conditions provided in **Article 1008 (Joint adoption with**

spouse) through **Article 1012 (Criteria for determination of establishment of full adoption)** be fulfilled, a court may on petition by the person(s) who will become the Adopter(s) establish a full adoption, whereby the relationship with the consanguinuitive Relatives on the natural parents' side terminates.

**1008. Joint adoption with spouse**

(1) In order to assume the status of an Adopter, a person must have a spouse.

(2) One spouse may not become an Adopter unless the other spouse does so as well. This provided that such shall not apply if one spouse becomes the Adopter of a natural child of the other spouse.

**1009. Age of Adopter**

An Adopter shall be no less than 25 years of age, and no less than 20 years older than the Adoptee.

**1010. Age of Adoptee**

In principle, the Adoptee must be less than 8 years of age.

**1011. Consent of parents**

In order to establish a full adoption, the consent of the natural parents or guardian of the minor to be adopted shall be required. This shall not apply to cases where the natural parents are unable to declare their intention or where on the part of the natural parents there is cruelty, abandonment in bad faith or other conditions that are extremely detrimental to the child to be adopted.

**1012. Criteria for determination of establishment of full adoption**

Full adoption shall be established should it be extremely difficult or inappropriate for the natural parent(s) to care for said child or where other special circumstance exist such that it is considered specifically necessary for the benefit of the child.

**1013. Trial period of care**

In considering whether to establish full adoption, the court shall take into account the circumstances of the prospective Adopter(s) providing care and custody of the child to be adopted for a period of no less than 6 months, in principle.

**1014. Termination of relationship with natural parents**

The relationship between an Adoptee and its natural parents and their blood Relatives shall terminate upon full adoption. This provided that such shall not apply to the relationship with the other spouse and his/her blood Relatives prescribed in the provision of paragraph (2) of **Article 1008 (Joint adoption with spouse)**.

**1015. Effect of full adoption**

(1) By virtue of the establishment of a full adoption, the Adoptee shall acquire the same status as that of a natural child of the Adopter(s), and shall have the same rights and Obligations as a natural child in relation to the Adopter(s).

(2) The Adoptee may use the surname of the Adopter(s) or the child's own surname prior to adoption.

(3) An Adoptee shall be subject to the parental authority of the Adopter(s). This provided that where one spouse is becoming the Adopter of a natural child of the other spouse, the Adoptee shall be subject to the joint parental authority of the natural parent and the Adopter.

**1016. Dissolution of full adoption**

(1) Upon petition by the Adoptee, the natural parents or a prosecutor, the court may dissolve an adoption upon the occurrence of all events described below, should it be considered necessary for the benefit of the Adoptee:

- a. Cruelty or abandonment in bad faith on the part of an Adopter or other grounds that are extremely detrimental to the Adoptee;  
or
- b. The natural parents being able to carry out suitable care and

custody of the child.

(2) No adoption may be dissolved other than under the provisions of paragraph (1).

**1017. Effect of dissolution of full adoption**

As of the date of the dissolution of a full adoption, the child shall have the same relationship with its natural parents and their blood Relatives as the relationship that was terminated through the full adoption.

**1018. Registration of full adoption and confidentiality**

Upon the establishment of a full adoption, a new birth certificate shall be prepared for the Adoptee. This provided that no reference to the adoption shall be made in any certified copy or abstract of the birth certificate.

**1019. Right of full Adoptee to know origin**

A full Adoptee who has attained majority may request the court that maintains records of the full adoption to disclose information relating thereto to the extent necessary. This provided that such shall not apply if the objective of the request is improper. The court shall determine such matters as the mode of maintenance of records of full adoption and of requests for disclosure.

Sub-section II. Simple Adoption

**1020. Petition for simple adoption**

(1) A person aged 25 years or more, together with the Adoptee, may file a petition to the court for the establishment of a simple adoption. This provided that the Adoptee must not be an ascendant or senior of the Adopter.

(2) Should the child being adopted be a minor, the parental authority holder or guardian shall make the petition described in paragraph (1) in the capacity of a legal representative.

**1021. The case where the Adopter has a spouse**

Should a person with a spouse wish to adopt a minor, the petition prescribed in **Article 1020 (Petition for simple adoption)** must be made together with the spouse, provided that such shall not apply if the child being adopted is the spouse's child or the spouse is incapable of declaring his/her intention.

**1022. Consent of spouse**

Should a person with a spouse petition for a simple adoption, the consent of such spouse must be obtained. This provided that such shall not apply if the petition under **Article 1020 (Petition for simple adoption)** is made together with the spouse or the spouse is incapable of declaring his/her intention.

**1023. Criteria for determining establishment of simple adoption**

(1) The court may permit the establishment of an adoption only should it be able to confirm that the parties truly have the intention to form a parent-child relationship.

(2) The court shall not permit the establishment of an adoption should it find that the adoption is being abused for heterosexual or homosexual marriage or any other unjust purpose.

**1024. The case where the Adoptee is a minor**

(1) Should the Adoptee be a minor, the court shall only permit the establishment of an adoption should it find that such is especially necessary for the benefit of the minor.

(2) Should the Adoptee be a minor whose natural parents have divorced, the court shall hear the opinion of the parent without parental authority in making its decision under paragraph (1).

(3) Should the minor have attained the age of 15 years, the court must obtain his/her consent in establishing the adoption. Even if the minor is less than 15 years old but can express his/her intention, the court

shall hear the minor's opinion in making its decision under paragraph (1).

**1025. Adoption between guardian and ward**

Should a guardian of a minor petition to adopt the minor under guardianship or a General Guardian petition to adopt the General Ward, the court may permit the establishment of an adoption only in cases where care of the person in guardianship and management of the person's property is being carried out properly. The same shall apply after the duties of the guardian have terminated, so long as the guardian's accounts of his/her management have not been completed.

**1026. Effect of simple adoption on relationship of natural parents and child**

(1) Notwithstanding the establishment of a simple adoption, the relationship between the Adoptee and the natural parents shall continue, and the Adoptee and the natural parents shall have the right to inherit from each other.

(2) The Adoptee and the natural parents shall have the right to claim support from the other and the Obligation to support the other.

**1027. Effect of adoption on relationship with Adopters**

(1) Provisions of paragraph (1) of **Article 1015 (Effect of full adoption)** shall apply mutatis mutandis to simple adoptions.

(2) The Adoptee may use the surname of the Adopters or the Adoptee's own surname prior to adoption.

(3) Should an Adoptee be a minor, he/she shall be subject to the joint parental authority of the Adopters. This provided that where one spouse is becoming the Adopter of a natural child of the other spouse, the Adoptee shall be subject to the joint parental authority of the natural parent and the Adopter.

**1028. Dissolution of simple adoption by agreement**

(1) Should the parties to an adoption have both agree to dissolve such adoption, they may petition the court for dissolution.

(2) Should the Adoptee be a minor, the petition under paragraph (1) shall be made by the Adopter(s) and the person who is to become the Adoptee's legal representative after dissolution of the adoption. This provided that if the Adoptee has attained the age of 15 years, his/her consent must be obtained. Should the Adoptee have not attained the age of 15 years but be capable of expressing his/her intention, the court shall hear his/her opinion.

(3) In cases under paragraph (2), should the Adoptee's natural parents be divorced, they shall, through consultation, determine which of them is to be the person with parental authority over the Adoptee after the dissolution of the adoption.

(4) Should the consultations under paragraph (3) not lead to an agreement, or if such consultations cannot be held, the court shall determine the person who is to have parental authority, taking into account the welfare of the child.

**1029. Dissolution of joint adoption of minor by married couple**

Should the Adopters be a married couple, in order to dissolve the adoption of a minor the husband and wife must together make a petition as prescribed in paragraph (1) of **Article 1028 (Dissolution of simple adoption by agreement)**. This provided that such shall not apply if either the husband or the wife is unable to express his/her intention.

**1030. Determination of dissolution of simple adoption**

Should a petition be made under paragraph (1) of **Article 1028 (Dissolution of simple adoption by agreement)**, the court may grant the dissolution of the adoption only after confirming that both parties truly wish to dissolve the relationship of Adopter(s) and Adoptee.

**1031. Grounds for dissolution**

(1) A party to an adoption may file a suit for dissolution based only

on the following grounds:

- a. Being abandoned with malice by the other party;
- b. It being unclear for a year or more whether the other party is alive or dead; or
- c. Other significant grounds making it difficult to continue the adoption.

(2) So long as the Adoptee is a minor, the Adopter(s) shall not file a suit under paragraph (1) against the Adoptee.

(3) Should the Adoptee be a minor, the provisions of paragraphs (2) to (4) of **Article 1028 (Dissolution of simple adoption by agreement)** shall apply mutatis mutandis to any suit filed by the Adoptee against the Adopter(s) under paragraph (1).

#### **1032. Effect of dissolution of simple adoption**

(1) By virtue of dissolution of a simple adoption, the whole effect of the adoption shall terminate as of that time onward.

(2) After dissolution of an adoption, the Adoptee may restore his/her surname to that prior to adoption, or may use the name of the Adopter.

#### **1033. Registration of simple adoption and birth certificate**

The establishment of a simple adoption shall be noted on the Adopters' civil status book, and shall also be noted in the margin of the Adoptee's original birth certificate.

## **Chapter 5 PARENTAL AUTHORITY**

### **Section I. General Provisions**

#### **1034. Definition of parental authority**

A parental authority holder<sup>16</sup> shall be a person having the right and duty to effect physical custody of the minor child and management of the minor

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<sup>16</sup> In this English translation, a person with the parental power shall be referred to as parental authority holder.

child's property.

**1035. Parental authority over Adoptee**

The Adopter shall be the parental authority holder of the Adoptee.

**1036. The principle of joint exercise**

During the marriage, father and mother shall exercise the parental authority jointly. This provided that should one of the parents be unable to exercise the parental authority, the other parent shall do so.

**Section II. Determination of Parental authority Holder in Case of Divorce or Acknowledgement**

**1037. Determination of parental authority holder in case of divorce**

(1) Should a divorce between the father and mother occur, the father and mother shall determine through mutual consultation which of them is to become the parental authority holder of the minor child.

(2) Should the father and mother divorce prior to the birth of the child, the mother shall become the parental authority holder of the child once the child is born. This provided that following the birth of the child, the father and mother may determine through mutual consultation that the father shall be the parental authority holder of the minor child.

(3) Should no determination under paragraph (1) or (2) be rendered upon mutual consultation or should consultation not be able to be held between the father and mother, the court shall determine which party shall be the parental authority holder, taking into account the interests of the minor child.

**1038. Relationship between acknowledgement and parental authority**

(1) An unmarried mother shall become the parental authority holder of the minor child that she bears.

(2) The father may exercise parental authority over a minor child that he/she has acknowledged only should the father and mother have determined through mutual consultation that the father become a parental authority holder of the minor child.

(3) Should no determination under paragraph (2) be rendered through mutual consultation or should consultation be unable to be held, the court shall determine the parental authority holder upon petition by the father or the mother.

(4) Should the father and mother marry following the father's acknowledgment of the minor child, the father and mother shall jointly exercise parental authority over the minor child.

**1039. Change of parental authority holder**

In cases set forth under **Article 1037 (Determination of parental authority holder in case of divorce)** and **Article 1038 (Relationship between acknowledgement and parental authority)**, the court may change the parental authority holder should it find such necessary in the interests of the minor child, upon petition by a relative of the minor child up to the 4th degree of relationship.

**1040. Rights and Obligations of parent who does not live with the minor child**

(1) Following a divorce, the parent not bearing parental authority shall have the right to meet and socialize with the minor child, and furthermore shall have the Obligation to share the cost for the care of the minor child.

(2) A father and mother intending to divorce shall consult with each other and agree upon the mode of meeting and socializing with the minor child, and the sharing of the costs for the care of the minor child.

(3) A father not living with a minor child whom he/she has acknowledged may consult with and agree with the mother concerning the mode of meeting and socializing with the minor child and the sharing of the costs for

the care of the minor child.

(4) Should no agreement described in paragraph (2) or (3) be reached or should consultation be unable to be held, the court, upon petition by the father or mother, shall determine the mode of meeting and socializing with the minor child and the sharing of costs for the care of the minor child.

(5) The court, upon petition by the father or mother, should it find such necessary, may alter the mode of meeting and socializing with the minor child and the sharing of the costs for the care of the minor child.

(6) In making its judgment under paragraphs (4) and (5), the court shall give priority to the interests of the minor child when determining the mode of meeting and socializing with the minor child, and shall take into account the living environment of the father and mother, and their economic circumstances when determining the sharing of costs for the care of the minor child.

(7) Should the father or mother be unable to confer with each other or to apply to the court, a relative of the minor child up to the 4th degree of relationship may make petition under paragraph (4) or (5).

**1041. Right to demand report of condition of minor child**

(1) A parent not having the parental authority may demand a report of the condition of the minor child from the parental authority holder.

(2) The contents and frequency of the report under paragraph (1) shall be agreed to by the father and mother through mutual consultation. This provided that should no such agreement be reached or should consultation be unable to be held, the court, upon petition by the father or the mother, shall make an judgment in place of such agreement.

(3) A relative of the minor child up to the 4th degree of relationship may demand a report on the condition of the minor child from the parental authority holder.

**1042. Obligation to consult on important matters relating to the minor child**

The parental authority holder shall consult with the parent not having parental authority concerning matters listed below relating to the minor child, except in emergency cases:

- a. Education beyond compulsory education;
- b. Changing the location of the residence of the minor child to another province;
- c. The minor child's occupation or business;
- d. Medical treatment affecting the minor child's life;
- e. Disposition of significant property of the minor child; and
- f. Other important matters relating to the care of and property of the minor child.

**Section III. Rights and Obligations of the Parental authority Holder**

**1043. Education of the minor child**

The parental authority holder shall have the right and obligation to educate the minor child.

**1044. Location of residence of the minor child**

The minor child shall reside in at a residence designated by the parental authority holder.

**1045. Discipline of minor child**

The parental authority holder may personally discipline the minor child to the extent necessary.

**1046. Permission to carry on occupation or business**

(1) A minor child may not carry on any occupation without the permission of the parental authority holder.

(2) In cases under paragraph (2) of **Article 20 (Minor permitted to conduct business)**, the parental authority holder may rescind or limit the permission under paragraph (1).

**1047. Demand to transfer over minor child**

(1) The parental authority holder may demand transfer of the minor child by a third party who illegally refuses to transfer the minor child.

