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Decree of the President of the People's Republic of China

No. 62

The Law of the People's Republic of China on Property Rights was adopted by the Fifth Session of the Tenth National People's Congress of the People's Republic of China on 16 March 2007 and is hereby promulgated and shall come into force on 1 October 2007.

Hu Jintao, President of the People's Republic of China

16 March 2007

Property Rights Law of the People's Republic of China

(Adopted at the Fifth Session of the Tenth National

People's Congress on 16 March

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Principles

order to safeguard the basic economic system of the State, maintain the socialist market economic order, clarify the attribution of things, bring into play the usefulness of things, and protect the property rights of right holders.

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Article 2 This Law shall apply to civil relations arising from the ownership and use of things.

The objects referred to in this Law include both immovable and movable property. Where the law provides for rights as objects of property rights, they shall be in accordance with its provisions. The right in rem referred to in this Law refers to the right of the right holder to enjoy direct dominion and exclusivity over a specific object in accordance with the law, including all

Rights, usufructs and security rights.

Article 3 The State shall, at the primary stage of socialism, adhere to the basic economic system in which the public ownership system is the mainstay and the economies of various types of ownership systems develop together.

The State consolidates and develops the public sector economy and encourages, supports and guides the development of the non-public sector economy.

The State implements a socialist market economy and guarantees the equal legal status and development rights of all market players.

Article 4 The property rights of the State, the collective, private individuals and the property rights of other rights holders shall be protected by law and shall not be infringed upon by any entity or individual.

Article 5 The types and contents of property rights shall be prescribed by law.

Article 6 The establishment, alteration, transfer and extinction of rights in real property shall be registered in accordance with the provisions of law. The establishment and transfer of rights in rem in movable property shall be delivered in accordance with the provisions of the law.

Article 7 The acquisition and exercise of property rights shall comply with the law, respect social morality and shall not harm the public interest or the legitimate rights and interests of others.

Article 8 Where other relevant laws have special provisions on property rights, they shall be in accordance with their provisions.

transfer and extinction of

property rights Section I

Registration of

immovable property

Article 9 The creation, change, transfer and extinction of real property rights shall take effect upon registration in accordance with the law; they shall not take effect without registration, except as otherwise provided by law.

Ownership of natural resources that are owned by the State by law may be unregistered.

Article 10 The registration of immovable property shall be handled by the registry office where the immovable property is located.

The State implements a unified registration system for immovable property. The scope of the unified registration, the registration authority and the registration methods are regulated by laws and administrative regulations.

Article 11 The parties applying for registration shall provide proof of ownership and necessary documents such as the boundaries and area of the immovable property according to different registration matters.

Article 12 The registration authority shall perform the following duties.

- (i) Checking proof of ownership and other necessary documents provided by the applicant.
- (ii) questioning the applicant on matters relating to registration.
- (iii) To register matters truthfully and promptly.
- (iv) Other duties as prescribed by laws and administrative regulations.

If the relevant circumstances of the immovable property to be registered require further proof, the registrar may request additional documents from the applicant and, if necessary, may conduct an on-site inspection.

Article 13 The registry shall not do any of the following.

- (i) Requirement for appraisal of immovable property.
- (ii) Duplicate registration in the name of annual inspection, etc.
- (iii) Other acts beyond the scope of registration duties.

Article 14 The establishment, change, transfer and extinction of real property rights, which shall be registered in accordance with the law, shall take effect from the time they are recorded in the real property register.

Article 15 The conclusion of a contract between the parties concerning

the establishment, alteration, transfer and extinction of real property rights shall take effect from the time of the establishment of the contract, unless otherwise provided by law or agreed in the contract; failure to register a property right shall not affect the validity of the contract.

Article 16 The real property register is the basis for the attribution and content of property rights. The register of immovable property is administered by the registration authority.

Article 17 A certificate of title to immovable property is proof that the right holder enjoys the right to the immovable property. The matters recorded in the real estate title certificate shall be consistent with the real estate register; if the records are inconsistent, the real estate register shall prevail unless there is evidence to prove that there is a genuine error in the real estate register.

Article 18 Rights holders and interested parties may apply for searching and copying of registration materials, and the registry shall provide them.

Article 19 If the right holder or interested party considers that the matters recorded in the real property register are wrong, he may apply for correction of the registration. If the right holder recorded in the real estate register agrees in writing to the correction or if there is evidence to prove that the registration is indeed erroneous, the registry shall make the correction.

If the owner of the rights recorded in the real estate register does not agree to the correction, the interested party may apply for the registration of an opposition. If the registrar registers the objection, the objection shall lapse if the applicant does not file a complaint within fifteen days from the date of registration of the objection. Objection Registration

If the improper notation causes damage to the right holder, the right holder may claim damages from the applicant.

Article 20 The parties conclude an agreement on the sale and purchase of houses or other real estate rights in rem, and in order to safeguard the realization of the rights in rem in the future, they may apply to the registration authority for advance registration in accordance with the agreement. If, after the registration of the advance notice, the real estate is disposed of without the consent of the right holder of the advance notice, no effect of property rights shall occur.

If, after the registration of the advance notice, the claim is extinguished or if no application for registration is made within three months from the date when registration of the immovable property is possible, the advance notice shall lapse.

Article 21 Where a party provides false materials to apply for registration and causes damage to others, he shall be liable for compensation.

If damage is caused to another person as a result of a registration error, the registry shall be liable for compensation. After compensation, the registration authority may recover the damages from the person who caused the registration error.

Article 22 Real estate registration fees shall be charged on a piecemeal basis and shall not be charged in proportion to the area, volume or price of the real estate. The specific fees shall be prescribed by the relevant department of the State Council in conjunction with the competent price department.

## Section 2 Delivery of chattels

Article 23 The creation and transfer of rights in movable property shall take effect from the time of delivery, unless otherwise provided by law.

Article 24 The creation, alteration, transfer and extinction of property rights such as ships, aircraft and motor vehicles shall not be allowed against bona fide third parties without registration.

Article 25 Where the right holder has taken possession of the movable property in accordance with the law before the creation and transfer of the movable property right, the right in rem shall take effect from the time the legal act takes effect.

Article 26 Where a third party takes possession of the movable property in accordance with the law prior to its creation and transfer, the person under an obligation to deliver may request the third party to return the

original property by transferring the right to do so in lieu of delivery.  
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Article 27 Where a right in rem in movable property is transferred and the parties further agree that the transferor shall continue to have possession of the movable property, the right in rem shall take effect from the time such agreement takes effect.

### Section 3 Other provisions

Article 28 Where a right in rem is established, changed, transferred or extinguished as a result of a legal instrument of a people's court or arbitration committee or an expropriation decision of the people's government, etc., it shall take effect when the legal instrument or the expropriation decision of the people's government, etc. takes effect.

Article 29 Where a right in rem is acquired by inheritance or bequest, it shall take effect from the commencement of the inheritance or bequest.

Article 30 The establishment or extinction of property rights due to de facto acts such as lawful construction or demolition of houses shall take effect from the time when the de facto acts are accomplished.

Article 31 Where a person enjoys a property right in real estate in accordance with the provisions of Articles 28 to 30 of this Law, the disposal of such property right shall not take effect without registration if registration is required in accordance with the provisions of the law.

### Chapter 3 Protection of the right to property

Article 32 Where the right to property is infringed, the right holder may settle the matter through conciliation, mediation, arbitration or litigation.

Article 33 Where a dispute arises over the attribution or content of a right in rem, the interested party may request confirmation of the right.



Article 34 Where a person is in possession of immovable or movable property without right, the right holder may request the return of the original property.

Article 35 Where a property right is or may be obstructed, the right holder may request the removal of the obstruction or the elimination of the danger.

Article 36 Where damage is caused to immovable or movable property, the right holder may request repair, reworking, replacement or restoration of the original state.

