

# **Civil Code (Part I, Part II and Part III (Tentative translation))**

(Act No. 89 of April 27, 1896)

## **Part I General Provisions**

### **Chapter I Common Provisions**

(Fundamental Principles)

Article 1 (1) Private rights must be congruent with the public welfare.

(2) The exercise of rights and performance of duties must be done in good faith.

(3) Abuse of rights is not permitted.

(Standards for Construction)

Article 2 This Code must be construed so as to honor the dignity of individuals and the essential equality of both sexes.

### **Chapter II Persons**

#### **Section 1 Capacity to Hold Rights**

Article 3 (1) The enjoyment of private rights commences at birth.

(2) Unless otherwise prohibited by applicable laws, regulations, or treaties, foreign nationals enjoy private rights.

#### **Section 2 Mental Capacity**

Article 3-2 If the person making a juridical act did not have mental capacity when manifesting the relevant intention, the juridical act is void.

#### **Section 3 Capacity to Act**

(Age of Majority)

Article 4 The age of majority is reached when a person has reached the age of 18.

(Juridical Acts by Minors)

Article 5 (1) A minor must obtain the consent of the minor's legal representative to perform a juridical act; provided, however, that this does not apply to a juridical act for merely acquiring a right or being released from an obligation.

(2) A juridical act in contravention of the provisions of the preceding paragraph is voidable.

(3) Notwithstanding the provisions of paragraph (1), a minor may freely dispose of property that the legal representative has permitted the minor to dispose of for a specified purpose, to an extent that falls within the scope of that purpose. The same applies if the minor disposes of property that the legal representative has permitted the minor to dispose of without specifying a purpose.

(Permission for Minors to Conduct Business)

Article 6 (1) A minor who is permitted to conduct one or multiple types of business has the same capacity to act as an adult as far as that business is concerned.

(2) In a case as referred to in the preceding paragraph, if there are grounds that make the minor unable to sustain that business, the legal representative may revoke or limit the permission therefor in accordance with the provisions of Part IV (Relatives).

(Decisions for Commencement of Guardianship)

Article 7 The family court may decide to commence a guardianship in respect of a person who constantly lacks the capacity to appreciate the person's own situation due to a mental disorder, at the request of the person in question, that person's spouse, that person's relative within the fourth degree of kinship, the person's guardian of a minor, the person's supervisor of a minor's guardian, the person's curator, the person's curator's supervisor, the person's assistant, the person's assistant's supervisor, or a public prosecutor.

(Adult Wards; Adult Guardians)

Article 8 A person subject to a decision for commencement of guardianship becomes an adult ward, and an adult guardian is appointed for that person.

(Juridical Acts by Adult Wards under Guardianship)

Article 9 A juridical act performed by an adult ward is voidable; provided, however, that this does not apply to the purchase of daily necessities or to any other act involved in day-to-day life.

(Rescission of Decisions for Commencement of Guardianship)

Article 10 If the grounds prescribed in Article 7 cease to exist, the family court must rescind the decision for the commencement of guardianship at the request of the person in question, that person's spouse, that person's relative within the fourth degree of kinship, the guardian (meaning a minor's guardian or an adult guardian; the same applies hereinafter), the guardian's supervisor (meaning the supervisor of a minor's guardian or the adult guardian's

supervisor; the same applies hereinafter), or a public prosecutor.

(Decisions for Commencement of Curatorship)

Article 11 The family court may decide to commence a curatorship in respect of a person whose capacity to appreciate their own situation is extremely inadequate due to a mental disorder, at the request of the person in question, the person's spouse, the person's relative within the fourth degree of kinship, the guardian, the guardian's supervisor, the assistant, the assistant's supervisor, or a public prosecutor; provided, however, that this does not apply to a person in respect of whom a cause set forth in Article 7 exists.

(Persons under Curatorship; Curators)

Article 12 A person subject to a decision for commencement of curatorship becomes a person under curatorship, and a curator is appointed for that person.

(Acts Requiring Consent of Curator)

Article 13 (1) A person under curatorship must obtain the consent of the curator in order to perform any of the following acts; provided, however, that this does not apply to an act provided for in the proviso of Article 9:

- (i) receiving or using any property producing civil fruit;
- (ii) borrowing money or guaranteeing an obligation;
- (iii) performing an act with the purpose of acquiring or losing any right regarding immovables or other significant property;
- (iv) suing any procedural act;
- (v) giving a gift, reaching a settlement, or entering into an arbitration agreement (meaning an arbitration agreement as provided in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003));
- (vi) accepting or renouncing a succession or dividing an estate;
- (vii) refusing an offer of a gift, renouncing a legacy, accepting an offer of gift with burden, or accepting a legacy with burden;
- (viii) constructing a new building, renovating, expanding, or undertaking major repairs;
- (ix) granting a lease for a term that exceeds the period set forth in Article 602;  
or
- (x) performing any of the acts set forth in the preceding items as a legal representative of a person with qualified legal capacity (meaning a minor, adult ward, or person under curatorship or a person under assistance who is subject to a decision as referred to in Article 17, paragraph (1); the same applies hereinafter).

(2) At the request of a person as referred to in the main clause of Article 11 or the curator or curator's supervisor, the family court may decide that the person

under curatorship must also obtain the consent of the curator before performing an act other than those set forth in each of the items of the preceding paragraph; provided, however, that this does not apply to an act provided for in the proviso to Article 9.

- (3) If the curator does not consent to an act for which the person under curatorship must obtain the curator's consent even though it is unlikely to prejudice the interests of the person under curatorship, the family court may grant permission that operates in lieu of the curator's consent at the request of the person under curatorship.
- (4) An act for which the person under curatorship must obtain the curator's consent is voidable if the person performs it without obtaining the curator's consent or a permission that operates in lieu of it.

#### (Rescission of Decisions for Commencement of Curatorship)

Article 14 (1) If the grounds prescribed in the main clause of Article 11 cease to exist, the family court must rescind the decision for the commencement of curatorship at the request of the person in question, that person's spouse, that person's relative within the fourth degree of kinship, the guardian of a minor, the supervisor of a minor's guardian, the curator, the curator's supervisor, or a public prosecutor.

- (2) At the request of a person provided for in the preceding paragraph, the family court may rescind all or part of the decision referred to in paragraph (2) of the preceding Article.

#### (Decisions for Commencement of Assistance)

Article 15 (1) The family court may decide to commence an assistance in respect of a person whose capacity to appreciate their own situation is inadequate due to a mental disorder, at the request of the person in question, that person's spouse, that person's relative within the fourth degree of kinship, the guardian, the guardian's supervisor, the curator, the curator's supervisor, or a public prosecutor; provided, however, that this does not apply to a person with respect to whom there are grounds as prescribed in Article 7 or the main clause of Article 11.

- (2) The issuance of a decision for commencement of assistance at the request of a person other than the person in question requires the consent of the person in question.
- (3) A decision for commencement of assistance must be made concurrent with a decision as referred to in Article 17, paragraph (1) or a decision as referred to in Article 876-9, paragraph (1).

#### (Persons under Assistance; Assistants)

Article 16 A person subject to a decision for commencement of assistance becomes a person under assistance, and an assistant is appointed for that person.

(Decisions Requiring Person to Obtain Consent of Assistant)

Article 17 (1) At the request of the person referred to in the main clause of Article 15, paragraph (1) or the assistant or assistant's supervisor, the family court may decide that the person under assistance must obtain the consent of the person's assistant in order to perform a specific juridical act; provided, however, that the acts that such a decision may establish as those for which the person must obtain the consent of the assistant are restricted to a part of the acts provided for in Article 13, paragraph (1).

(2) In order to decide as referred to in the preceding paragraph at the request of a person other than the person in question requires the consent of the person in question.

(3) If the assistant does not consent to an act for which the person under assistance must obtain the assistant's consent even though it is unlikely to prejudice the interests of the person under assistance, the family court may grant permission that operates in lieu of the assistant's consent, at the request of the person under assistance.

(4) An act for which the person under assistance must obtain the assistant's consent is voidable if the person performs it without obtaining the assistance's consent or a permission that operates in lieu of it.

(Rescission of Decisions for Commencement of Assistance)

Article 18 (1) If the grounds prescribed in the main clause of Article 15, paragraph (1) cease to exist, the family court must rescind the decision for commencement of assistance at the request of the person in question, that person's spouse, that person's relative within the fourth degree of kinship, the guardian of a minor, the supervisor of a minor's guardian, the assistant, the assistant's supervisor, or a public prosecutor.

(2) At the request of a person as prescribed in the preceding paragraph, the family court may rescind all or part of the decision referred to in paragraph (1) of the preceding Article.

(3) If rescinding the decision referred to in paragraph (1) of the preceding Article and the decision referred to in Article 876-9, paragraph (1) in their entirety, the family court must rescind the decision for commencement of assistance.

(Relationship between Decisions)

Article 19 (1) If the family court decides to commence a guardianship and the person in question is a person under curatorship or a person under assistance,

it must rescind the decision for commencement of the curatorship or commencement of assistance respecting that person.

- (2) The provisions of the preceding paragraph apply mutatis mutandis if the court decides to commence a curatorship and the person in question is an adult ward or a person under assistance or if the court decides to commence an assistance and the person in question is an adult ward or a person under curatorship.

(Right to Demand of the Other Party to Dealings Involving a Person with Qualified Legal Capacity)

- Article 20 (1) After a person with qualified legal capacity who is involved in dealings with another party becomes a person with the legal capacity to act (meaning a person whose legal capacity to act is not subject to restrictions; the same applies hereinafter), the other party to those dealings may fix a period of one month or longer and demand that the person give a definite answer within that period of time as to whether the person will ratify an act that the person may rescind. In such a case, if the person fails to send a definite answer within that period of time, the person is deemed to have ratified that act.
- (2) The second sentence of the preceding paragraph also applies if, before the person with qualified legal capacity becomes a person with the legal capacity to act, the other party to dealings involving the person with qualified legal capacity lodges the demand prescribed in the preceding paragraph with the legal representative, curator, or assistant of that person with respect to an act within the scope of their authority, and they fail to send a definite answer within the fixed period of time referred to in that paragraph.
- (3) If a person does not send notice within the period of time set forth in the preceding two paragraphs indicating that the person has completed any special formalities that an act requires, the person is deemed to have rescinded that act.
- (4) The other party to dealings involving a person with qualified legal capacity may lodge a demand with a person under curatorship or with a person under assistance who is subject to a decision as referred to in Article 17, paragraph (1) to demand that the person get the curator or assistant to ratify an act within the fixed period referred to in paragraph (1). In such a case, if the person under curatorship or person under assistance does not send notice within that period indicating that the person has gotten the curator or assistant to ratify the act in question, the person is deemed to have rescinded that act.

(Use of Fraudulent Means by Persons with Qualified Legal Capacity)

Article 21 If a person with qualified legal capacity uses fraudulent means to

induce another person to believe that the person is a person with legal capacity to act, the person may not rescind the act in question.

#### **Section 4 Domicile**

(Domicile)

Article 22 A person's principal place of daily activity is that person's domicile.

(Residence)

Article 23 (1) If a person's domicile is unknown, the person's residence is deemed to be the person's domicile.

(2) If a person does not have a domicile in Japan, the person's residence is deemed to be the person's domicile, regardless of whether the person is a Japanese national or a foreign national; provided, however, that this does not apply if the law of domicile is to be applied in accordance with the provisions of the laws that establish the governing law.

(Temporary Addresses)

Article 24 If a temporary address is selected for an act, that temporary address is deemed to be the domicile as far as that act is concerned.

#### **Section 5 Administration of Absentee Property; Declarations of Disappearance**

(Administration of Absentee Property)

Article 25 (1) If a person who has taken leave of the domicile or residence up until then (hereinafter referred to as an "absentee") has not appointed an administrator for the person's property (hereinafter in this Section referred to simply as an "administrator"), the family court, at the request of an interested person or a public prosecutor, may order the necessary dispositions with regard to the administration of that property. The same applies if the administrator's authority is extinguished during the absence of the absentee.

(2) If an absentee appoints an administrator after an order under the provisions of the preceding paragraph has been issued, the family court must rescind that order at the request of the person's administrator, an interested person, or a public prosecutor.

(Replacing Administrators)

Article 26 If an absentee has appointed an administrator but it is unclear whether the absentee is dead or alive, the family court may replace that administrator with another at the request of an interested person or a public

prosecutor.

(Duties of Administrators)

Article 27 (1) An administrator appointed by the family court pursuant to the provisions of the preceding two Articles must prepare a list of the property that the administrator is to administer. In such a case, the expenses incurred are paid from the property of the absentee.

(2) If it is unclear whether an absentee is dead or alive and an interested person or a public prosecutor so requests, the family court may also order the administrator appointed by the absentee to prepare the list referred to in the preceding paragraph.

(3) Beyond what is provided for in the preceding two paragraphs, the family court may order the administrator to make the dispositions that the court finds to be necessary to preserve the property of the absentee.

(Administrators' Authority)

Article 28 If an administrator needs to perform an act exceeding the authority provided for in Article 103, the administrator may perform that act after obtaining the permission of the family court. The same applies if it is unclear whether the absentee is dead or alive and the administrator needs to perform an act exceeding the authority established by the absentee.

(Provision of Security by and Remuneration of Administrators)

Article 29 (1) The family court may require an administrator to provide reasonable security with respect to the administration and return of the property.

(2) The family court may grant reasonable remuneration to the administrator from the property of the absentee based on the relationship between the administrator and absentee and other circumstances.

(Declarations of Disappearance)

Article 30 (1) If it has been unclear for seven years whether an absentee is dead or alive, the family court may enter a declaration of disappearance at the request of an interested person.

(2) The provisions of the preceding paragraph also apply if it has been unclear whether a person who has entered a war zone, was aboard a vessel that has sunk, or was otherwise exposed to a danger likely to result in a person's death is dead or alive, for one year after the war has ended, the vessel sank, or such other danger has passed.

(Effect of Declarations of Disappearance)

Article 31 A person subject to a declaration of disappearance pursuant to the provisions of paragraph (1) of the preceding Article is deemed to have died when the period of time referred to in that paragraph ended, and a person subject to a declaration of disappearance pursuant to the provisions of paragraph (2) of that Article is deemed to have died when that danger had passed.

(Rescission of Declarations of Disappearance)

Article 32 (1) Having received proof that a missing person is alive or that a missing person died at a time different from the time set forth in the preceding Article, the family court, at the request of the missing person or an interested person, must rescind the declaration of that person's disappearance. In this case, the rescission does not affect the validity of any act performed in good faith after the declaration of disappearance but before the rescission thereof.

(2) A person who has acquired property due to a declaration of disappearance loses the rights in question due to its rescission; provided, however, that the person has the obligation to return that property only to the extent currently enriched.

### **Section 6 Presumption of Simultaneous Death**

Article 32-2 If more than one person dies and it is unclear whether one of them was still alive after the death of another, it is presumed that they all died at the same time.

### **Chapter III Juridical Persons**

(Formation of Juridical Person)

Article 33 (1) No juridical person can be formed unless it is formed pursuant to the provisions of this Code or other laws.

(2) The formation, organization, operation, and management of juridical persons including juridical persons formed for academic activities, art, charity, worship, religion and other public interests, and juridical persons formed for engaging in business for profit are governed by the provisions of this Code and other laws.

(Capacity of Juridical Person)

Article 34 A juridical person has rights and is subject to duties, subject to the provisions of laws and regulations and within the scope of the purpose set forth in its articles of incorporation and other basic.

(Foreign Juridical Person)

- Article 35 (1) With the exception of any state, any administrative division of any state, and any foreign corporation, no formation of a foreign juridical person is approved; provided, however, that, this does not apply to any foreign juridical person which is approved pursuant to the provisions of a law or treaty.
- (2) A foreign juridical person which is approved pursuant to the provision of the preceding paragraph shall possess the same private rights as may be possessed by the juridical person of the same kind which can be formed in Japan; provided, however, that, this shall not apply to any right which may not be enjoyed by a foreign national, or a right for which special provision is made in a law or treaty.

(Registration)

- Article 36 A juridical person and a foreign juridical person are to complete their registration pursuant to the provisions of this Code and other laws and regulations.

(Registration of Foreign Juridical Person)

- Article 37 (1) If a foreign juridical person (limited to the foreign juridical person prescribed in the proviso to Article 35, paragraph (1); hereinafter the same applies in this Article) establishes an office in Japan, the registration of the foreign juridical person must be completed by registering the following matters at the location of the office, within three weeks:
- (i) the law governing the incorporation of the foreign juridical person;
  - (ii) the purpose;
  - (iii) the name;
  - (iv) the address of the office;
  - (v) the duration, if it is specified; and
  - (vi) the name and address of its representative.
- (2) If there is a change in any of the matters set forth in the items of the preceding paragraph, a registration of the change must be completed for within three weeks. In this case, the change may not be asserted against any third party before it is registered.
- (3) If provisional disposition order suspending execution of duties by the representative or appointing a person who will perform those duties on behalf of the representative is issued or a ruling changing or revoking those provisional disposition order is made, the registration thereof must be completed. In this case, the provisions of the second sentence of the preceding paragraph apply *mutatis mutandis*.
- (4) If a matter that must be registered pursuant to the provisions of the preceding two paragraphs arises in a foreign country, the period for

- registration is counted from the day on which the notice thereof reached.
- (5) If a foreign juridical person has established an office in Japan for the first time, a third party may deny the formation of the juridical person until the registration has been completed at the location of the office.
  - (6) If a foreign juridical person relocates its office, the registration of relocation must be completed at the former location within three weeks and the registration of the foreign juridical person must be completed by registering the items of paragraph (1) at the new location within four weeks.
  - (7) If a foreign juridical person relocates its office within the jurisdictional district of the same registry office, it is sufficient to register the relocation.
  - (8) If a representative of a foreign juridical person fails to complete a registration provided for in this Article, the representative is punished by a civil fine of not more than 500,000 yen.

Articles 38 to 84 Deleted

## **Chapter IV Things**

(Definition)

Article 85 The term "things" as used in this Code means tangible objects.

(Immovables and Movable)

Article 86 (1) Land and any fixtures thereto are immovables.

(2) Things other than immovables are movables.

(Principal Things and Appurtenances)

Article 87 (1) If the owner of a first thing attaches a second thing that the owner owns to the first thing to serve the ordinary use of the first thing, the thing that the owner attaches is an appurtenance.

(2) An appurtenance is disposed of together with the principal thing if the principal thing is disposed of.

(Natural Fruits and Civil Fruits)

Article 88 (1) Products obtained from the intended use of a thing are its natural fruits.

(2) Money and other things that may be obtained in exchange for the use of any thing are civil fruits.

(Ownership of Fruits)

Article 89 (1) The ownership of natural fruits is acquired by the person entitled to obtain them when they are separated from the original thing.

- (2) A person acquires civil fruits in proportion to the duration of the right to obtain them, as calculated on a prorated, daily basis.

## **Chapter V Juridical Acts**

### **Section 1 General Provisions**

(Public Policy)

Article 90 A juridical act that is against public policy is void.

(Manifestations of Intention Inconsistent with Default Rules)

Article 91 If a party to a juridical act manifests an intention that is inconsistent with the provisions of laws and regulations that are not related to public policy, that intention prevails.

(Customs Inconsistent with Default Rules)

Article 92 If a custom is inconsistent with the provisions of laws and regulations that are not related to public policy and it is found that the party to the juridical act has the intention to abide by that custom, that custom prevails.

### **Section 2 Manifestations of Intention**

(Mental Reservations)

Article 93 (1) The validity of a manifestation of intention is not impaired even if the person making it does so while knowing that it does not reflect that person's true intention; provided, however, that if the other party knew or could have known that the manifestation was not the true intention of the person who made it, that manifestation of intention is void.