(2) The parental authority holder may demand that the parent not having the parental authority transfer the minor child.

**Section IV. Suspension and Divestment of Authority of Parental authority Holder**

**1048. Order for suspension or divestment of authority of parental authority holder**

Should a father or mother exercising parental authority abuse his/her rights or neglects his/her Obligations, the court, upon petition by a relative of the minor child up to the 4th degree of relationship, a *commune* or *sangkat* head, the head of a public child welfare institution or a public prosecutor, may order the suspension or divestment of the authority of the parental authority holder.

**1049. Rescision of suspension or divestment of parental authority**

Should the grounds provided under **Article 1048 (Order for suspension or divestment of authority of parental authority holder)** have ceased to exist, the court, upon application by the person who was subject to the order for suspension or divestment, or his/her relative up to the 4th degree of relationship, may rescind said order.

**1050. Resignation and resumption of parental authority holder**

(1) With the permission of the court, a father or mother exercising parental authority over a minor child may resign as the parental authority holder should there be unavoidable circumstances.

(2) With the permission of the court, should the grounds described in paragraph (1) cease to be affective, the father or mother who has resigned may resume their parental authority.

**1051. Change of parental authority holder**

(1) Should only one of the parents be the parental authority holder and there is no longer a parental authority holder on account of the suspension, divestment or resignation of such person as a parental authority holder, the court may designate either the mother or the father who is not the parental authority holder as the parental authority holder.

(2) A relative of the minor child up to the 4th degree of relationship may seek an order under paragraph (1) should such be necessary.

(3) Should the minor child no longer have a parental authority holder on account of the death of the parent who was appointed as the parental authority holder by agreement upon divorce, the father or mother who was not designated as the parental authority holder shall become the parental authority holder.

**1052. Commencement of guardianship of minor**

Should a minor child cease to have any parental authority holder by virtue of **Article 1048 (Order for suspension or divestment of authority of parental authority holder)** or paragraph (1) of **Article 1050 (Resignation and resumption of parental authority holder)** and there be no change of parental authority holder by virtue of **Article 1051 (Change of parental authority holder)**, the court shall issue a declaration of commencement of minor guardianship in respect to the minor child.

**Section V. Authority of Management of Minor child's Property**

**1053. Property management and representation**

The parental authority holder shall have the right and duty to manage the minor child's property and to represent the minor child in any act relating to said property. This provided that the consent of the minor child shall be obtained to the creation of any Obligation having as its Object action on the part of the minor child.

**1054. Act committed by one parental authority holder in the names of both parental authority holders**

(1) Should one of the parents who exercises joint parental authority over a minor child perform an act in place of the minor child despite such being against the wishes of the other parent, but does so in the name of both parents, the validity of such act shall not thereby be impaired. This shall not apply where the other party to such act acted mala fide.

(2) Paragraph (1) shall apply in the same manner to the case where one parent exercising joint parental authority have consented to an act of the minor child despite such being against the wishes of the other parent.

**1055. Duty of care in management of property**

A parental authority holder shall manage the minor child's property with the care of a good manager.

**1056. Account of management of property**

A parental authority holder shall render an account of his/her management of the child's property without delay after the child attains his/her age of majority. This provided that the expenses for the care of the minor child and the management of the property, on the one hand, and the profits arising from the child's property on the other hand, shall be deemed to have been set off against each other.

**1057. Exception**

Should a third person who gratuitously transfers property to a minor child have declared a contrary intention, the provisions of **Article 1056 (Account of management of property)** shall not apply to such property.

**1058. Management of property granted by third party**

(1) Should a third person who gratuitously transfers property to a minor child have declared the intention not to allow the minor child's mother and/or father exercising parental authority to manage such property, the property shall be excluded from the scope of the property managed by the minor child's father and/or mother, respectively.

(2) Upon application by the minor child, a relative of the minor child up to the 4th degree of relationship or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) that is not managed by the parental authority holder(s) and in respect to which a third party has not been appointed as a manager.

(3) Even should a third party have been appointed as a property manager, paragraph (2) shall apply should the third party fail to appoint a new manager where the authority of the first-mentioned manager has been extinguished or it has become necessary to replace said manager.

(4) The provisions of **Article 37 (Appointment of administrator by the court)** through **Article 40 (Authority of administrator)** inclusively shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

**1059. Mutatis mutandis application of provisions relating to mandate**

The provisions of **Article 650 (Obligations of Mandatary in emergency after termination of mandate)** and **Article 651 (Conditions for perfection of termination of Mandate)** shall apply *mutatis mutandis* to cases where a parental authority holder manages the property of a minor child and to cases described in **Article 1058 (Management of property granted by third party)**.

**1060. Extinctive prescription of claims between parent and minor child relating to property management**

(1) Any claim arising between a parental authority holder and his/her minor child in connection with the management of property shall be extinguished by prescription unless exercised within 3 years following the extinguishment of the parent's authority to manage the property.

(2) Should the authority to manage property be extinguished while the child is still a minor and the child has no legal representative at that time, the prescription period prescribed in paragraph (1) shall be computed from when the child attains his/her age of majority or when a succeeding legal representative for the child assumes office.

## Section VI. Suspension and Divestment of Authority to Manage Property

### **1061. Order for suspension or divestment of authority to manage property**

Should a parental authority holder imperils the property of the minor child through improper management thereof, the court, upon petition by a relative of the minor child up to the 4th degree of relationship, a *commune* or *sangkat* head, public child welfare institution head or public prosecutor, may order the suspension or divestment of the property management authority of such parental authority holder.

### **1062. Rescinding of order relating to property management**

Should the grounds for disqualification provided in **Article 1061 (Order for suspension or divestment of authority to manage property)** have ceased to be affective, the court, upon petition by the person subject to the order for suspension or divestment of authority to manage property, or by his/her relative up to the 4th degree of relationship, may rescind said order.

### **1063. Resignation and resumption of property management**

(1) With the permission of the court, a parental authority holder may resign his/her authority to manage the property of the minor child should there be unavoidable circumstances.

(2) With the permission of the court, should the grounds described in paragraph (1) cease to operate, the parental authority holder who has resigned may resume his/her authority to manage the property.

### **1064. No property manager**

Should, by virtue of **Article 1061 (Order for suspension or divestment of authority to manage property)** or paragraph (1) of **Article 1063 (Resignation and resumption of property management)** there no longer be anyone managing the minor child's property, the court shall by judgment appoint a special representative for the minor child.

**1065. Conflict of interest between parental authority holder and minor child**

(1) In respect to acts where the interests of a parental authority holder conflicts with those of the minor child, the parental authority holder shall apply to the court for the appointment of a special representative for the minor child.

(2) Should the parental authority holder exercise parental authority over two or more minor children, and the interests of one of the children conflict with those of the other or others in respect to certain acts, the parental authority holder shall apply to the court for the appointment of a special representative for some of the minor children.

Section VII. *Mutatis Mutandis* Application of This Chapter

**1066. Substituted exercise of parental authority**

The parental authority holder of an unmarried minor who has a child shall exercise parental authority over such child in place of the minor. In such case Chapter Five shall apply *mutatis mutandis* to the substituted exercise of parental authority.

**Chapter 6 GUARDIANSHIP**

Section I. Guardianship of Minors

Sub-section I. Commencement of Guardianship of Minor

**1067. Grounds for commencement of guardianship of minor**

Guardianship of a minor shall commence at such time as there is no person who exercises parental authority over the minor.

Sub-section II. Guardian of Minor

**1068. Designation of guardian of minor, appointment by court and appointment criteria**

(1) The person who last exercised parental authority over a minor may

designate a guardian of such minor via a will and testament.

(2) Should there be no person appointed as a guardian of a minor under paragraph (1), the court may appoint such a guardian upon petition by a relative of the minor up to the 4th degree of relationship, the head of the *commune* or *sangkat* in which the minor's Permanent Residence is located, the head of a public child welfare institution or a public prosecutor. The same shall apply if there exists no guardian.

(3) In appointing a guardian for a minor, the mental and physical condition of the minor, the state of the lifestyle and property of the minor, the occupation and career of the proposed guardian and any conflicts of interest with those of the minor, the opinion of the minor, and all other circumstances shall be taken into account.

**1069. Duty to demand appointment of guardian for minor**

Should a guardian of a minor appointed under **Article 1052 (Commencement of guardianship of minor)** have ceased to serve as such, the court shall promptly appoint a new guardian.

**1070. Number of guardians of minor, appointment of General Guardian for minor**

(1) A minor shall not have more than one guardian. This provided that a General Guardian may be additionally appointed for a minor who remains in a habitual condition lacking the ability to recognize and understand the legal consequences of his/her actions due to mental illness or disability, and with respect to whom the commencement of General Guardianship is declared pursuant to **Article 24 (Declaration of commencement of general guardianship)**.

(2) The provisions of this Code regarding General Guardianship shall apply *mutatis mutandis* to a General Guardianship over a minor, except for paragraph (1) of **Article 1120 (More than one General Guardian)**.

**1071. Resignation of guardian of minor**

A guardian of a minor may resign the office due to good cause with the

permission of the court.

**1072. Obligation to demand appointment of guardian for minor**

Should a guardian of a minor resign, the court shall promptly appoint a new guardian.

**1073. Dismissal of guardian of minor**

Upon petition by the guardian's supervisor, a relative up to the 4th degree of relationship to the minor, the head of the *commune* or *sangkat* in which the minor's Permanent Residence is located, the head of a public child welfare institution or a public prosecutor, the court may dismiss a guardian of a minor who commits a wrongful act or other act rendering him or her unfit for the office of guardian.

**1074. Persons who may not be guardian of minor**

None of the persons described below may become a guardian of a minor:

- a. A minor or General Ward or one under curatorship;
- b. A legal representative, curator or supervisor of either of the foregoing who has been dismissed by a court;
- c. A dissolvent person; or
- d. A person whose whereabouts are unknown.

**Sub-section III. Supervisor of Guardian of Minor**

**1075. Supervisor of designated guardian of minor and supervisor of appointed guardian of minor**

(1) A parental authority holder who has the right to designate a guardian of a minor may designate a supervisor of the guardian via will and testament.

(2) Should there be no supervisor for the guardian designated under paragraph (1), upon petition by the guardian, a relative up to the 4th degree of relationship to the minor, the head of the *commune* or *sangkat* in which the minor's Permanent Residence is located, the head of a public child welfare institution or a public prosecutor, the court may appoint a supervisor of the guardian if it finds such is necessary. The same

shall apply if there is no longer a supervisor.

**1076. Persons who may not be supervisor**

Neither the spouse nor a relative up to the 4th degree of relationship of a guardian of a minor may become a supervisor of the guardian.

**1077. Duties of supervisor**

The duties of a supervisor of a guardian of a minor shall be as follows:

- a. To supervise the performance of the duties of the guardian;
- b. To apply to the court without delay for the appointment of a new guardian should [the former guardian has ceased to serve, and] a guardian no longer exist;
- c. In case of emergency, to take the necessary measures for the care of the minor and management of the property of the minor; and
- d. To represent the minor in respect to any act which involves a conflict of interest between the guardian and the minor.

**1078. Mutatis mutandis application of provisions**

The provisions of paragraph (3) of **Article 1068 (Designation of guardian of minor, appointment by court and appointment criteria)**, **Article 1071 (Resignation of guardian of minor)**, **Article 1073 (Dismissal of guardian of minor)**, **Article 1074 (Persons who may not be guardian of minor)**, paragraph (2) of **Article 1087 (Estimates of outlays and expenses of guardianship)**, **Article 1088 (Remuneration of guardian)**, **Article 1093 (Guardian's duty of care)**, **Article 1100 (Emergency Obligations of guardian following termination of guardianship)** and **Article 1101 (Conditions for perfection of termination of guardianship)** shall apply *mutatis mutandis* to a supervisor of a guardian of a minor.

Sub-section IV. Duties of Guardian of Minor

**1079. Rights and Obligations of guardian**

(1) The guardian of a minor shall have the same rights and Obligations as a parental authority holder in respect of matters provided in **Book Seven, Chapter Five (Parental authority), Section III (Rights and**

**Obligations of the parental authority holder**). This provided that in order to change the method of education and location of residence determined by the parental authority holder, to discipline the minor, permit him or her to engage in business, rescind such permission, or limit such engagement in business, should there be a supervisor of a guardian, the consent of such supervisor must be obtained.

(2) In respect to matters provided in **Article 1042 (Obligation to consult on important matters relating to the minor child)**, should there be a supervisor of a guardian, the guardian shall consult with said supervisor. This shall not apply in cases of emergency.

**1080. Property management and representation**

(1) The guardian of a minor shall manage the minor's property and represent the minor in any act affecting the minor's property.

(2) The provisions of **Article 1053 (Property management and representation)** shall apply *mutatis mutandis* to cases described in paragraph (1).

**1081. Survey of property and preparation of inventory**

(1) Upon assuming office, the guardian of a minor shall promptly commence a survey of the minor's property and within 3 months shall complete such survey and prepare an inventory. This provided that said period may be extended by the court.

(2) Should there be a supervisor of the guardian, the survey and inventory of the property shall have no effect unless conducted in the presence of said supervisor.

**1082. Authority prior to preparation of inventory**

Until the completion of the inventory, a guardian shall only have the authority to effect acts of urgent necessity. This provided that such restriction shall not be set up against a bona fide third party.

**1083. Reporting of claims or Obligations by the guardian against**

**or towards the minor**

(1) Should there be a supervisor of the guardian, if the guardian holds any claim against, or bears any Obligation towards the minor, the guardian shall report such claim and/or Obligation to the supervisor prior to commencing the survey of the property.

(2) Should the guardian be aware of holding a claim against the minor but does not report it, such claim shall be forfeited.

**1084. Application *mutatis mutandis* to cases where minor acquires [general estate]**

The provisions of **Article 1081 (Survey of property and preparation of inventory)**, **Article 1082 (Authority prior to preparation of inventory)** and **Article 1083 (Reporting of claims or Obligations by the guardian against or towards the minor)** shall apply *mutatis mutandis* to cases where the minor has acquired floating property after the guardian has assumed his office.

**1085. Permission for property management**

Permission of a court shall be required in cases where the guardian of a minor sells, leases, terminates a lease, establishes a hypothec or dispose of in another manner equivalent to the foregoing, in place of the minor, an immovable property provided for the residence of the minor.