Article 37 Where an infringement of the right to property causes damage to the right holder, the right holder may request compensation for the damage or may request other civil liability.

Article 38 The forms of protection of property rights provided for in this chapter may be applied individually or in combination depending on the circumstances in which the rights are infringed.

In addition to civil liability for infringement of property rights, those who violate administrative regulations shall be held administratively liable in accordance with the law; those who constitute a crime shall be held criminally liable in accordance with the law.

## Title II

### Ownership

#### Chapter 4

#### General

#### Provisions

Article 39 The owner shall have the right to possess, use, benefit and dispose of his immovable or movable property in accordance with law.

The right to a share.

Article 40 An owner has the right to create usufruct and security rights in its own immovable or movable property. The usufructuary or security right holder may not exercise its rights to the detriment of the owner's rights and interests.

Article 41 No unit or individual may acquire ownership of immovable and movable property which is exclusively owned by the State as provided for by law.

Article 42 In order to meet the needs of public interests, collectively owned land and the houses and other immovable properties of units and individuals may be expropriated in accordance with the authority and

procedures prescribed by law.

When land under collective ownership is expropriated, the land compensation fee, resettlement subsidy fee, compensation fee for land attachment and seedlings, etc. shall be paid in full in accordance with the law, and arrangements shall be made for the social security expenses of the peasants whose land is expropriated, so as to protect the livelihood of the peasants whose land is expropriated and safeguard their legitimate rights and interests.

The expropriation of houses and other immovable properties of units and individuals shall be compensated for demolition and relocation in accordance with the law, and the legitimate rights and interests of the expropriated person shall be safeguarded; where individual residences are expropriated, the living conditions of the expropriated person shall also be guaranteed.

No unit or individual shall embezzle, misappropriate, privately divide, retain or default on the collection of compensation fees and other fees.

Article 43 The State shall exercise special protection for arable land, strictly restrict the conversion of agricultural land into land for construction, and control the total amount of land for construction. Collectively owned land may not be expropriated in violation of the authority and procedures prescribed by law.

Article 44 The real estate or movable property of a unit or individual may be requisitioned for emergency needs such as rescue and disaster relief in accordance with the authority and procedures prescribed by law. The requisitioned immovable or movable property shall be returned to the requisitioned person after it has been used. Where the real or movable property of a unit or individual is expropriated or destroyed or lost after expropriation, compensation shall be paid.

#### Chapter 5 State ownership and collective ownership, private ownership

Article 45 Property belonging to the State as provided for by law shall be owned by the State, i.e. by the whole people. The State Council shall exercise ownership of state-owned property on behalf of the State; if otherwise provided by law, in accordance with its provisions. Article 46 Mineral deposits, water currents and sea areas belong to the State.

Article 47 Land in cities shall be owned by the State. Land in the countryside and in the suburbs of cities which is owned by the State as provided by law shall be owned by the State.

Article 48 Natural resources such as forests, mountains, grasslands, wastelands and mudflats shall be owned by the State, except where they are collectively owned as provided by law.

Article 49 Wildlife resources that are owned by the State as provided for by law shall be owned by the State.

Article 50 Radio spectrum resources belong to the State.

Article 51 Cultural relics which are owned by the State as provided for by law shall be owned by the State.

Article 52 Defence assets belong to the State.

Infrastructure such as railways, roads, electric power facilities, telecommunications facilities and oil and gas pipelines are owned by the State if they are owned by the State in accordance with the law.

Article 53 State organs shall have the right to possess, use and dispose of immovable and movable property at their direct disposal in accordance with the law and the relevant provisions of the State Council.

Article 54 The institutions organized by the State shall have the right to possess and use the immovable and movable property at their direct disposal, as well as the right to gain and dispose of them in accordance with the law and the relevant provisions of the State Council.

Article 55 The enterprises financed by the State Council and the local people's governments shall, in accordance with the laws and administrative regulations, perform the duties of financiers and enjoy the rights and interests of financiers on behalf of the State respectively.

Article 56 Property owned by the State is protected by law, and any unit or individual is prohibited from appropriating, looting, privately sharing, intercepting or destroying it.

Article 57 The institutions performing the duties of management and supervision of state-owned property and their staff shall strengthen the management and supervision of state-owned property in accordance with law, promote the preservation and appreciation of state-owned property and prevent losses of state-owned property; those who abuse their powers and neglect their duties, causing losses of state-owned property, shall bear legal responsibility in accordance with law.

Those who violate the regulations on the management of state-owned property, transfer it at a low price, conspire to share it privately, guarantee it without authorization or otherwise cause losses to state-owned property in the process of enterprise restructuring, mergers and demergers,

and connected transactions shall be held legally liable.

Article 58: Collectively owned immovable and movable property includes.

- (i) Land and forests, mountains, grasslands, wastelands and mudflats that are collectively owned under the law.
- (ii) Collectively owned buildings, production facilities and farmland water conservancy facilities.
- (iii) Collectively owned educational, scientific, cultural, health and sports facilities.
- (iv) Other immovable and movable property owned collectively.

Article 59 Real and movable property owned by peasant collectives shall be collectively owned by the members of the collectives.

The following matters shall be decided by the members of the Collective in accordance with legal procedures.

- (i) Land contracting programmes and the contracting out of land to units or individuals other than the collective.
- (ii) Adjustment of contracted land between individual landowners.
- (iii) The method of using and allocating land compensation fees and other costs.
- (iv) Matters such as changes in ownership of collectively funded enterprises.
- (v) Other matters as provided for by law.

Article 60 With regard to collectively owned land and forests, mountains, grasslands, wastelands and beaches, ownership shall be exercised in accordance with the following provisions.

- (i) If owned collectively by village farmers, the village collective economic organization or village committee shall exercise ownership on behalf of the collective.

(ii) If they belong to two or more farmers' collectives within the village, the ownership shall be exercised collectively by the representatives of each such collective economic organization or group of villagers within the village.

(iii) If the property belongs to the collective peasant ownership of the commune, the commune's collective economic organization shall exercise ownership on behalf of the collective.

Article 61 The real and movable property owned by the urban collectives shall, in accordance with the provisions of laws and administrative regulations, be subject to the right of the Collective to possess, use, benefit and dispose of.

Article 62 A collective economic organization or a villagers' committee or group shall publish the status of collective property to the members of the collective in accordance with the laws and administrative regulations as well as the statutes and village rules and regulations.

Article 63 Collectively owned property is protected by law, and any unit or individual is prohibited from appropriating, looting, privately sharing or destroying it.

Where a decision made by a collective economic organisation, a villagers' committee or its head infringes on the lawful rights and interests of a collective member, the aggrieved collective member may request the people's court to revoke it.

Article 64 Private individuals shall have the right to own their lawful income, houses, household goods, means of production, raw materials and other immovable and movable property.

Article 65 The lawful savings and investments of private persons and their earnings shall be protected by law. The State protects the inheritance rights and other lawful rights and interests of private individuals in accordance with the provisions of the law.

Article 66 The lawful property of private individuals is protected by law, and any unit or individual is prohibited from appropriating, looting or destroying it.

Article 67 The State, collectives and private individuals may, in accordance with the law, invest in the establishment of limited liability companies, joint stock companies or other enterprises. Where real or movable property owned by the State, collectives and private persons is invested in an enterprise, the contributors shall, in accordance with the agreement or in

proportion to their capital contribution, enjoy the rights and perform the obligations in respect of the return on assets, major decisions and the choice of business managers.

Article 68 An enterprise legal person shall have the right to possess, use, profit and dispose of its real and movable property in accordance with the laws and administrative regulations and its articles of association.

The provisions of the relevant laws, administrative regulations and statutes shall apply to the rights of legal persons other than enterprise legal persons in respect of their immovable and movable property.

Article 69 The real and movable property owned by social organizations according to law shall be protected by law.