(2) The nullity of a manifestation of intention under the provisions of the proviso to the preceding paragraph may not be duly asserted against a third party in good faith.

(False Manifestations of Intention)

Article 94 (1) A false manifestation of intention that a person makes in collusion with another person is void.

(2) The nullity of a manifestation of intention under the provisions of the preceding paragraph may not be duly asserted against a third party in good faith.

(Mistakes)

Article 95 (1) A manifestation of intention is voidable if it is based on either of the following mistakes, and the mistake is material in light of the purpose of

the juridical act and the common sense in the transaction:

- (i) a mistake wherein the person lacks the intention that corresponds to the manifestation of intention; or
  - (ii) a mistake wherein the person making the manifestation of intention holds an understanding that does not correspond to the truth with regard to the circumstances which the person has taken as the basis for the juridical act.
- (2) A manifestation of intention under the provisions of item (ii) of the preceding paragraph may be rescinded only if it has been indicated that the circumstances in question are being taken as the basis for the juridical act.
- (3) If a mistake is due to gross negligence on the part of the person making the manifestation of intention, that person may not rescind a manifestation of intention as under paragraph (1), except in the following cases:
- (i) if the other party knew, or did not know due to gross negligence, of the mistake on the part of the person making the manifestation of intention; or
  - (ii) if the other party was under the same mistake as the person making the manifestation of intention.
- (4) The rescission of a manifestation of intention under the provisions of paragraph (1) may not be duly asserted against a third party in good faith acting without negligence.

(Fraud or Duress)

- Article 96 (1) A manifestation of intention based on fraud or duress is voidable.
- (2) If a third party commits a fraud inducing a first party to make a manifestation of intention to a second party, that manifestation of intention is voidable only if the second party knew or could have known that fact.
- (3) The rescission of a manifestation of intention induced by fraud under the provisions of the preceding two paragraphs may not be duly asserted against a third party in good faith acting without negligence.

(Timing of Entry into Effect of Manifestations of Intention)

- Article 97 (1) A manifestation of intention becomes effective at the time notice thereof reaches the other party.
- (2) If the other party prevents notice of a manifestation of intention from reaching them without a legitimate reason, the notice is deemed to have reached that party at the time it would have normally reached them.
- (3) The effect of a manifestation of intention is not impaired even if the person making it dies, loses mental capacity, or becomes subject to restrictions on their legal capacity to act after having sent the notice.

(Manifestation of Intention by Public Notice)

- Article 98 (1) A manifestation of intention may be made by means of public

notice if the person making it is unable to ascertain who the other party is or is unable to ascertain the whereabouts thereof.

- (2) Public notice as referred to in the preceding paragraph is effected by a notice being posted in the posting area of the relevant court and an indication that that posting has been made being published in the Official Gazette at least once, in accordance with the provisions of the Code of Civil Procedure (Act No. 109 of 1996) on service by publication; provided, however, that if the court finds it to be suitable, it may order that a notice be posted in the posting area of the city office, ward office, town hall, or any facility equivalent to these in lieu of the relevant information being published in the Official Gazette.
- (3) A manifestation of intention by public notice is deemed to have reached the other party once two weeks have passed since the day when the relevant information was last published in the Official Gazette or once two weeks have passed since the day on which the relevant information started to be posted in lieu of being so published; provided, however, that the effect of a manifestation of intention having reached the other party does not arise if the person making it was negligent in not ascertaining the other party or the whereabouts thereof.
- (4) If the person making a manifestation of intention is unable to ascertain who the other party is, the procedures involved in public notice are under the jurisdiction of the summary court that has jurisdiction over the locality where the person making the manifestation of intention is domiciled; if the person making a manifestation of intention is unable to ascertain the whereabouts of the other party, the procedures involved in public notice are under the jurisdiction of the summary court that has jurisdiction over the locality of the last known domicile of the other party.
- (5) The court must have the person making a manifestation of intention prepay the expenses associated with a public notice.

#### (Capacity to Receive Manifestations of Intention)

Article 98-2 Any person may not assert a manifestation of intention against the other party thereto if that other party had no mental capacity or was a minor or an adult ward at the time of receiving it; provided, however, that this does not apply after either of the following persons learns of the manifestation of intention:

- (i) the legal representative of the other party; or
- (ii) the other party, after that other party's mental capacity has been restored or after that other party has become a person with capacity to act.

### **Section 3 Agency**

(Requirements and Effect of Acts of Agency)

Article 99 (1) A manifestation of intention that an agent makes indicating that they will be making a manifestation of intention on behalf of the principal within the scope of the agent's authority binds the principal directly.

(2) The provisions of the preceding paragraph apply mutatis mutandis to a manifestation of intention that a third party makes to an agent.

(Manifestation of Intention That the Agent Does Not Indicate as Being Made on Behalf of the Principal)

Article 100 A manifestation of intention that an agent makes without having indicated that they will be acting on behalf of the principal is deemed to be one that the agent has made on their own account; provided, however, that if the other party knew or could have known that the agent was acting on behalf of the principal, the provisions of paragraph (1) of the preceding Article apply mutatis mutandis.

(Defects in Acts of Agency)

Article 101 (1) If the validity of a manifestation of intention that an agent has made to the other party is to be influenced by the absence of intention; by mistake, fraud, or duress; or by the knowledge of or negligence in not knowing of a particular circumstance; whether or not any such fact was present is decided as it concerns the agent.

(2) If the validity of a manifestation of intention that the other party has made to the agent is to be influenced by the recipient's knowledge of or negligence in not knowing of a particular circumstance, whether or not any such fact was present is decided as it concerns the agent.

(3) If an agent who has been entrusted with performing a specific juridical act performs that act, the principal may not assert that the agent did not know of any particular circumstance of which the principal knew. The same applies to any circumstance of which the principal did not know due to the principal's own negligence.

(Agent's Capacity to Act)

Article 102 An act that a person with qualified legal capacity performs as an agent of another person may not be rescinded on the grounds of qualified legal capacity; provided, however, that this does not apply to an act performed by a person with qualified legal capacity as a legal representative of another person with qualified legal capacity.

(Authority of an Agent with No Specifically Defined Authority)

Article 103 An agent who has no specifically defined authority has the authority to perform the following acts only:

- (i) acts of preservation; and
- (ii) acts with the purpose of using or improving a thing or right that is the subject matter of the agency, to the extent that this does not change the nature of that thing or right.

(Appointment of Subagents by Agents)

Article 104 An agent appointed by mandate may not appoint a subagent unless the authorization of the principal is obtained or there is a compelling reason to do so.

(Appointment of Subagents by Legal Representatives)

Article 105 A legal representative may appoint a subagent on its own responsibility. In such a case, if there is a compelling reason to do so, the legal representative is only liable to the principal for the appointment and supervision of the subagent.

(Authority of Subagents)

- Article 106 (1) A subagent represents the principal with respect to acts within the scope of the authority thereof.
- (2) A subagent has the same rights and obligations as an agent in relation to the principal and third parties within the scope of that subagent's authority.

(Abuse of Authority to Represent)

Article 107 If an agent performs an act that falls within the scope of that agent's authority to represent for the purpose of benefiting the agent's own interests or the interests of a third party, and the other party knew of or could have ascertained that purpose, that act is deemed to be an act performed by a person without authority to represent.

(Self-Contracting and Representation of Both Parties)

- Article 108 (1) An act that a person performs as an agent of the counterparty or as agent of both parties for the same juridical act is deemed to be an act performed by a person without authority to represent; provided, however, that this does not apply to the performance of an obligation or to an act authorized by the principal in advance.
- (2) Beyond what is provided for in the main clause of the preceding paragraph, an act for which the interest of the agent conflicts with the interest of the principal is deemed to be an act performed by a person without authority to represent; provided, however, that this does not apply to an act authorized by the principal in advance.

(Apparent Authority Due to Indication of Grant of Authority to Represent)

Article 109 (1) A person who indicates to a third party that the person granted certain authority to represent to another person is liable for an act performed between that other person and that third party within the scope of the authority to represent; provided, however, that this does not apply if the third party knew or did not know due to negligence that the other person has not been granted the authority to represent.

(2) If a person who indicates to a third party that the person granted authority to represent to another person is, pursuant to the provisions of the preceding paragraph, liable for acts performed by that other person in relation to the third party within the scope of the authority to represent, and the other person performs in relation to the third party an act beyond the scope of the authority to represent, the person who makes the indication is liable for that act only if the third party has reasonable grounds for believing that the other person has authority to represent in that act.

(Apparent Authority of Act Exceeding Authority)

Article 110 The provisions of the main clause of paragraph (1) of the preceding Article apply *mutatis mutandis* if an agent performs an act exceeding the agent's authority to represent and a third party has reasonable grounds for believing that the agent has the authority as an agent.

(Ground of Extinction of Authority to Represent)

Article 111 (1) The authority to represent ceases to exist upon:

- (i) death of the principal; and
- (ii) death of the agent, or being given an order commencing bankruptcy proceeding or a decision for commencement of guardianship against the agent.

(2) The authority to represent by mandate ceases to exist, other than on the grounds set forth in the respective items of the preceding paragraph, upon the termination of the mandate.

(Apparent Authority After Extinction of Authority to Represent)

Article 112 (1) A person that grants authority to represent to another person is liable towards a third party for an act performed between that other person and the third party within the scope of the authority to represent after the extinction of the authority to represent if that third party does not know the fact that the authority to represent has ceased to exist; provided, however, that this does not apply if the third party does not know due to negligence the fact.

(2) If a person that grants authority to represent to another person is, pursuant

to the provisions of the preceding paragraph, liable for an act performed between that other person and a third party within the scope of the authority to represent after the extinction of that authority to represent, and the other person performs in relation to the third party an act beyond the scope of the authority to represent, the person that grants authority to represent is liable for that act only if the third party has reasonable grounds for believing that the other person has authority to represent for the act.

(Unauthorized Agency)

Article 113 (1) A contract concluded by a person who acts as the agent of another person but has no authority to represent does not bind the principal unless the principal ratifies it.

(2) The ratification or refusal to ratify may not be duly asserted against the counterparty unless it is made to that counterparty; provided, however, that this does not apply if the counterparty has come to know the ratification or refusal to ratify.

(Right to Demand of Counterparty of Unauthorized Agency)

Article 114 In the case referred to in the preceding Article, the counterparty may demand, by specifying a reasonable period of time, that the principal give a definite answer on whether or not the principal will ratify within that period of time. In this case, if the principal fails to give a definite answer within that period, the principal is deemed to have refused to ratify.

(Right to Rescind of Counterparty of Unauthorized Agency)

Article 115 A counterparty may rescind a contract that a person without the authority to represent has concluded until the principal ratifies it; provided, however, that this does not apply if the counterparty knew at the time of the conclusion of the contract that the agent had no authority to represent.

(Ratification of Act of Unauthorized Agency)

Article 116 Ratification is retroactive to the time of the conclusion of the contract unless a particular intention is manifested; provided, however, that this may not prejudice the rights of a third party.

(Liability of Unauthorized Agency)

Article 117 (1) A person who concludes a contract as an agent of another person is liable to the counterparty for the performance of the contract or compensation for loss or damage, as chosen by the counterparty, unless the person proves the authority to represent or the principal ratifies the contract.

(2) The provisions of the preceding paragraph do not apply in the following cases:

- (i) if the counterparty knew that the person who concluded the contract as an agent of the other person had no authority to represent;
- (ii) if the counterparty was negligent in not knowing that the person who concluded the contract as an agent of the other person had no authority to represent; provided, however, that this does not apply if the person who concluded a contract as an agent of the other person knew themselves to have no authority to represent; or
- (iii) if the legal capacity to act of the person who concluded the contract as an agent of the other person was subject to restrictions.

(Unauthorized Agency in Unilateral Juridical Act)

Article 118 With respect to a unilateral juridical act, the provisions of Articles 113 through the preceding Article apply mutatis mutandis only if the counterparty, at the time of the act, either agrees for the person holding themselves out as an agent to act without the authority to represent or does not contest the authority to represent of that person. The same applies if a person does a unilateral juridical act vis-a-vis a person without authority to represent with the consent of that person.

**Section 4 Nullity and Rescission**

(Ratification of Void Acts)

Article 119 A void act does not become effective by ratification; provided, however, that if a party ratifies an act knowing that the act is void, it is deemed that the party did a new act.

(Holder of Right to Rescind)

Article 120 (1) An act that is voidable on the grounds of the qualified legal capacity to act of the person who did the act may be rescinded only by the person with qualified legal capacity (in the case of an act performed by the person as a legal representative of another person with limited capacity, including that other person with limited capacity), or an agent or successor thereof, or a person who has the authority to give consent thereto.

(2) An act that is voidable on the grounds of a mistake, fraud or duress may be rescinded only by the person who made the defective manifestation of intention, or an agent or successor thereof.

(Effect of Rescission)

Article 121 An act that has been rescinded is deemed void ab initio.

(Obligation of Restoration)

Article 121-2 (1) A person that has received payment or delivery as the performance of an obligation based on a void act has an obligation to restore the other party to the original state.

(2) Notwithstanding the provisions of the preceding paragraph, if a person that receives payment or delivery as the performance of an obligation based on a void gratuitous act did not know that the act was void at the time of receiving the payment or delivery (or if the person did not know that the act was voidable at the time of receiving the payment or delivery in the case of an act which is deemed void ab initio pursuant to the provisions of the preceding Article after the receipt of the payment or delivery), has an obligation to return to the extent currently enriched by the act.

(3) Notwithstanding the provisions of paragraph (1), a person who has no mental capacity at the time of performing an act has an obligation to return to the extent currently enriched by the act. The same applies to a person who is a person with qualified legal capacity at the time of performing an act.

(Ratification of Voidable Acts)

Article 122 A voidable act may not be rescinded after the person prescribed in Article 120 ratifies it.

(Method of Voidance and Ratification)

Article 123 If the counterparty to a voidable act is identified, the voidance or ratification of that act is made by the manifestation of intention to the counterparty.

(Requirements for Ratification)

Article 124 (1) The ratification of a voidable act does not become effective unless it is made after the circumstances that made the act voidable cease to exist and the person ratifying the act becomes aware of the right to rescind it.

(2) In the following cases, the ratification referred to in the preceding paragraph is not required to be made after the circumstances that made the act voidable cease to exist:

(i) if a legal representative or a curator or assistant of a person with qualified legal capacity ratifies the act; or

(ii) if a person with qualified legal capacity (excluding an adult ward) makes the ratification with the consent of a legal representative, curator or assistant.

(Statutory Ratification)

Article 125 If, at or after the time when it becomes possible to ratify an act, any of the following facts occur with respect to a voidable act, it is deemed that the

act has been ratified; provided, however, that this does not apply if an objection is reserved:

- (i) full or partial performance;
- (ii) request for the performance;
- (iii) novation;
- (iv) provision of a security;
- (v) assignment of a part of or the whole of a right acquired by the voidable act;  
or
- (vi) compulsory execution.

(Limitation on Period of Right to Rescind)

Article 126 The right to rescind an act is extinguished by the operation of the prescription if it is not exercised within five years from the time when it becomes possible to ratify the act. The same applies if 20 years have passed from the time of the act.

## **Section 5 Conditions and Time Limits**

(Effect of Fulfillment of Conditions)

- Article 127 (1) A juridical act subject to a condition precedent becomes effective upon fulfillment of the condition precedent.
- (2) A juridical act that is subject to a condition subsequent ceases to be effective upon fulfillment of the condition subsequent.
- (3) If the party manifests an intention to make the effects retroactive to the time of or any time prior to the time of the fulfillment, that intention prevails.

(Prohibition of Infringement of Interest of Counterparty Pending Fulfillment of Conditions)

Article 128 While it is uncertain whether or not a condition will be fulfilled, a party to a juridical act that is subject to a condition may not prejudice the other party's interests that would arise from the juridical act upon fulfillment of the condition.

(Disposition of Rights Pending Fulfillment of Conditions)

Article 129 While it is uncertain whether or not a condition will be fulfilled, the rights and obligations of the party concerned may be disposed of, inherited or preserved, or a security may be provided therefor, in accordance with the general provisions.

(Prevention of Fulfillment of Conditions)

Article 130 (1) If a party that would suffer a detriment as a result of the

fulfillment of a condition intentionally prevents the fulfillment of that condition, the counterparty may deem that the condition has been fulfilled.

- (2) If a party who would enjoy a benefit as a result of the fulfillment of a condition wrongfully has that condition fulfilled, the counterparty may deem that the condition has not been fulfilled.

(Fulfilled Conditions)

Article 131 (1) If a condition has already been fulfilled at the time of a juridical act and that condition is a condition precedent, the juridical act constitutes an unconditional juridical act; if that condition is a condition subsequent, the juridical act is void.

- (2) If it has already been established at the time of a juridical act that a condition will not be fulfilled and that condition is a condition precedent, the juridical act is void; if that condition is a condition subsequent, the juridical act constitutes an unconditional act.

- (3) In the cases referred to in the provisions of the preceding two paragraphs, the provisions of Article 128 and Article 129 apply mutatis mutandis until the relevant party becomes aware that the condition has been or has not been fulfilled.

(Unlawful Conditions)

Article 132 A juridical act subject to an unlawful condition is void. The same applies to a juridical act subject to the condition that an unlawful act not be performed.

(Impossible Conditions)

Article 133 (1) A juridical act subject to an impossible condition precedent is void.

- (2) A juridical act subject to an impossible condition subsequent is an unconditional juridical act.

(Potestative Conditions)

Article 134 A juridical act subject to a condition precedent is void if the condition is dependent only upon the intention of the obligor.

(Effect of Arrival of Assigned Time)

Article 135 (1) If a time of commencement is assigned to a juridical act, the performance of that juridical act may not be demanded before the arrival of that assigned time.

- (2) If time of expiration is assigned to a juridical act, that juridical act expires upon the arrival of that assigned time.

(Benefit of Time and Waiver)

Article 136 (1) The time stipulation is presumed to be provided for the benefit of the obligor.

(2) The benefit of time stipulation may be waived; provided, however, that the waiver may not prejudice the interest of the counterparty.

(Acceleration)

Article 137 The obligor may not assert the benefit of time stipulation if:

(i) the obligor has become subject to the order commencing bankruptcy proceeding;

(ii) the obligor has lost, damaged, or diminished the security; or

(iii) the obligor fails to provide security when it has the obligation to do so.

## **Chapter VI Computation of Period of Time**

(Common Rules on Computation of Period of Time)

Article 138 The method of computation of a period of time is governed by the provisions of this Chapter unless otherwise provided in the laws and regulations or a judicial order, or unless otherwise provided for by the relevant juridical act.

(Commencement of Period)

Article 139 When a period is provided for in hours, the period commences immediately at the specified time.

Article 140 When a period is provided for in days, weeks, months, or years, the first day of the period is not included in the computation; provided, however, that this does not apply when the period commences at twelve midnight.

(Expiration of Period)

Article 141 In the case referred to in the preceding Article, the period expires at the end of the last day.

Article 142 If the last day of a period falls on a Sunday, a holiday as provided in the Act on National Holidays (Act No. 178 of 1948), or any other holiday, only when it is customary not to do business on the relevant day, the period expires on the immediately following day.

(Computation of Period with Reference to Calendar)

Article 143 (1) If a period is provided for in weeks, months, or years, the period

is calculated in accordance to the calendar.

- (2) If a period does not commence at the beginning of the week, month, or year, that period expires on the day immediately preceding the day which corresponds to the commencement day in the last week, month or year; provided, however, that if the period is provided for in months or years and the last month does not contain a corresponding day, the period expires on the last day of that month.

## **Chapter VII Prescription**

### **Section 1 General Provisions**

(Effect of Prescription)

Article 144 The prescription is retroactive to the commencement day.