**1086. Acts involving conflict of interests of guardian and minor**

The provisions of **Article 1065 (Conflict of interest between parental authority holder and minor child)** shall apply *mutatis mutandis* to guardians of minors. This provided that such shall not apply where the guardian has a supervisor.

**1087. Estimates of outlays and expenses of guardianship**

(1) Upon assuming office, a guardian of a minor shall estimate the amount of money to be expended annually for the care of the minor and the management of the minor's property.

(2) The expenses required for the performance by the guardian of his/her duties under the guardianship shall be defrayed from the minor's property.

**1088. Remuneration of guardian**

A court may allow reasonable remuneration to the guardian of a minor out of the minor's property, taking into account the financial capacity of the guardian and the minor and other circumstances.

**1089. Supervision of duties of guardian**

(1) The supervisor of a guardian or the court may at any time demand that the guardian of a minor provide a report as to the conducting of his/her duties or an inventory of the property, and may also inspect the condition of the minor and/or the property.

(2) Upon application by the supervisor of a guardian of a minor, a relative of the minor up to the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the minor's Permanent Residence is located, the head of a public child welfare institution or a public prosecutor, the court may order the guardian to take necessary action relating to the care of the minor, the management of the minor's property or otherwise relating to the guardianship.

**1090. Limitations on right of representation and right to grant consent**

Should the guardian of a minor have a supervisor, the permission of the supervisor must be obtained in order to conduct business or to do any of the acts listed in **Article 30 (Right to rescind act)** in place of the minor, or in order to consent to the doing of any of the foregoing acts by the minor. This provided that such shall not apply to the receipt of the principal.

**1091. Effect of breach of Article 1090**

(1) Any act done or consented to by a guardian of a minor in breach of **Article 1090 (Limitations on right of representation and right to grant consent)** may be rescinded by the minor or the guardian. In such

case, the provisions of **Article 32 (Right to demand)** shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of **Article 358 (Voidable acts)** together with **Article 359 (Method of rescission or ratification Person having right of rescission)** through **Article 363 (Extinctive prescription of right of rescission)**, inclusively.

**1092. Acquisition of property and other Objects from minors**

(1) Should the guardian of a minor acquire the minor's property or the rights of a third party against the minor, the minor may rescind such acquisition. In such case, the provisions of **Article 32 (Right to demand)** shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of **Article 358 (Voidable acts)** together with **Article 359 (Method of rescission or ratification Person having right of rescission)** through **Article 363 (Extinctive prescription of right of rescission)**, inclusively.

**1093. Guardian's duty of care**

(1) The guardian of a minor shall be obligated to perform the duties of guardianship with the care of a good manager.

(2) Should the guardian breach the Obligations described in paragraph (1) and thereby cause damages to the minor, the minor may demand that the guardian compensate him/ her for such damages.

**1094. Management of property granted by third party to minor**

(1) Should a third party who gratuitously transfers property to a minor have declared the intention to not allow the minor's guardian to manage such property, the property shall be excluded from the scope of the property managed by the guardian.

(2) Upon petition by the supervisor, a relative of the minor up to

the 4th degree of relationship, the chief of the *commune* or *sangkat* in which the minor's Permanent Residence is located, the head of a public child welfare institution or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) not managed by the guardian and in respect to which a third party has not been appointed as a manager.

(3) Even should a third party have appointed a property manager, paragraph (2) shall apply if the third party fails to appoint a new manager where the authority of the earlier appointed manager has been extinguished or it has become necessary to replace said manager.

(4) The provisions of **Article 37 (Appointment of administrator by the court)** through **Article 40 (Authority of administrator)**, inclusively, shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

#### Sub-section V. Release of Minor from Guardianship

##### **1095. Conditions for release of minor from guardianship**

(1) Should a minor have reached the age of 16 and be living independently, the court, upon petition by the minor, may declare the minor to be released from guardianship, if it finds that such is consistent with the interests of the minor. In such case, the court shall hear the opinion of the guardian. The court shall also hear the opinion of the supervisor, should there be one.

(2) A minor who marries shall be released from guardianship without a declaration of the court.

(3) In the case set forth in paragraph (2), even should the parties thereafter divorce, the validity of the release from guardianship shall not be extinguished.

##### **1096. Effect of release from guardianship**

A minor released from guardianship shall be regarded as having attained

the age of majority.

**1097. Account of property management and presence of supervisor**

(1) Should the duties of a guardian of a minor have terminated, the guardian or his/her successor shall render an account of the management of the property within 3 months following the date of termination. This provided that such period may be extended by the court.

(2) Should there be a supervisor of the guardian of a minor, the account described in paragraph (1) shall be prepared in the presence of such supervisor.

**1098. Rescission of contract between guardian and minor**

(1) A minor who has entered into a contract with his/her guardian or the successor of the guardian after attaining the age of majority but before the termination of the accounts of the guardianship may rescind such contract. The same shall apply to any unilateral act effected by the minor vis-à-vis the guardian or the successor of the guardian.

(2) The provisions of **Article 358 (Voidable acts)** together with **Article 359 (Method of rescission or ratification Person having right of rescission)** through **Article 363 (Extinctive prescription of right of rescission)**, inclusively, shall apply *mutatis mutandis* to the cases described in paragraph (1).

**1099. Obligation to pay interest between guardian and minor**

(1) Any money required to be returned by a minor to the guardian or by the guardian to a minor shall bear interest as from the time of termination of the accounts of the guardianship.

(2) Should a guardian of a minor have spent the minor's money on his/her own behalf, such amount shall bear interest as from the time of spending. Should the minor suffer any damages thereby, the guardian shall be liable to compensate the minor for such damages.

**1100. Emergency Obligations of guardian following termination of**

### **guardianship**

Should an emergency occur following the termination of a guardianship, the guardian or his/her successor shall take the necessary measures until such time as the minor, his/her successor or legal representative is able to take up the minor's business.

#### **1101. Conditions for perfection of termination of guardianship**

Regardless of whether the grounds for termination arises on either the side of the minor or guardian, the termination may be held up against the counter-party only should the termination have been noticed to the other party or the other party is aware of it.

#### **1102. Extinctive prescription on claims relating to guardianship**

(1) The provisions of **Article 1060 (Extinctive prescription of claims between parent and minor child relating to property management)** shall apply *mutatis mutandis* to claims arising in relation to the guardianship between the guardian of a minor or supervisor on one side and the respective minor on the other.

(2) In the event that an act is rescinded pursuant to **Article 1098 (Rescission of contract between guardian and minor)**, prescription under paragraph (1) shall run from the time of the rescission.

#### Sub-section VI. *Mutatis Mutandis* Application to Child of Minor

#### **1103. Substituted exercise of parental authority held by minor**

(1) The guardian of a minor shall exercise parental authority over the child of said minor in loco parentis vis-a-vis the minor.

(2) The provisions of **Article 1079 (Rights and Obligations of guardian)** through **Article 1102 (Extinctive prescription on claims relating to guardianship)**, inclusively, shall apply *mutatis mutandis* to the cases described in paragraph (1).

## Section II. General Guardianship

### Sub-section I. Commencement of General Guardianship

#### 1104. Commencement of General Guardianship

A General Guardianship shall commence in accordance with **Article 24 (Declaration of commencement of general guardianship)**.

### Sub-section II. General Guardian

#### 1105. Appointment of General Guardian

(1) Upon the declaring of the commencement of a General Guardianship, the court shall appoint a General Guardian.

(2) Should there exists no General Guardian, the court shall appoint a General Guardian upon petition by the guardian's supervisor, the General Ward, the spouse of the General Ward, any relative up to the fourth degree of relationship of the General Ward, the chief of the *commune* or *sangkat* in which the Permanent Residence of the General Ward is located, a public prosecutor or other interested person.

(3) Even should a General Guardian have been appointed, the court may appoint an additional General Guardian upon application by any person listed in paragraph (2) or by the General Guardian, if it finds such necessary.

(4) In appointing a General Guardian, the mental and physical condition of the General Ward, the state of the lifestyle and property of the General Ward, the occupation and career of the proposed General Guardian and any conflict of interest with the General Ward, the opinion of the General Ward and all other circumstances shall be taken into account. Should the proposed General Guardian be a juristic person, the type and contents of its business and any conflict of interest between the General Ward and the juristic person and/or its representatives shall be taken into account.

(5) The court may, when appointing a General Guardian for a minor, appoint the parental authority holder or the guardian for the minor as a General Guardian. Should the court appoint a person other than the parental authority holder or the guardian for minor as the General Guardian, the court shall designate the allocation of duties among the parental authority holder or the guardian for minor and the General Guardian.

**1106. Resignation of General Guardian**

A General Guardian may resign such office for good cause with the permission of the court.

**1107. Obligation to demand appointment of General Guardian**

Should a General Guardian resign, the court shall promptly appoint a new General Guardian.

**1108. Dismissal of General Guardian**

Upon application by the General Guardian's supervisor, the General Ward, the spouse of the General Ward, a relative of the General Ward up to the 4th degree of relationship, the head of the *commune* or *sangkat* in which the Permanent Residence of the General Ward is located, a public prosecutor or other interested person, the court may dismiss a General Guardian who commits a wrongful act or other act rendering him or her unfit for the office of General Guardian.

**1109. Persons who may not be General Guardian**

Persons described below shall not become a General Guardian:

- a. A minor or General Ward or one under curatorship;
- b. A legal representative, curator or supervisor of either of the foregoing who has been dismissed by a court;
- c. A insolvent person; or
- d. A person whose whereabouts are unknown.

Sub-section III. Supervisor of General Guardian

**1110. Supervisor of General Guardian**

Upon application by the General Guardian, the General Ward, the spouse of the General Ward, a relative of the General Ward up to the 4th degree in relationship, the head of the *commune* or *sangkat* in which the Permanent Residence of the General Ward is located, a public prosecutor or other interested person, the court may appoint a supervisor of a General Guardian should the court find such necessary. The same shall apply should there be no supervisor.

**1111. Persons who shall not be supervisors of General Guardians**

Neither the spouse nor a relative up to the 4th degree of relationship of a General Guardian may become a supervisor of the General Guardian.

**1112. Duties of supervisor of General Guardian**

The duties of the supervisor of a General Guardian shall be as follows:

- a. Supervise the performance of duties by the General Guardian;
- b. Apply to the court without delay for the appointment of a new General Guardian should there be no General Guardian;
- c. In cases of emergency, take the necessary measures for the management of the livelihood, health care and property of the General Ward;
- d. Represent the General Ward in respect to any act which involves a conflict of interest between the General Guardian or the General Guardian's representative and the General Ward.

**1113. Provisions to apply *mutatis mutandis***

The provisions of paragraph (4) of **Article 1105 (Appointment of General Guardian)**, **Article 1106 (Resignation of General Guardian)**, **Article 1108 (Dismissal of General Guardian)**, **Article 1109 (Persons who may not be General Guardian)**, **Article 1120 (More than one General Guardian)**, **Article 1121 (Permission for property management)**, paragraph (2) of **Article 1123 (Estimates of outlays and expenses of General Guardianship)**, **Article 1124 (Remuneration of General Guardian)**, **Article 1129 (Guardian's Obligation for care)**, **Article 1133 (Emergency Obligations of guardian after termination of General Guardianship)** and **Article 1134 (Condition for perfection of termination of General Guardianship)** shall apply *mutatis mutandis* to the supervisor of a General Guardian.

Sub-section IV. Duties of General Guardian

**1114. Property management and representation**

(1) The General Guardian shall manage the property of the General Ward and represent the General Ward in any act affecting the property of the General Ward.

(2) The provision of the second sentence of **Article 1053 (Property management and representation)** shall apply *mutatis mutandis* to cases described in paragraph (1).

**1115. Survey of property and preparation of inventory**

(1) Upon assuming office a General Guardian shall promptly commence a survey of the property of the General Ward and within 3 months shall complete such survey and prepare an inventory. This provided that said period may be extended by the court.

(2) Should there be a supervisor of the General Guardian, the survey and inventory of the property shall have no effect unless conducted in the presence of said supervisor.

**1116. Authority prior to preparation of inventory**

Until the completion of the inventory, a General Guardian shall have authority to effect only acts of urgent necessity. This provided that such restriction shall not be set up against a bona fide third party.

**1117. Reporting of claims or Obligations by the General Guardian against or in favor of the General Ward**

(1) Should there be a supervisor of the General Guardian, if the General Guardian holds any claim against or bears any Obligation in favor of the General Ward, the General Guardian shall report such claim and/or Obligation to the supervisor prior to commencing the survey of the property.

(2) Should the General Guardian be aware of the holding any claim

against the General Ward but does not report such, said claim shall be forfeited.

**1118. Mutatis mutandis application to cases where the General Ward acquires floating property**

The provisions of **Article 1115 (Survey of property and preparation of inventory)**, **Article 1116 (Authority prior to preparation of inventory)** and **Article 1117 (Reporting of claims or Obligations by the General Guardian against or in favor of the General Ward)** shall apply *mutatis mutandis* to cases where the General Ward has acquired floating property after the General Guardian has assumed office.

**1119. Respect for wishes of the General Ward**

(1) When performing matters that concern the livelihood, medical treatment and/or care of and management of the property of the General Ward, the guardian shall respect the wishes of the General Ward and shall take into account the mental and physical condition and living conditions of the General Ward.

(2) The General Guardian shall strive to provide the best possible medical care for the General Ward, in accordance with the financial capacity of the General Guardian and the General Ward, and their relationship.

**1120. More than one General Guardian**

(1) Should there be more than one General Guardian, the court may determine whether the General Guardians should exercise their functions jointly or whether the functions should be divided among the General Guardians.

(2) The court may rescind a determination under paragraph (1).

(3) Should there be more than one General Guardian, it shall suffice if a third party declares his/her intention to only one of them.

**1121. Permission for property management**

The permission of the court shall be required in cases where a General Guardian sells, leases, terminates the lease, establishes a hypothec or dispose of in another manner equivalent to the foregoing, in place of the General Ward, an immovable property provided for the residence of the General Ward.

**1122. Acts involving conflict of interests of General Guardian and the General Ward**

The provisions of **Article 1065 (Conflict of interest between parental authority holder and minor child)** shall apply *mutatis mutandis* to General Guardians. This provided that such shall not apply where the General Guardian has a supervisor.

**1123. Estimates of outlays and expenses of General Guardianship**

(1) Upon assuming office, a General Guardian shall estimate the amount of money to be expended annually for the livelihood, medical treatment and care of and management of the property of the General Ward.