## Chapter 6 Ownership of buildings by owners

Article 70 Owners shall have the right of ownership over the residential and business premises and other exclusive parts of the building, and the right of common ownership and common management over the common parts other than the exclusive parts.

Article 71 Owners shall have the right to occupy, use, benefit from and dispose of the exclusive parts of their buildings. The exercise of the owners' rights shall not endanger the safety of the building or prejudice the legitimate rights and interests of other owners.

Article 72 Owners shall have rights and obligations in respect of the common parts of the building other than the exclusive parts; they shall not fail to perform their obligations by waiving their rights.

When owners transfer their residential and business premises in a building, their rights to common and shared management of the common parts are transferred together.

Article 73 Roads within building zones shall belong to the owners in common, except where they are public roads in towns. Green areas within building zoning districts shall belong to the owners in common, except where they are public urban green areas or where they expressly belong to individuals. Other public places, public facilities and property service rooms within the building zoning district shall be in the common ownership of the owners.

Article 74 Within a building zone, parking spaces and garages planned for the parking of cars shall first meet the needs of owners

To.

Within the building zoning, the ownership of parking spaces and garages planned for parking cars shall be determined by the parties concerned through sale, attachment or

The agreement was made in the form of a lease, etc.

Car parking spaces that occupy roads or other sites shared by owners for the parking of cars are shared by owners.

Article 75 Owners may establish an owners' association and elect an owners' committee.

The relevant departments of the local people's government shall provide guidance and assistance in the establishment of owners' associations and the election of owners' committees.

Article 76 The following matters shall be decided jointly by the owners.

- (i) To establish and amend the rules of procedure for owners' meetings.
- (ii) Making and amending management statutes for buildings and their appurtenances.
- (iii) Election of owners' committees or replacement of members of owners' committees.
- (iv) Selection and dismissal of property service companies or other managers.
- (v) The collection and use of funds for the maintenance of buildings and their appurtenances.
- (vi) Alteration or reconstruction of buildings and their appurtenances.
- (vii) Other significant matters relating to communal and co-management rights.

In deciding the matters specified in the fifth and sixth paragraphs of the preceding paragraph, the consent of the owners of more than two-thirds of the total area of the building and of more than two-thirds of the total number of owners shall be required. In deciding the other matters set out in the preceding paragraph, the consent of the owners of more than half of the total area of the building and of a majority of the total number of owners shall be required.

Article 77 Owners shall not change their residences into business premises in violation of laws, regulations and the management statutes. In addition to complying with laws, regulations and the management statutes, owners who change their residences into business premises shall obtain the consent of the owners who have an interest in the change.

Article 78 The decisions of the owners' general meeting or the owners' committee shall be binding on the owners.

Where a decision made by an owners' meeting or owners' committee infringes on the lawful rights and interests of the owners, the aggrieved owners may request the people's court to revoke it.

Article 79 The funds for the maintenance of buildings and their appurtenances shall belong to the owners in common. It may be used for the maintenance of lifts, water tanks and other common parts by common decision of

the owners. The collection and use of the maintenance funds shall be made public.

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Article 80 Where there is an agreement on matters such as the apportionment of expenses and the distribution of proceeds of buildings and their appurtenant facilities, such matters shall be determined in accordance with the agreement; where there is no agreement or where the agreement is unclear, the proportion of the owner's exclusive part to the total area of the building.

Article 81 Owners may manage their buildings and their ancillary facilities by themselves, or they may entrust the management to property service enterprises or other managers.

The owner has the right to replace the property service enterprise or other manager hired by the construction unit in accordance with the law.

Article 82 Property service enterprises or other managers shall manage the buildings and their appurtenant facilities in the building zones according to the entrustment of the owners, and shall be subject to the supervision of the owners.

Article 83 Owners shall abide by the laws and regulations and the management statutes.

Owners' associations and owners' committees have the right to demand, in accordance with the laws, regulations and management statutes, that the perpetrators stop infringing, eliminate dangers, remove nuisances and compensate for damages for acts such as arbitrary disposal of rubbish, emission of pollutants or noise, keeping animals in violation of regulations, illegal construction, encroachment on passages, refusal to pay property fees and other acts that damage the legitimate rights and interests of others. Owners may bring a lawsuit to the People's Court against acts that infringe their lawful rights and interests in accordance with the law.

## Chapter 7 Adjacency



Article 84 The neighboring rights holders of real estate shall properly handle the neighboring relations in accordance with the principles of favorable production, convenient living, solidarity and mutual assistance, fairness and reasonableness.

Article 85 Where laws and regulations provide for the handling of adjacent relations, they shall be followed; where they do not, they may be followed in accordance with local customs.

Article 86 The owner of real property rights shall provide the necessary facilities for the adjacent rights holders to use water and drainage.

The use of natural flowing water shall be reasonably distributed among the neighbouring rights holders of the immovable property. The discharge of natural flowing water shall respect the natural direction of flow.

Article 87 The owner of the right to immovable property shall provide the necessary facilities to the neighbouring right holders who must use their land for passage, etc.

Article 88 Where the owner of the right to immovable property must use adjacent land or buildings for the construction or repair of buildings and the laying of electric wires, cables, water pipes, heating and gas pipelines, the owner of the right to such land or buildings shall provide the necessary facilities.

Article 89 The construction of buildings shall not violate the relevant national engineering construction standards and obstruct the ventilation, light and daylight of adjacent buildings.

Article 90 Real estate rights holders shall not abandon solid waste, emit harmful substances such as air pollutants, water pollutants, noise, light and electromagnetic wave radiation in violation of state regulations.

Article 91 The excavation of land, the construction of buildings, the laying of pipelines and the installation of equipment by the owner of immovable property rights shall not endanger the safety of adjacent immovable property.

Article 92 Where a real property right holder uses adjacent real property for water, drainage, passage, laying of pipelines, etc., he shall endeavour to avoid causing damage to the adjacent real property right holder; if damage is caused, he shall pay compensation.

#### Chapter 8 Total            There are

Article 93 Real estate or movable property may be held in common by two or more entities or individuals. Shared ownership includes joint tenancy and common ownership.

Article 94 The co-owners shall enjoy ownership of the real or movable property in common in accordance with their shares.

Article 95 The co-owners shall have joint ownership of the real or movable property in common.

Article 96 The co-owners shall manage the immovable or movable property in common in accordance with the agreement; if there is no agreement or if the agreement is unclear, each co-owner shall have the right and obligation to manage.

Article 97 In the case of disposing of real or movable property in common or making major repairs to real or movable property in common, the consent of the co-owners or all the co-owners who account for at least two-thirds of the shares shall be obtained, unless otherwise agreed between the co-owners.

Article 98 Where there is an agreement on the management expenses and other burdens of the common property, they shall be borne in accordance with the agreement; if there is no agreement or if the agreement is unclear, the joint tenants shall bear the burden in accordance with their shares and the joint tenants shall share the burden.

Article 99 Where the co-owners agree not to divide the real or movable property in common in order to maintain the relationship of common ownership, they shall do so in accordance with the agreement, but the co-owners may request such division if they have serious reasons to do so; if there is no agreement or if the agreement is unclear, the co-owners may request such division at any time, and the co-owners may request such division if the basis of common ownership is lost or if they have serious reasons to do so. If the division causes damage to other co-owners, compensation shall be paid.

Article 100 Co-owners may negotiate to determine the manner of partition. If no agreement is reached, the real estate or movable property in common can be divided and the value will not be diminished by the division, it shall be divided in kind; if it is difficult to be divided or the value will be diminished by the division

If the value of the property is not sufficient, the discounted price or the price obtained at auction or sale shall be divided.

If the real or personal property acquired by a co-owner by partition is defective, the other co-owners shall share in the loss.

Article 101 A tenant in common may transfer his or her share of the real or personal property in common. The other co-owners shall have the right of first refusal under the same conditions.