(Invocation of Prescription)

Article 145 The court may not make a judicial decision relying on prescription unless a party (in the case of extinctive prescription, including a guarantor, third-party collateral provider, third party acquirer, or any other person with a legitimate interest in the extinction of a right) invokes it.

(Waiver of Benefits of Prescription)

Article 146 The benefits of the prescription may not be waived in advance.

(Postponement of Expiry of Prescription Period and Renewal of Prescription Period on the Ground of Demand by Litigation)

Article 147 (1) If any of the following grounds exists, the period of prescription does not expire until the ground ceases to exist (if the ground ceases to exist while the right remains undetermined by a final and binding judgment or anything that has the same effect as a final and binding judgment, until six months have passed from the time of cessation):

(i) demand by litigation;

(ii) demand for payment;

(iii) settlement referred to in Article 275, paragraph (1) of the Code of Civil Procedure or mediation under the Civil Conciliation Act (Act No. 222 of 1951) or the Domestic Relations Case Procedure Act (Act No. 52 of 2011); or

(iv) participation in bankruptcy proceeding, rehabilitation proceeding or reorganization proceeding.

- (2) In the case referred to in the preceding paragraph, if a right is determined by a final and binding judgment or anything that has the same effect as a final and binding judgment, a new period of prescription commences to run at the time when the grounds set forth in the items of that paragraph cease to exist;

(Postponement of Expiry of Prescription Period and Renewal of Prescription Period on the Ground of Compulsory Execution)

Article 148 (1) If any of the following grounds exists, the prescription period does not expire until those grounds cease to exist (or until six months after those grounds cease to exist, if they cease to exist due to the withdrawal of a petition or the rescission of a petition for failure to comply with the provisions of the law):

(i) compulsory execution;

(ii) enforcement of a security right;

(iii) auction under the rules of an auction for the enforcement of a security right prescribed in Article 195 of the Civil Execution Act (Act No. 4 of 1979);  
or

(iv) asset disclosure procedure prescribed in Article 196 of the Civil Execution Act or procedure for acquiring information from a third party prescribed in Article 204 of that Act.

(2) In the case referred to in the preceding paragraph, a new period of prescription commences to run at the time when the grounds set forth in the items of that paragraph cease to exist; provided, however, that this does not apply if the grounds cease to exist due to the withdrawal of a petition or the rescission of a petition for the failure to comply with the provisions of the law.

(Postponement of Expiry of Prescription Period on the Ground of Provisional Seizure)

Article 149 If either of the following grounds exists, the prescription period does not expire until six months have passed from the time when the ground ceases to exist:

(i) provisional seizure; or

(ii) provisional disposition.

(Postponement of Expiry of Prescription Period on the Ground of Demand)

Article 150 (1) If a demand is made, the prescription period does not expire until six months have passed since the time of the demand.

(2) A second demand made during the postponement of expiry of the prescription period granted on the ground of the first demand does not have the effect of postponement of expiry of prescription period under the provisions of the preceding paragraph.

(Postponement of Expiry of Prescription Period on the Ground of Agreement on Holding Discussion)

Article 151 (1) If an agreement on holding a discussion concerning a right is

made in writing, the prescription period does not expire until the earliest of the following points in time:

- (i) when one year has passed from the time of the agreement;
  - (ii) if the period during which the parties are to hold a discussion is specified by the agreement (limited to a period less than one year): when that period has expired; or
  - (iii) if one of the parties notifies the other party in writing of refusal to continue the discussion: when six months have passed from the time of the notice.
- (2) If an agreement referred to in the preceding paragraph is made a second time during the postponement of expiry of the prescription period granted pursuant to the provisions of that paragraph, the second agreement has the effect of postponement of expiry of prescription period under the provisions of the preceding paragraph; provided, however, that the period of that effect may not exceed five years in total from the time when the prescription period should have expired had the postponement of expiry of the prescription period not been granted.
- (3) An agreement referred to in paragraph (1) which is made during the postponement of expiry of the prescription period granted on the ground of a demand does not have the effect of postponement of expiry of prescription period under the provisions of that paragraph. The same applies to a demand made during the postponement of expiry of the prescription period granted pursuant to the provisions of that paragraph.
- (4) If an agreement referred to in paragraph (1) is made by means of an electronic or magnetic record (meaning a record used in computerized information processing which is created in electronic form, magnetic form, or any other form that cannot be perceived by the human senses; the same applies hereinafter), the agreement is deemed to have been made in writing and the provisions of the preceding three paragraphs apply thereto.
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the notice referred to in paragraph (1), item (iii).

(Renewal of Prescription Period on the Ground of Acknowledgment)

Article 152 (1) If a right is acknowledged, a new period of prescription commences to run at the time of the acknowledgment.

- (2) With respect to the disposition of the right of the other party, an acknowledgment referred to in the preceding paragraph does not require unlimited capacity to act or authority.

(Scope of Persons Affected by Postponement of Expiry of Prescription Period or Renewal of Prescription Period)

Article 153 (1) The postponement of the expiry of prescription period or the renewal of prescription period under the provisions of Article 147 or Article 148 is effective only between the parties with respect to whom grounds to postpone the expiry of prescription period or to renew prescription period have arisen and their successors.

(2) The postponement of expiry of prescription period under the provisions of Articles 149 through 151 is effective only between the parties with respect to whom grounds to postpone the expiry of prescription period have arisen and their successors.

(3) The renewal of prescription period under the provisions of the preceding Article is effective only between the parties with respect to whom grounds to renew prescription period have arisen and their successors.

Article 154 If the procedure regarding any of the grounds set forth in the items of Article 148, paragraph (1) or the items of Article 149 is not carried out in relation to a person that is to receive the benefit of prescription, it does not have an effect of postponement of expiry of prescription period or renewal of prescription period under the provisions of Article 148 or Article 149 unless the person is notified of it.

Articles 155 through 157 Deleted

(Minor or Adult Ward and Postponement of Expiry of Prescription Period)

Article 158 (1) If a minor or an adult ward has no legal representative during the period of six months preceding the expiration of the period of prescription, the prescription period does not expire with respect to that minor or adult ward until six months pass from the time when that minor or adult ward becomes a person with a capacity to act, or a legal representative assumes the position.

(2) If a minor or an adult ward has a right vis-a-vis the minor's or the adult ward's father, mother, or guardian who manages the property, the prescription period does not expire with respect to that right until six months have passed from the time when that minor or adult ward becomes a person with capacity to act, or a succeeding legal representative assumes the position.

(Postponement of Expiry of Prescription Period of Rights Between Husband and Wife)

Article 159 With respect to rights which the husband or wife has vis-a-vis the other spouse, the prescription period does not expire until six months have passed from the time of the dissolution of their marriage.

(Postponement of Expiry of Prescription Period Regarding Estate)

Article 160 With respect to an estate, the prescription period does not expire until six months have passed from the time when the heir is identified, the administrator is appointed, or commencement of bankruptcy proceeding is ordered.

(Postponement of Expiry of Prescription Period Due to Natural Disaster)

Article 161 If it is impossible to carry out the procedure regarding any of the grounds set forth in the items of Article 147, paragraph (1) or the items of Article 148, paragraph (1) upon the expiration of the period of prescription due to a natural disaster or other unavoidable grave incident, the prescription period does not expire until three months have passed from the time when that impediment ceases to exist.

## **Section 2 Acquisitive Prescription**

(Acquisitive Prescription of Ownership)

Article 162 (1) A person that possesses the property of another for 20 years peacefully and openly with the intention to own it acquires ownership thereof.  
(2) A person that possesses the property of another for 10 years peacefully and openly with an intention to own it acquires ownership thereof if the person was acting in good faith and was not negligent at the time when the possession started.

(Acquisitive Prescription of Property Rights Other Than Ownership)

Article 163 A person that exercises a property right other than ownership peacefully and openly with the intention to do so on the person's own behalf acquires that right after the passage of 20 years or 10 years, according to the distinction provided for in the preceding Article.

(Renewal of Acquisitive Prescription Due to Discontinuation of Possession)

Article 164 The prescription under the provisions of Article 162 is renewed if the possessor discontinues the possession voluntarily or is deprived of that possession by another person.

Article 165 The provisions of the preceding Article apply mutatis mutandis to the case under Article 163.

## **Section 3 Extinctive Prescription**

(Extinctive Prescription of Claims)

Article 166 (1) A claim is extinguished by prescription in the following cases:

- (i) if the obligee does not exercise the right within five years from the time when the obligee came to know that it was exercisable; or
- (ii) if the obligee does not exercise the right within 10 years from the time when it became exercisable.

(2) A claim or property right other than ownership is extinguished by prescription if not exercised within 20 years from the time when the right became exercisable.

(3) The provisions of the preceding two paragraphs do not preclude the commencement of acquisitive prescription for the benefit of a third party that possesses the subject matter of a right with a time of commencement or a right subject to a condition precedent, at the time of commencing the possession; provided, however, that the holder of the right may demand acknowledgment from the possessor at any time to renew the prescription period.

(Extinctive Prescription of Claim for Compensation for Loss or Damage Resulting from Death or Injury to Person)

Article 167 To apply the provisions of paragraph (1), item (ii) of the preceding Article to the extinctive prescription of a claim for damages arising from the death or injury to persons, the phrase "10 years" in that item is deemed to be replaced with "20 years".

(Extinctive Prescription of Claims for Periodic Payments)

Article 168 (1) A claim for periodic payments is extinguished by prescription in the following cases:

- (i) if the obligee does not exercise each claim for the delivery of things such as money arising from the claim for periodic payments within 10 years from the time when the obligee comes to know that each claim is exercisable; or
- (ii) if the obligee does not exercise each claim prescribed in the preceding item within 20 years from the time when it becomes exercisable.

(2) The obligee of periodic payments may require its obligor at any time to issue a written acknowledgment in order to acquire the evidence of the renewal of the prescription period.

(Extinctive Prescription of Right Determined by Judgment)

Article 169 (1) The period of prescription of a right determined by a final and binding judgment or anything that has the same effect as a final and binding judgment is 10 years even if a period of prescription shorter than 10 years is provided for.

(2) The provisions of the preceding paragraph do not apply to a claim which is not yet due and payable at the time when it is determined.

Articles 170 through 174 Deleted

## **Part II Real Rights**

### **Chapter I General Provisions**

(Establishment of Real Rights)

Article 175 No real right may be established other than those prescribed by laws including this Code.

(Creation and Transfer of Real Rights)

Article 176 The creation and transfer of a real right becomes effective solely by the manifestations of intention of the parties.

(Requirements of Perfection of Changes in Real Rights on Immovables)

Article 177 Acquisitions of, losses of and changes in real rights on immovables may not be duly asserted against any third parties, unless the same are registered pursuant to the applicable provisions of the Real Property Registration Act (Act No. 123 of 2004) and other laws regarding registration.

(Requirements of Perfection of Transfer of Real Rights Concerning Movables)

Article 178 The transfer of a real right on movables may not be duly asserted against a third party, unless the movables are delivered.

(Merger of Rights)

Article 179 (1) If ownership and another real right on the same thing are acquired by the same person, the other real right is extinguished; provided, however, that this does not apply if that thing or the other real right is the object of the right of a third party.

(2) If a real right other than ownership and another right for which that real right is the object are acquired by the same person, the other right is extinguished. In this case, the provisions of the proviso to the preceding paragraph apply mutatis mutandis.

(3) The provisions of the preceding two paragraphs do not apply to possessory rights.

## **Chapter II Possessory Rights**

### **Section 1 Acquisition of Possessory Rights**

(Acquisition of Possessory Rights)

Article 180 Possessory rights are acquired by possessing a thing with the

intention to do so on one's own behalf.

(Possession through Agents)

Article 181 Possessory rights may be acquired through an agent.

(Actual Delivery and Summary Delivery)

Article 182 (1) The transfer of possessory rights is effected by the delivery of the thing possessed.

(2) If a transferee or the agent of a transferee is actually holding the thing under possession, the transfer of possessory rights may be effected by the parties' manifestations of intention alone.

(Constructive Transfer with Retention of Possession)

Article 183 If an agent manifests the intention to thenceforward possess a thing under the agent's own possession on behalf of the principal, the principal thereby acquires the possessory rights.

(Transfer of Possession by Instruction)

Article 184 If a thing is possessed through an agent, the principal orders that agent to thenceforward possess that thing on behalf of a third party, and that third party consents thereto, the third party acquires the possessory rights.

(Change in Nature of Possession)

Article 185 If it is assumed, due to the nature of the title, that a possessor does not have the intention to own, the nature of the possessor's possession does not change unless that possessor manifests the intention to own to the person that put the thing under that person's possession, or commences possession under a new title with an intention to own from that time.

(Presumption Regarding Nature of Possession)

Article 186 (1) A possessor is presumed to possess a thing with the intention to own, in good faith peacefully and openly.

(2) If there is evidence of possession at two different points in time, it is presumed that possession continued during that interval.

(Succession to Possession)

Article 187 (1) A successor to a possessor may, as the successor chooses, assert either the successor's own possession only, or the successor's own possession together with that of the predecessor.

(2) If a person asserts the possession of the predecessor together with the person's own, that person also succeeds to defects in the same.

## Section 2 Effect of Possessory Rights

(Presumption of Lawfulness of Rights Exercised with Respect to Possessed Thing)

Article 188 The possessor is presumed to lawfully have the rights that a possessor exercises with respect to the thing under possession.

(Acquisition of Fruits by Possessor in Good Faith)

Article 189 (1) A possessor in good faith acquires fruits derived from the thing under possession.

(2) If a possessor in good faith is defeated in an action on the title that legally supports the possession, that possessor is deemed to be a possessor in bad faith as from the time when the action is filed.

(Return of Fruits by Possessors in Bad Faith)

Article 190 (1) A possessor in bad faith has the obligation to return fruits, and reimburse the price of fruits that the possessor has already consumed, damaged due to negligence, or failed to collect.

(2) The provisions of the preceding paragraph apply mutatis mutandis to a person who takes possession of a thing through assault or duress or through concealment.

(Compensation for Loss or Damage by Possessors)

Article 191 If a possessed thing has been lost or damaged due to grounds attributable to the possessor, a possessor in bad faith is liable to compensate the person recovering the thing for the entire loss or damage, and a possessor in good faith is liable to compensate that person for the loss or damage to the extent currently enriched as a result of that loss or damage; provided, however, that a possessor that is without the intention to own the thing must compensate the person for the entire loss or damage, even if the possessor has acted in good faith.

(Good Faith Acquisition)

Article 192 A person that commences the possession of movables peacefully and openly by a transactional act acquires the rights that are exercised with respect to the movables immediately if the person possesses it in good faith and without negligence.

(Recovery of Stolen or Lost Property)

Article 193 In the cases provided for in the preceding Article, if the possessed

thing constitutes stolen or lost property, the victim or the person that lost the thing may demand the return of that thing from the possessor within two years from the time of the loss or theft.

Article 194 If a possessor has purchased stolen or lost property in good faith at an auction, in a public market, or from a merchant that sells similar things, the victim or the person that lost the thing may not recover the thing without reimbursing the possessor for the price paid.

(Acquisition of Rights through Possession of Animals)

Article 195 A person possessing a non-domestic animal bred by another person acquires the rights to exercise with respect to that animal if the person possessing it was acting in good faith at the beginning of the possession and the owner of the animal does not demand its return from that person within one month from the time when that animal left the possession of its owner.

(Possessors' Claims for Reimbursement of Expenses)

Article 196 (1) If a possessor returns a thing in the possession thereof, the possessor may have the person recovering the thing reimburse the possessor for the costs the possessor has paid for its preservation and other necessary expenses; provided, however, that if the possessor has acquired fruits, ordinary and necessary expenses are borne by the possessor.

(2) With respect to the costs paid for by a possessor to improve the thing in the possession thereof and other beneficial expenses, the possessor may have the person recovering the thing reimburse the possessor for either the costs the possessor has paid or the amount of the increased value, whichever the person recovering the thing chooses, but only if there is a current increase in value; provided, however, that with regard to a possessor in bad faith, the court may, at the request of the person recovering the thing, grant a reasonable period of time for the same.

(Possessory Actions)

Article 197 A possessor may file a possessory action in accordance with the provisions of the following Article through Article 202. The same applies to a person that takes possession on behalf of another person.

(Actions for Maintenance of Possession)

Article 198 If a possessor is obstructed from possession, the possessor may claim for the discontinuation of the obstruction and compensation for loss or damage by filing an action for maintenance of possession.

(Actions for Preservation of Possession)

Article 199 If a possessor is likely to be obstructed from possession, the possessor may demand either the prevention of the obstruction or for the submission of security for the compensation for loss or damage by filing an action for preservation of possession.

(Actions for Recovery of Possession)

Article 200 (1) If a possessor is forcibly dispossessed, the possessor may demand the restitution of the thing and compensation for loss or damage by filing an action for recovery of possession.

(2) An action for recovery of possession may not be filed against a specific successor of a person that forcibly takes possession; provided, however, that this does not apply if that successor had knowledge of the fact that the person has unlawfully taken the possession.

(Periods of Time for Filing Possessory Actions)

Article 201 (1) An action for maintenance of possession must be filed during the obstruction or within one year after the obstruction stops; provided, however, that if the possessed thing has been damaged due to construction work and either one year has passed from the time when the construction was started or the construction has been completed, the action may not be filed.

(2) An action for preservation of possession may be filed so long as the danger of obstruction exists. In this case, the provisions of the proviso to the preceding paragraph apply mutatis mutandis if the possessed thing is likely to be damaged by the construction work.

(3) An action for recovery of possession must be filed within one year from the time when a possessor was forcibly dispossessed.

(Relationship with Actions on Title)

Article 202 (1) A possessory action does not preclude an action on title that legally supports the possession, and an action on title does not preclude a possessory action.

(2) With respect to possessory actions, no judicial decision may be made on grounds relating to title that legally supports the possession.

### **Section 3 Extinction of Possessory Rights**

(Grounds for Extinction of Possessory Rights)

Article 203 Possessory rights are extinguished when the possessor renounces the intention to possess, or loses possession of the possessed thing; provided, however, that this does not apply if the possessor files an action for recovery of

possession.

(Grounds for Extinction of Agent's Possessory Rights)

Article 204 (1) If a person possesses a thing through an agent, possessory rights are extinguished on the grounds set forth below:

- (i) renunciation by the principal of intention to have agent possess;
- (ii) manifestation of intention to the principal of an agent to hold the thing possessed on behalf of the agent itself or a third party; or
- (iii) the agent has ceased to hold the thing possessed.

(2) Possessory rights are not extinguished solely as a result of the extinction of the authority to represent.

#### **Section 4 Quasi-Possession**

Article 205 The provisions of this Chapter apply mutatis mutandis if a person exercises their property rights with the intention to do so on their own behalf.

### **Chapter III Ownership**

#### **Section 1 Extent of Ownership**

##### **Subsection 1 Content and Scope of Ownership**

(Content of Ownership)

Article 206 An owner has the rights to freely use, profit from and dispose of the thing owned, within the limits of laws and regulations.

(Scope of Ownership in Land)

Article 207 Ownership in land extends to above and below the surface of the land, within the limits of laws and regulations.

Article 208 Deleted

##### **Subsection 2 Neighboring Relationships**

(Use of Neighboring Land)

Article 209 (1) An owner of land may use the neighboring land to the extent necessary for the following purposes; provided, however, that the owner may not enter the dwelling house of the resident without the approval of the resident:

- (i) construction, removal or repair of barriers, buildings or other structures at or near the boundary;
- (ii) investigation of boundary markers or surveying concerning boundaries; or

- (iii) cutting of branches pursuant to the provisions of Article 233, paragraph (3).
- (2) In the case referred to in the preceding paragraph, the date and time, place, and method of use is to be chosen so as to cause the least damage to the owner of the neighboring land and to the person who is actually using the neighboring land (hereinafter referred to as "user of the neighboring land" in this Article).
- (3) A person who uses the neighboring land pursuant to the provisions of paragraph (1) must notify the owner and user of the neighboring land in advance of the purpose, date and time, place, and method of the use; provided, however, that if it is difficult to give notice in advance, it is sufficient to give notice without delay after starting the use.
- (4) In the case referred to in paragraph (1), if the owner or user of the neighboring land suffers damages, they may claim compensation.