(2) The expenses required for performance by the General Guardian of his/her duties under the General Guardianship shall be defrayed from the property of the General Ward.

**1124. Remuneration of General Guardian**

The court may allow reasonable remuneration to the General Guardian out of the property of the General Ward, taking into account the financial capacity of the General Guardian and the General Ward, and other circumstances.

**1125. Supervision of duties of General Guardian**

(1) The supervisor of the General Guardian or the court may at any time demand that the General Guardian provide a report of the conduct of his/her duties or the inventory of the property, and may also inspect the living conditions and health care of the General Ward and the management of the property.

(2) Upon application by the supervisor of a General Guardian, the

General Ward, the spouse of the General Ward, a relative of the General Ward up to the 4th degree in relationship, the chief of the *commune* or *sangkat* in which the Permanent Residence of the General Ward is located, a public prosecutor, or another interested person, the court may order the General Guardian to take necessary action relating to the living conditions or medical care of the General Ward, the management of the property of the General Ward or otherwise relating to the General Guardianship.

**1126. Limitations on right of representation and right to grant consent**

Should the General Guardian have a supervisor, the permission of the supervisor must be obtained in order to conduct business or to do any of the acts listed in **Article 30 (Right to rescind act)** in place of the General Ward, or in order to consent to the doing of any of the foregoing acts by the General Ward. This provided that such shall not apply to the receipt of the principal.

**1127. Effect of breach of Article 1126**

(1) Any act done or consented to by a General Guardian in breach of **Article 1126 (Limitations on right of representation and right to grant consent)** may be rescinded by the General Ward or the General Guardian. In such a case, the provisions of **Article 32 (Right to demand)** shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of **Article 358 (Voidable acts)** together with **Article 359 (Method of rescission or ratification Person having right of rescission)** through **Article 363 (Extinctive prescription of right of rescission)**, inclusively.

**1128. Acquisition of property from General Ward**

(1) Should the General Guardian acquire property from the General Ward or rights of a third party against the General Ward, the General Ward may rescind such acquisition. In such case, the provisions of **Article 32 (Right to demand)** shall apply *mutatis mutandis*.

(2) The provisions of paragraph (1) shall not preclude the application of the provisions of **Article 358 (Voidable acts)** together with **Article 359 (Method of rescission or ratification Person having right of rescission)** through **Article 363 (Extinctive prescription of right of rescission)**, inclusively.

**1129. Guardian's Obligation for care**

(1) The General Guardian is obligated to perform the duties of the General Guardianship with the care of a good manager.

(2) Should the General Guardian breach the Obligations described in paragraph (1) and thereby cause damages to the General Ward, the General Ward may demand that the General Guardian compensate him/ her for such damages.

**1130. Management of property granted by third party to the General Ward**

(1) Should a third party who gratuitously transfer property to a General Ward have declared the intention not to allow the General Guardian of the General Ward to manage such property, such property shall be excluded from the scope of the property managed by the General Guardian.

(2) Upon petition by the supervisor, the General Ward, the spouse of the General Ward, a relative of the General Ward up to the 4th degree in relationship, the chief of the *commune* or *sangkat* in which the Permanent Residence of the General Ward is located, or a public prosecutor, the court may appoint a manager of any property described in paragraph (1) not managed by the General Guardian and in respect to which a third party has not been appointed a manager.

(3) Even should a third party have been appointed a property manager, paragraph (2) shall apply if the third party fails to appoint a new manager once the authority of the first-mentioned manager has become extinguished or it has become necessary to replace said manager.

(4) The provisions of **Article 37 (Appointment of administrator by the court)** through **Article 40 (Authority of administrator)**, inclusively, shall apply *mutatis mutandis* to cases described in paragraphs (2) and (3).

#### Sub-section V. Termination of General Guardianship

##### **1131. Account of property management and presence of supervisor**

(1) Should the duties of a General Guardian have terminated, the General Guardian or his/her successor shall render an account of property management within 3 months following the date of termination. This provided that such period may be extended by the court.

(2) Should the General Guardian have a supervisor, the account described in paragraph (1) shall be prepared in the presence of such supervisor.

##### **1132. Obligation to pay interest between General Guardian and General Ward**

(1) Any money required to be returned by a General Ward to the General Guardian or by the General Guardian to a General Ward shall bear interest as from the time of the termination of the accounts of the General Guardianship.

(2) Should a General Guardian have spent money of a General Ward on his/her own behalf, such amount shall bear interest as from the time of use. Should the General Ward suffer any damages thereby, the General Guardian shall be liable to compensate the General Ward for such damages.

##### **1133. Emergency Obligations of guardian after termination of General Guardianship**

Should an emergency arise following the termination of a General Guardianship, the General Guardian or his/her successor shall take the necessary measures until such time as the General Ward, his/her

successor or legal representative is able to take on the business of the General Ward.

**1134. Condition for perfection of termination of General Guardianship**

Regardless of whether grounds for the termination of a General Guardianship arise on the side of the General Ward or on that of the General Guardian, such can be held up against the counter-party only if it has been notified to the counter-party or the counter-party is aware of such.

**1135. Extinctive prescription of claims relating to guardianship**

The provisions of **Article 1060 (Extinctive prescription of claims between parent and minor child relating to property management)** shall apply *mutatis mutandis* to claims arising in relation to the General Guardianship between a General Guardian or a supervisor on one side and the General Ward on the other.

## **Chapter 7 CURATORSHIP**

**1136. Commencement of curatorship**

A Curatorship shall commence in accordance with **Article 28 (Declaration of commencement of curatorship)**.

**1137. Appointment of curator**

(1) Should commencement of curatorship be declared, the court shall appoint a curator.

(2) The provisions of paragraphs (2) through (4) of **Article 1105 (Appointment of General Guardian)** and **Article 1106 (Resignation of General Guardian)** to **Article 1109 (Persons who may not be General Guardian)**, inclusively, shall apply *mutatis mutandis* to a curator.

(3) Should there be a conflict of interest between the curator or the representative of the curator and the person under curatorship, the curator shall apply to the court for the appointment of a temporary

curator. This shall not apply where there is a supervisor of the curator.

(4) Paragraph (3) shall also apply to the case where there is a conflict of interest among a number of persons under a single curator.

**1138. Supervisor of curator**

(1) Upon petition by the curator, a person under curatorship, the spouse of the person under curatorship, a relative up to the 4th degree in relationship of the person under curatorship, the chief of the *commune* or *sangkat* in which the Permanent Residence of the person under curatorship is located, a public prosecutor or other interested person, the court, where it finds such necessary, may appoint a supervisor of the curator. The same shall apply if there exists no supervisor.

(2) The provisions of paragraph (4) of **Article 1105 (Appointment of General Guardian)**, **Article 1106 (Resignation of General Guardian)**, **Article 1108 (Dismissal of General Guardian)**, **Article 1109 (Persons who may not be General Guardian)**, **Article 1111 (Persons who shall not be supervisors of General Guardians)**, **Article 1120 (More than one General Guardian)**, paragraph (2) of **Article 1123 (Estimates of outlays and expenses of General Guardianship)** and **Article 1124 (Remuneration of General Guardian)** shall apply *mutatis mutandis* to supervisors of curators.

(3) Should any act involve a conflict of interest between the curator or the representative of the curator and the person under curatorship, the supervisor must consent to such act by the person under curatorship.

(4) Paragraph (3) shall also apply to the case of conflict of interest among a number of persons under a single curator.

**1139. Duties of curator**

(1) The curator has the authority to grant consent to actions by the person under curatorship for acts listed in **Article 30 (Right to rescind act)**, or to rescind any of such acts effected by the person under curatorship without the consent of the curator.

(2) In effecting his/her duties under paragraph (1), the curator shall respect the wishes of the person under curatorship and take into account the mental and physical condition and the state of the livelihood of the person under curatorship.

(3) The provisions of **Article 1120 (More than one General Guardian)**, paragraph (2) of **Article 1123 (Estimates of outlays and expenses of General Guardianship)**, **Article 1124 (Remuneration of General Guardian)** and **Article 1125 (Supervision of duties of General Guardian)** shall apply *mutatis mutandis* to the duties of curators.

(4) The provisions of **Article 1060 (Extinctive prescription of claims between parent and minor child relating to property management)** shall apply *mutatis mutandis* to claims arising in relation to a curatorship between the curator or the supervisor of the curator and the person under curatorship.

## Chapter 8 SUPPORT

### **1140. Scope and order of persons obliged to provide support**

(1) Relatives shall be obliged to provide support in the scope and order described below:

- a. Cohabiting Relatives;
- b. Lineal Relatives by consanguinity; and
- c. Siblings.

(2) Should there be special circumstances, the court may impose an Obligation of support on Relatives up to the 3rd degree of relationship other than persons described in paragraph (1). The same shall apply to support between the surviving spouse and the Relatives of the deceased spouse in cases where a marriage is dissolved due to the death of one of spouse.

(3) Should circumstances change after the rendering of a judgment described in paragraph (2), the court may rescind such judgment.

**1141. Confirmation of who should actually provide and receive support**

(1) Should there be two or more persons obliged to provide support, such persons shall agree, upon mutual consultation, as to which one or more of them shall actually provide support.

(2) Should no agreement described in paragraph (1) be reached or should consultation be unable to be held between them, the court shall determine which person or persons subject to an Obligation to provide support should actually provide such support, taking into account the financial capacity, age, mental and physical condition of said persons, the relationship of the parties and all other circumstances.

(3) Should there be two or more persons entitled to receive support and the financial capacity of the person or persons obliged to provide support is insufficient to support all of the persons entitled, the provisions of paragraphs (1) and (2) shall apply to the determination of who should actually receive support.

**1142. Extent and mode of support**

Should no agreement be reached or consultation be unable to be held between the relevant parties concerning the extent or mode of support, the court shall determine these matters, taking into account the necessity for such support to the life of the person or persons entitled to support, the financial capacity of the person or persons obliged to provide support and all other circumstances.

**1143. Variation and rescinding of support arrangement**

(1) Should circumstances change following the conclusion of an agreement or a decision rendered concerning which party or parties are to provide or receive support or the extent or mode of support, the relevant parties may agree to alter the support relationship.

(2) Should no agreement described in paragraph (1) be reached or should consultation be unable to be held between the relevant parties,

the relevant parties may apply to the court for rescission or variation of the previous agreement or decision.

(3) The provisions of paragraphs (2) and (3) of **Article 1141 (Confirmation of who should actually provide and receive support)** shall apply *mutatis mutandis* to orders by the court for rescission or variation under paragraph (2) of this Article.

**1144. Prohibition on disposing of right to demand support**

The right to receive support shall be an exclusive and individual right of the person requiring support, and shall not be made the subject of an assignment, gift, creation of security or any other transaction whatsoever with any third party.

## **BOOK 8 SUCCESSION**

### **Chapter 1 GENERAL PROVISIONS**

#### **Section I. Opening of Succession**

**1145. Cause of initiate of succession**

(1) Succession shall initiate upon the death of the decedent.

(2) Succession shall be carried out in accordance with the provisions of law or the wishes of the decedent. Succession in accordance with the provisions of law shall be referred to as Statutory Succession, and succession in accordance with the wishes of the decedent as Testamentary Succession.

**1146. Place of succession**

Succession shall initiate at the Permanent Residence of the decedent at the time of death.

## Section II. Effect of Succession

### **1147. Succession to the Succession Property<sup>17</sup>**

(1) Upon the commencement of a succession, the Successor shall succeed to all of the rights and Obligations pertaining to the property of the decedent. This shall not apply for such property that is entirely personal to the decedent.

(2) Should there be a person who should succeed to ownership of ceremonial implements, graves and movable ancestral heirlooms, such as a person who was designated by the decedent to preside over the rites for the ancestors, such person shall succeed to said ownership. Should there be no such designation by the decedent, the person who by custom should succeed to the ownership of those items such as the person to preside over such rites for ancestors shall succeed to the said ownership. Should no such custom be apparent, the court shall determine the Successor to the said ownership.

### **1148. Succession to the property rights by multiple Successors**

(1) Should there be more than one Successor, each co-successor shall succeed to the rights and Obligations of the decedent in proportion to their share in the succession. This provided that the rights and Obligations that by their nature cannot be partitioned shall be succeeded to without portioning.

(2) Co-successors shall be joint owners of the succession property.

## Section III. Qualification for succession

### **1149. Persons eligible for succession**

(1) Only persons who are alive at the time of the commencement of succession and also do not fall under any provision of **Article 1150**

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<sup>17</sup> In this translation, the term of succession property refer to any part or the whole of the property rights, including both positive and negative assets, that belong to the decedent at the time of the commencement of the succession. The translator avoided the use of the term estate since under the provisions of this Code property passes directly to the Successors and there is no intermediate estate, as seems to be the case in Anglo-American jurisdictions.

**(Persons disqualified from succession)** through **Article 1152 (Disinheritance by will)** shall be eligible for succession.

(2) Notwithstanding the provisions of paragraph (1), paragraphs (2) and (3) of **Article 9 (Fetus)** shall apply to any fetus.

**1150. Persons disqualified from succession**

Persons described below shall not become Successors or acquire property under a will:

- a. Any person who has been sentenced to punishment, whether being involved directly or indirectly, for having intentionally caused or attempted to cause the death of the decedent or of any person who has prior or equal rank in the succession;
- b. Any person who, knowing that the decedent has been murdered, fails to lodge an accusation or complaint. This shall not apply in cases where such person lacks the capacity to discern right from wrong, or where the murderer is the spouse or lineal relative by consanguinity of such person;
- c. Any person who has by fraud or duress, prevented the decedent from making, rescinding or altering a will relating to the succession;
- d. Any person who has by fraud or duress, induced the decedent to make, rescind or alter a will relating to the succession;  
or
- e. Any person who has forged, altered, destroyed or concealed a will of the decedent relating to the succession.

**1151. Disinheritance of Successor**

(1) Should a presumptive Successor with a legally secured portion engage in any of the following conduct, a decedent may apply to the court for the disinheritance of such presumptive Successor. The intention to disinherit may also be declared via will:

- a. Cruelty towards the decedent;
- b. Treating the decedent with great contempt;
- c. Failing to care for the decedent when the decedent was sick, despite being able to do so;

- d. Being found guilty of a crime that is subject to life imprisonment;
- e. Engaging in other egregious misconduct.