Article 102 In respect of claims and debts arising from real estate or movable property in common, in the external relations, the co-owners shall enjoy joint and several claims and bear joint and several debts, except where otherwise provided by law or where a third party knows that the co-owners do not have joint and several claims and debts; in respect of the internal relations of the co-owners, unless otherwise agreed by the co-owners, the co-owners shall enjoy claims and bear debts in accordance with their shares, and the co-owners shall enjoy joint The co-owners are jointly entitled to claims and debts. A joint tenant who pays more than his share of the debt shall be entitled to recover it from the other joint tenants.

Article 103 Where the co-owners have not agreed on the common ownership of the real or personal property in common, or where the agreement is unclear, the common ownership shall be deemed to be in common unless the co-owners have family relations, etc.

Article 104 Where there is no agreement or where the agreement is unclear, the share of the joint tenant in the real or movable property in common shall be determined in accordance with the amount of the capital contribution; if the amount of the capital contribution cannot be determined, it shall be deemed to be equal.

Article 105 Where two or more entities or individuals share a common usufruct or security right, reference shall be made to the provisions of this Chapter.

#### chapter ix special provisions for acquisition of ownership

Article 106 Where a person without the right of disposition transfers immovable or movable property to a transferee, the owner shall have the right to recover it; unless otherwise provided by law, the transferee acquires ownership of the immovable or movable property if the following circumstances are met.

(i) The transferee was bona fide when he or she transferred the immovable or movable property.

(ii) Transfer at a reasonable price.

(iii) The immovable or movable property transferred has been registered

if it is required to be registered in accordance with the law, or has been delivered to the transferee if it is not required to be registered.

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If the transferee acquires ownership of immovable or movable property in accordance with the preceding paragraph, the original owner shall be entitled to claim damages from the person who has no right of disposition.

Where the parties have acquired other rights in rem in good faith, reference is made to the provisions of the two preceding paragraphs.

Article 107 The owner or other right holder shall have the right to recover the lost property. If the lost property is in the possession of another person through a transfer, the right holder shall have the right to claim damages from the person who has no right of disposition or to claim the return of the original property from the transferee within two years from the date when he knew or should have known of the transferee, provided that if the transferee acquires the lost property through an auction or from an operator with business qualifications, the right holder shall pay the fees paid by the transferee when claiming the return of the original property. The right holder shall be entitled to recover the costs paid by the assignee from the non-disposer.

Article 108 Upon acquisition of movable property by a bona fide transferee, the original right in the movable property shall be extinguished, unless the bona fide transferee knew or should have known of the right at the time of the transfer.

Article 109 The found lost property shall be returned to the rightful owner. The finder shall promptly notify the rightful owner to collect it or deliver it to the public security and other relevant departments.

Article 110 When the relevant department receives the lost property and knows the rightful owner, it shall promptly notify him/her to collect it; if it does not know, it shall promptly issue a notice of solicitation.

Article 111 The finder shall take proper care of the lost property before it is delivered to the relevant department, and the relevant department shall take proper care of the lost property before it is claimed. If the lost property is destroyed or lost due to intent or gross negligence, the person shall bear civil liability.

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Article 112 When the right holder collects the lost property, he shall pay to the finder or the relevant authorities the necessary expenses incurred in keeping the lost property, etc.

If the right holder offers a reward for the search of lost property, he shall perform his obligations as promised when collecting the lost property.

If the finder appropriates the lost property, he is not entitled to claim the expenses incurred in keeping the lost property, etc., nor is he entitled to claim performance of the obligations of the right holder in accordance with the promise.

Article 113 If the lost property is unclaimed within six months from the date of publication of the notice of claim, it shall belong to the State.

Article 114 Where drifting objects are found, or where buried or concealed objects are discovered, reference shall be made to the relevant provisions on the finding of lost and found objects. Where laws such as the Law on the Protection of Cultural Relics provide otherwise, they shall be in accordance with their provisions.

Article 115 Where the principal object is transferred, the subordinate object shall be transferred with the principal object, unless otherwise agreed by the parties.

Article 116 Natural fruits shall be acquired by the owner, or, where there is both an owner and a usufructuary owner, by the usufructuary owner. If the parties have agreed otherwise, they shall do so in accordance with the agreement.

Where the parties have agreed, legal fruits shall be obtained in accordance with the agreement; where there is no agreement or where the agreement is unclear, they shall be obtained in accordance with the custom of the transaction.

title iii

usufructuary

rights chapter

x general

provisions

Article 117 The owner of a usufruct right shall have the right to possess, use and benefit from immovable or movable property owned by another person in accordance with law.

Article 118 Natural resources owned by the State or owned by the State for collective use, as well as those belonging to the collective as provided for by law, may be possessed, used and benefited by units and individuals in accordance with the law.

Article 119 The State shall implement a system for the paid use of natural resources, except where otherwise provided by law.

Article 120 The exercise of the rights of the usufructuary shall comply with the provisions of the law relating to the protection and rational exploitation of resources. The owner shall not interfere with the exercise of the rights of the usufructuary.

Article 121 Where the right of usufruct is extinguished or the exercise of the right of usufruct is affected by the expropriation or requisition of immovable or movable property, the owner of the right of usufruct shall be entitled to receive corresponding compensation in accordance with the provisions of Articles 42 and 44 of this Law.

Article 122 The right to use the sea acquired in accordance with the law shall be protected by law.

Article 123 The rights of prospecting, mining, water extraction and the use of waters and beaches for farming and fishing acquired in accordance with the law shall be protected by law.

## Chapter 11 Land Contracting Rights

Article 124 The rural collective economic organizations shall implement a two-tier management system based on family contract management and a combination of unification and division.

Agrarian, forest and grassland land owned collectively by peasants and by the State for collective use by peasants, as well as other land used for agriculture, are subject to a system of land contract management in accordance with the law.

Article 125 The owner of the right to contract for land management shall enjoy the right to occupy, use and profit from the arable land, forest land and grassland under his contract, and shall have the right to engage in agricultural production such as planting, forestry and animal husbandry in accordance with the law.

Article 126 The contract period for arable land shall be thirty years. The contract period for grassland shall be from thirty years to fifty years. The contract period for forest land shall be from thirty years to seventy years; the contract period for forest land of special forest trees may be extended upon approval by the forestry administrative department under the State Council.

Upon the expiry of the contracting period as stipulated in the preceding paragraph, the land contractor shall continue to contract in accordance with the relevant state regulations.

Article 127 The right to contract for land management shall be established when the contract for land management enters into force.

Local people's governments at or above the county level shall issue land contract management rights certificates, forestry rights certificates and grassland use rights certificates to land contract management rights holders, and register them to confirm land contract management rights.

Article 128 The owner of the right to contract for land management shall, in accordance with the provisions of the rural land contract law, have the right to transfer the right to contract for land management by way of subcontracting, swap or transfer. The term of the transfer shall not exceed the remaining term of the contract period. Contracted land shall not be used for non-agricultural construction without approval in accordance with the law.

Article 129 Where the owner of the right to contract for land swaps or transfers the right to contract for land and the parties concerned request registration, they shall apply to the local people's government at or above the county level for registration of the change in the right to contract for land; without registration, no third party in good faith shall be opposed.

Article 130 The Contractor shall not adjust the contracted land during the contracting period.

In the event that the contracted arable and grassland land needs to be appropriately adjusted due to special circumstances such as severe destruction of contracted land by natural disasters, this shall be done in accordance with the provisions of the Rural Land Contract Law and other laws.

Article 131 The issuer shall not withdraw the contracted land during the contracting period. If the law on rural land contracting and other laws provide otherwise, the provisions shall be followed.

Article 132 Where contracted land is expropriated, the owner of the right to contracted land management shall be entitled to corresponding compensation in accordance with the provisions of paragraph 2 of Article 42 of this Law.