(Right-of-Way over Other Land for Access to Public Roads)

- Article 210 (1) An owner of land that is surrounded by other land and has no access to a public road may pass through the other land that surrounds that owner's land to reach a public road.
- (2) The preceding paragraph also applies if an owner cannot reach a public road without passing over a pond, lake, river, waterway, or sea, or if there is an extreme difference in height between the land and the public road on account of a cliff.

- Article 211 (1) In the cases referred to in the preceding Article, the location and method of passage must be chosen so as to meet the needs of the person that is entitled to the right-of-way under the provisions of that Article and cause the least damage to the other land.
- (2) A person that holds the right-of-way under the provisions of the preceding Article may construct a road if necessary.

Article 212 A person that is entitled to the right-of-way under the provisions of Article 210 must pay compensation for damage caused to the other land that the same person passes through; provided, however, that except for damage arising from the construction of a road, compensation may be paid on an annual basis.

- Article 213 (1) If the partition of land creates a parcel of land that has no access to public roads, the owner of that parcel of land may pass to the public roads only through the lands owned by another person that participated in the partition. In this case, it is necessary to pay compensation.
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* if the owner of land transfers part of the land to another person.

(Right to Install Facilities for Receiving Continuous Supply)

Article 213-2 (1) If an owner of land is unable to receive electricity, gas or tap water supply or any other continuous supply equivalent thereto (hereinafter referred to as "continuous supply" in this paragraph and paragraph (1) of the following Article) without installing facilities on other land or using facilities owned by another person, the owner of land may install facilities on the other land or use facilities owned by the other person to the extent necessary to receive continuous supply.

(2) In the case referred to in the preceding paragraph, the place and method of installation or use of the facilities are to be chosen so as to cause the least damage to other land or facilities owned by the other person (referred to as "other land, etc." in the following paragraph).

(3) A person who installs facilities on other land or uses facilities owned by another person pursuant to the provisions of paragraph (1) must notify in advance the owner of other land, etc. and the person who is actually using the other land of the purpose, place and method of the installation or use.

(4) In order to install facilities on other land or to use facilities owned by another person pursuant to the provisions of the same paragraph, a person who has the right pursuant to the provisions of paragraph (1) may use the other land in question or the land on which the facilities owned by the other person in question are located. In this case, the provisions of the proviso to paragraph (1), and paragraphs (2) to (4) of Article 209 apply mutatis mutandis.

(5) A person who installs facilities on other land pursuant to the provisions of paragraph (1) must pay compensation for damage (excluding damage prescribed in Article 209, paragraph (4) as applied mutatis mutandis in the preceding paragraph) to the other land in question; provided, however, that the compensation may be paid annually.

(6) A person who uses facilities owned by another person pursuant to the provisions of paragraph (1) must pay compensation for damage caused by actions taken in order to start using the facilities.

(7) A person who uses, pursuant to the provisions of paragraph (1), facilities owned by another person must bear the costs required for installation, reconstruction, repair and maintenance of the facilities in proportion to the benefits received.

Article 213-3 (1) If the partition of land creates a parcel of land that cannot receive continuous supply without installing facilities on other land, an owner of the land may, in order to receive continuous supply, install facilities only on other land owned by a person who participated in the partition. In this case, the provisions of paragraph (5) of the preceding Article do not apply.

(2) The provisions of the preceding paragraph apply mutatis mutandis if an owner of land has transferred a part of the land to another person.

(Prohibition of Obstruction of Natural Water Streams)

Article 214 A landowner may not interfere with a natural water stream flowing from a neighboring land.

(Removal of Impediments to Water Streams)

Article 215 If a stream is blocked at low-lying ground due to a natural disaster or other unavoidable grave incident, an owner of a higher land may carry out construction work necessary to remove the impediment to the stream at that owner's own expense.

(Repairs of Structures Related to Streams)

Article 216 If a land suffers or is likely to suffer damage due to destruction or blockage of a structure installed on other land to store, discharge or draw water, the owner of that land may have the owner of that other land repair the structure or remove the impediments, or, if necessary, have the same carry out preventive construction work.

(Customs with Respect to Allocation of Expenses)

Article 217 In the cases provided for in the preceding two Articles, if there are other customs with respect to the allocation of expenses, those customs prevail.

(Prohibition of Installation of Structures That Discharge Rainwater to Neighboring Lands)

Article 218 A landowner may not install a roof or other structures that discharge rainwater directly onto neighboring land.

(Changes to Streams)

Article 219 (1) An owner of a channel, moat, or other such land containing a stream may not change the course or width of the same if the land on the other side is owned by another person.

(2) If the land on both sides of a stream is owned by the owner of the land containing the stream, that owner may change the course or the width of the same; provided, however, that the owner must return the stream to its natural course at the point where the stream meets a neighboring land.

(3) If there are customs that differ from the provisions of the preceding two paragraphs, those customs prevail.

(Running Water through Lower Ground for Discharge)

Article 220 An owner of a higher land may run water through lower lands to dry out that owner's higher land if that land is flooded, or to discharge surplus water for household or agricultural or industrial use until the water meets a public stream or sewerage system. In these cases, the location and method that cause the least damage to the lower ground must be selected.

(Use of Structures to Direct Water)

Article 221 (1) A landowner may use a structure installed by the owner of higher or lower land in order to cause water from the landowner's land to pass through that land.

(2) In the cases referred to in the preceding paragraph, the person using the other person's structure must bear the expenses of the installation and preservation of the structure in proportion to the benefit that person enjoys.

(Construction and Use of Dams)

Article 222 (1) If an owner of land containing a stream needs to construct a dam, that owner may construct that dam by fixing it to the other side even if the land on the other side is owned by another person; provided, however, that the owner must pay compensation for damage arising as a result.

(2) The owner of land on the other side of a dam may use the dam referred to in the preceding paragraph if that owner owns part of the land containing the stream.

(3) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to the cases referred to in the preceding paragraph.

(Installation of Boundary Markers)

Article 223 A landowner may install boundary markers, sharing the expenses with the owner of the neighboring land.

(Expenses of Installation and Preservation of Boundary Markers)

Article 224 The expenses of installation and preservation of boundary markers are borne equally by neighbors; provided, however, that measuring expenses are borne in proportion to the area of each land.

(Installation of Fences)

Article 225 (1) If two buildings are owned by different owners and there is an open lot between them, each owner may install a fence on the boundary, sharing the expenses with the other owner.

(2) If no agreement is reached between the parties, the fence referred to in the preceding paragraph must be a wooden fence, a bamboo fence or a fence made of similar material and must be two meters high.

(Expenses of Installation and Preservation of Fences)

Article 226 The expenses of installation and preservation of the fences under the preceding Article are borne equally by the neighbors.

(Installation of Fences by One of Neighbors)

Article 227 One of neighboring owners may install a fence using materials better than those provided for in Article 225, paragraph (2) or elevating the height provided for under that paragraph; provided, however, that the relevant owner must bear the increase in expenses arising as a result of the same.

(Customs Relating to Installation of Fences)

Article 228 If there are customs that differ from the provisions of the preceding three Articles, those customs prevail.

(Presumption of Co-Ownership of Boundary Markers)

Article 229 Boundary markers, fences, walls, channels and moats installed on boundary lines are presumed to be co-owned by the neighbors.

Article 230 (1) The provisions of the preceding Article do not apply to a wall on a boundary line that constitutes part of a building.

(2) If the height of a wall that separates two neighboring buildings of different heights is higher than the height of the lower building, the preceding paragraph also applies with respect to that portion of that wall that is higher than the lower building; provided, however, that this does not apply to fire walls.

(Construction Work Raising Height of Co-Owned Walls)

Article 231 (1) One of neighboring owners may raise the height of a co-owned wall; provided, however, that if the wall cannot withstand the construction work, the relevant owner must reinforce that wall as necessary or rebuild the same at the owner's own expense.

(2) If the height of a wall is raised pursuant to the provisions of the preceding paragraph, the raised portion is owned solely by the owner that carried out the construction work.

Article 232 In the cases provided for in the preceding Article, if a neighbor suffers damage, that neighbor may claim compensation for the same.

(Cutting of Branches and Roots of Trees and Bamboo)

Article 233 (1) If a tree or bamboo branch from neighboring land crosses a

boundary line, the landowner may have the owner of that tree or bamboo sever that branch.

- (2) In the case referred to in the preceding paragraph, if the tree or bamboo belongs to several co-owners, any of the co-owners may cut off the branch.
- (3) In the case referred to in paragraph (1), an owner of land may cut off the branch in the following cases:
  - (i) when the owner of the tree or bamboo does not cut off the branch within a reasonable period of time despite receiving a notice requesting the owner to do so;
  - (ii) when identity of the owner of the tree or bamboo cannot be ascertained, or the owner's whereabouts cannot be ascertained;
  - (iii) when there are pressing circumstances.
- (4) If a tree or bamboo root from neighboring land crosses a boundary line, the owner of the land may sever that root.

(Restrictions on Buildings Near Boundary Lines)

Article 234 (1) In order to construct a building, the building must be distanced 50 centimeters or more away from the boundary line.

- (2) If a person attempts to construct a building in violation of the provisions of the preceding paragraph, the owner of the neighboring land may have the construction suspended or changed; provided, however, that if one year passes from the time when that construction started or if that building is completed, the owner may only claim compensation for loss or damage.

Article 235 (1) A person that installs a window or porch (hereinafter in this and the following paragraph including a veranda) at a distance of less than one meter from a boundary line allowing the observation of the residential land of another person must put up a privacy screen.

- (2) The distance referred to in the preceding paragraph is calculated by measuring the length of a straight line from the point on the window or porch closest to the neighboring land, to where it reaches the boundary line at a right angle.

(Customs Relating to Construction Near Boundary Lines)

Article 236 If there are customs that differ from the provisions of the preceding two Articles, those customs prevail.

(Restrictions on Digging Near Boundary Lines)

Article 237 (1) In order to dig a well, service water pit, sewage pit or compost pit, the same must be distanced two or more meters from the boundary line, and in order to dig a pond, cellar or human waste pit, the same must be distanced one

or more meters from the boundary line.

- (2) In order to bury water pipes, or dig a channel or moat, the same must be distanced from the boundary line by a measurement equivalent to at least half the depth of the same; provided, however, that the distance is not required to be exceeding one meter.

(Duty of Care Regarding Digging Near Boundary Lines)

Article 238 When carrying out a construction referred to in the preceding Article near a boundary line, necessary care must be taken to ensure the prevention of earth collapses or leakages of water or contaminated liquids.

## **Section 2 Acquisition of Ownership**

(Ownership in Ownerless Property)

Article 239 (1) Ownership of movables without an owner are acquired by possessing the same with the intention to own.

(2) Ownerless immovables belong to the National Treasury.

(Finding of Lost Property)

Article 240 If the owner of lost property is not identified within three months of the time when public notice thereof is effected as prescribed by the Lost Property Act (Act No. 73 of 2006), the person who found the lost property acquires ownership of the same.

(Discovery of Buried Things)

Article 241 If the owner of a buried thing is not identified within six months of the time when public notice thereof is effected as prescribed by the Lost Property Act, the finder acquires ownership of the same; provided, however, that with respect to a buried thing discovered inside a thing that belongs to another person, the finder and that other person acquire equally proportionate ownership of that buried thing.

(Accession to Immovables)

Article 242 The owner of immovables acquires ownership of a thing that has been attached thereto as its appurtenance; provided, however, that the rights of the other person that attached that thing by virtue of a title are not prejudiced.

(Accession to Movables)

Article 243 If two or more movable properties with different owners can no longer be separated without damage due to accession, the ownership of the

composite thing belongs to the owner of the principal movable property. The same applies if excessive expense is required to separate the movables.

Article 244 If the distinction of principal and accessory cannot be made between the movables united by accession, the owner of each movable property co-owns the composite thing in proportion to the respective price current at the time of the accession.

(Mixture)

Article 245 The provisions of the preceding two Articles apply *mutatis mutandis* if the things of different owners are mixed together and can no longer be distinguished.

(Processing)

Article 246 (1) If a person (hereinafter in this Article referred to as "processor") adds labor to another person's movables, the ownership of the processed thing belongs to the owner of the material; provided, however, that if the value derived from the work significantly exceeds the value of the material, the processor acquires ownership of the processed thing.

(2) In the cases prescribed in the preceding paragraph, if the processor provides a portion of the materials, the processor acquires ownership of the processed thing only if the value of provided materials added to the value derived from the labor exceeds the value of the other person's materials.

(Effect of Accession, Mixture or Processing)

Article 247 (1) If the ownership of a thing is extinguished pursuant to the provisions of Article 242 through the preceding Article, other rights existing on that thing are also extinguished.

(2) In the cases prescribed in the preceding paragraph, if the owner of a thing has become the sole owner of the thing formed by accession or appurtenance, mixture or processing (hereinafter in this paragraph referred to as "composite thing"), other rights existing on that thing thereafter exist on the composite thing, and if the owner of the thing becomes a co-owner of the composite thing, other rights existing on that thing thereafter exist on that owner's interest in the same.

(Demands for Compensation for Accession, Appurtenance, Mixture or Processing)

Article 248 A person that suffers loss because of the application of the provisions of Article 242 through the preceding Article may demand compensation in accordance with the provisions of Article 703 and Article 704.

### Section 3 Co-Ownership

#### (Use of Property in Co-Ownership)

Article 249 (1) Each co-owner may use the entire property in co-ownership in proportion to each co-owner's interest.

(2) Unless otherwise agreed, a co-owner who uses the property in co-ownership is obligated to reimburse other co-owners for the use of the property in co-ownership in excess of the co-owner's ownership share.

(3) A co-owner must use the property in co-ownership with the due care of a prudent manager.

#### (Presumption of Proportion of Co-Ownership Interests)

Article 250 Each co-owner's interest is presumed to be equal.

#### (Changes to Property in Co-Ownership)

Article 251 (1) No co-owner may make changes (excluding those that do not involve extreme changes to the shape or function; the same applies in the following paragraph) to the property in co-ownership without the consent of the other co-owners.

(2) If a co-owner is unable to ascertain the identity of another co-owner or his/her whereabouts, the court may, at the request of the co-owner, render a judicial decision to the effect that changes may be made to the property in co-ownership with the consent of the co-owners other than the other co-owner in question.

#### (Management of Property in Co-Ownership)

Article 252 (1) Matters regarding the management of property in co-ownership (including the appointment and dismissal of a manager of the property in co-ownership prescribed in paragraph (1) of the following Article, and excluding those that make any changes prescribed in paragraph (1) of the preceding Article to the property in co-ownership; the same applies in the following paragraph) are decided by a majority according to the value of the ownership shares of the co-owners. The same applies when there are co-owners who use the property in co-ownership.

(2) In any of the following cases, the court may, upon the request of a co-owner other than another co-owner listed in the respective items, render a judicial decision to the effect that matters regarding the management of property in co-ownership may be decided by a majority according to the value of the ownership shares of the co-owners other than the other co-owner in question :

(i) when a co-owner is unable to ascertain the identity of another co-owner or

- his/her whereabouts;
- (ii) when a co-owner has given notice to another co-owner requesting him/her to clarify whether he/she is in favor of or against the idea of deciding on matters regarding the management of property in co-ownership within a reasonable period of time, and the other co-owner in question does not clarify whether he/she is in favor of or against within that period of time.
- (3) If the decision under the preceding two paragraphs should have a special effect on any co-owner who uses the property in co-ownership based on a decision among co-owners, his/her consent must be obtained.
  - (4) Pursuant to the provisions of the preceding three paragraphs, co-owners may establish on the co-owned property the leases or other rights to use or earn profit listed in the following items (hereinafter referred to as "right of lease, etc." in this paragraph) that do not exceed the period of time specified in the relevant item:
    - (i) right of lease, etc. of forest for the purpose of planting or felling trees: 10 years;
    - (ii) right of lease, etc. for land other than the leases set forth in the preceding item: 5 years;
    - (iii) right of lease, etc. of a building: 3 years;
    - (iv) right of lease, etc. of movables: 6 months.
  - (5) Notwithstanding the provisions of the preceding paragraphs, each co-owner may perform acts of preservation.

(Manager of Property in Co-ownership)

- Article 252-2 (1) A manager of the property in co-ownership may perform any act relating to the management of the property in co-ownership; provided, however, that no co-owner may make changes (excluding those that do not involve a extreme change in the shape or function; the same applies in the following paragraph) to the property in co-ownership without the consent of all co-owners.
- (2) If a manager of the property in co-ownership is unable to ascertain the identity of a co-owner or his/her whereabouts, the court may, at the request of the manager of the property in co-ownership, render a judicial decision to the effect that changes may be made to the property in co-ownership with the consent of the co-owners other than the co-owner.
  - (3) When the co-owners have decided on matters regarding the management of the property in co-ownership, a manager of the property in co-ownership must perform the manager's duties in accordance with their decisions.
  - (4) Any acts of a manager of the property in co-ownership performed in violation of the provisions of the preceding paragraph have no effect on the co-owners; provided, however, that this may not be duly asserted by a co-owner against a

third party acting in good faith.

(Obligations to Bear Burdens Regarding Property in Co-Ownership)

Article 253 (1) Each co-owner pays the expenses of management and bears burdens regarding the property in co-ownership, in proportion to each co-owner's interest.

(2) If a co-owner does not perform the obligations referred to in the preceding paragraph within one year, other co-owners may acquire that co-owner's interest by paying a reasonable compensation.

(Claims on Property in Co-Ownership)

Article 254 A claim that one of the co-owners holds against other co-owners with respect to the property in co-ownership may be exercised against their specific successors.

(Waiver of Interests and Death of Co-Owners)

Article 255 If one of co-owners waives interest or dies without an heir, the waived interest belongs to the other co-owners.

(Demands for Partition of Property in Co-Ownership)

Article 256 (1) Each co-owner may demand the partition of property in co-ownership at any time; provided, however, that this does not preclude concluding a contract agreeing not to partition that property for a period not exceeding five years.

(2) The contract under the proviso to the preceding paragraph may be renewed; provided, however, that the period thereof may not exceed five years from the time of the renewal.

Article 257 The provisions of the preceding Article do not apply to the property in co-ownership provided for in Article 229.

(Partition of Property in Co-Ownership by Judicial Decision)

Article 258 (1) If co-owners are unable to reach an agreement on, or unable to discuss, the partition of property in co-ownership, they may request the court to partition the property in co-ownership.

(2) The court may order the partition of property in co-ownership by any of the following methods:

(i) partitioning the property in co-ownership in kind;

(ii) having a co-owner assume a debt and acquire in exchange all or part of another co-owner's ownership share.

(3) If it is not possible to partition the property in co-ownership by a method

prescribed in the preceding paragraph, or if it is likely that the value of the property in co-ownership will be significantly reduced by the partition, the court may order the sale of the same at auction.

- (4) In a judicial decision on the partition of property in co-ownership, the court may order the parties to pay any money, deliver any objects, perform their obligation to register, or perform any other act.

Article 258-2 (1) In cases where all, or a share of, the property in co-ownership belongs to inherited property, the property in co-ownership or the share in question may not be partitioned under the provisions of the preceding Article when the coheirs make a division of inherited property with regard to all of, or a share of, the property in co-ownership.