(2) A presumptive Successor against whom disinheritance is sought may contest the existence of the grounds of disinheritance before the court described in paragraph (1).

**1152. Disinheritance by will**

Should the decedent have made a will described in **Article 1151 (Disinheritance of Successor)**, the executor of the will shall apply to the court for disinheritance without delay after the will comes into effect. In such case the disinheritance shall have effect retroactive to the time of death of the decedent.

**1153. Possession of succession property by disqualified Successor**

Should a person disqualified from succession or from acquiring property by will under **Article 1150 (Persons disqualified from succession)** or who has been disinherited under **Article 1151 (Disinheritance of Successor)** or **Article 1152 (Disinheritance by will)** possess any of the succession property, such person shall be deemed to be a possessor in bad faith as from the time of the commencement of the succession.

**1154. Rescission of disinheritance**

(1) The decedent may apply to the court at any time for the rescission of the disinheritance of a presumed Successor.

(2) The provisions of **Article 1152 (Disinheritance by will)** shall apply *mutatis mutandis* to a rescission of disinheritance.

**1155. Case where the Successor is an foreign national**

(1) Should the Successor or person acquiring property under a will not hold Cambodian nationality, such person shall be unable neither to succeed to land nor to acquire land by testamentary gift.

(2) Should one or more co-successors not hold Cambodian nationality,

the succession of property shall be partitioned in consideration of paragraph (1).

(3) Should none of the co-successors with prior rank in the succession hold Cambodian nationality, land included in the succession property shall constitute a juristic person, and all co-successors with prior rank shall jointly carry out the management and disposition thereof.

(4) Should all of the co-successors with prior rank in the succession effect absolute or qualified acceptance and, within three months after such acceptance, have sold the land as the person with the authority to dispose the succession property as described in paragraph (3), the sales proceeds thereof shall form the succession property, and the succession property juristic person as described in paragraph (3) shall be dissolved thereby.

(5) Should all of the co-successors with prior rank in the succession not jointly sell the land pursuant to the provisions of paragraph (4) within three months following their effecting the absolute or qualified acceptance, the ownership of the land shall be succeeded to by Successors with next rank in the succession who hold Cambodian nationality. In such a case, the succession property juristic person shall be deemed to never have existed.

## **Chapter 2 STATUTORY SUCCESSION**

### **Section I. Successors**

#### **1156. Successors of first rank**

(1) Children of the decedent shall be Successors of first rank.

(2) Children of the decedent shall have equal shares of the succession regardless of whether they are natural or adopted.

#### **1157. Succession by representation**

(1) Should a child of the decedent die prior to the commencement of

succession, or lose the right to succession due to the provisions of **Article 1150 (Persons disqualified from succession)** or due to disinheritance, the children of such person become Successors by virtue of succession by representation. This provided that such shall not apply to persons who are not lineal descendants of the decedent.

(2) The provisions of paragraph (1) shall apply in turn to Successors by representation to whom any grounds under the paragraph apply.

**1158. Succession shares in case of succession by representation**

The share of a lineal descendant who becomes a Successor under **Article 1157 (Succession by representation)** shall be equal to the share that the lineal ascendant of such descendant would have received. Should there be more than one lineal descendant, they shall each succeed in equal shares to the share that their lineal ascendant would have received.

**1159. Successors of the second rank**

(1) Should there be no lineal descendant to become a Successor to the decedent, the decedent's lineal ascendant(s) shall become the Successor(s). This provided that as between persons standing in different degrees of relationship, the person in the nearer degree of relationship shall be preferred.

(2) Should there be more than one lineal ascendant to become Successors, they shall succeed in equal shares.

**1160. Successors of the third rank**

(1) Should there exist neither lineal descendants nor lineal ascendants to become Successors of the decedent, the sibling(s) of the decedent shall become Successors.

(2) Should there be more than one sibling, they shall succeed in equal shares. This provided that the share of a sibling who has only one parent in common with the decedent shall be half the share of a sibling who has both parents in common with the decedent.

(3) The provisions of paragraph (1) of **Article 1157 (Succession by representation)** and **Article 1158 (Succession shares in case of succession by representation)** shall apply *mutatis mutandis* to cases where siblings of the decedent, who should become Successors pursuant to paragraphs (1) and (2), die prior to the commencement of the succession.

## Section II. Succession by Spouse

### **1161. Succession by spouse**

(1) The spouse of the decedent shall become a Successor in all cases.

(2) Should a person other than the spouse of the decedent become a Successor under the provisions of Section I in addition to the spouse, the spouse shall rank equally with such other person.

### **1162. Shares in succession in case of succession by spouse**

The shares of the Successors shall be as follows should there be other Successors in addition to the spouse:

- a. If the Successors are the spouse and lineal descendants, the spouse and each of the descendants shall succeed in equal shares;
- b. If the Successors are the spouse and the decedent's parents, the spouse shall succeed to a one-third share and the parents to a two-thirds share. This provided that should only one of the parents of the decedent still be living, such parent and the spouse shall succeed in equal shares.
- c. Should the Successors be the spouse and lineal ascendants other than the decedent's parents or siblings or their Successors by representation, the spouse shall succeed a one-half share of the decedent's property and the lineal ascendants other than the decedent's parents or siblings or their Successors by representation shall succeed to a one-half share.

## Section III. Adjustment of Succession Shares

**1163. Share of person receiving special benefit**

(1) Should any of the co-successors have received from the decedent prior to the decedent's death any gift on the occasion of marriage or other event, or as capital for livelihood, or has received a testamentary gift from the decedent, the value of the property owned by the decedent upon the commencement of the succession plus the value of the gift shall be deemed to be the total succession property, and such person's share of the succession shall be the balance after deducting the value of such gift or testamentary gift from the share calculated in accordance with the provisions of Sections I and II.

(2) Should the value of the gift or testamentary gift equal or exceed the value of the share in the succession, such co-successor shall not receive such share.

**1164. Value of gift**

Should the property received by way of gift described in **Article 1163 (Share of person receiving special benefit)** have been disposed of by the donee or has been destroyed or lost prior to the commencement of the succession, the value shall be calculated according to the value at the time of such disposition, destruction or loss. Should the value have changed as a result of the donee's alteration to any part of such property, its value shall be calculated as if it were in the original condition at the time of commencement of the succession. Any interest received or profit realized by a Successor who has received a gift shall not be included in the calculation of the gift's value.

**1165. Case where the value of special benefits exceeds the value of succession share**

(1) Even should the value of the gift or testamentary gift received by a co-successor exceed the value of such Successor's share of the succession, except where there is a claim of abatement for legally a secured portion, the Successor shall not be required to return the property forming the subject matter of the gift for the benefit of the other co-Successors.

(2) In cases set forth under paragraph (1), the actual amount that each of the other Successors is entitled to receive in the succession shall be the amount allotted or distributed as a result of the partition of the succession property owned by the decedent upon the commencement of the succession in accordance with the ratio of the succession share of each co-successor set forth in paragraph (1) of **Article 1163 (Share of person receiving special benefit)**.

#### **1166. Contributions**

(1) Should any of the co-successors have made a special contribution to the maintenance or increase of the decedent's property by offering labor or property to the decedent's business, providing nursing services or in some other form, the succession property owned by the decedent at the time of the commencement of the succession less the amount of the Successor's contribution as aforesaid as determined upon consultation by the co-Successors shall be deemed to be the succession property, and the share for such Successor shall be the sum of the share calculated in accordance with the provisions of Sections I and II and the amount of said contribution.

(2) Should a determination under paragraph (1) not be rendered or should consultation be unable to be held between the co-successors, then on application by the person who made the contribution described in the said paragraph, the court shall determine such contribution, taking into account the timing, mode and extent of the contribution, the amount of the succession property and all other circumstances.

(3) The contribution shall not exceed the value of the succession property owned by the decedent at the time of the initiation of the succession less the amount of the testamentary gift and the value of the property designated by the decedent as the share for the co-successor or as the method for the partitioning of the succession property.

(4) The application under paragraph (2) may be done, in cases where there is application under paragraph (1) of **Article 1270 (Partition by**

the court) or the filing of a complaint under **Article 1274 (Demand by person who was acknowledged after partition)**.

**1167. Relationship against third parties**

Adjustment of succession shares pursuant to the provisions of **Section III** shall not be held against a third party unless the requirements of perfection are fulfilled with respect to the results of the partitioning of the succession property in accordance with said adjustment.

## **Chapter 3 TESTAMENTARY SUCCESSION**

### **Section I. Capacity to Make a Will**

**1168. Person able to form a will**

(1) Persons who have attained the age of majority and minors who have been released from guardianship or parental authority may create a will.

(2) The provisions of **Article 26 (Right to rescind acts)** and **Article 30 (Right to rescind act)** shall not apply to wills.

**1169. Capacity at time of creation of will**

(1) At the time of creating a will, the testator must have the capacity to create such an instrument.

(2) A person asserting a defect in the testator's capacity must prove such. This provided that such shall not apply in cases described in **Article 1176 (Making of will by General Ward)**.

### **Section II. Forms of wills**

**1170. Formal of will**

(1) Wills may not be made except in accordance with the forms prescribed in this Code.

(2) Wills that do not conform to those prescribed in this Code shall

be null and void. This provided that an undated will shall be valid if, and only if, another will made by the same testator does not conflict with the first mentioned will. Any undated wills that contradict each other shall each be rendered null and void to the extent of the contradiction.

**1171. Formal validity**

A will that conforms to any form prescribed by this Code shall be valid with regard to its form.

**1172. Persons who may not be witnesses or observers**

None of the persons described below can be a witness or observer to the creation of a will:

- a) Minors or persons under general guardianship;
- b) Presumptive Successors or testamentary donees or their spouses or lineal relatives by consanguinity; or
- c) In a case where a notary participates in the making of a will by notarial document or secret document, the spouse, lineal relatives by consanguinity, clerks and employees of the notary.

**1173. Will by notarial document**

(1) In order to create a will through a notarial document, a testator shall carry out the formalities prescribed in paragraph (2) in the presence of a notary.

(2) A will via notarial document shall comply with the following formalities:

- a. Two or more witnesses shall be present;
- b. The testator shall orally declare the tenor of the will to the notary;
- c. The notary shall write out the contents of the testator's will and read such aloud to the testator and the witnesses;
- d. Upon acknowledging that the contents of the written document are correct, the testator and the witnesses shall each note their name, age and address and affix a signature to the

document. This provided that if the testator is unable to write or sign, the notary shall note the above matters and sign in lieu of the testator and make an additional note of the reason for so doing; and

e. The notary shall date and sign the document.

**1174. Will by privately produced document**

(1) In order to create a privately produced will, the testator shall write the entire text of the will and date thereof in his/her own hand, and affixes his/her signature to it. A privately produced will written by a person other than the Testator or using a typewriter or other machine shall be null and void.

(2) Any addition or other alteration of a privately produced will shall be null and void unless the testator indicates the place thereof, makes an additional entry that an alteration has been made, and specifically signs such entry.

**1175. Will by secret document**

In order to create a will by secret document, the following formalities shall be complied with:

- a. The testator shall sign the document;
- b. The testator shall complete the document and sign or initial the place of completion or take such other measures as to enables a judgment to be made as to whether the closure has been opened;
- c. The testator shall produce the sealed document before a notary and at least two witnesses, and declare that it is his/her testamentary document and, if it was written by a person other than the testator, the name and address of such person; and
- d. After the notary has written on the cover of the sealed document the date of the production of the document and the declaration of the testator, the notary, the testator and the witnesses shall affix their signatures thereon.

**1176. Making of will by General Ward**

(1) At least two medical practitioners shall be present for a General Ward to create a will while he/she has temporarily recovered the ability to recognize and understand the legal consequences of his/her actions, .

(2) The medical practitioners present at the creation of a will must make a separate entry on the testamentary document to the effect that the testator was of sound mind and capacity to recognize and understand the legal consequences of his/her actions and was not of mental illness or disability at the time of creating the will, and shall affix a statement that they are medical practitioners and their signatures thereto.

**1177. Will of a person in imminent danger of death**

(1) Should a person in imminent danger of death from disease or other cause wish to create a will, he/she may do so in the presence of at least three witnesses by orally declaring its tenor to one of them. In such case the person to whom the oral declaration is made shall write the testament down, and read the testament aloud or submit the document for verification by the other witnesses, and each witness shall sign the document after confirming its accuracy.

(2) A will made pursuant to the provisions of paragraph (1) shall be invalid unless, within one month from the date on which the will was made, one of the witnesses or an interested person applies to the court and obtains confirmation thereof.

(3) The court shall not confirm a will unless convinced that it represents the true intentions of the testator.

**1178. Will of person in quarantine**

(1) A person confined in quarantine by court judgment or administrative order may create a will in the presence of a police officer or official of the place of quarantine together with at least two witnesses.

(2) A person on board a ship or plane may create a will in the presence

of the ship's or the plane's master or one of the ship's or the plane's clerks together with at least two witnesses.

(3) In order to create a will pursuant to the provisions of paragraphs (1) or (2), the testator make an oral declaration to the police officer, the official of the place of quarantine, the ship's or the plane's master or the ship's or the plane's clerk.

(4) In cases under paragraph (3), the provisions of items (b) through (e) of paragraph (2) of **Article 1173 (Will by notarial document)** shall apply *mutatis mutandis*. For the application of these provisions, all references to Notary shall be replaced by that of police officer, official of the place of quarantine, the ship's or the plane's master or the ship's or the plane's clerk, respectively.

(5) A will made pursuant to the provisions of paragraphs (1) through (4) shall be null and void should the testator survive for a period of 6 months from the time when, after his/her release from the place of the quarantine, or his/her disembarking from the ship or plane, he/she becomes able to make a will in accordance with the formalities set forth in **Article 1173 (Will by notarial document)** through **Article 1175 (Will by secret document)**.

#### **1179. Creation of will by person unable to speak**

(1) In order for a person who is unable to speak to make a will pursuant to the formalities set forth in **Article 1173 (Will by notarial document)**, **Article 1175 (Will by secret document)** or **Article 1177 (Will of a person in imminent danger of death)**, the testator may declare through an interpreter the tenor of the will or a statement that the testamentary document is his/her own will, or may write any of the foregoing in his/her own hand, before a notary or witnesses, in place of making an oral declaration him/herself.