Article 133 The right to contract for rural land, such as wasteland, through bidding, auction or public negotiation, may be transferred, entered

into shares, mortgaged or otherwise circulated in accordance with the Law on  
Rural Land Contracts and other laws and the relevant provisions of the State  
Council.

Property Rights (Decree of the President  
No. 62)

Article 134 Where agricultural land owned by the State is operated

under contract, reference shall be made to the

relevant provisions of this Law. Chapter XII

Right to use land for construction

Article 135 The owner of the right to use land for construction shall have the right to occupy, use and profit from land owned by the State in accordance with law, and shall have the right to use such land for the construction of buildings, structures and their appurtenant facilities.

Article 136 The right to use land for construction purposes may be established separately on the surface, above or below the ground. Newly created rights to use land for construction purposes shall not impair the usufruct rights already created.

Article 137 The right to use land for construction may be established by way of grant or allocation.

If there are more than two potential landowners for industrial, commercial, tourism, entertainment and commercial residential land, and if there are more than two potential landowners for the same land, the land shall be put up for sale by public bidding, such as bidding or auction.

The establishment of the right to use land for construction by way of allocation is strictly restricted. If the allocation method is adopted, the provisions of laws and administrative regulations on land use shall be observed.

Article 138 Where the right to use construction land is established by way of tender, auction or agreement, the parties shall conclude a contract for the grant of the right to use construction land in writing.

Contracts for the grant of construction land use rights generally include the following clauses.

(i) The name and domicile of the party.



- (ii) Land boundaries, areas, etc.
- (iii) Space occupied by buildings, structures and their appurtenances.
- (iv) Land use.
- (v) Duration of use.
- (vi) Fees such as grants and the manner of their payment.
- (vii) Methods of dispute resolution.

Article 139 Where the right to use construction land is established, an application shall be made to the registration authority for registration of the right to use construction land. The right to use construction land shall be established from the time of registration. The registration authority shall issue a certificate of the right to use construction land to the owner of the right to use construction land.

Article 140 The owner of the right to use land for construction shall make reasonable use of the land and shall not change the use of the land; if it is necessary to change the use of the land, it shall be approved by the relevant administrative authorities in accordance with law.

Article 141 The owner of the right to use land for construction shall pay the premium and other fees in accordance with the provisions of the law and the contractual agreement.

Article 142 The ownership of buildings, structures and their appurtenances constructed by the owner of the construction land use right belongs to the owner of the construction land use right, unless there is evidence to the contrary.

Article 143 The owner of the right to use construction land shall have the right to transfer, exchange, contribute to, grant or mortgage the right to use construction land, unless otherwise provided by law.

Article 144 Where the right to use construction land is transferred, exchanged, funded, gifted or mortgaged, the parties shall conclude a corresponding contract in writing. The term of use shall be agreed by the parties, but shall not exceed the remaining term of the right to use the construction land.

Article 145 Where the right to use construction land is transferred, exchanged, contributed to or given away, an application shall be made to the registration authority for registration of the change.

Article 146 Where the right to use land for construction is transferred, exchanged, funded or given away, the buildings, structures and their appurtenances attached to such land shall be disposed of together.

Article 147 Where a building, structure and its appurtenances are transferred, exchanged, funded or given away, the right to use the

construction land within the area occupied by the building, structure and its appurtenances shall be disposed of together.

Property Rights (Decree of the President  
No. 62)

Article 148 Where, before the expiry of the period of the right to use construction land, the public interest requires the early resumption of such land, compensation shall be paid for the houses and other immovable properties on such land in accordance with the provisions of Article 42 of this Law, and the corresponding premium shall be refunded.

Article 149 Where the period of the right to use land for residential construction expires, it shall be automatically renewed.

The renewal of the right to use land for non-residential construction after the expiry of the period shall be handled in accordance with the provisions of the law. Where there is an agreement on the ownership of houses and other real estate on the land, the agreement shall be followed; where there is no agreement or where the agreement is unclear, the matter shall be handled in accordance with the provisions of laws and administrative regulations.

Article 150 Where the right to use construction land is extinguished, the grantor shall promptly apply for cancellation of registration. The registration authority shall withdraw the certificate of the right to use the construction land.

Article 151 Where collectively owned land is used as land for construction, it shall be handled in accordance with the provisions of the Land Administration Law and other laws.

### Chapter 13 - The Right to Use the Homestead

Article 152 The owner of the right to use the residential land shall enjoy the right to occupy and use the land collectively owned by him in accordance with the law, and shall have the right to use the land to build residential houses and their ancillary facilities in accordance with the law.

Article 153 The acquisition, exercise and transfer of the right to use residential land shall be governed by the Land Management Law and other laws and relevant state regulations.

Article 154 Where a residential base is lost due to natural disasters or other reasons, the right to use the residential base shall be extinguished. Villagers who have lost their residential bases shall be reallocated residential bases.

Article 155 Where the right to use a residential base that has been registered is transferred or extinguished, the change of registration or cancellation of registration shall be carried out in a timely manner.

#### Chapter 14 Easements

Article 156 The easement holder shall have the right to use the immovable property of another person, as agreed in the contract, in order to improve the efficiency of his own immovable property.

The real property of another person referred to in the preceding paragraph shall be a servitude, and his own real property shall be a servitude.

Article 157 In establishing an easement, the parties shall conclude a contract for the easement in writing. The easement contract shall normally include the following provisions.

- (i) The name or names and domicile of the parties.
- (ii) The location of the place of service and the place of demand.
- (iii) Purpose and methods of utilization.
- (iv) Duration of utilization.
- (v) Fees and how they are paid.
- (vi) Methods of dispute resolution.

Article 158 An easement is created when the easement contract takes effect. If the parties require registration, they may apply to the registration authority for registration of the easement; without registration, it may not be registered against bona fide third parties.

Article 159 The owner of the right to the easement shall allow the easement holder to use his land as agreed in the contract and shall not obstruct the exercise of the easement holder's rights.

Article 160 The easement holder shall utilize the easement in accordance with the purposes and methods of utilization agreed upon in the contract,

with the least possible restriction on the rights of the person entitled to the easement.

Article 161 The duration of an easement shall be agreed by the parties, but shall not exceed the remaining duration of the usufruct rights such as the right to contract for land and the right to use construction land.

Article 162 Where the owner of land enjoys an easement or is burdened with an easement, when the right to contract for land management or the right to use a residential base is established, the owner of the right to contract for land management or the right to use a residential base shall continue to enjoy or be burdened with the easement that has been established.

Article 163 Where rights such as the right to contract for land management, the right to use construction land or the right to use a residential base have been established on land, the owner of the land may not establish an easement without the consent of the usufructuary.

Article 164 Easement rights shall not be transferred separately. Where the right to contract for land management, the right to use construction land, etc. is transferred, the easement shall be transferred together, unless otherwise agreed in the contract.

Article 165 An easement may not be mortgaged separately. Where the right to contract for land management or the right to use construction land is mortgaged, the easement shall be transferred together with the mortgage when the mortgage is realized.

Article 166 Partial transfer of servitude land and the right to contract for the management of land and the right to use construction land on servitude land

Where the transfer involves an easement in part, the transferee shall also have an easement.

Article 167 When servitude land and the right to contract for land management and the right to use construction land on servitude land are partially transferred, if the transferred part involves an easement, the easement shall be binding on the transferee.

Article 168 The owner of the easement right shall have the right to rescind the easement contract and the easement shall be extinguished if the easement owner.

(i) Abuse of easements in violation of the provisions of the law or contractual agreements.

(ii) for the use of servitude land in return for payment, if the fee is not paid within a reasonable period of time after the expiry of the agreed payment period and after two reminders

Use.

Article 169 Where an easement which has been registered is changed, transferred or extinguished, the change shall be registered or cancelled in a timely manner.