- (2) Notwithstanding the provisions of the preceding paragraph, in cases where a share of the property in co-ownership belongs to inherited property, if ten years have elapsed since the time of commencement of inheritance, the share of property in co-ownership belonging to the inherited property may be partitioned in accordance with the provisions of the preceding Article; provided, however, that this does not apply in cases where there is a request for division of inherited property with respect to the share of property in co-ownership, and an heir has filed an objection to the partition of the share of property in co-ownership in accordance with the provisions of the same Article.

- (3) If an heir files an objection referred to in the proviso to the preceding paragraph, it must be filed with the court that received the request under paragraph (1) of the preceding Article, within two months from the date on which the heir received from that court a notice to the effect that the request had been made.

#### (Payment of Claims Regarding Co-Ownership)

Article 259 (1) If one of the co-owners holds a claim regarding co-ownership against other co-owners, upon partition, the portion of the property in co-ownership that belongs to the obligor may be appropriated for the payment of the same.

- (2) If it is necessary to sell the portion of the property in co-ownership that belongs to the obligor to obtain the payment referred to in the preceding paragraph, the obligee may demand the sale of the same.

#### (Participation in Partition of Property in Co-Ownership)

Article 260 (1) A person that holds a right with respect to property in co-ownership and a creditor of any of the co-owners may participate in partitions at their own expense.

- (2) If, notwithstanding a request for participation under the provisions of the

preceding paragraph, partition is effected without allowing the participation of the person that submitted the request, that partition may not be duly asserted against the person that submitted the request.

(Co-Owners' Warranties upon Partitions)

Article 261 Each co-owner provides the same warranty as that of a seller in proportion to each co-owner's interest, with regards to the thing other co-owners have acquired by the partition.

(Instruments Regarding Property in Co-Ownership)

Article 262 (1) When a partition is completed, each of the persons that participated in the partition must retain the instruments regarding things each of them acquired.

(2) Instruments regarding a thing that is partitioned for some or all co-owners must be retained by the person that acquired the largest portion of that thing.

(3) In the cases referred to in the preceding paragraph, if no person acquired the largest portion, the person that is to retain the instruments is determined by agreement among the persons that participated in the partition. If no agreement is reached, the court designates the same.

(4) A person that is to retain instruments must allow other persons that participated in the partition to use the instruments at the request of the same.

(Acquisition of Ownership Share of Co-owner Whose Whereabouts Are Unknown)

Article 262-2 (1) In cases where real property belongs to several co-owners, if a co-owner is unable to ascertain the identity of another co-owner or to ascertain his/her whereabouts, the court may, at the request of a co-owner, render a judicial decision to allow the co-owner to acquire the ownership share of the co-owner in question (hereinafter referred to as "co-owner whose whereabouts are unknown" in this Article). In this case, if there are two or more co-owners who have made the request, they may acquire the ownership share of the co-owner whose whereabouts are unknown in proportion to the ownership shares of property in co-ownership held by each of the co-owners who made the request.

(2) If a request or a request for division of inherited property has been made under the provisions of Article 258, paragraph(1) with regard to real property pertaining to the ownership share for which a request was filed under the preceding paragraph, and if any co-owner other than the co-owner whose whereabouts are unknown has notified the court which received the request filed under the preceding paragraph to the effect that the co-owner has an objection to the court's rendering a judicial decision under the same paragraph, the court may not render the judicial decision referred to therein.

- (3) In cases where the ownership share of a co-owner whose whereabouts are unknown belongs to inherited property (limited to cases where the inheritance should be divided among coheirs), the court may not render the judicial decision referred to in paragraph (1) if ten years have not yet elapsed from the time of commencement of the inheritance.
- (4) If a co-owner has acquired the ownership share of a co-owner whose whereabouts are unknown pursuant to the provisions of paragraph (1), the co-owner whose whereabouts are unknown is entitled to demand payment of the amount equivalent to the market value of the ownership share acquired by the co-owner.
- (5) The provisions of the preceding paragraphs apply mutatis mutandis to cases where a right to use or earn profits from real property (excluding the right of ownership) belongs to several co-owners.

(Transfer of Ownership Share of Co-owner Whose Whereabouts are Unknown)

Article 262-3 (1) In cases where real property belongs to several co-owners, if a co-owner is unable to ascertain the identity of another co-owner or to ascertain another co-owner's whereabouts, the court may, at the request of a co-owner, render a judicial decision to the effect that the co-owner is granted the authority to transfer the ownership share of the other co-owner in question (hereinafter referred to as "co-owner whose whereabouts are unknown" in this Article) to a specific person on the condition that all of the co-owners other than the co-owner whose whereabouts are unknown transfer all of their ownership shares to the specific person.

- (2) In cases where an ownership share of a co-owner whose whereabouts are unknown belongs to inherited property (limited to cases where the inheritance should be divided among joint heirs), the court may not render the judicial decision referred to in the preceding paragraph if ten years have not yet elapsed from the time of commencement of the inheritance.
- (3) If a co-owner has transferred the ownership share of a co-owner whose whereabouts are unknown to a third party based on the authority granted by the judicial decision set forth in paragraph (1), the co-owner whose whereabouts are unknown is entitled to demand from the co-owner who made the transfer payment the amount obtained by proportionally dividing the amount equivalent to the market value of the real property according to the ownership share of the co-owner whose whereabouts are unknown.
- (4) The provisions of the preceding three paragraphs apply mutatis mutandis to cases where a right to use or earn profits from real property (excluding the right of ownership) belongs to several co-owners.

(Rights of Common with Nature of Co-Ownership)

Article 263 Rights of common that have the nature of co-ownership are governed by local customs and are otherwise subject to the application of the provisions of this Section.

(Quasi-Co-Ownership)

Article 264 The provisions of this Section (excluding Article 262-2 and Article 262-3) apply mutatis mutandis if two or more persons share property rights other than ownership; provided, however, that this does not apply if otherwise provided by laws and regulations. Article 264 The provisions of this Section shall apply mutatis mutandis to the cases where two or more persons share property rights other than the ownership; provided, however, that this shall not apply if laws and regulations provide otherwise.

#### **Section 4 Administration Order for Unclaimed Land and Administration Order for Unclaimed Building**

(Administration Order for Unclaimed Land)

Article 264-2 (1) With regard to land for which the identity of the owner cannot be ascertained or for which the owner's whereabouts cannot be ascertained (or in cases where the land belongs to several co-owners, a co-ownership share for which the identity of the owner cannot be ascertained or for which the owner's whereabouts cannot be ascertained), the court may, finding it necessary, upon the request of an interested person, issue a disposition to order administration by an administrator of unclaimed land (meaning the administrator of unclaimed land referred to in paragraph (4); hereinafter the same applies) for the land or co-ownership share pertaining to the request (hereinafter referred to as "administration order for unclaimed Land").

(2) The effect of an administration order for unclaimed land extends to movables (limited to those owned by the owner of the land or the person holding the co-ownership share that is the subject of the administration order for unclaimed land) located on the land that is the subject of the administration order for unclaimed land (or in cases where the administration order for unclaimed land is issued for a co-ownership share, the land that is property in co-ownership).

(3) administration order for unclaimed land, in cases where it is rescinded after the issuance thereof, may also be issued on the property obtained by the administrator of unclaimed land due to management or disposition of the land or co-ownership share that is the subject of the administration order for unclaimed land, and movables to which the effect of the administration order for unclaimed land extends, or for other reasons, when it is found to be necessary.

(4) When issuing an administration order for unclaimed land, the court must

appoint an administrator of unclaimed land in the order itself.

(Authority of Administrator of Unclaimed Land)

- Article 264-3 (1) If an administrator of unclaimed land is appointed pursuant to the provisions of paragraph (4) of the preceding Article, the right to manage and dispose of the land or co-ownership that is the subject of the administration order for unclaimed land, and movables to which the effect of the administration order for unclaimed land extends, as well as the property obtained by the administrator of unclaimed land due to management or disposition thereof or other reasons (hereinafter referred to as "unclaimed land, etc."), is exclusive to the administrator of unclaimed land.
- (2) An administrator of unclaimed land must obtain permission of the court in order to conduct any act beyond the scope of the following acts; provided, however, that the absence of permission may not be duly asserted against a third party acting in good faith.
- (i) acts of preservation;
  - (ii) acts for the purpose of use or improvement of land with an unclear record of ownership, etc. to the extent that the nature of the land is not changed.

(Handling of Actions Concerning Unclaimed Land, etc.)

Article 264-4 In cases where an administration order for unclaimed land has been issued, the administrator of unclaimed land is to stand as a plaintiff or defendant in an action concerning the unclaimed land, etc.

(Duties of an Administrator of Unclaimed Land)

- Article 264-5 (1) administrator of unclaimed land must exercise the authority for the owner of unclaimed land, etc. (including those holding a co-ownership share therein) with the care of a prudent manager.
- (2) If an administration order for unclaimed land is issued for the co-ownership shares of several persons, an administrator of unclaimed land must exercise the authority in good faith and impartially for the benefit of all persons holding the co-ownership shares that are the subject of the administration order for unclaimed land.

(Dismissal and Resignation of an Administrator of Unclaimed Land)

- Article 264-6 (1) If an administrator of unclaimed land has caused extreme damage to unclaimed land, etc., in violation of the administrator's duties, or if there are other significant reasons, a court may dismiss the administrator of unclaimed land upon the request of an interested person.
- (2) An administrator of unclaimed land may resign with the permission of the court when there are justifiable grounds.

(Remuneration of an Administrator of Unclaimed Land)

- Article 264-7 (1) An administrator of unclaimed land may receive advance payment of expenses, and remuneration in an amount determined by the court from the unclaimed land, etc.
- (2) The expenses and remuneration necessary for the management of unclaimed land, etc. by an administrator of unclaimed land are to be borne by the owner of the unclaimed land, etc. (including those who have co-ownership shares therein).

(Administration Order for Unclaimed Building)

- Article 264-8 (1) With regard to a building for which the identity of the owner cannot be ascertained or for which the owner's whereabouts cannot be ascertained (or in cases where the building belongs to several co-owners, a co-ownership share in a building for which the identity of the owner cannot be ascertained or for which the owner's whereabouts cannot be ascertained), the court may, finding it necessary, upon the request of an interested person, issue a disposition to order administration by an administrator for unclaimed building (meaning the administrator of unclaimed building referred to in paragraph (4); hereinafter the same applies in this Article) for the building or co-ownership share pertaining to the request (hereinafter referred to as "administration order for unclaimed building" in this Article).
- (2) The effect of an administration order for unclaimed building extends to movables (limited to those owned by the owner of the building or the person holding the co-ownership share that is the subject of the administration order for unclaimed building ) located in the building (or in cases where the administration order for unclaimed building is issued for a co-ownership share, the building that is property in co-ownership) that is the subject of the administration order for unclaimed building, as well as any rights to the building site for the purpose of owning the building or co-ownership shares therein (limited to right of lease or other rights to use and earn profit (excluding ownership rights) held by the owner of the building or the person holding a co-ownership share that is the subject of the administration order for unclaimed building).
- (3) administration order for unclaimed building, in cases where it is rescinded after the issuance thereof, may also be issued on the property obtained by the administrator of unclaimed building due to the management or disposition of the building or co-ownership share therein that is the subject of the administration order for unclaimed building as well as movables and rights on a building site to which the effect of the administration order for unclaimed building extends, or other reasons, when it is found to be necessary.

- (4) When issuing an administration order for unclaimed building, the court must appoint an administrator of unclaimed building in the order itself.
- (5) administration order for unclaimed building and an administrator of unclaimed building.

### **Section 5 Administration Order for Mismanaged Land and Administration Order for Mismanaged Building**

(Administration Order for Mismanaged Land)

Article 264-9 (1) If rights or legally protected interests of another person are infringed upon or are likely to be infringed upon due to inappropriate management of land by its owner, the court may, finding it necessary, upon the request of an interested person, make a disposition to order administration by an administrator of mismanaged land (meaning the administrator of mismanaged land referred to in paragraph (3); the same applies hereinafter) for the land (hereinafter referred to as "administration order for mismanaged land")

- (2) administration order for mismanaged land extends to movables (limited to those owned by the owner of the land that is the subject of the administration order for mismanaged land or the person holding a co-ownership share therein) located on the land that is the subject of the administration order for mismanaged land.
- (3) When issuing an administration order for mismanaged land, the court must appoint an administrator of mismanaged land in the order itself.

(Authority of Administrator of Mismanaged Land)

Article 264-10 (1) An administrator of mismanaged land has the authority to manage and dispose of the land that is the subject of the administration order for mismanaged land, and movables to which the effect of the administration order for mismanaged land extends, as well as the property obtained by the administrator of mismanaged land due to management or disposition thereof, or other reasons (hereinafter referred to as "mismanaged land, etc.").

- (2) An administrator of mismanaged land must obtain the permission of the court in order to conduct any act beyond the scope of the following acts; provided, however, that the absence of permission may not be duly asserted against a third party acting in good faith and without negligence.
  - (i) acts of preservation;
  - (ii) acts for the purpose of use or improvement of mismanaged land, etc. to the extent that the nature of the land is not changed.
- (3) To grant the permission referred to in the preceding paragraph for the disposal of land that is the subject of an administration order for mismanaged

land, the consent of the owner must be obtained.

(Duties of an Administrator of mismanaged land)

Article 264-11 (1) An administrator of mismanaged land must exercise the authority for the owner of the mismanaged land, etc., with the care of a prudent manager.

(2) If mismanaged land, etc. belongs to several co-owners, an administrator of mismanaged land must exercise the authority faithfully and impartially for the benefit of all of the persons holding co-ownership shares therein.

(Dismissal and Resignation of an Administrator of Mismanaged Land)

Article 264-12 (1) If an administrator of mismanaged land has caused extreme damage to mismanaged land, etc. in violation of the administrator's duties, or if there are other important reasons, the court may dismiss the administrator of mismanaged land, upon the request of an interested person.

(2) An administrator of mismanaged land may resign with the permission of the court when there are justifiable grounds.

(Remuneration of an Administrator of Mismanaged Land)

Article 264-13 (1) An administrator of mismanaged land may receive advance payment of expenses, and remuneration, in an amount determined by the court from the mismanaged land, etc.

(2) mismanaged land, etc. by an administrator of mismanaged land are to be borne by the owner of the mismanaged land, etc.

(Administration Order for Mismanaged Building)

Article 264-14 (1) If rights or legally protected interests of another person are infringed upon or are likely to be infringed upon due to inappropriate management of a building by its owner, the court may, finding it necessary, upon the request of an interested person, make a disposition to order administration by an administrator of mismanaged building (meaning the administrator of mismanaged building referred to in paragraph (3); the same applies in paragraph (4)) for the building (hereinafter referred to as "administration order for mismanaged building" in this Article).

(2) The effect of an administration order for mismanaged building extends to movables (limited to those owned by the owner of the building that is the subject of the administration order for mismanaged building or the person holding a co-ownership share therein) located in the building that is the subject of the administration order for mismanaged building, as well as any rights to the building site in order to own the building (limited to right of lease or other rights for the purpose of use and profit (excluding ownership rights))

held by the owner of the building or the person holding a co-ownership share in the building that is the subject of the administration order for mismanaged building).

- (3) When issuing an administration order for mismanaged building, the court must appoint an administrator of mismanaged building in the order itself.
- (4) All provisions from Article 264-10 to the preceding article apply mutatis mutandis to an administration order for mismanaged building and an administrator of mismanaged building.

## **Chapter IV Superficies**

(Content of Superficies)

Article 265 A superficiesary has the right to use another person's land in order to own structures, or trees or bamboo, on that land.

(Rents)

- Article 266 (1) The provisions of Articles 274 through 276 apply mutatis mutandis if the superficiesary must pay periodical rent to the owners of the land.
- (2) Beyond what is provided for in the preceding paragraph, provisions on leasehold apply mutatis mutandis to rent to the extent that application is not inconsistent with the nature of the same.

(Mutatis Mutandis Application of Provisions Regarding Neighboring Relationships)

Article 267 The provisions of Section 1, Subsection 2 of the preceding Chapter (Neighboring Relationships) apply mutatis mutandis between superficiesaries or between a superficiesary and a landowner; provided, however, that the mutatis mutandis application of the provisions of Article 229 to superficiesaries is limited to when structures on the boundary line are installed after the establishment of the superficies.

(Duration of Superficies)

- Article 268 (1) If the duration of superficies is not fixed by the act that established the same and there are no relevant customs, the superficiesary may waive that right at any time; provided, however, that if rent must be paid, the superficiesary must give notice one year or more in advance or pay rent for one year that has not yet become due and payable.
- (2) If the superficiesary does not waive that right pursuant to the provisions of the preceding paragraph, the court may, at the request of the parties concerned, fix a duration of 20 years or more but not more than 50 years, taking into consideration the kind and status of the structures, or trees or bamboo and

other circumstances at the time of the creation of the superficies.

(Removal of Structures)

Article 269 (1) When the right of the superfiary is extinguished, the superfiary may restore the land to its original state and remove structures and trees or bamboo on the same; provided, however, that if the owner of the land gives notice that the owner will purchase the same by offering to pay an amount equivalent to the market value, the superfiary may not refuse that offer without reasonable grounds.

(2) If there are customs that differ from the provisions of the preceding paragraph, those customs prevail.

(Superficies for Underground or Airspace)

Article 269-2 (1) An underground space or airspace may be established as the subject matter of superficies for ownership of structures, through the specification of upper and lower extents. In such a case, restrictions on the use of that land may be added in the act that establishes superficies for the purpose of facilitating the exercise of the superficies.

(2) The superficies referred to in the preceding paragraph may be established even if third parties hold the rights to use or profit from the land provided that all persons holding those rights or rights on them give their consent. In such a case, persons that hold the rights to use or profit from the land cannot prevent the exercise of the superficies to the same.

## **Chapter V Farming Rights**

(Content of Farming Rights)

Article 270 A farming right holder has the right to pay rent and engage in cultivation or livestock farming on another person's land.

(Limitations on Alterations to Land by Farming Right Holders)

Article 271 A farming right holder may not make any alteration of the land that results in irreparable damage.

(Assignment of Farming Rights or Leasing of Land)

Article 272 A farming right holder may assign the holder's right to another person or lease the land during the duration of the right to cultivate or farm livestock; provided, however, that this does not apply if those acts are prohibited by the act that established that right.

(Mutatis Mutandis Application of Provisions Regarding Lease)

Article 273 Beyond what is provided for in this Chapter and those provided for in the act of establishment, provisions regarding lease apply mutatis mutandis to the obligations of a farming right holder, to the extent that application is not inconsistent with the nature of the same.

(Rent Reductions or Releases)

Article 274 A farming right holder may not demand release from or reduction in the rent even if there is a loss of profits due to force majeure.

(Waiver of Farming Rights)

Article 275 If a farming right holder has gained no profit whatsoever for three or more consecutive years or has gained profits less than the rent for five or more consecutive years due to force majeure, that holder may surrender waive that right.

(Demand for Extinction of Farming Rights)

Article 276 If a farming right holder fails to pay the rent for two or more consecutive years, the landowner may demand the extinction of the farming right.

(Customs Regarding Farming Rights)

Article 277 If there are customs that differ from the provisions of Article 271 through the preceding Article, those customs prevail.

(Duration of Farming Rights)

Article 278 (1) The duration of a farming right is 20 years or more and 50 years or less. Even if an act of establishment provides for a period longer than 50 years, the duration is 50 years.  
(2) The establishment of farming right may be renewed; provided, however, that the duration of that right may not exceed 50 years from the time of renewal.  
(3) If an act of establishment does not provide for the duration of the farming right, the duration of that right is 30 years unless there are other customs to the contrary.

(Removal of Structures)

Article 279 The provisions of Article 269 apply mutatis mutandis to farming rights.