(2) Should, after noting the tenor of the will, the notary or other person prescribed by this Code read aloud the contents thereof to the testator and the witnesses, if the testator or any witness is deaf, the

communication of the written contents to the testator or witness may be effected through an interpreter in lieu of reading the contents aloud.

(3) A notary or other person prescribed by this Code shall note the actions taken in any case described in paragraphs (1) and (2) on the document.

**1180. Entry of name with thumbprint in lieu of signature**

Should it be required for a notary or witness to affix his/her signature, a notary or witness may make an entry of his/her name together with his/her thumbprint affixed with it in lieu of a signature.

**1181. Special provision governing making of wills by Cambodians living abroad**

Should a Cambodian national who is a resident in a country where a Cambodian Consul is stationed wish to make a will by notarial document or secret document, the functions of a notary shall be performed via such Consul.

**Section III. Matters To Be Included In Will**

**1182. Designation of succession shares**

(1) A decedent may via will designate the succession shares of the co-successors and express an intention contrary to the provisions of **Article 1163 (Share of person receiving special benefit)** relating to the succession share of a person receiving special benefit. This provided that any designation of a share that infringes any legally secured portion shall be subject to the provisions governing legally secured portions.

(2) Should the decedent designate the shares of only one or more of the co-Successors, the shares of the other co-Successors shall be determined in accordance with the provisions of Section III of Chapter Two.

**1183. Designation of manner for partitioning succession property**

A decedent may, via will, determine or commission a third party to determine the manner for partitioning the succession property, or forbid partitioning for a period not exceeding five years from the time of the commencement of succession.

**1184. Transfer of property**

Subject to complying with the provisions governing legally secured portions, the testator, may via will, give the whole or any part of his/her property pursuant to the methods set forth in **Article 1199 (Definition of testamentary gift)**.

**1185. Transfer of property to Successors**

(1) Should the decedent have made a will purporting to transfer one or more items of specified property to one Successor or to co-successors, then, except in cases that involve a clear intention to make a testamentary gift including testamentary gift with a charge, the testator shall be presumed to have designated the manner of partitioning the succession property, and if the value of the specified property that is subject to such designation exceeds the share in the succession of that of the Successor(s), the testator shall also be presumed to have made a designation of share(s) in the succession.

(2) Should the decedent have created a will concerning only a portion of the succession property, and the value of such portion is less than the share of the Successor who has become eligible to receive such portion, the testator shall be presumed to have declared no more than to have designated the manner of partition of the property that should belong to that Successor.

**1186. Designation of executor of will**

A decedent may, via will, designate or commission a third party to designate one or more executors of the will.

**1187. Other matters**

In addition to the matters prescribed in this Code, a testator may

include in his/her will opinions aimed at the harmony of the family and other matters. In such a case, the Successors shall honor the will.

#### Section IV. Revocation of Will

##### **1188. Time and mode of revocation of will**

A testator may at any time rescind his/her will in whole or part in accordance with the provisions of Section IV.

##### **1189. Rescission using the form of a will**

(1) The whole or part of a will may be rescinded using the form of a will.

(2) In the event of discrepancies between an earlier and a subsequent will, the subsequent will shall be deemed to have rescinded the earlier will in respect to the conflicting portions.

##### **1190. Revocation of will by inter vivos disposition**

An inter vivos transfer or other disposition pertaining to the subject matter of a will shall be deemed to be a revocation of such will in respect to the portion that is inconsistent with the will.

##### **1191. Rescission by destruction of testamentary document**

Should a testator intentionally destroy the original of a testamentary document, he/she shall be deemed to have rescinded the will in respect to the destroyed portion. The same shall apply to intentional destruction of the Object under the will.

##### **1192. Waiver of right to revoke will**

A testator shall not be able to waive the right to revoke his/her will.

##### **1193. Revocation of a testamentary gift with fee**

Should a testamentary donee not perform an Obligation that has been imposed by the testator in exchange for a testamentary gift, the executor of the will, or in the absence of an executor, the Successor, may give notice of a reasonable time for performance, and, should

performance not occur within such period, may apply to the court for revocation of such testamentary gift.

## Section V. Effect of Will

### **1194. Time at which will becomes effective**

(1) A will shall become effective upon the death of the testator.

(2) Should, in the case where a will is subject to a condition precedent, the condition be fulfilled following the death of the testator, the will shall become effective upon the fulfillment of said condition.

### **1195. Effect of designation of share in succession**

(1) Should the decedent have made a designation of the Successors' shares in the succession or the manner for partitioning the succession property by declaring the intention in a will to transfer one or more items of specified property to one or more co-successors, such specified property shall automatically devolve upon the Successor(s) to whom it should belong upon the coming into effect of the will.

(2) Should the will have been made subject to a condition precedent and such condition is fulfilled following the death of the decedent, the property described in paragraph (1) shall be deemed to belong to the Successor to whom it should belong retroactive to the time of death of the decedent.

### **1196. Death of presumed Successor**

(1) Should, if the decedent have by will made a designation of the Successors' shares or of the manner of partitioning the succession property, a presumed Successor die before the initiating of the succession, come to fall under the provisions of **Article 1150 (Persons disqualified from succession)** or lose the right of succession on account of being disinherited, said designation shall be deemed to have been made in respect to any Successor by representation of such presumed Successor.

(2) In cases set forth in paragraph (1), should there be no Successor by representation of the presumed Successor, the designation of such presumed Successor shall have no effect. The same shall apply should a Successor waive succession.

(3) Notwithstanding the provisions of paragraphs (1) and (2), should the decedent have expressed an differing intention in the will, such intention shall prevail.

**1197. Restrictions on wills in favor of general guardians**

(1) Should, prior to the accounts of a general guardianship having been terminated, a General Ward make a will under which the general guardian, the spouse of the general guardian or any lineal descendant of the general guardian is to benefit, such will shall be void.

(2) The provisions of paragraph (1) shall not apply in cases where a lineal relative by consanguinity, the spouse or a sibling of the General Ward is the general guardian.

**1198. Devolution of property in cases where testamentary gift is void**

Should a testamentary gift not take effect due to the disqualification or death of the testamentary donee or other reason, or not take effect by reason of renunciation, whatever property the testamentary donee would have received shall devolve to the Successors. This provided that should the testator have declared a different intention in his/her will, such intention shall prevail.

**Section VI. Testamentary Gifts**

**1199. Definition of testamentary gift**

A Universal Testamentary Gift shall refer to a testator giving via will the entire of the succession property or any part thereof designated by a certain ratio to one or more persons, and a Specific Testamentary Gift shall refer to a testator gives via will a specified property to one or more persons.

**1200. Death of testamentary donee**

(1) A testamentary gift shall be null and void should the testamentary donee die on or before the death of the decedent. The same shall apply should the testamentary gift be subjected to a condition precedent and the testamentary donee die prior to the fulfillment of such condition.

(2) Notwithstanding the provisions of paragraph (1), should the testator have declared a different intention in his/her will, such intention shall prevail.

(3) Should a presumed Successor be the testamentary donee, the provisions of paragraph (1) shall not preclude the application of the provisions of paragraph (1) of **Article 1196 (Death of presumed Successor)**.

**1201. Renunciation of testamentary gift**

(1) A testamentary donee may effect a renunciation of a testamentary gift at any time after the death of the decedent. This provided that, in case of a universal testamentary gift, a renunciation shall be effected in compliance with the provisions regarding renunciation of succession.

(2) A renunciation of a testamentary gift shall have effect retroactive to the death of the decedent.

**1202. Notice by interested person**

A person entrusted with a testamentary gift or other interested person may give notice to the testamentary donee to effect either acceptance or renunciation of the testamentary gift within a reasonable period fixed by such notice. Should the testamentary donee not declare his/her intention to the person charged with the testamentary gift within said period, the testamentary donee shall be deemed to have accepted the testamentary gift.

**1203. Renunciation or acceptance by Successor of donee**

Should a testamentary donee die without effecting either an acceptance or a renunciation of the testamentary gift, his/her Successor may effect an acceptance or renunciation within the scope of his/her own right of succession. This provided that should the testator have declared a different intention in his/her will, such intention shall prevail.

**1204. Rescinding of acceptance or renunciation**

(1) Acceptance or renunciation of a testamentary gift shall not be able to be rescinded.

(2) The provisions of paragraph (2) of **Article 1252 (Rescission of acceptance or renunciation)** shall apply *mutatis mutandis* to the rescission of the acceptance or renunciation of a testamentary gift.

**1205. Acceptance or renunciation where the testamentary donee is a Successor**

(1) Should a testamentary donee who is also a Successor renounce a succession, he/she shall be deemed to have also renounced the testamentary gift. A testamentary donee cannot at the same time renounce succession and accept a testamentary gift.

(2) A testamentary donee described in paragraph (1) can, however, accept the succession and renounce a specific testamentary gift.

**1206. Right to acquire fruits by testamentary donee**

A testamentary donee shall acquire the fruits from such time as the performance or delivery of the testamentary gift is able to be demanded. This provided that should the testator have declared a different intention in his/her will, such intention shall prevail.

**1207. Testamentary gift of rights not included in the succession property**

A testamentary gift shall not take effect should the rights subject thereto not be included in the succession property at the time of the death of the testator.

**1208. Testamentary gift of Objects or rights subject to third party rights**

Should the Object or right constituting the Object of a testamentary gift be the subject-matter of a right belonging to a third party at the time of the death of the testator, the testamentary donee may not demand of the person charged with the testamentary gift that such right be extinguished.

**1209. Subrogation**

(1) Should a testator have a right to claim compensation from a third party due to the destruction, loss or alteration of the Object of the testamentary gift or the loss of possession thereof, such right shall be presumed to have been made the Object of the testamentary gift.

(2) Should an Object constituting the Object of a testamentary gift have been attached to or mixed or consolidated with another Object, if the testator has become the sole owner or a joint owner of the composite Object in accordance with the provisions of **Article 186 (Affixture of a movable to an immovable)** or **Article 198 (Attachment, mixture, consolidation of movables)**, the testator shall be presumed to have made the whole ownership or joint ownership of the composite Object the subject matter of the testamentary gift.

**1210. Subrogation of testamentary gift of claim**

(1) Should a claim have been included as an Object of a testamentary gift, if the testator has received performance of such claim and any Object that was so received still remains part of the succession property, such Object shall be presumed to have been the Object of the testamentary gift.

(2) In the case of a monetary claim, to the extent that: [i] the amount of money that remains part of the succession property; together with, [ii] the balance of the account in which the payment of such monetary claim was deposited; these amounts of money shall be presumed to have been the Objects of the testamentary gift.

**1211. Liability of donee of testamentary gift subject to charge**

(1) A person who has received a testamentary gift subject to a charge shall be liable to perform the Obligation that he/she has assumed only to the extent of the value of the Object of the testamentary gift.

(2) Should the value of the Object of a testamentary gift subject to a charge be reduced by reason of a qualified acceptance of the succession or a demand for abatement of a legally secured portion, the testamentary donee shall, in proportion to such reduction, be relieved of the Obligation that he/she has assumed. This provided that should the testator have declared a different intention in his/her will, such intention shall prevail.

**1212. Rights and duties of universal testamentary donee**

(1) A universal testamentary donee has the same rights and duties as a Successor.

(2) Should a Universal Testamentary Gift have been made to a person other than a Successor, the Successor or Successors shall be deemed to have not succeeded, except to rights over legally secured portions.

**Section VII. Execution of Wills**

**1213. Probate and opening of wills**

(1) Upon becoming aware of the initiating of the succession, the custodian of a testamentary document must without delay present it to the court and apply for probate thereof. Should there be no custodian of the testamentary document, the same shall apply upon discovery of the document by a Successor or other interested person.

(2) The provisions of paragraph (1) shall not apply to a will made through notarized document.

(3) A sealed testamentary document shall not be opened except by the court and in the presence of the Successors, interested parties or their representative.

(4) A person who has opened a sealed testamentary document outside the court in breach of the provisions of paragraph (3) shall be incur a civil fine of no more than one million (1,000,000) riel.

(5) A testamentary document that has been opened outside of the court in breach of the provisions of paragraph (3) shall not be invalidated on such account.

**1214. Appointment of executors**

(1) A person who has been commissioned by the testator in his/her will to appoint executors shall without delay effect such appointment and give notice thereof to the Successors.

(2) Should a person commissioned to appoint executors under paragraph (1) desire to decline such commission, he/she shall without delay give notice to such effect to the Successors.

**1215. Assumption of office by executor**

An executor who has agreed to assume the office must at once take up upon his/her duties thereof.

**1216. Notice of assumption of office by executor**

(1) A Successor or other interested person may give notice to a person appointed as an executor demanding that he/she give a definite answer within a reasonable period fixed by such notice as to whether he/she agrees to assume the office. Should such person fail to give a definite answer to the Successor within such period, he/she shall be deemed to have declined to assume the office.

(2) The first sentence of paragraph (1) shall apply *mutatis mutandis* to cases where a third party commissioned to appoint an executor does not promptly effect such appointment. In such case, should the third party not appoint an executor within the fixed period, he/she shall be deemed to have declined the commission.

**1217. Persons who may not be executor**

A General Ward, person under curatorship, minor or insolvent person shall not become an executor.

**1218. Appointment of executor**

Should there exist no executor or none remains, the court may appoint an executor upon the application of a Successor or any interested party.

**1219. Preparation of inventory of property**

(1) The executor must, without delay, prepare an inventory of the succession property and deliver it to the Successors.

(2) The Successors shall have the right to be present at the preparation of the inventory by the executor.

**1220. Authority of executor**

The executor shall have the right and duty to manage the succession property and to perform all other acts necessary for the execution of the will.

**1221. Forfeiture of Successors' right to dispose of succession property**

(1) Should there be an executor, the Successors shall not in any way dispose of the succession property or do any other act that would obstruct the execution of the will.

(2) Any disposition in breach of paragraph (1) shall have no effect.

**1222. Execution of will over specified property**

Should the will relate to specific property, the provisions of **Article 1219 (Preparation of inventory of property)** through **Article 1221 (Forfeiture of Successors' right to dispose of succession property)** shall apply to such property only.

**1223. Status of executor**

(1) The executor shall act in his/her own name in respect to any of

the succession property that is subject to execution.

(2) The effect of any act of the executor performed as part of the duties of the executor shall extend to the Successors directly.

**1224. Right to appoint sub-executor**

(1) An executor shall not procure a third party to perform his/her duties except for unavoidable reasons. This provided that should the testator have declared a contrary intention in the will, such intention shall prevail.