## Title IV

### Security Rights

#### Chapter XV

#### General

#### Provisions

Article 170 The holder of a security interest shall have the right to priority payment in respect of the encumbered property in the event of default by the debtor in the performance of the debt as it falls due or in the event of the realization of the security interest as agreed by the parties, unless otherwise provided by law.

Article 171 Where a creditor, in a civil activity such as lending, buying or selling, needs security to secure the realization of its claim, it may create a security right in rem in accordance with the provisions of this Law and other laws.

Where a third party provides security for the debtor to the creditor, the debtor may be required to provide a counter-guarantee. The provisions of this Act and other laws apply to counter-guarantees.

Article 172 A security right shall be created by concluding a security contract in accordance with the provisions of this Law and other laws. The

security contract is a subordinate contract to the main debt contract. If the main debt contract is invalid, the security contract is invalid, unless otherwise provided by law.

If the debtor, guarantor and creditor are at fault after the security contract is confirmed as invalid, they should each bear the corresponding civil liability according to their fault.

Article 173 The scope of the security right includes the principal claim and interest thereon, liquidated damages, damages for damages, custody of the encumbered property and expenses for the realization of the security right. If the parties have agreed otherwise, they shall follow the agreement.

Article 174 If the secured property is destroyed, lost or expropriated during the guarantee period, the holder of the security right may receive priority in payment of the insurance, indemnity or compensation received. If the performance period of the secured claim has not expired, the insurance, compensation or indemnity may also be withdrawn.

Article 175 Where a third party provides a guarantee and the creditor allows the debtor to transfer all or part of the debt without its written consent, the guarantor shall no longer be liable for the corresponding guarantee.

Article 176 Where the secured claim is secured by both in rem and human security, the creditor shall realize the claim in accordance with the agreement if the debtor fails to perform the debt as it falls due or if the parties agree to realize the security right; if there is no agreement or the agreement is unclear and the debtor provides its own security in rem, the creditor shall first realize the claim in respect of the security in rem; if a third party provides security in rem, the creditor may If a third party provides security in rem, the creditor may realise the claim in respect of the security in rem and may also require the guarantor to assume liability for the guarantee. The third party providing the guarantee is entitled to recover from the debtor after it has assumed liability for the guarantee.

Article 177 A security right is extinguished if.

(i) extinguishment of the principal claim.

(ii) Realization of a security right.

(iii) Waiver by the creditor of the security right.

(iv) In other cases where the law provides for the extinction of a security right.

Article 178 Where there is an inconsistency between the provisions of the Security Law and this Law, this Law shall apply.

## Chapter 16

### Mortgages

#### Section 1

##### General

### Mortgages

Article 179 Where, in order to secure the performance of a debt, the debtor or a third party does not transfer possession of the property and pledges the property to the creditor, the creditor shall be entitled to priority payment in respect of the property if the debtor fails to perform the debt as it falls due or in the event of the realization of the pledge as agreed by the parties.

The debtor or third party under the preceding paragraph is the mortgagee, the creditor is the mortgagee and the property provided as security is the mortgaged property.

Article 180 The following property, which the debtor or a third party has the right to dispose of, may be mortgaged.

(i) Buildings and other land attachments.

(ii) Right to use land for construction.

(iii) Contractual rights to land, such as wasteland, acquired by tender, auction, public negotiation, etc.

(iv) Production equipment, raw materials, semi-finished products and products.

(v) Buildings, ships and aircraft under construction.

(vi) Means of transport.

(vii) Other property not prohibited by law

or administrative regulations from being mortgaged. The mortgagee may mortgage the properties listed in the preceding paragraph together.

Article 181 By written agreement of the parties, enterprises, individual entrepreneurs and agricultural producers may mortgage their existing as well as production equipment, raw materials, semi-finished products and products

that they will have, and if the debtor fails to perform his debts as they fall due or if the circumstances agreed upon by the parties for the realization of the mortgage occur, the creditor shall be entitled to priority payment for the movable assets upon realization of the mortgage.

Article 182 Where a building is mortgaged, the right to use the construction land within the area occupied by the building is also mortgaged. Where the right to use construction land is mortgaged, the building on that land is mortgaged together.

If the mortgagee does not mortgage together in accordance with the preceding paragraph, the unmortgaged property shall be deemed to be mortgaged together.

Article 183 The right to use the construction land of a township or village enterprise shall not be mortgaged separately. Where a mortgage is given on a building such as a factory building of a township or village enterprise, the right to use the construction land within the scope of its occupation is mortgaged together.

Article 184 The following property may not be mortgaged.

- (i) Land ownership.
- (ii) The right to use collectively owned land such as arable land, house bases, self-reserved land and self-reserved hills, except where the law provides for mortgages.
- (iii) Educational facilities, medical and health facilities and other facilities for social welfare of schools, kindergartens, hospitals and other institutions and social organizations for public welfare purposes.
- (iv) Property the ownership or use of which is unknown or disputed.
- (v) Property that has been seized, impounded or placed under custody in accordance with the law.
- (vi) Other properties that are not allowed to be mortgaged under the laws and administrative regulations.



Article 185 In establishing a mortgage, the parties shall conclude a mortgage contract in writing. The mortgage contract shall normally include the following provisions.

- (i) The type and amount of the secured claim.
- (ii) The period of time for the debtor to perform the debt.
- (iii) The name, quantity, quality, condition, location, ownership or right of use of the mortgaged property

Genus.

- (iv) The scope of the guarantee.

Article 186 The mortgagee may not agree with the mortgagor that the mortgaged property shall revert to the creditor in the event of the debtor's failure to perform the debt as it falls due before the expiry of the performance period.

Article 187 Where a mortgage is given on property specified in items 1 to 3 of paragraph 1 of Article 180 of this Law or on a building under construction as specified in item 5, the mortgage shall be registered. The right of mortgage shall be created from the time of registration.

Article 188 Where a mortgage is given on property specified in subparagraphs 4 and 6 of paragraph 1 of Article 180 of this Law or on a ship or aircraft under construction specified in subparagraph 5, the right of mortgage shall be created when the mortgage contract takes effect; without registration, it shall not be effective against bona fide third parties.

Article 189 Where an enterprise, an individual industrial or commercial enterprise or an agricultural production operator mortgages the movable assets specified in Article 181 of this Law, the mortgage shall be registered with the administrative department for industry and commerce of the place of domicile of the mortgagor. The right of mortgage shall be established when the mortgage contract takes effect; without registration, it shall not be effective against bona fide third parties.

A mortgage in accordance with Article 181 of this Law shall not be held against a buyer who has paid a reasonable price and acquired the mortgaged property in the ordinary course of business.

Article 190 Where the mortgaged property has been leased out before the conclusion of the mortgage contract, the original lease relationship shall not be affected by such mortgage. If the mortgaged property is leased out after the creation of the mortgage, the leasing relationship shall not be against the registered mortgage.

Article 191 If, during the mortgage period, the mortgagor transfers the mortgaged property with the consent of the mortgagee, he shall pay off the

debt in advance to the mortgagee or withdraw the money received from the transfer. The portion of the transferred price that exceeds the amount of the claim shall belong to the mortgagor, and the shortfall shall be paid off by the debtor.

During the term of the mortgage, the mortgagor may not transfer the mortgaged property without the consent of the mortgagee, except where the mortgage is extinguished by the assignee in satisfaction of the debt.

Article 192 A mortgage may not be transferred separately from a claim or as security for another claim. Where a claim is transferred, the mortgage securing that claim is transferred together, unless otherwise provided by law or agreed by the parties.

Article 193 Where the mortgagor acts in such a way as to reduce the value of the mortgaged property, the mortgagee shall have the right to demand that the mortgagor cease its acts. If the value of the mortgaged property is reduced, the mortgagee has the right to demand that the value of the mortgaged property be restored or that security corresponding to the reduced value be provided. If the mortgagor does not restore the value of the mortgaged property and does not provide security, the mortgagee is entitled to demand that the debtor pay the debt in advance.