## **Chapter VI Servitudes**

(Content of Servitudes)

Article 280 A servitude holder has the right to use another person's land for the convenience of their own lands in accordance with purposes prescribed in the act establishing the servitude; provided, however, that this right must not violate the provisions (limited to those that relate to public policy) under Section 1 of Chapter 3 (Extent of Ownership).

(Accessoriness of Servitudes)

Article 281 (1) Servitudes are transferred together with the ownership in the dominant land (meaning the land of a servitude holder, enjoying benefits from another person's land; the same applies hereinafter) as appurtenances thereof, and are subject of other rights that exist in relation to the dominant land; provided, however, that this does not apply if the act establishing the servitude provides otherwise.

(2) Servitudes may neither be transferred nor made the subject of other rights apart from the dominant land.

(Indivisibility of Servitudes)

Article 282 (1) One of the co-owners of land may not terminate, with respect to that owner's own interest, a servitude that exists on behalf of or in relation to the land.

(2) If the land is partitioned or a portion thereof is transferred to another person, the servitude exists on behalf of or in relation to the respective portions of the same; provided, however, that this does not apply if the servitude, by its nature, relates only to a portion of the land.

(Acquisition of Servitudes by Prescription)

Article 283 A servitude may be acquired by prescription so long as it is continuously exercised and can be externally recognized.

Article 284 (1) If one of the co-owners of land acquires a servitude by prescription, the other co-owners also acquire the same servitude.

(2) Renewal of prescription period does not become effective against co-owners unless it is made against each co-owner that exercises the servitude.

(3) If there are two or more co-owners that exercise a servitude, even if there is any ground for postponement of expiry of prescription period with respect to one of them, the prescription runs in favor of each co-owner.

(Servitude for Water Use)

Article 285 (1) If water on servient land (meaning a land of a person other than the servitude holder, made available for the benefit of the dominant land; the same applies hereinafter) subject to a servitude for water use is insufficient for

the demand of the dominant land and the servient land, the water is to be used in proportion to the demand on each parcel of land, firstly for household purposes with the remaining portion used for other purposes; provided, however, that this does not apply if the act establishing the servitude provides otherwise.

(2) If more than one servitude for water use is created with respect to the same servient land, the subsequent servitude holders may not prevent the use of water by the previous servitude holders.

(Obligations of Owners of Servient Land to Install Structures)

Article 286 If the owner of servient land has borne obligations to install or repair structures for the exercise of a servitude at that owner's own expense by the act establishing the servitude or by a contract concluded after the establishment, specific successors of the owner of the servient land also bear those obligations.

Article 287 An owner of servient land may be exempted from obligations of the preceding Article at any time by abandoning the ownership in the portion of the land necessary for the servitude and transferring the same to the servitude holder.

(Use of Structures by the Owner of Servient Lands)

Article 288 (1) The owner of a servient land may use structures installed on the servient land for the exercise of the servitude to the extent the use does not obstruct the exercise of that servitude.

(2) In the cases referred to in the preceding paragraph, the owner of the servient land must bear the expense for the installation and preservation of the structures in proportion to the benefit that owner receives.

(Extinction of Servitude by Acquisition by Prescription of Servient Lands)

Article 289 If a possessor of servient land has possessed that land in conformity with the necessary requirements for acquisitive prescription, the servitude is extinguished thereby.

Article 290 The extinctive prescription under the preceding Article is renewed by the servitude holder exercising the relevant rights.

(Extinctive Prescription of Servitudes)

Article 291 The period of the extinctive prescription provided for in Article 166, paragraph (2) commences upon the final exercise of the servitude if the servitude is not exercised continuously, and upon the occurrence of a fact that

prevents the exercise of the servitude if the servitude is exercised continuously.

Article 292 If dominant land is co-owned by more than one person, and expiry of prescription period is postponed or prescription period is renewed in favor of one co-owner, the postponement of expiry of prescription period or the renewal of prescription period is also effective for the benefit of other co-owners.

Article 293 If a servitude holder does not exercise a portion of that holder's rights, only that portion is extinguished by prescription.

(Rights of Common without the Nature of Co-Ownership)

Article 294 Rights of common that do not have the nature of co-ownership are governed by local customs and are otherwise subject to the mutatis mutandis application of the provisions of this Chapter.

## **Chapter VII Rights of Retention**

(Content of Rights of Retention)

Article 295 (1) If a possessor of a thing belonging to another person has a claim that has arisen in relation to that thing, that possessor may retain that thing until that claim is satisfied; provided, however, that this does not apply if the relevant claim has not yet fallen due.

(2) The provisions of the preceding paragraph do not apply if possession commenced by means of a tortious act.

(Indivisibility of Rights of Retention)

Article 296 A holder of a right of retention may exercise that holder's rights against the whole of the thing retained until the relevant claim is satisfied in its entirety.

(Collection of Fruits by Holders of Rights of Retention)

Article 297 (1) A holder of a right of retention may collect fruits derived from the thing retained, and appropriate the same to the satisfaction of that holder's own claim before other obligees.

(2) The fruits referred to in the preceding paragraph must be appropriated first to the payment of interest on the claim, and any remainder must be appropriated to the satisfaction of the principal.

(Custody of Thing Retained by Holders of Rights of Retention)

Article 298 (1) The holder of a right of retention must possess the thing retained with the due care of a prudent manager.

- (2) The holder of the right of retention may not use, lease or provide as a security the thing retained unless that holder obtains the consent of the obligor; provided, however, that this does not apply to uses necessary for the preservation of that thing.
- (3) If the holder of a right of retention violates the provisions of the preceding two paragraphs, the obligor may demand that the right of retention be terminated.

(Demands for Reimbursement of Expenses by Holders of Rights of Retention)

Article 299 (1) If the holder of a right of retention incurs necessary expenses with respect to the thing retained, that holder may have the owner reimburse the same.

- (2) If the holder of a right of retention incurs beneficial expenses with respect to the thing retained, to the extent that there is currently an increase in value as a result of the same, that holder may have the expenses incurred or the increase in value reimbursed at the owner's choice; provided, however, that the court may, at the request of the owner, grant a reasonable period of time for the reimbursement of the same.

(Exercise of Rights of Retention and Extinctive Prescription of Claims)

Article 300 The exercise of a right of retention does not preclude the running of extinctive prescription of claims.

(Extinction of Rights of Retention by Provision of Security)

Article 301 An obligor may demand that a right of retention be terminated by providing a reasonable security.

(Extinction of Rights of Retention by Loss of Possession)

Article 302 A right of retention is extinguished if the holder of the right of retention loses possession of the thing retained; provided, however, that this does not apply if the thing retained is leased or it is made the subject of a pledge pursuant to the provisions of Article 298, paragraph (2).

## **Chapter VIII Statutory Liens**

### **Section 1 General Provisions**

(Content of Statutory Liens)

Article 303 The holder of a statutory lien has the rights to have that holder's own claim satisfied prior to other obligees out of the assets of the relevant obligor in accordance with the provisions of laws including this Act.

(Extension of Security Interest to Proceeds of Collateral)

Article 304 (1) A statutory lien may also be exercised against things including monies that the obligor is to receive as a result of the sale, lease or loss of, or damage to, the subject matter of the statutory lien; provided, however, that the holder of the statutory lien must attach the same before the payment or delivery of the monies or other thing.

(2) The provisions of the preceding paragraph also apply to the consideration for real rights created by the obligor on the subject matter of the statutory lien.

(Indivisibility of Statutory Liens)

Article 305 The provisions of Article 296 apply mutatis mutandis to statutory liens.

## **Section 2 Kinds of Statutory Liens**

### **Subsection 1 General Statutory Lien**

(General Statutory Lien)

Article 306 A person that has a claim arising from the causes set forth below has a statutory lien over the entire assets of the obligor:

- (i) expenses for the common benefit;
- (ii) an employer-employee relationship;
- (iii) funeral expenses; or
- (iv) the supply of daily necessities.

(Statutory Liens for Expenses for Common Benefit)

Article 307 (1) Statutory liens for expenses for the common benefit exist with respect to the expenses of preservation, liquidation or distribution of the assets of the obligor incurred for the common benefit of all obligees.

(2) With respect to expenses referred to in the preceding paragraph that were not beneficial for all obligees, the statutory lien exists solely in relation to obligees that benefited from those expenses.

(Statutory Liens for Employer-Employee Relationships)

Article 308 Statutory liens for employer-employee relationships exist with respect to salaries and other claims that arise from the employer-employee relationship between the obligor and the employee.

(Statutory Liens for Funeral Expenses)

Article 309 (1) Statutory liens for funeral expenses exist with respect to the reasonable expenses of a funeral held for the obligor.

(2) The statutory lien referred to in the preceding paragraph also exists with

respect to the reasonable expenses of a funeral held by the obligor for a relative whom the obligor is bound to support.

(Statutory Liens for Daily Necessaries)

Article 310 Statutory liens for daily necessities exist with respect to the supply of food and drink items, fuel and electricity for the most recent six months required for the household of the obligor or cohabiting relatives whom the obligor is bound to support and the domestic servants of the same.

### **Subsection 2 Statutory Liens over Movables**

(Statutory Liens over Movables)

Article 311 A person that has a claim arising from the causes set forth below has a statutory lien against specific movables of the obligor:

- (i) a lease of immovables;
- (ii) a lodging at a hotel;
- (iii) the transportation of passengers or luggage;
- (iv) the preservation of movables;
- (v) the sale of movables;
- (vi) the supply of seeds and seedlings or fertilizer (including eggs of silkworms or mulberry leaves provided to feed silkworms; the same applies hereinafter);
- (vii) agricultural labor; or
- (viii) industrial labor.

(Statutory Liens for Leases of Immovables)

Article 312 Statutory liens for a lease of immovables exist against the movables of the lessee in connection with the rent of the relevant immovables and other obligations of the lessee that arise from that lease relationship.

(Scope of Subject Matter of Statutory Liens for Leases of Immovables)

Article 313 (1) The statutory lien of a lessor of land exists against movables furnished to that land or buildings for the use of that land, movables provided for the use of that land, and fruits of that land in the possession of the lessee.  
(2) The statutory lien of a lessor of a building exists against movables furnished to that building by the lessee.

Article 314 In the case of an assignment of lease or subleasing, the statutory lien of the lessor extends to the movables of the assignee or sublessee. The same applies to monies that the assignor or sublessor is to receive.

(Scope of Secured Claims under Statutory Liens for Leases of Immovables)

Article 315 When all of the lessee's assets are to be liquidated, the statutory lien of the lessor exists only with respect to the rent and other obligations for the previous, current and next terms, and obligations to compensate for loss or damage that arise in the previous and current terms.

Article 316 If a lessor has received a security deposit prescribed in Article 622-2, paragraph (1), the lessor has a statutory lien solely against the portion of the lessor's claim that will not be satisfied by that security deposit.

(Statutory Liens for Lodging at Hotels)

Article 317 Statutory lien for lodging at hotels exist against the hand luggage of a hotel guest left at that hotel, in connection with room charges, and food and beverage charges, that should be borne by the hotel guest.

(Statutory Liens for Transportation)

Article 318 Statutory liens for transportation exist against luggage in the possession of the carrier, in connection with transportation charges for passengers or freight charges for luggage and expenses incidental to the same.

(Mutatis Mutandis Application of Provisions on Good Faith Acquisition)

Article 319 The provisions of Articles 192 through 195 apply mutatis mutandis to statutory liens under the provisions of Article 312 through the preceding Article.

(Statutory Liens for Preservation of Movables)

Article 320 Statutory liens for the preservation of movables exist against movables, in connection with expenses required for the preservation of those movables, or expenses required for the preservation, approval or enforcement of rights regarding those movables.

(Statutory Liens for Sale of Movables)

Article 321 Statutory liens for the sale of movables exist against movables, in connection with the price of those movables and interest on the same.

(Statutory Liens for Supply of Seeds and Seedlings or Fertilizer)

Article 322 Statutory liens for the supply of seeds and seedlings or fertilizer exist against fruits (including eggs of silk worms or any thing derived from the use of mulberry leaves provided to feed silkworms) derived from land where the seeds and seedlings or fertilizer were used, within one year of that use, in connection with the price of those seeds and seedlings or fertilizer and interest on the same.

(Statutory Liens for Agricultural Labor)

Article 323 Statutory liens for agricultural labor exist against fruits derived from labor, in connection with the most recent year's wages of the person who engages in that labor.

(Statutory Liens for Industrial Labor)

Article 324 Statutory liens for industrial labor exist against manufactured things derived from labor, in connection with the most recent three months' wages of the person who engages in that labor.

### **Subsection 3 Statutory Liens for Immovables**

(Statutory Liens for Immovables)

Article 325 A person that has a claim arising from the causes set forth below has a statutory lien over specific immovables of the obligor:

- (i) the preservation of immovables;
- (ii) construction work for immovables; or
- (iii) the sale of immovables.

(Statutory Liens for Preservation of Immovables)

Article 326 Statutory liens for the preservation of immovables exist against the relevant immovables, in connection with the expenses required for the preservation of the immovables or the expenses required for the preservation, approval or enforcement of rights regarding the immovables.

(Statutory Liens for Construction Work for Immovables)

Article 327 (1) Statutory lien for construction work for immovables exists, with respect to immovables, in connection with the expenses of construction work performed by a person that designs, constructs or supervises construction regarding the immovables of the obligor.

(2) The statutory liens referred to in the preceding paragraph exist with respect to the relevant increased value alone, but only if there is a current increase in the value of the immovables resulting from the construction work.

(Statutory Liens for Sales of Immovables)

Article 328 Statutory liens for sales of immovables exist, with respect to immovables, in connection with the price of the immovables and interest on the same.

### **Section 3 Order of Priority of Statutory Liens**

(Order of Priority of General Statutory Liens)

Article 329 (1) If there are competing general statutory liens, the order of priority follows the order set forth in each item of Article 306.

(2) If there are competing a general statutory lien and a special statutory lien, the special statutory lien has priority over the general statutory lien; provided, however, that statutory liens on expenses for the common benefit have priority being effective against all obligees who benefit from the same.

(Order of Priority of Statutory Liens over Movables)

Article 330 (1) If there are competing special statutory liens against the same movables, the order of priority follows the order set forth below. In this case, if there are two or more preservers with respect to the statutory liens for preservation of movables set forth in item (ii), a new preserver has priority over previous preservers:

(i) statutory liens for leases of immovables, lodging at hotels and transportation;

(ii) statutory liens for the preservation of movables; and

(iii) statutory liens for the sale of movables, the supply of seeds and seedlings or fertilizer, agricultural labor and industrial labor.

(2) In the cases referred to in the preceding paragraph, if a holder of a statutory lien ranked first knew at the time of acquiring the relevant claim of the existence of a holder of a statutory lien of the second or third rank, that holder may not exercise the relevant rights of priority against those persons. The same applies to the exercise against persons that have preserved things on behalf of the holder of a statutory lien of the first rank.

(3) Regarding fruits, the first rank belongs to persons who engage in agricultural labor, the second rank belongs to persons that supply seeds and seedlings or fertilizer, and the third rank belongs to lessors of land.

(Order of Priority of Statutory Liens over Immovables)

Article 331 (1) If there is conflict among special statutory liens against the same immovables, the order of priority follows the order set forth in the items of Article 325.

(2) If the same immovables are subject to successive sales, the order of priority of the statutory liens for the sale of the immovables among sellers follows the chronological order of the sales.

(Statutory Liens with Same Priority)

Article 332 If there are two or more holders of statutory liens with the same priority with respect to the same object, the holders of statutory liens are paid

in proportion to the amounts of their claims.

#### **Section 4 Effect of Statutory Liens**

(Statutory Liens and Third Party Acquirers)

Article 333 Statutory liens may not be exercised against the movables that are the subject matter of the same after the obligors have delivered those movables to third party acquirers.

(Conflict between Statutory Liens and Pledges on Movables)

Article 334 If there is conflict between a statutory lien and a pledge on movables, the pledgee of those movables has the same rights as those of the holder of a statutory lien of the first rank under Article 330.

(Effect of General Statutory Liens)

- Article 335 (1) Holders of general statutory liens cannot be paid out of immovables unless they are first paid out of property other than immovables and a claim that is not satisfied remains.
- (2) With respect to immovables, holders of general statutory liens must first be paid out of those that are not the subject matters of special security.
- (3) If holders of general statutory liens fail to participate in distributions in accordance with the provisions of the preceding two paragraphs, they may not exercise their statutory liens against registered third parties with respect to amounts that would have been paid to them if they had participated in the distribution.
- (4) The provisions of the preceding three paragraphs do not apply if the proceeds of immovables are distributed prior to the proceeds of assets other than immovables, or if the proceeds of immovables that are the subject matter of a special security are distributed prior to the proceeds of other immovables.

(Perfection of General Statutory Liens)

Article 336 General statutory liens may be duly asserted against obligees without special security, even if the liens are not registered with respect to the relevant immovables; provided, however, that this does not apply to registered third parties.

(Registration of Statutory Liens for Preservation of Immovables)

Article 337 In order to preserve the effectiveness of statutory liens for preservation of immovables, registration must be carried out immediately after the completion of the act of preservation.

(Registration of Statutory Liens for Construction Work for Immovables)

Article 338 (1) In order to preserve the effectiveness of statutory liens for construction work for immovables, the budgeted expenses of the construction work must be registered prior to the commencement of the same. In this case, if the expenses of the construction work exceed the budgeted amount, a statutory lien does not exist with respect to the amount in excess of the same.

(2) The amount of increase in value of immovables that resulted from construction work must be evaluated by an appraiser appointed by the court at the time of the participation in the distribution.

(Registered Statutory Liens for Preservation of Immovables or Construction Work for Immovables)

Article 339 Statutory liens registered in accordance with the provisions of the preceding two Articles may be exercised prior to mortgages.

(Registration of Statutory Liens for Sales of Immovables)

Article 340 In order to preserve the effectiveness of statutory liens for the sale of immovables, a statement to the effect that the price of the immovables or interest on the same has not been paid must be registered simultaneously with the execution of the sales contract.

(Mutatis Mutandis Application of Provisions Regarding Mortgages)

Article 341 Beyond what is provided for in this Section, the provisions regarding mortgages apply mutatis mutandis to the effects of statutory liens, provided that it is not inconsistent with the nature of the same.

## **Chapter IX Pledges**

### **Section 1 General Provisions**

(Content of Pledges)

Article 342 A pledgee has the right to possess a thing received from an obligor or a third party as security for their claims and to have their own claims paid prior to other obligees out of that thing.

(Subject Matter of Pledges)

Article 343 A thing that cannot be transferred to another person may not be made the subject of a pledge.

(Creation of Pledges)

Article 344 The creation of a pledge becomes effective through delivery of the subject matter of the pledge to the obligee.

(Prohibition of Possession through Pledgors as Agents)

Article 345 A pledgee may not allow a pledgor to possess the thing pledged on behalf of the pledgee.

(Scope of Secured Claims under Pledges)

Article 346 A pledge secures the principal, interest, penalties, expenses of enforcing the pledge, expense of preserving the thing pledged and the compensation of loss or damage arising from failure to perform obligations or latent defects in the thing pledged; provided, however, that this does not apply if the act establishing the pledge provides otherwise.

(Retention of the Thing Pledged)

Article 347 The pledgee may retain the thing pledged until the claims provided for in the preceding Article are satisfied; provided, however, that this right cannot be duly asserted against an obligee that has priority over the pledgee.

(Subpledges)

Article 348 The pledgee may subpledge the thing pledged within the duration of the pledgee's right, upon the pledgee's own responsibility. In this case, the pledgee is responsible for any loss arising from the subpledge even if the same is caused by force majeure.

(Prohibition on Disposition of the Thing Pledged by Contract)

Article 349 The pledgor may not, either by the acts establishing pledges or by contracts made prior to the due dates for the obligations, allow the pledgee to acquire ownership of the thing pledged as satisfaction of the obligations, nor promise to allow the pledgee to dispose of it in any manner other than is prescribed by law.