(2) Should the executor procure the performance of his/her duties by a third party in accordance with paragraph (1), the executor shall be liable to the testamentary donee and the Successors for the selection and supervision of such third party. Should the executor procure the performance of his/her duties by a third party in breach of paragraph (1), the executor must compensate the testamentary donee and the executors for any loss incurred as a result thereof.

**1225. Co-executors**

(1) Should there be two or more executors, the conducting of their duties shall be determined by a majority vote. This provided, however, that should the testator have declared a different intention in his/her will, such intention shall prevail.

(2) Notwithstanding the provisions of paragraph (1), each executor is entitled to effect acts of preservation.

**1226. Remuneration of executor**

(1) The executor shall be entitled to receive the remuneration set forth in the will.

(2) Should there be remuneration set forth in the will, the court, upon petition by the executor, may prescribe the amount of remuneration should it finds it appropriate for remuneration to be paid, with consideration of the conditions of the succession property, the

relationship between the testator and the executor and other circumstances.

**1227. Resignation or removal of executor**

(1) Should reasonable ground exist, an executor may resign from his office with the leave of the court.

(2) Should an executor neglect his/her duties or other reasonable ground exists, an interested person may apply to the court for the removal of such executor.

**1228. Execution expenses**

The expenses for the execution of a will shall be borne by the succession property. This provided that no legally secured portion can be diminished thereby.

**1229. *Mutatis mutandis* application of provisions on mandate**

The provisions governing mandates shall apply to the duties of an executor to the extent that said provisions do not conflict with the nature of the duties of an executor.

## **Chapter 4 LEGALLY SECURED PORTIONS**

### **Section I. General Provisions**

**1230. Persons entitled to legally secured portions**

(1) Lineal descendants, the parents or the grand parents and the spouse of the decedent shall be entitled to receive as their legally secured portion the property described below:

- a) One-third of the decedent's property, if only the parents or the grand parents are the Successors;
- b) One-half of the decedent's property, in other cases.

(2) Should there be two or more Successors, the co-successors shall each receive the legally secured portion in proportion to their share in the succession.

(3) The provisions of **Articles 1157 (Succession by representation)** and **1158 Succession shares in case of succession by representation** shall apply *mutatis mutandis* to legally secured portions.

**1231. The property that is the basis for calculation of legally secured portions**

(1) Legally secured portions shall be calculated by adding to the value of the property which the decedent had at the opening of the succession the value of any special benefit as described in **Article 1163 (Share of person receiving special benefit)** together with the value of any property gifted by the decedent as described in **Article 1232 (Gifts that are the basis for the calculation of legally secured portions)**, and subtracting therefrom the total amount of the Obligations.

(2) The value of a conditional right or a right of uncertain duration shall be determined in accordance with the appraisal of an expert appointed by the court.

(3) Obligations described in paragraph (1) shall include funeral expenses appropriate to the decedent's status.

**1232. Gifts that are the basis for the calculation of legally secured portions**

(1) The gifts described below shall be the basis for the calculation of legally secured portions. This provided that special benefits under **Article 1163 (Share of person receiving special benefit)** shall be excluded:

- a. Gifts made within one year prior to the initiating of the succession; and
- b. Gifts other than gifts described in item (a) above should both parties have been aware that loss would be caused to a person entitled to a legally secured portion.

(2) In the application of Chapter Four, a gratuitous release of Obligations shall be deemed as gift.

**1233. Property that is subject to abatement for legally secured portion(s)**

Testamentary gifts, designations of shares in a succession by will, special benefits and gifts described in **Article 1232 (Gifts that are the basis for the calculation of legally secured portions)** shall be subject to abatement for legally secured portion(s). This provided that if a testamentary gift, designation of a share in a succession or special benefit to a Successor is subject to abatement for a legally secured portion, such abatement shall be limited to the amount exceeds the legally secured portion of such Successor.

**1234. Amount of claim of abatement for legally secured portion**

The amount which a person entitled to a legally secured portion may claim as abatement shall be the amount calculated by deducting from the amount of the legally secured portion the total amount obtained by that person through succession together with the value of any special benefit, and adding thereto the amount of Obligations in the succession to be borne by that person.

**Section II. Method of Abatement for Legally Secured Portion**

**1235. Claim of abatement for legally secured portion**

A person entitled to a legally secured portion and his/her Successor may demand abatement of a testamentary gift against a person who has obtained property or a benefit that is subject to abatement for a legally secured portion, to the extent necessary in order to preserve such legally secured portion.

**1236. Order of abatement**

Gifts inter vivos and special benefits shall not be abated until after testamentary gifts and designations of shares in a succession have been abated.

**1237. Abatement of testamentary gifts**

(1) First, testamentary gifts to Successors and designations of

shares in the succession shall be simultaneously abated, and if there is any deficit, testamentary gifts to persons who are not Successors shall be abated.

(2) Testamentary gifts shall abate in proportion to the value of their Objects. The same shall apply in the case of designation of shares in a succession via transfer of one or more specified items of property. This provided that should a testamentary gift or designation of share in the succession to a Successor be subject to abatement, the value of the Object shall be deemed to be that portion which exceeds the amount of the legally secured portion of such Successor.

(3) Designations of shares in a succession at a certain ratio shall be abated by changing such ratio of shares.

(4) Notwithstanding the provisions of paragraphs (1), (2) and (3), if the testator has declared a different intention in his/her will, such intention such prevail.

#### **1238. Order of abatement of gifts**

(1) Abatement of gifts or special benefits shall commence with the most recent and extend in successive order to the earliest.

(2) Should the gift or special benefit have been granted 20 years or more prior to the initiating of the succession, the donee or Successor who received the special benefit shall be entitled to reject the claim of abatement for the legally secured portion.

#### **1239. Return of fruits**

In addition to the property or money to be returned, a co-successor, a testamentary donee or donee must also return the fruits of such property or money as from the day on which the claim for abatement was made.

#### **1240. Burden of loss arising from insolvency**

Any loss arising from the insolvency of a co-successor, testamentary

donee or donee subject to abatement shall be borne by the persons entitled to the legally secured portions.

**1241. Abatement of gift subject to fee**

In the case of a gift subject to a fee, abatement may be claimed in respect to the value of the Object less that of the fee.

**1242. Abatement of contract deemed to be a gift**

(1) A contract concluded for an inadequate consideration shall be deemed to be a gift only should both parties to such contract have acted with knowledge that loss would be caused to a person with a legally secured portion. In such case, the person entitled to a legally secured portion who claims abatement must repay the consideration.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to a release of Obligations due to inadequate consideration.

**1243. Abatement of gift assigned to another person**

(1) Should a co-successor, testamentary donee or donee have assigned the Object of the gift to another person, such assignor shall compensate the person entitled to a legally secured portion to the extent of the value thereof at the time of such assignment. This provided that should, at the time of the assignment, the assignee have known that loss would be caused to the person entitled to a legally secured portion, the latter may also claim abatement against the assignee.

(2) The provisions of paragraph (1) shall also apply *mutatis mutandis* to cases where a co-successor, testamentary donee or donee have created rights over the Object of a gift.

**1244. Performance by payment of value**

(1) A co-successor, testamentary donee or donee may relieve himself of the duty of restoration by paying to the person entitled to a legally secured portion the value of the Object(s) of the designated share, testamentary gift or gift to the extent that such share is to abate.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to the case described in the provisions to paragraph (1) of **Article 1243 (Abatement of gift assigned to another person)**.

### Section III. Extinction of Claim of Abatement

#### **1245. Extinctive prescription of right to claim abatement**

A right to claim abatement shall be extinguished by prescription should one year have lapsed, beginning from the time when the person entitled to a legally secured portion becomes aware that the succession has initiated and that a designation of share in succession, testamentary gift, gift or special benefit has been granted. A right to claim abatement shall also be extinguished by prescription under any circumstances should 5 years have lapsed since the initiating of the succession.

#### **1246. Renunciation of legally secured portion**

A legally secured portion may be renounced in whole or part. This provided that such renunciation effected prior to the initiation of the succession shall be effective only if the approval of the court has been obtained.

#### **1247. The case of co-Successors**

Neither the extinguishment of the legally secured portion of one co-successor by prescription nor the renunciation by one co-successor of his/her legally secured portion shall have effect upon the legally secured portion of any other co-successor.

## **Chapter 5 ACCEPTANCE AND RENUNCIATION OF SUCCESSION**

### Section I. General Provisions

#### **1248. Period for acceptance or renunciation**

(1) Within three months from becoming aware that a succession has initiated in his/her favor, a Successor must effect an acceptance, either absolute or qualified, or a renunciation thereof. This provided

that such period may be extended by the court upon application by the Successor.

(2) A Successor shall be entitled to inspect the succession property prior to effecting acceptance or renunciation thereof.

**1249. Special provisions concerning period in case of death of Successor**

Should a Successor die without effecting either acceptance or renunciation, the period described in paragraph (1) of Article 1248 (**Period for acceptance or renunciation**) shall be computed from the time when his/her Successor became aware that the succession had initiated in his/her favor.

**1250. Special provisions concerning period in case of minor**

Should the Successor be a minor or General Ward, the period described in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)** shall be computed from the time that his/her legal representative becomes aware that the succession has initiated in favor of the minor or the General Ward.

**1251. Special provision concerning period in cases where the existence of Obligations is unknown**

(1) In cases where a decedent had owed massive debts which could not be repaid from the succession property, should a Successor be unable to be aware of the existence of those debts by taking into account the conditions of the life or the property of the decedent and other circumstances, the period described in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)** shall be computed from the time that the Successor becomes aware of the existence of such debts.

(2) In the case described in paragraph (1), should the Successor have disposed of any of the succession property to pay off other Obligations of the decedent prior to the time that he/she became aware of the existence of the debts described in paragraph (1), the provisions of

paragraph (1) of **Article 1255 (statutory absolute acceptance)** shall not apply.

**1252. Rescission of acceptance or renunciation**

(1) Acceptance and renunciation shall not be rescinded even within the period described in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)**.

(2) The provisions of paragraph (1) shall not prevent the rescinding of an acceptance or renunciation on the grounds of defect in the Declaration of Intent. This provided that such right of rescission shall be extinguished should it not be exercised within six months from the time that it becomes possible to effect ratification. This shall also apply if not within five years from the time of the initiation of the succession.

(3) A person who wishes to rescind a qualified acceptance or renunciation in accordance with paragraph (2) shall file a petition with the courts to such effect.

**1253. Prohibition of suit against Successor prior to acceptance**

No assertion of a claim against the succession property may be made against a Successor prior to acceptance of the succession.

Section II. Acceptance

**1254. Absolute acceptance**

Upon effecting an absolute acceptance, the Successor shall succeed without limitation to the rights and duties of the decedent.

**1255. Statutory absolute acceptance**

Under the circumstances set forth below, the Successor shall be deemed to have effected an absolute acceptance:

- a. Should the Successor have disposed of whole or part of the succession property. This provided that such shall not apply to acts of preservation or mere acts of management;
- b. Should the Successor fail to effect a qualified acceptance or

a renunciation within the period prescribed in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)**; or  
c. Should, despite having effected a renunciation, the Successor have concealed or privately consumed a whole or part of the succession property. This provided that such shall not apply after an acceptance has been effected by a person who has become Successor due to renunciation by a Successor with prior rank.

**1256. Qualified acceptance**

(1) A Successor may effect an acceptance with the reservation that the Obligations and testamentary gifts of the decedent shall be performed only to the extent of the property acquired through the succession.

(2) Should there be more than one Successor, qualified acceptance may be effected only by the joint act of all the co-successors.

**1257. Procedure for qualified acceptance**

Should a Successor desire to effect a qualified acceptance, he/she must prepare an inventory within the period prescribed in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)** and submit such to the court with a declaration of qualified acceptance.

**1258. Effect of qualified acceptance**

(1) Should a Successor effect a qualified acceptance, the succession creditors shall not be able to apply liability against the individual property of the Successor.

(2) In cases described in paragraph (1), any rights and duties of the Successor vis-à-vis the decedent shall be deemed to not have been extinguished by virtue of merger.

**1259. Statutory acceptance after qualified acceptance**

(1) Should a single and sole Successor have effected a qualified acceptance, if such Successor in bad faith does not make an entry of the whole or part of the succession property in the inventory, or if

grounds listed in items (a) through (c) of **Article 1255 (Statutory absolute acceptance)** apply to such Successor, it shall be deemed that the Successor has effected an absolute acceptance, and that the declaration of qualified acceptance take no effect in the first instance.

(2) Should any grounds described in paragraph (1) apply to one or more co-successors who have effected a qualified acceptance, succession creditors may exercise their rights against the aforesaid co-successor(s) in proportion to their shares for the amount of claims that such creditors have been unable to receive payment for from the succession property.

### Section III. Renunciation

#### **1260. Renunciation of succession**

A person who wishes to renounce a succession must file a motion to such effect with the court.

#### **1261. Effect of renunciation**

A person who has renounced succession shall be deemed to not have been a Successor *ab initio* in respect to such succession.

## **Chapter 6 MANAGEMENT AND PARTITION OF THE SUCCESSION PROPERTY**

### Section I. Management of the Succession Property

#### **1262. Custody of the succession property**

(1) The Successor in possession of the succession property at the time of the decedent's death shall have custody and management of the succession property until the succession property is partitioned. This provided that such shall be subject to the provisions of **Article 1263 (Custody by executor)**.

(2) Prior to accepting or renouncing succession, the Successor shall manage the succession property with the same care as towards his/her

own property. The same shall apply once a Successor renounces succession until the person who becomes a Successor by virtue of such renunciation is able to commence management of the succession property.

**1263. Custody by executor**

Should the executor of a will assume office, he/she shall manage the succession property. This provided that should the will only cover specific property, the executor shall manage such property alone.

**1264. Temporary manager of inheritance**

(1) Should there be no executor to manage the whole inheritance, a Successor, legatee or creditor of the decedent may apply to the court for appointment of a temporary manager of the inheritance pending the partitioning of the inheritance.

(2) Notwithstanding the provisions of **Article 1253 (Prohibition of suit against Successor prior to acceptance)** of this code, a temporary manager appointed under paragraph (1) shall be charged with any legal suits involving claims against the inheritance on behalf of the Successor by specifying the name of the decedent, pending acceptance by the Successor.

(3) The provisions of paragraph (1) and (3) of **Article 40 (Authority of administrator)** of this code shall apply mutatis mutandis to a temporary manager.