Article 194 The mortgagee may renounce the right of mortgage or the subordination of the right of mortgage. The mortgagee and the mortgagor may agree to change the subordination of the mortgage and the amount of the secured claim, etc., provided that the change of the mortgage shall not adversely affect the other mortgagee without the written consent of the other mortgagee.

If the debtor creates a mortgage on its own property and the mortgagee renounces that mortgage, subordinates the mortgage or changes the mortgage, the other guarantors are relieved of their liability to the extent that the mortgagee loses its priority interest, unless the other guarantors undertake to still provide security.

Article 195 Where the debtor fails to perform the debt as it falls due or where the circumstances agreed upon by the parties for the realization of the mortgage occur, the mortgagee may agree with the mortgagor to receive priority in payment of the discounted value of the mortgaged property or the price obtained from the auction or sale of such mortgaged property. If the agreement is detrimental to the interests of other creditors, the other creditors may request the people's court to revoke the agreement within one year from the date they knew or should have known of the cause of revocation.

If the mortgagee and the mortgagor do not reach an agreement on the manner of realisation of the mortgage, the mortgagee may request the people's court to auction or sell the mortgaged property.

If the mortgaged property is discounted or sold, the market price should be taken into account.

Article 196 Where a mortgage is created in accordance with the provisions of Article 181 of this Law, the mortgaged property is determined from the occurrence of one of the following circumstances.

- (i) The period for performance of the debt has expired and the claim has not been realised.
- (ii) The mortgagor is declared bankrupt or is avoided.
- (iii) The circumstances in which the parties have agreed to realize the mortgage.
- (iv) Other circumstances that seriously affect the realisation of claims.

Article 197 Where the debtor fails to perform his debts as they fall due or the circumstances agreed upon by the parties for the realization of the mortgage right occur, resulting in the mortgaged property being seized by the people's court in accordance with the law, the mortgagee shall be entitled to receive the natural or legal fruits of the mortgaged property from the date of seizure, unless the mortgagee fails to notify the obligor who should settle the legal fruits.

The fruits specified in the preceding paragraph shall first be credited towards the cost of collecting them.

Article 198 After the mortgaged property is discounted or auctioned or sold, the portion of its price exceeding the amount of the claim shall belong to the mortgagor, and the shortfall shall be paid off by the debtor.

Article 199 Where the same property is mortgaged to more than two creditors, the proceeds from the auction or sale of the mortgaged property shall be settled in accordance with the following provisions.

- (a) If the mortgage has been registered, the mortgage shall be satisfied in the order of registration; if the order is the same, the mortgage shall be satisfied in proportion to the claim

Reimbursement.

(ii) A registered mortgage is paid before an unregistered one.  
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(iii) If the mortgage is not registered, it shall be satisfied in proportion to the claim.

Article 200 After the right to use construction land is mortgaged, the new buildings on the land are not part of the mortgaged property. When the mortgage of the right to use the construction land is realised, the additional buildings on the land shall be disposed of together with the right to use the construction land, but the mortgagee shall not be entitled to priority in payment of the price received for the additional buildings.

Article 208 Where the right to contract for land management is mortgaged in accordance with the provisions of paragraph 1(3) of Article 180 of this Law, or where the right to use construction land within the area occupied by the plant and other buildings of a township or village enterprise is mortgaged together in accordance with the provisions of Article 183 of this Law, the nature of the ownership of the land and the use of the land shall not be changed without the statutory procedure after the mortgage is realized.

Article 202 The mortgagee shall exercise the mortgage right during the period of limitation of the main claim; if it fails to do so, the people's court shall not protect it.

## Section 2 Maximum Charges

Article 203 If, in order to secure the performance of an obligation, the debtor or a third party provides security property for claims that are to be incurred consecutively within a certain period of time, and the debtor fails to perform the obligation as it becomes due or if the circumstances agreed upon by the parties for the realization of the mortgage occur, the mortgagee shall be entitled to priority payment on the security property within the limit of the maximum claim.

Claims that existed before the creation of the supreme mortgage may be transferred to the claims secured by the supreme mortgage with the consent of the parties.

Article 204 Where a claim secured by a maximum mortgage is assigned in part before the claim is determined, the right to the maximum mortgage shall not be assigned, unless otherwise agreed by the parties.

Article 205 Before the claim secured by a maximum mortgage is determined, the mortgagee and the mortgagor may change the period during which the claim is determined, the scope of the claim and the maximum claim amount by agreement, provided that the changes do not adversely affect the other mortgagees.

Article 206 The claim of the mortgagee is determined if.

- (i) The expiry of the agreed period for the determination of claims.
- (ii) If there is no agreement on the period for the determination of the claim or the agreement is unclear, the mortgagee or the mortgagor requests the determination of the claim after two years from the date of creation of the maximum mortgage.
- (iii) New claims are unlikely to arise.
- (iv) The mortgaged property has been seized or impounded.
- (v) The debtor or mortgagee has been declared bankrupt or has been avoided.
- (vi) Other circumstances in which claims are determined by law.

Article 207 In addition to the provisions of this section, the provisions of the first section of this chapter on general mortgages shall apply to the maximum mortgages.

## CHAPTER XVII

### PLEDGE OF

#### RI

### GHTS Section I.

#### Pledge of

#### Chattels

Article 208 Where, in order to secure the performance of a debt, the debtor or a third party pledges its movable property to the creditor for possession, the creditor shall be entitled to priority payment in respect of the movable property if the debtor fails to perform the debt as it falls due or if the circumstances agreed upon by the parties for the realization of the

pledge occur.

The debtor or third party under the preceding paragraph is the pledgee, the creditor is the pledgee, and the movable property delivered is the pledged property

Production.

Article 209 Movable property whose transfer is prohibited by law or administrative regulations shall not be pledged.

Article 210 In establishing a pledge, the parties shall conclude a contract of pledge in writing. The contract of pledge shall normally include the following provisions.

- (i) The type and amount of the secured claim.
- (ii) The period of time for the debtor to perform the debt.
- (iii) The name, quantity, quality and condition of the pledged property.
- (iv) The scope of the guarantee.
- (v) The time of delivery of the pledged property.

Article 211 The pledgee shall not agree with the pledgee that the pledged property shall revert to the creditor in the event of the debtor's failure to perform the debt as it falls due before the expiry of the performance period of the debt.

Article 212 The right of pledge is created when the pledgee delivers the pledged property.

Article 213 The pledgee shall be entitled to collect the fruits of the pledged property, unless otherwise agreed in the contract. The fruits stipulated in the preceding paragraph shall first be credited against the costs of collecting the fruits.

Article 214 Where the pledgor uses or disposes of the pledged property without the consent of the pledgee during the existence of the pledge, and causes damage to the pledgee, he shall be liable for compensation.

Article 215 The pledgee shall have the obligation to properly keep the pledged property; if the pledged property is destroyed or lost due to improper storage, he shall be liable for compensation.

If the pledgor's actions may cause the pledged property to be destroyed or extinguished, the pledgee may request the pledgor to withdraw the pledged property, or request the early settlement of the debt and the return of the pledged property.

Article 216 Where the pledged property is likely to be destroyed or its value significantly reduced for reasons not attributable to the pledgee, to the extent that the rights of the pledgee are jeopardized, the pledgee shall have the right to require the pledgor to provide corresponding security; if the pledgor fails to do so, the pledgee may auction or sell the pledged property and agree with the pledgee to settle the debt in advance or withdraw the proceeds from the auction or sale.

Article 217 Where the pledgee, during the existence of the pledge, transfers the pledge without the consent of the pledgee, causing the destruction or loss of the pledged property, he shall be liable to the pledgee for compensation.