(Mutatis Mutandis Application of Provisions on Rights of Retention and Statutory Liens)

Article 350 The provisions of Articles 296 through 300 and those of Article 304 apply mutatis mutandis to pledges.

(Third-Party Collateral Providers' Rights to Reimbursement)

Article 351 If a person that creates a pledge to secure an obligation of another person performs that obligation or loses ownership of the thing pledged due to the enforcement of the pledge, that person has the right to reimbursement from the obligor in accordance with the provisions regarding guarantee obligations.

## **Section 2 Pledges on Movables**

(Requirements for the Perfection of Pledges on Movables)

Article 352 A pledgee of movables cannot duly assert the pledge against third parties unless that pledgee is in continuous possession of the thing pledged.

(Recovery of Possession of the Thing Pledged)

Article 353 A pledgee of movables may, if the pledged thing is usurped, recover the same solely by filing an action for recovery of possession.

(Enforcement of Pledges on Movables)

Article 354 If the claim of a pledgee of movables is not satisfied, the pledgee may make a request to the court seeking the immediate appropriation of the thing pledged for the satisfaction of that claim in accordance with the evaluation of an appraiser only when there are reasonable grounds. In this case, the pledgee of movables must notify the obligor in advance of the request.

(Order of Priority of Pledges on Movables)

Article 355 If more than one pledge is created with respect to the same movables, the order of priority of those pledges follow the chronological order of their creation.

## **Section 3 Pledges of Immovables**

(Use of and Obtaining Profit from Immovables by Pledgees)

Article 356 The pledgee of immovables may use and profit from the immovables that are the subject matter of a pledge in line with the way the relevant immovables are used.

(Management Expenses Borne by Pledgees of Immovables)

Article 357 The pledgee of immovables pays the expenses of management and otherwise bear burdens in relation to the immovables.

(Prohibition on Demanding Interest by Pledgees of Immovables)

Article 358 The pledgee of immovables may not demand interest on the relevant claim.

(Special Provisions in Act of Establishment)

Article 359 The provisions of the preceding three Articles do not apply if the acts establishing pledges provide otherwise or execution against earnings from the immovable collateral (referring to the execution against earnings from

immovable collateral provided for in Article 180, item (ii) of the Civil Execution Act; the same applies hereinafter) has been commenced.

(Duration of Pledges of Immovables)

Article 360 (1) The duration of pledges of immovables may not exceed 10 years. Even if a longer period is provided for in the act establishing the pledge, the duration of the same is 10 years.

(2) The creation of pledges of immovables may be renewed; provided, however, that the duration of the same may not exceed 10 years from the time of the renewal.

(Mutatis Mutandis Application of Provisions on Mortgages)

Article 361 Beyond what is provided for in this Section, the provisions of the next Chapter (Mortgages) apply mutatis mutandis to pledges of immovables, provided that it is not inconsistent with the nature of the same.

#### **Section 4 Pledges of Rights**

(Subject Matter of Pledges of Rights)

Article 362 (1) A pledge may have a property right for its subject matter.

(2) Beyond what is provided for in this Section, the provisions of the preceding three Sections (General Provisions, Pledges on Movables and Pledges of Immovables) apply mutatis mutandis to pledges referred to in the preceding paragraph, provided that it is not inconsistent with the nature of the same.

Article 363 Deleted

(Requirements for Perfection of Pledges over Claims)

Article 364 The creation of a pledge over a claim (including a pledge over a claim which has not yet arisen) may not be duly asserted against a third party obligor and other third parties unless notice of the creation of the pledge is given to that third party obligor in accordance with the provisions of Article 467, or unless that third party obligor gives consent to the same.

Article 365 Deleted

(Collection of Claims by Pledgees)

Article 366 (1) A pledgee may directly collect the claim that is the subject matter of the pledge.

(2) If monies are the subject matter 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) If the due date of the pledged claim referred to in the preceding paragraph arrives prior to the due date of the claim of the pledgee, the pledgee may have the third party obligor deposit with official depository that amount to be paid to the pledgee. In this case, the pledge exists over the amount so deposited.
- (4) If the subject matter of the pledged claim is not monies, the pledgee has the pledge over the thing received for the satisfaction of the claim.

Article 367 Deleted

Article 368 Deleted

## **Chapter X Mortgages**

### **Section 1 General Provisions**

(Content of Mortgages)

- Article 369 (1) A mortgagee has the right to have the mortgagee's claim satisfied prior to other obligees out of the immovables that the obligor or a third party provided to secure the obligation without transferring possession.
- (2) Superficies and farming rights may be the subject matter of a mortgage. In this case, the provisions of this Chapter apply mutatis mutandis.

(Scope of Effect of Mortgages)

- Article 370 A mortgage extends to the things that form an integral part of the immovables that are the subject matter of the mortgage (hereinafter referred to as "mortgaged immovables") except for buildings on the mortgaged land; provided, however, that this does not apply if the act establishing the mortgage provides otherwise or the rescission of fraudulent act may be demanded as prescribed in Article 424, paragraph (3) with regard to the act of the obligor.

- Article 371 If there is a default with respect to a claim secured by a mortgage, the mortgage extends to the fruits of the mortgaged immovables derived after the default.

(Mutatis Mutandis Application of Provisions on Right of Retention)

- Article 372 The provisions of Article 296, Article 304 and Article 351 apply mutatis mutandis to mortgages.

### **Section 2 Effect of Mortgages**

(Order of Priority of Mortgages)

Article 373 If more than one mortgage is created with respect to the same immovables, the order of priority of those mortgages follows the chronological order of their registration.

(Changes in Order of Priority of Mortgages)

Article 374 (1) The order of priority of mortgages may be changed with the agreement of all mortgagees; provided, however, that if there are interested persons, the consent of the same must be obtained.

(2) The changes in order referred to in the preceding paragraph do not become effective unless registered.

(Scope of Secured Claims under Mortgages)

Article 375 (1) If a mortgagee has the right to demand periodic payments including interest, that mortgagee may exercise the mortgage solely with respect to payments of the last two years before maturity; provided, however, that with respect to prior periodic payments, if special registration is effected after maturity, the mortgagee is not precluded from exercising the mortgage as from the time of that registration.

(2) If the mortgagee has the right to claim compensation for loss or damage resulting from defaults in obligations, the provisions of the preceding paragraph also apply *mutatis mutandis* to the loss or damage of the most recent two years; provided, however, that the aggregate period including the interest and other periodic payments may not exceed two years.

(Disposition of Mortgages)

Article 376 (1) A mortgagee may apply the mortgage to secure other claims, or assign or waive that mortgage, or its order of priority, for the benefit of other obligees of the same obligor.

(2) In the cases referred to in the preceding paragraph, if a mortgagee disposes of the mortgage for the benefit of two or more persons, the order of priority of the rights of persons who benefit from that disposition follows the chronological order of supplemental registration in the registration of the mortgage.

(Requirements for Perfection of Disposition of Mortgages)

Article 377 (1) In the cases in the preceding Article, the mortgagee may not duly assert the disposition of mortgages against principal obligors, guarantors, mortgagors or their respective successors unless the disposition is notified to the principal obligors or the principal obligors consent to that disposition in accordance with the provisions of Article 467.

(2) If the principal obligors have received the notice or given the consent pursuant to the provisions of the preceding paragraph, payments made without

the consent of the persons who benefit of the disposition of the mortgage may not be duly asserted against those beneficiaries.

(Direct Satisfaction of Mortgage with Purchase Price)

Article 378 If a third party that purchases the ownership or superficies of a mortgaged immovables pays the price of the same to a mortgagee at the request of the same mortgagee, that mortgage is terminated for the benefit of that third party.

(Claims for Extinguishment of Mortgages)

Article 379 A third party acquirer of a mortgaged immovables may make a claim for the extinguishment of a mortgage as prescribed in Article 383.

Article 380 No principal obligor, guarantor or successor of the same may make a claim for the extinguishment of a mortgage.

Article 381 A third party acquirer of a mortgaged immovables that is subject to a condition precedent may not make a claim for the extinguishment of a mortgage while it is uncertain whether or not the condition precedent will be fulfilled.

(Timing of Claims for Extinguishment of Mortgages)

Article 382 A third party acquirer of a mortgaged immovables must make a claim for the extinguishment of a mortgage before attachment under auction procedure as a result of the enforcement of the mortgage takes effect.

(Procedures for Claims for Extinguishment of Mortgages)

Article 383 If a third party acquirer of a mortgaged immovables makes a claim for the extinguishment of a mortgage, that third party must send the documents set forth below to each registered obligee:

- (i) a document that specifies the cause and date of the acquisition, the name and address of the assignor and the acquirer, the nature, location and price of the mortgaged immovables and burdens of the acquirer;
- (ii) a certificate of registered information regarding the mortgaged immovables (limited to certificates certifying all registered information currently in effect); and
- (iii) a document to the effect that, if an obligee does not enforce the mortgage by filing a petition for auction within two months, the third party acquirer of the mortgaged immovables will pay the price provided for in item (i) or an amount specifically fixed in accordance with the order of priority of claims, or will deposit the price or that amount with official depository.

(Deemed Approval of Obligees)

Article 384 In the cases set forth below, the obligee that has received the documents set forth in each item of the preceding Article is deemed to have approved the price or amount that the third party acquirer of the mortgaged immovables has offered as stated in the document set forth in item (iii) of that Article:

- (i) if the obligee does not enforce the mortgage by filing a petition for auction within two months after receipt of the documents set forth in each item of the preceding Article;
- (ii) if the obligee withdraws a petition under the preceding item;
- (iii) if a decision dismissing a petition under item (i) has become final and binding; or
- (iv) if a decision rescinding auction procedures based on a petition under item (i) (excluding rulings under the provisions of Article 63, paragraph (3) or Article 68-3, paragraph (3) of the Civil Execution Act applied mutatis mutandis under Article 188 of that Act, or under the provisions of Article 183, paragraph (2) of that Act if the certified copy under paragraph (1), item (v) of that Article is submitted) has become final and binding.

(Notice of Petitions for Auction)

Article 385 If an obligee that has received the documents set forth in each item of Article 383 files a petition under item (i) of the preceding Article, that obligee must give notice to that effect to the obligor and assignor of the mortgaged immovables within the period under that item.

(Effect of Claims for Extinguishment of Mortgages)

Article 386 A mortgage is extinguished if all registered obligees approve the price or amount offered by the third party acquirer of the mortgaged immovables, and the third party acquirer of the mortgaged immovables has paid or deposited with the official depository the price or amount approved.

(Perfection of Leases with Registered Consent of Mortgagees)

Article 387 (1) A registered lease may be duly asserted against mortgagees that hold mortgages registered prior to the registration of that lease if all mortgagees that hold those mortgages give their consent and those consents are registered.

(2) For a mortgagee to give the consent referred to in the preceding paragraph, the approval of the persons that hold rights for which the mortgage is the subject matter and other persons that will suffer detriment as a result of the consent of the mortgagee must be obtained.

(Statutory Superficies)

Article 388 If the land and a building on that land belong to the same owner, a mortgage is created with respect to that land or building, and the enforcement of that mortgage causes them to belong to different owners, it is deemed that a superficies has been created with respect to that building. In this case, the rent is fixed by the court at the request of the parties.

(Auction of Buildings on Mortgaged Lands)

Article 389 (1) If a building is constructed on a mortgaged land after the creation of a mortgage, the mortgagee may auction the building together with the land; provided, however, that the right of priority of that mortgagee may be exercised solely against the proceeds of the land.

(2) The provisions of the preceding paragraph do not apply if the owner of that building has rights with respect to the possession of the mortgaged land that may be duly asserted against the mortgagee.

(Purchases of Mortgaged Immovables by Third Party Acquirers)

Article 390 A third party acquirer of a mortgaged immovables may be the purchaser at the auction of the same.

(Claims for Reimbursement of Expenses by Third Party Acquirers of Mortgaged Immovables)

Article 391 If a third party acquirer of a mortgaged immovables has incurred necessary or beneficial expenses with respect to the mortgaged immovables, that third party may obtain reimbursement of the same out of the proceeds of the mortgaged immovables prior to other obligees, in accordance with the distinctions in Article 196.

(Distribution of Proceeds in Cases of Joint Mortgages)

Article 392 (1) If an obligee holds mortgages on several immovable properties to secure the same claim, and the proceeds of those immovable properties are to be distributed simultaneously, the burden of the claim is divided in proportion to the value of each of the immovable properties.

(2) If an obligee holds mortgages on several immovable properties to secure the same claim, and the proceeds from only one of the immovable properties are to be distributed, the mortgagee may receive the payment of the entire claim out of those proceeds. In this case, subordinated mortgagees may exercise their mortgages in subrogation of that mortgagee, up to the amount that that mortgagee that receives payment would otherwise be entitled to receive from the proceeds of other immovable properties, in accordance with the provisions

of the preceding paragraph.

(Supplemental Registration of Subrogation in Case of Joint Mortgages)

Article 393 A person that exercises a mortgage by way of subrogation pursuant to the provisions of the second sentence of paragraph (2) of the preceding Article may note that subrogation in the registration of that mortgage.

(Payment from Assets Other than Mortgaged Immovables)

Article 394 (1) A mortgagee may receive payment from assets other than the mortgaged immovables only for the portion of that mortgagee's claim that is not paid from the proceeds of the relevant mortgaged immovables.  
(2) The provisions of the preceding paragraph do not apply if the proceeds of other assets are to be distributed prior to the proceeds of the mortgaged immovables. In these cases, each other obligee may demand that the amount to be distributed to the mortgagee be deposited in order to have the mortgagee receive payment under the provisions of that paragraph.

(Suspension of Delivery by Users of Mortgaged Buildings)

Article 395 (1) A person that uses or profits from a building subject to a mortgage by virtue of a lease that cannot be duly asserted against the mortgagee, and that is set forth as follows (in the following paragraph referred to as "mortgaged building user") is not required to deliver that building to the purchaser thereof until six months have passed from the time when the purchaser purchased that building at auction:  
(i) a person that has been using or profiting from the building since prior to the commencement of auction procedures; or  
(ii) a person that is using or profiting from the building by virtue of a lease given after the commencement of auction procedures by the administrator of compulsory administration or execution against earnings from immovable collateral.  
(2) The provisions of the preceding paragraph do not apply if the purchaser, specifying a reasonable period of time, issues a notice to the mortgaged building user demanding payment of consideration for a period of one month or more with respect to the use of the building referred to in that paragraph that has been made after the time of purchase by the purchaser, and no payment is made within that reasonable period of time.

### **Section 3 Extinction of Mortgages**

(Extinctive Prescription of Mortgages)

Article 396 No mortgage is extinguished by prescription in relation to obligors

and mortgagors unless it is extinguished simultaneously with the claim the mortgage secures.

(Extinction of Mortgages by Acquisition by Prescription of Mortgaged Immovables)

Article 397 If a person that is neither an obligor nor a mortgagor has possessed the mortgaged immovables in complete conformity with the requirements for acquisitive prescription, the mortgage is extinguished thereby.

(Renunciation of Mortgaged Superficies)

Article 398 Even if a holder of superficies or a farming right holder that created mortgage on that holder's superficies or farming right renounces the relevant rights, the renunciation may not be duly asserted against the mortgagee.

#### **Section 4 Revolving Mortgages**

(Revolving Mortgages)

Article 398-2 (1) Mortgages may be created, by an establishing act, in order to secure unspecified claims of a certain scope, up to the limit of a maximum amount.

(2) The scope of the unspecified claims to be secured by the mortgage under the provisions of the preceding paragraph (hereinafter referred to as "revolving mortgage") must be prescribed by limiting the scope to claims arising from specific contracts with the obligor for continuous transactions or other claims arising from certain kinds of transactions with the obligor.

(3) Claims that arise continuously with the obligor pursuant to a specific cause, claims under negotiable instruments or checks, or electronically recorded monetary claims (meaning electronically recorded monetary claims prescribed in Article 2, paragraph (1) of the Electronically Recorded Monetary Claims Act (Act No. 102 of 2007); the same applies in paragraph (2) of the following Article) may be treated as claims that are to be secured by a revolving mortgage, notwithstanding the provisions of the preceding paragraph.

(Scope of Secured Claims under Revolving Mortgages)

Article 398-3 (1) A revolving mortgagee may exercise the relevant revolving mortgage up to the maximum amount with respect to all of crystallized principal as well as periodic payments including interest and compensation for loss or damage resulting from failure to perform obligations.

(2) If a claim under a negotiable instrument or check or electronically recorded monetary claim acquired from causes other than the transactions with the obligor is agreed to be treated as a claim to be secured by a revolving mortgage,

and any of the following grounds exist, that revolving mortgage may be exercised only with respect to claims acquired before those grounds arose; provided, however, that even with respect to claims acquired after the grounds arose, the exercise of the revolving mortgage is not precluded as far as the claims were acquired without knowledge of those grounds:

- (i) the suspension of payments by the obligor;
- (ii) a petition to commence bankruptcy proceeding, the commencement of rehabilitation proceeding, the commencement of reorganization proceeding or the commencement for special liquidation with respect to the obligor; or
- (iii) a petition for commencement of auction procedure in relation to a mortgaged immovables or attachment for disposition of delinquency.

(Alterations in Scope of Secured Claims under Revolving Mortgages and of Obligors)

Article 398-4 (1) The scope of the claims to be secured by a revolving mortgage may be changed if the change is effected before the principal is crystallized.

The same applies with respect to change of obligors.

(2) In order to effect the changes referred to in the preceding paragraph, it is not required that the approval of third parties including subordinated mortgagee be obtained.

(3) If the change under paragraph (1) is not registered before the principal is crystallized, it is deemed that the change was not effected.

(Changes in Maximum Amounts of Revolving Mortgages)

Article 398-5 Changes in the maximum amount of a revolving mortgage may not be made unless the consent of the interested parties is obtained.

(Provisions of Principal Crystallization Date of Revolving Mortgage)

Article 398-6 (1) With respect to the principal secured by a revolving mortgage, the date when the principal is to be crystallized may be specified or changed.

(2) The provisions of Article 398-4, paragraph (2) apply mutatis mutandis to the cases referred to in the preceding paragraph.

(3) The date under paragraph (1) must be within five years of the day when the date was prescribed or changed.

(4) If registration with respect to a change in the date under paragraph (1) is not effected before the old date, the principal secured is crystallized on that old date.

(Assignments of Secured Claims under Revolving Mortgages)

Article 398-7 (1) A person that acquires a claim from a revolving mortgagee before the principal is crystallized may not exercise the revolving mortgage

with respect to that claim. The same applies to a person that made payment for or on behalf of an obligor before the principal was crystallized.

- (2) If an obligation is assumed before the principal is crystallized, the revolving mortgagee may not exercise the revolving mortgage with respect to the obligation of the person that assumes the obligation.
- (3) If the assumption of obligation releasing an old obligor is effected before the principal is crystallized, the obligee may not transfer the revolving mortgage to the obligation assumed by the new obligor, notwithstanding the provisions of Article 472-4, paragraph (1).
- (4) If any novation due to the substitution of the obligee is effected before the principal is crystallized, the obligee before the novation may not transfer the revolving mortgage to the obligations after the novation, notwithstanding the provisions of Article 518, paragraph (1). The same applies to the obligee in the case of novation due to the substitution of the obligor before the principal is crystallized.

#### (Succession of Revolving Mortgagees or Obligors)

Article 398-8 (1) If succession involving a revolving mortgagee commences before the principal is crystallized, the revolving mortgage secures the claims that exist at the time of the commencement of succession and otherwise secures claims that were agreed upon by the heirs and the mortgagor of the revolving mortgage and that an heir acquires after the commencement of succession.