**1265. Expenses relating to succession property**

Expenses relating to the succession property shall be paid out of the succession property. This provided that expenses arising through the negligence of a Successor shall be borne by such Successor.

**Section II. Partition of Succession Property**

**1266. Consultation for partition of succession property**

(1) Co-successors may, at any time following the completion of one month from the initiating of the succession, commence a consultation

on the partition of the succession property. This provided, however, that the change of the name of for any succession property as a result of the partition shall comply with the provisions of **Article 1277 (Prohibition of transfer of ownership)**, and that, where the decedent has forbidden partitioning in his/her will, the partition shall not be carried out for the forbidden period.

(2) The transfer of rights over Objects in a partition shall be executed in accordance with the required formalities such as documents for the respective rights.

#### **1267. Criteria of partition**

(1) Should the manner of partitioning not be designated in the will, partitioning of succession property shall be carried out taking into consideration the type and nature of the Objects or rights constituting the succession property, the age, occupation, state of mind and body and living conditions of each Successor, and all other circumstances.

(2) Should the value of any succession property be severely damaged by the act of partitioning, when considered reasonable, the succession property may be caused to devolve to one Successor, subject to the payment of compensation from the other Successors.

#### **1268. Priority right of spouse**

Should the spouse be a Successor and there is property acquired jointly by the spouse and the decedent during the marriage, the spouse shall have precedence over other co-successors to acquire the decedent's share of such jointly owned property until the spouse attains his/her share in the succession.

#### **1269. Payment of debts and other liabilities of succession**

Should the decedent have left debts, the co-successors shall effect partitioning, taking into account that such debts should be repaid and that the shares of liabilities for such debts shall not be altered without the consent of the creditors.

**1270. Partition by the court**

(1) Should no agreement be reached or consultation is unable to be held among the co-successors in the partitioning of the succession property, any co-successor may apply to the court for partitioning.

(2) In effecting the partitioning, the court shall take into consideration the provisions of **Article 1267 (Criteria of partition)** through **Article 1269 (Payment of debts and other liabilities of succession)**, together with the customs of the region and the views of the majority of Successors.

**1271. Liquidation by sale**

The court may sell any property and partition the proceeds of said property should the partitioning or ownership of which the co-Successors fail to reach an agreement on.

**1272. Subrogation based on disposition of property prior to partitioning**

All compensation for loss, destruction or usurpation of or damage to the Objects of the succession property, and any Object acquired by a contract relating to the succession property on the basis of rights belonging to the succession property shall belong to the succession property.

**1273. Effect of partitioning**

(1) Partitioning of succession property shall be effective retroactive to the initiating of the succession. This provided that already registered or perfected rights of third parties shall not be infringed upon.

(2) Each co-Successor shall receive a certificate of ownership for the property that has devolved to him.

**1274. Demand by person who was acknowledged after partition**

Should a person who becomes a Successor as a result of being acknowledged

after the death of the decedent demand of the partition of the succession property, if the other co-successors have already partitioned or otherwise disposed of the succession property, he/she shall only be entitled to demand of the distribution of the value thereof.

**1275. Conditions for partition of claims**

(1) Should the claims held by the decedent have been partitioned other than in the ratio of the statutory shares in succession, unless all of the co-Successors give notice to such effect to the debtors of such claims, or if the partitioning of the succession property has been carried out by a notarial document unless all the co-Successors show said debtors the notarial document or provide them with a copy thereof shall not be held up against such debtors.

(2) Any payment made by a debtor of the decedent in accordance with the ratio of the statutory shares of succession to co-Successors prior to receiving a notice described in paragraph (1) may be held up against the Successors who have acquired the claim through the partitioning of the succession property.

**1276. Co-Successor's liability for warranty**

In proportion to his/her share in the succession, each co-Successor shall bear the same liability for warranty as a seller vis-à-vis the other co-Successors.

**Section III. Adjustment Among Creditors**

**1277. Prohibition of transfer of ownership**

Until the lapse of the period prescribed in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)**, neither the Successors nor the succession property administrator shall change the name of the owner of any succession property to any Successor or testamentary done. This provided that such prohibition shall not apply to a change of name that is necessary for the payment of the debts of the decedent.

**1278. Creditors of the decedent**

Creditors of the decedent shall not enforce their rights against the personal property of a Successor until the lapse of the period prescribed in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)**.

**1279. Creditors of Successor**

Creditors of a Successor may not enforce their rights against the succession property until the lapse of the period prescribed in paragraph (1) of **Article 1248 (Period for acceptance or renunciation)**.

**Section IV. Liquidation in cases where there has been a qualified acceptance**

**1280. Administration of succession property after qualified acceptance**

A Successor effecting a qualified acceptance shall continue to manage the succession property with the care of a good manager.

**1281. Public notice and preemptory notice**

(1) Within five days following execution of a qualified acceptance, the acceptor shall give public notice to all creditors of the decedent and to all testamentary donees that a qualified acceptance has been effected by such acceptor and that they are called upon to present their claims within a specified period, which shall be no than two months.

(2) An additional statement shall be included in the notices under paragraph (1) that the claims of creditors who do not present their claims within such period shall be excluded from the liquidation. This provided that qualified acceptors shall not exclude creditors known to them.

(3) A qualified acceptor shall give separate preemptory notice to each creditor known to the acceptor to present his/her claim.

**1282. Right to refuse to perform claims during the notice period**

A qualified acceptor may refuse perform vis-à-vis the creditors of the decedent and testamentary donees until the expiration of the period for

public notice prescribed in paragraph (1) of **Article 1281 (Public notice and peremptory notice)**.

**1283. Payment by distribution**

Upon the expiration of the public notice period prescribed in paragraph (1) of **Article 1281 (Public notice and peremptory notice)**, a qualified acceptor shall effect payment from the succession property to those creditors who have presented their claims within such period, in proportion to the amounts of their respective claims. This provided that the rights of creditors with priority rights shall not be harmed thereby.

**1284. Performance of claims not yet due**

(1) In accordance with the provisions of **Article 1283 (Payment by distribution)**, a qualified acceptor shall effect payment even of claims that have not come due.

(2) Conditional claims and claims of uncertain duration shall be paid in accordance with the appraisal of an expert appointed by the court.

**1285. Payment to testamentary donees**

A qualified acceptor may effect payment to testamentary donees only after effecting payment to each of the creditors in accordance with the provisions of **Article 1283 (Payment by distribution)** and **Article 1284 (Performance of claims not yet due)**.

**1286. Realization of succession property**

(1) Should it be necessary to sell the succession property in order to effect payment under **Article 1283 (Payment by distribution)** through **Article 1285 (Payment to testamentary donees)**, the qualified acceptor shall offer such property for compulsory sale via auction or sell such property for no less than the price appraised by an expert appointed by the court.

(2) The qualified acceptor, succession creditor or testamentary donee may be the purchaser in an auction or sale under paragraph (1).

**1287. Liability for improper performance**

(1) Should a qualified acceptor have neglected to give public or formal notice prescribed in **Article 1281 (Public notice and peremptory notice)**, or has made payment to some creditors or testamentary donees within the notice period prescribed in paragraph (1) of said Article and consequently has become unable to make payment to other creditors or other testamentary donees, he/she shall be liable to compensate for any damages arising therefrom.

(2) The provisions of paragraph (1) shall not prejudice the right of other creditors or testamentary donees to demand compensation from creditors or testamentary donees who have received payment with knowledge of its improperness.

**1288. Case of claims not presented**

Obligees and testamentary donees who have failed to present their claims within the period prescribed in paragraph (1) of **Article 1281 (Public notice and peremptory notice)** and who were unknown to the qualified acceptor may exercise their rights only in respect to the surplus assets. This provided that such shall not apply to a person who has security interests over a specified Object or right.

**1289. Case of joint succession**

(1) Should a qualified acceptance have been made in a case where there is more than one Successor, the court shall appoint one of the Successors as the administrator of the succession property.

(2) The administrator shall implement all acts necessary for the management of the succession property and the payment of debts on behalf of both himself and the co-Successors and in lieu of the co-successors.

(3) The provisions of **Article 1281 (Public notice and peremptory notice)** through **Article 1288 (Case of claims not presented)** shall apply *mutatis mutandis* to an administrator. This provided that the period for public notice prescribed in paragraph (1) of **Article 1281 (Public notice**

and peremptory notice) shall occur within ten days following the appointment of the administrator.

## Chapter 7 NON-EXISTENCE OF SUCCESSORS

### 1290. The succession property juristic person

Should it be uncertain whether or not there are any Successors, the succession property shall constitute a juristic person.

### 1291. Appointment of administrator

(1) In cases set out under **Article 1290 (The succession property juristic person)**, the court shall appoint an administrator of the succession property upon the application of an interested person, the head of the *commune* or *sangkat* in which the decedent's last Permanent Residence was located or a public prosecutor.

(2) Upon the appointment of the administrator, the court shall, without delay, give public notice thereof.

### 1292. Rights and duties of administrator

(1) The administrator shall prepare an inventory of the succession property without delay.

(2) The administrator shall carry out the custody and management of the succession property. Should it be deemed necessary for such purpose, the administrator may realize or dispose of the succession property with the permission of the court.

(3) Upon demand by a succession creditor or testamentary donee, the administrator shall provide such person with a report on the condition of the succession property.

(4) The administrator shall perform the matters prescribed in **Article 1282 (Right to refuse to perform claims during the notice period)** through **Article 1288 (Case of claims not presented)** as applied *mutatis mutandis* by paragraph (2) of **Article 1296 (Public notice and peremptory notice**

to creditors).

(5) The administrator shall, upon an order of the court, investigate facts and report the result thereof to the court.

**1293. Remuneration of administrator**

The court may pay reasonable remuneration to an administrator from the succession property, taking into consideration the condition of the succession property and other circumstances.

**1294. Emergence of Successor**

Should it become known that there is a Successor, the succession property juristic person shall be deemed to have never existed. This provided that such shall not affect the validity of acts effected by the administrator within the scope of his/her authority.

**1295. Time for extinguishment of authority of administrator**

(1) The authority of an administrator shall be extinguished upon a Successor accepting the succession.

(2) Should a Successor accept the succession, the administrator must without delay render an account of his/her administration to such Successor.

**1296. Public notice and peremptory notice to creditors**

(1) Should, two months following the public notice prescribed in paragraph (2) of **Article 1291 (Appointment of administrator)**, the existence of a Successor have not been determined, the administrator shall without delay give public notice to all succession creditors and to all testamentary donees to present their claims within a specified period, which shall be no less than two months.

(2) The provisions of paragraph (2) of **Article 1281 (Public notice and peremptory notice)** and **Article 1282 (Right to refuse to perform claims during the notice period)** through **Article 1288 (Case of claims not presented)** shall apply *mutatis mutandis* to cases under paragraph (1).

This provided that the administrator shall not be the purchaser in an auction or sale under **Article 1286 (Realization of succession property)** as applied *mutatis mutandis*.

**1297. Public notice of search for Successor**

(1) Should, even following the expiration of the period prescribed in paragraph (1) of **Article 1296 (Public notice and peremptory notice to creditors)** the existence of a Successor still be unable to be ascertained, the court, upon the application of the administrator or of a public prosecutor, shall give public notice calling upon a Successor, if any, to declare him/herself to be the Successor within a specified period. This shall be no less than six months.

(2) Should there be no prospect of a surplus arising from the succession property, the administrator and public prosecutor shall not be required to make application under paragraph (1).

**1298. Exclusion by public notice**

Should no one declare him/herself to be a Successor within the period prescribed in **Article 1297 (Public notice of search for Successor)**, neither any Successors nor any Obligees of the decedent or testamentary donees who were unknown to the administrator shall be able to exercise their rights.

**1299. Distribution of succession property to person having special connection with decedent**

(1) Should the court deem it fit for cases under **Article 1298 (Exclusion by public notice)**, upon application by a person who has shared his/her livelihood with or devoted himself to the medical treatment and nursing of the decedent, or has otherwise had a special connection with the decedent, the court may confer part of the succession property remaining after liquidation upon such person. This provided that the total amount of property conferred in such way shall not exceed one-half of the remaining succession property.

(2) An application under paragraph (1) shall be made within three

months of the expiration of the period prescribed in **Article 1297 (Public notice of search for Successor)**, and shall include clarification of the grounds for claiming a special connection with the decedent.

(3) In making a distribution under paragraph (1), the court may investigate the relevant facts of such matters. In such case, the court may hear the opinion of the head of the *commune* or *sangkat*.

#### **1300. Reversion of succession property to the state**

Succession property that has not been disposed of under **Article 1299 (Distribution of succession property to person having special connection with decedent)** shall revert to the state. In such case, the administrator shall prepare an account of the administration and submit such to the court.

### **Chapter 8 DEMAND FOR RECOVERY OF SUCCESSION**

#### **1301. Objective of demand for recovery of succession**

A Successor may demand recovery of succession in order to recover the whole or a part of the succession property of which he/she has been deprived of the right to inherit.

#### **1302. Substance of demand for recovery of succession**

(1) A Successor may demand that a person who has acquired the succession property through a succession right that does not actually belong to such person return the Object acquired to the Successor.

(2) An Object that the other party to the demand for recovery of succession has acquired under a contract relating to the succession property may also be the Object of the demand for recovery of succession.

#### **1303. Substance of Obligation to return**

(1) The other party to the demand for recovery shall return the succession property to the Successor who has demanded the same. Should the other party have acquired the Object in good faith, he/she shall be entitled to retain the fruits and interest already received from the

Object, to demand reimbursement of outlays for beneficial expenses of the property, and also to demand reimbursement of succession debts that were discharged.

(2) Should the other party have acquired the Object in bad faith, he/she shall be obliged to return all fruits and interest received from the succession property, and shall have no right to demand reimbursement of succession debts discharged or to demand reimbursement for outlays for the beneficial expenses of the property.

**1304. Extinguishment by prescription of right to demand recovery of succession**

The period for extinguishment by prescription of a right to demand recovery of succession property shall be five years if the succession property has been transferred to other parties to such demand in accordance with a will or partition of the succession property, and five years from the date of death of the decedent in the case of succession by a single Successor.

## **BOOK 9 FINAL PROVISIONS**

**1305. Date to be applicable**

(1) This Law shall be effective from a date to be designated separately by another law.

(2) Items necessary for application of this Law, including transitional measures regarding the application of this Law, shall be determined separately by other laws.