Article 218 The pledgee may waive the right of pledge. If the debtor gives a pledge of his own property and the pledgee waives such pledge, the other guarantor shall be relieved of liability for the guarantee to the extent that the pledgee loses his priority interest, except where the other guarantor undertakes to still provide the guarantee.

Article 219 If the debtor fulfills the debt or the pledgee settles the secured claim in advance, the pledgee shall return the pledged property.

In the event that the debtor fails to perform the debt as it falls due or in the event of the realization of the pledge as agreed by the parties, the pledgee may agree with the pledgee to take a discount on the pledged property or to receive priority in payment for the proceeds of the auction or sale of the pledged property.

If the pledged property is discounted or sold, the market price shall be taken into account.

Article 220 The pledgee may request the pledgor to exercise the pledge right in time after the expiry of the debt performance period; if the pledgor fails to exercise it, the pledgee may request the people's court to auction or sell the pledged property.

The pledgee requests the pledgor to exercise the pledge right in a timely manner, and the pledgor shall be liable for any damage caused by the pledgor's negligence in exercising the right.

Article 221 After the pledged property is discounted or auctioned or sold, the portion of its price that exceeds the amount of the claim shall belong to the pledgee, and the debtor shall satisfy the shortfall.

Article 222 The pledgor and the pledgee may agree to create a maximum amount of pledge rights.

In addition to the provisions of this section, the maximum pledge shall be subject to the provisions of Chapter 16, Section 2 of this Act on the maximum mortgage.

Definition.

## Section II. Pledge of rights

Article 223 The following rights, which the debtor or a third person has the right to dispose of, may be pledged.

- (i) Money orders, cheques and promissory notes.
- (ii) Bonds, certificates of deposit.
- (iii) Warehouse receipts, bills of lading.
- (iv) Fund shares, equity interests that are transferable.
- (v) Property rights in intellectual property rights such as registered trademarks, patents and copyrights that are transferable.
- (vi) Accounts receivable.
- (vii) Other property rights that may be pledged under laws and administrative regulations.



Article 224 Where a bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is pledged, the parties shall conclude a written contract. The right of pledge shall be established when the document of right is delivered to the pledgee; if there is no document of right, the right of pledge shall be established when the pledge is registered by the relevant authorities.

Article 225 Where the date of encashment of bills of exchange, cheques, promissory notes, bonds, certificates of deposit, warehouse receipts or bills of lading or the date of withdrawal of goods is prior to the maturity of the principal claim, the pledgee may encash or withdraw the goods and agree with the pledgee to settle the debt in advance or withdraw the encashed price or withdrawn goods.

Article 226 Where shares of a fund or equity interests are pledged, the parties shall enter into a written contract. Where the pledge is made in shares of a fund or equity interests registered with the securities registration and settlement institution, the pledge shall be established when the securities registration and settlement institution registers the pledge; where the pledge is made in other equity interests, the pledge shall be established when the administration for industry and commerce registers the pledge.

Fund shares and equity interests shall not be transferred after pledging, except with the consent of the pledgee and the pledgor. The price received by the pledgee from the transfer of the fund shares or equity interests shall be paid in advance to the pledgee in satisfaction of the debts or withdrawn.

Article 227 Where property rights in registered trademarks, patents, copyrights and other intellectual property rights are pledged, the parties shall conclude a written contract. The right of pledge shall be established upon registration of the pledge by the relevant competent authorities.

After the property rights in intellectual property rights have been pledged, the pledgee may not transfer or license the use of the pledged property rights to others, except with the consent of the pledgee and the pledgor. The price received by the pledgee from transferring or licensing the use of the property rights in the pledged intellectual property shall be paid in advance to the pledgee or withdrawn.

Article 228 Where pledges of accounts receivable are made, the parties shall conclude a written contract. The right of pledge shall be established upon registration of the pledge by the credit reference agency.

Accounts receivable shall not be assigned after they have been pledged, except with the agreement of the pledgee and the pledgor. The price received

by the pledgee from the assignment of the receivables shall be paid in advance to the pledgee in satisfaction of the debt or withdrawn.

Article 229 The provisions of the pledge of rights shall apply, in addition to the provisions of this section, to the provisions of the first section of this chapter on the pledge of movable property.

## Chapter 18 Liens

Article 230 Where the debtor fails to perform his debts as they fall due, the creditor may retain the movable property of the debtor which is already in his lawful possession and shall be entitled to priority in payment in respect of such movable property.

The creditor under the preceding paragraph shall be the lienholder and the movable property in possession shall be the property subject to the lien.

Article 231 A creditor's lien on movable property shall belong to the same legal relationship as the claim, except in the case of an inter-enterprise lien.

Article 232 No lien shall be placed on movable property which is prohibited by law or which the parties have agreed not to place a lien on.

Article 233 Where the property subject to a lien is divisible, the value of the property subject to the lien shall be equal to the amount of the debt.

Article 234 The lienholder shall have the obligation to properly keep the lien property; if the lien property is destroyed or lost due to improper storage, he shall be liable for compensation.

Article 235 The lienholder shall be entitled to collect the fruits of the property subject to the lien. The fruits provided for in the preceding paragraph shall first be credited against the costs of collecting them.

Article 236 The lienholder and the debtor shall agree on the period of performance of the debt after the lien property; if there is no agreement or if the agreement is unclear, the lienholder shall give the debtor a period of more than two months to perform the debt, except for movable assets such as fresh and perishable property which are not easily kept. If the debtor is overdue, the lienholder may agree with the debtor to take a discount on the lien property or to receive priority in payment for the proceeds of the auction or sale of the lien property.

If the property is discounted or sold, the market price shall be taken into account.

Article 237 The debtor may request the lienholder to exercise the lien after the expiration of the debt performance period; if the lienholder does not exercise it, the debtor may request the people's court to auction or sell the lien property.

Article 238 After the lien property is discounted or auctioned or sold, the portion of its price that exceeds the amount of the claim shall belong to the debtor, and the debtor shall satisfy the shortfall.

Article 239 Where a mortgage or a pledge has been created on the same movable property and such movable property is subject to a lien, the lienholder shall be paid in priority.

Article 240 If the lienholder loses possession of the property subject to the lien or if the lienholder accepts another guarantee from the debtor, the lien shall be extinguished.

## Part V. Possession Yes

### Chapter 19 Possession Possession

Article 241 Possession arising from contractual relations, etc., concerning the use, benefit and liability for breach of contract of immovable or movable property, etc., shall be in accordance with the contract; if the contract is silent or unclear, in accordance with the relevant laws.

Article 242 Where a person in possession causes damage to immovable or movable property in possession by using it, the person in bad faith possession shall be liable for compensation.

Article 243 Where real or movable property is possessed by a possessor, the right holder may request the return of the original property and its fruits, but shall pay the necessary expenses incurred by the bona fide possessor in maintaining the real or movable property.

Article 244 Where an immovable or movable property in possession is destroyed or lost and the right holder of such immovable or movable property requests compensation, the possessor shall return to the right holder the insurance money, compensation or indemnity obtained as a result of the destruction or loss; if the damage to the right holder has not been adequately compensated, the person in bad faith possession shall also compensate for the loss.

Article 245 Where immovable or movable property in possession is appropriated, the possessor shall have the right to demand the return of the original property; where the possession is obstructed, the possessor shall

have the right to demand the removal of the obstruction or the elimination of the danger; where damage is caused by the appropriation or obstruction, the possessor shall have the right to demand compensation for damages.

A claim for the return of the original property by the possessor is

extinguished if it is not exercised

within one year from the date on which

the appropriation occurred. Supplementary

Provisions Rules

Article 246 Before the scope of the unified registration of immovable property, the registration agencies and the registration methods are prescribed by laws and administrative regulations, local regulations may make provisions in accordance with the relevant provisions of this Law.

Article 247 This Law shall come into force on October 1, 2007.

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