- (2) If succession involving an obligor commences before the principal is crystallized, the revolving mortgage secures the obligations that exist at the time of the commencement of succession and otherwise secures the claims that were agreed upon by the revolving mortgagee and the mortgagor of the revolving mortgage and that an heir assumes after the commencement of succession.
- (3) The provisions of Article 398-4, paragraph (2) apply mutatis mutandis if an agreement as referred to in the preceding two paragraphs is reached.
- (4) If the agreements referred to in paragraph (1) and paragraph (2) are not registered within six months of the commencement of succession, the principal secured is deemed to have been crystallized at the time of the commencement of succession.

#### (Mergers of Revolving Mortgagees or Obligors)

Article 398-9 (1) If there is a merger with respect to a revolving mortgagee before the principal is crystallized, the revolving mortgage secures the claims that exist at the time of the merger and otherwise secures claims that a corporation that survives the merger or a corporation that is incorporated by the merger acquires after the merger.

- (2) If there is a merger with respect to an obligor before the principal is crystallized, the revolving mortgage secures the obligations that exist at the time of the merger and otherwise secures the obligations that a corporation that survives the merger or a corporation that is incorporated by the merger assumes after the merger.
- (3) In the cases provided for in the preceding two paragraphs, the mortgagor of the revolving mortgage may demand that the principal secured be crystallized; provided, however, that this does not apply, in the cases referred to in the preceding paragraph, if the relevant obligor is the mortgagor of the revolving mortgage.
- (4) If a demand under the provisions of the preceding paragraph is made, the principal secured is deemed to have been crystallized at the time of the merger.
- (5) The demand under the provisions of paragraph (3) may not be made if two weeks have passed since the day when the mortgagor of the revolving mortgage acquired knowledge of the merger. The same applies if one month has passed from the day of the merger.

(Company Splits of Revolving Mortgagees or Obligors)

Article 398-10 (1) If, before the principal is crystallized, a company split in which the relevant revolving mortgagee is the company to be split is effected, the revolving mortgage secures the claims that exist at the time of the split and otherwise secures claims acquired after the split by the split company and the company incorporated by the split, or claims acquired after the split by the company that succeeded to some or all of the rights and obligations of the split company regarding its business.

- (2) If, before the principal is crystallized, a split in which the relevant obligor is the company to be split is effected, the revolving mortgage secures the obligations that exist at the time of the split and otherwise secures obligations that are assumed after the split by the split company and the company incorporated by the split, or claims acquired after the split by the company that assumed some or all of the rights and obligations of the split company regarding its business.
- (3) The provisions of paragraphs (3) through (5) of the preceding Article apply mutatis mutandis to cases under the preceding two paragraphs.

(Disposition of Revolving Mortgages)

Article 398-11 (1) Before the principal is crystallized, a revolving mortgagee may not dispose of a revolving mortgage under the provisions of Article 376, paragraph (1); provided, however, that the revolving mortgagee is not precluded from applying that revolving mortgage to secure other claims.

- (2) The provisions of Article 377, paragraph (2) do not apply to payments made

before the principal is crystallized in the cases provided for in the proviso to the preceding paragraph.

(Assignments of Revolving Mortgages)

Article 398-12 (1) Before the principal is crystallized, a revolving mortgagee may assign a revolving mortgage, with the approval of the mortgagor of the revolving mortgage.

(2) A revolving mortgagee may divide the revolving mortgage into two revolving mortgages and assign either of the same pursuant to the provisions of the preceding paragraph. In this case, the rights for which that revolving mortgage is the subject matter is extinguished with respect to the revolving mortgage that was assigned.

(3) In order to effect an assignment under the provisions of the preceding paragraph, the approval of the person that holds the rights for which that revolving mortgage is the subject matter must be obtained.

(Partial Assignments of Revolving Mortgages)

Article 398-13 Before the principal is crystallized, a revolving mortgagee may, with the approval of the mortgagor of the revolving mortgage, effect a partial assignment of the revolving mortgage (meaning assignments of revolving mortgages that the assignor effects without dividing the revolving mortgage in order to co-own the same with the assignee; hereinafter the same applies in this Section).

(Co-Ownership of Revolving Mortgages)

Article 398-14 (1) Co-owners of a revolving mortgage are paid in proportion to the amount of their respective claims; provided, however, that if before the principal is crystallized, a proportion other than the above is agreed upon, or if it is agreed upon that a certain person will be paid prior to another, that agreement prevails.

(2) A co-owner in a revolving mortgage may, with the consent of the other co-owners, assign rights of the same pursuant to the provisions of Article 398-12, paragraph (1).

(Assignments or Waivers of Order of Priority of Mortgages and Assignments or Partial Assignments of Revolving Mortgages)

Article 398-15 If a revolving mortgagee that has accepted an assignment or waiver of the order of priority of a mortgage has assigned or partially assigned that mortgagee's revolving mortgage, the assignee benefits from the assignment or waiver of that order of priority.

(Joint Revolving Mortgages)

Article 398-16 The provisions of Articles 392 and 393 apply with respect to a revolving mortgage only when the fact that the revolving mortgage has been simultaneously established on several immovable properties to secure the same claim is registered.

(Changes in Joint Revolving Mortgages)

Article 398-17 (1) An change in the scope, obligors or maximum amount of the claims to be secured, or assignment or partial assignment of the revolving mortgages for which registration is effected in accordance with the preceding Article does not take effect unless registration is effected with respect to all immovable properties over which that revolving mortgages are established.

(2) The principal secured by the revolving mortgage for registered pursuant to the preceding Article is crystallized even when grounds on which the principal is crystallized arise only with respect to one immovable property alone.

(Aggregate Revolving Mortgages)

Article 398-18 A person that has a revolving mortgage on several immovable properties may exercise the right of priority with respect to the proceeds of each immovable property up to the respective maximum amounts, except for cases provided for in Article 398-16.

(Requests for Crystallizing of Principal of Revolving Mortgages)

Article 398-19 (1) If three years have passed from the time of the creation of a revolving mortgage, the mortgagor of the revolving mortgage may request the crystallizing of the principal secured. In this case, the principal secured is crystallized when two weeks have passed since the time of that request.

(2) A revolving mortgagee may request the crystallizing of the principal secured at any time. In this case, the principal secured is crystallized on the request of the same.

(3) The provisions of the preceding two paragraphs do not apply if the date on which the principal secured is to be crystallized is specified.

(Grounds for Crystallizing of Principal of Revolving Mortgages)

Article 398-20 (1) The principal secured by a revolving mortgage is crystallized in the following cases:

(i) if the revolving mortgagee has filed, with respect to the mortgaged immovables, a petition for auction or execution against earnings from immovable collateral or the attachment under the provisions of Article 304 as applied mutatis mutandis pursuant to Article 372; provided, however, that this provision applies only if the commencement of either auction procedures

- or execution procedures against earnings from immovable collateral, or an attachment has been effected;
- (ii) if the revolving mortgagee has effected an attachment for disposition of delinquency against the mortgaged immovables;
  - (iii) if two weeks have passed from the time when the revolving mortgagee acquired knowledge of the commencement of auction procedures or attachment for disposition of delinquency against the mortgaged immovables; or
  - (iv) if the obligor or mortgagor of the revolving mortgage has become subject to an order commencing bankruptcy proceeding.
- (2) If the commencement of auction procedures, the attachment under item (iii) of the preceding paragraph or the order commencing bankruptcy proceeding under item (iv) of that paragraph ceases to be effective, it is deemed that the principal secured was not crystallized; provided, however, that this does not apply if a person has acquired that revolving mortgage or a right for which the revolving mortgage is the subject matter on the assumption that the principal was crystallized.

(Requests for Reductions in Maximum Amount of Revolving Mortgages)

- Article 398-21 (1) After the principal is crystallized, the mortgagor of the revolving mortgage may request a reduction in the maximum amount of that revolving mortgage, to the amount of the obligations actually in existence plus the amount of the periodic payments including interest and the amount of compensation for loss or damage due to default in obligations that will arise in the following two years.
- (2) As to the reduction in the maximum amount of a revolving mortgage registered pursuant to Article 398-16, it suffices to make the request referred to in the preceding paragraph with respect to one of those immovable properties.

(Requests for Extinguishment of Revolving Mortgages)

- Article 398-22 (1) If the amount of the obligations currently in existence after the principal is crystallized exceeds the maximum amount of a revolving mortgage, the person that created the revolving mortgage to secure the obligations of another person or a third party that has acquired ownership, superficies, farming rights, or a lease that can be duly asserted against any third party with respect to the mortgaged immovables may request the extinguishment of that revolving mortgage on paying or depositing with an official depository an amount equivalent to that maximum amount. In this case, that payment or deposit has the effect of performance of the obligation.
- (2) A revolving mortgage that has been registered pursuant to Article 398-16 is

extinguished if the request for extinguishment referred to in the preceding paragraph is made with respect to one immovable property.

(3) The provisions of Articles 380 and 381 apply *mutatis mutandis* to the requests for extinguishment under paragraph (1).

### **Part III Claims**

#### **Chapter I General Provisions**

##### **Section 1 Subject Matter of Claim**

(Subject Matter of Claim)

Article 399 Even something that cannot be given an estimated monetary value may be the subject matter of a claim.

(Duty of Care in Cases of Delivery of Specific Things)

Article 400 If the subject matter of a claim is the delivery of a specific thing, the obligor must retain the thing with the due care of a prudent manager, which is determined in light of the contract or other sources of claims and the common sense in the transaction, until the delivery.

(Fungible Claim)

Article 401 (1) If the object of a claim is designated only with reference to a type and its quality cannot be determined in light of the nature of the juridical act or intention of the parties, the obligor must deliver a thing of medium quality.

(2) In the case referred to in the preceding paragraph, if the obligor has completed the acts necessary to deliver the thing, or has designated the thing the obligor is to deliver with the consent of the obligee, that thing thenceforth constitutes the subject matter of the claim.

(Monetary Claim)

Article 402 (1) If the subject matter of a claim is money, the obligor, at the obligor's own choice, may make the payment in currency of any kind; provided, however, that this does not apply to if the delivery of a specific kind of currency is the subject matter of the claim.

(2) If the specific kind of currency that is the subject matter of the claim has lost its mandatory circulating power at the time of the payment, the obligor must make payment in other currency.

(3) The provisions of the preceding two paragraphs apply *mutatis mutandis* if the delivery of the currency of a foreign state is the subject matter of the claim.

Article 403 If the amount of the claim is designated in the currency of a foreign state, the obligor may make the payment in Japanese currency converted with

the foreign exchange rate at the place of the performance.

(Statutory Interest Rate)

Article 404 (1) Unless the parties manifest a particular intention with respect to a claim which bears interest, the rate of the interest is the statutory interest rate as of the time when the interest first accrues.

(2) The statutory interest rate is 3% per annum.

(3) Notwithstanding the provisions of the preceding paragraph, pursuant to the provisions of Ministry of Justice Order, the statutory interest rate is to change pursuant to the provisions of the following paragraph for each term consisting of three years.

(4) The statutory interest rate for each term is the rate calculated by adding or deducting the rate equivalent to the difference between the benchmark rate for the most recent term during which there was a change in the statutory interest rate pursuant to the provisions of this paragraph (hereinafter referred to as the "most recent term of change" in this paragraph) and the benchmark rate for the current term (any part of the ratio which is less than 1% is disregarded), to or from the statutory interest rate for the most recent term of change.

(5) The term "benchmark rate" prescribed in the preceding paragraph means the rate announced by the Minister of Justice as the rate calculated by dividing, by 60, the sum of the average interest rate for short-term loans for each month (meaning the average of the interest rates for loans (limited to loans for a term of less than one year) extended by banks in each month)) during the period from January of the year six years prior to the year which contains the first day of each term to December of the year two years prior to the year which contains the first date of each term (any part of the rate which is less than 0.1% is disregarded), pursuant to the provisions of Ministry of Justice Order.

(Incorporation of Interest into Principal)

Article 405 If the payment of interest corresponding to one year or more is delayed, and if the obligor does not pay that interest notwithstanding the demand by the obligee, the obligee may incorporate that interest into the principal.

(Attribution of Right to Choose in Cases of Alternative Obligation)

Article 406 If the subject matter of the claim is to be determined by a choice being made from among more than one performance, the right to choose belongs to the obligor.

(Exercise of Right to Choose)

Article 407 (1) The right to choose under the preceding Article is exercised by

manifesting the intention to the counterparty.

- (2) The manifestation of intention referred to in the preceding paragraph may not be withdrawn without the consent of the counterparty.

(Transfer of Right to Choose)

Article 408 If a claim is due and, notwithstanding a demand by the counterparty specifying a reasonable period of time, the party that holds the right to choose does not exercise the right within that period of time, the right to choose is transferred to the counterparty.

(Right to Choose of Third Party)

Article 409 (1) If a third party makes the choice, that choice is made by manifesting intention to either the obligee or the obligor.

- (2) In the case prescribed in the preceding paragraph, if the third party is unable to make the choice or has no intention to make the choice, the right to choose is transferred to the obligor.

(Identification of Alternative Obligation Due to Impossibility)

Article 410 If a performance included in the subject matter of a claim is impossible, and the impossibility is by negligence of the party that has the right to choose, the claim exists to the extent of the remaining performances.

(Effect of Choice)

Article 411 The choice becomes effective retroactively as of the time of the accrual of the claim; provided, however, that this may not prejudice the rights of a third party.

## **Section 2 Effects of Claims**

### **Subsection 1 Liability for Non-Performance**

(Time of Performance and Delay in Performance)

Article 412 (1) If a fixed due date is assigned to the performance of an obligation, the obligor is liable for delay from the time that due date arrives.

- (2) If an uncertain due date is assigned to the performance of an obligation, the obligor is liable for delay from the time when the obligor receives the request for performance after the due date arrives or the time when the obligor becomes aware of the arrival of that due date, whichever comes earlier.

- (3) If no time limit is assigned to the performance of an obligation, the obligor is liable for delay from the time the obligor receives the request for performance.

(Impossibility of Performance)

Article 412-2 (1) If the performance of an obligation is impossible in light of the contract or other sources of claims and the common sense in the transaction, the obligee may not request the performance of the obligation.

(2) The impossibility of the performance of an obligation based on a contract as of the time of the formation of the contract does not preclude claiming compensation for loss or damage that arises from the impossibility of the obligation pursuant to the provisions of Article 415.

(Obligee's Delay in Acceptance)

Article 413 (1) If the obligee refuses, or is unable, to accept the tender of the performance of an obligation, and the subject matter of the obligation is the delivery of a specific thing, it is sufficient for the obligor to retain the thing by exercising care identical to that the obligor exercises for the obligor's own property, during the period from the time of the tender of the performance until the delivery of the thing.

(2) If the obligee's refusal or inability to accept the performance of an obligation results in increasing the expenses for the performance, the amount of increase is borne by the obligee.

(Impossibility of Performance during Obligor's Delay in Performance or Obligee's Delay in Acceptance, and Grounds Attributable)

Article 413-2 (1) If the performance of an obligation becomes impossible due to grounds not attributable to either party during a period in which the obligor is liable for delay in performance of the obligation, the impossibility of performance is deemed to be due to grounds attributable to the obligor.

(2) If the obligee refuses or is unable to accept the performance of an obligation, and the performance of the obligation becomes impossible due to grounds not attributable to either party after the obligor's tender of the performance, the impossibility of performance is deemed to be due to grounds attributable to the obligee.

(Compelling Performance)

Article 414 (1) If an obligor voluntarily fails to perform an obligation, the obligee may request the court to enforce obligor to perform through methods such as direct compulsion, execution by substitution, or indirect compulsion, in accordance with the provisions of the Civil Execution Act and other laws and regulations concerning the procedure for compulsory execution; provided, however, that this does not apply if the nature of the obligation does not permit the enforcement.

(2) The provisions of the preceding paragraph do not preclude claiming compensation for loss or damage.

(Compensation for Loss or Damage Due to Non-Performance)

Article 415 (1) If an obligor fails to perform consistent with the purpose of the obligation or the performance of an obligation is impossible, the obligee may claim compensation for loss or damage arising from the failure; provided, however, that this does not apply if the failure to perform the obligation is due to grounds not attributable to the obligor in light of the contract or other sources of obligation and the common sense in the transaction.

(2) If the obligee is entitled to claim compensation for loss or damage pursuant to the provisions of the preceding paragraph, and any of the following cases applies, the obligee may claim compensation for loss or damage in lieu of the performance of the obligation:

- (i) the performance of the obligation is impossible;
- (ii) the obligor manifests the intention to refuse to perform the obligation; or
- (iii) the obligation has arisen from a contract, and the contract is cancelled or the obligee acquires the right to cancel the contract on the ground of the obligor's failure to perform the obligation.

(Scope of Compensation for Loss or Damage)

Article 416 (1) The purpose of the claim for compensation for the loss or damage for failure to perform an obligation is to have the obligor to pay the compensation for loss or damage which would ordinarily arise from the failure.

(2) The obligee may also claim the compensation for damage which has arisen from any special circumstances if the party did foresee, or should have foreseen, the circumstances.

(Method of Compensation for Loss or Damage)

Article 417 Unless a particular intention is manifested, the amount of the compensation for loss or damage is determined with reference to monetary value.

(Deduction of Interim Interest)

Article 417-2 (1) In the case of determining the amount of compensation for loss or damage in relation to profits to be acquired in the future and deducting an amount equivalent to interest that is to accrue until the time of acquiring the profits, the deduction is made by applying the statutory interest rate applicable as of the time when the claim for the compensation for loss or damage arises.

(2) The preceding paragraph also applies in the case of determining the amount of compensation for loss or damage to cover expenses to be incurred in the future and deducting an amount equivalent to interest that is to accrue until

the time of incurring the expenses.

(Comparative Negligence)

Article 418 If the obligee is negligent regarding the failure to perform the obligation or the occurrence or spreading of a damage caused thereby, the court determines the liability for compensation for loss or damage and the amount thereof by taking these elements into consideration.

(Special Provisions for Monetary Debt)

Article 419 (1) The amount of the compensation for loss or damage for failure to perform an obligation to deliver money is determined with reference to the statutory interest rate as of the time when the obligor first assumes the responsibility for the delay; provided, however, that if the agreed-upon interest rate exceeds the statutory interest rate, the agreed-upon interest rate prevails.  
(2) The obligee is not be required to prove loss or damage with respect to the compensation for loss or damage referred to in the preceding paragraph.  
(3) The obligor may not raise the defense of force majeure with respect to the compensation for loss or damage referred to in paragraph (1).

(Liquidated Damages)

Article 420 (1) The parties may agree on the amount of liquidated damages with respect to the failure to perform the obligation.  
(2) The agreement on liquidated damages do not preclude the request for performance or the exercise of the cancellation right.  
(3) A penalty is presumed to constitute liquidated damages.

Article 421 The provisions of the preceding Article apply mutatis mutandis if the parties agree in advance to appropriate anything other than money as compensation for loss or damage.

(Subrogation for Compensation for Loss or Damage)

Article 422 If an obligee receives the full value of a thing or right which is the subject matter of the claim as compensation for loss or damage, the obligor subrogates the obligee to that thing or right by operation of law.

(Right to Demand Substitute)

Article 422-2 If the obligor acquires a right or profit as a substitute for the subject matter of the obligation due to the same cause as the one that has rendered the performance of the obligation impossible, the obligee may demand the transfer of the right or reimbursement of the profit from the obligor, to the extent of the amount of damage sustained thereby.

## Subsection 2 Obligee's Right of Subrogation

### (Requirements for Obligee's Right of Subrogation)

- Article 423 (1) An obligee may exercise the right of the obligor (hereinafter referred to as the "subrogor's right") when it is necessary to do so in order to preserve the obligee's own claim; provided, however, that this does not apply to rights which belong exclusively to and are personal to the obligor or rights which are immune from attachment.
- (2) The obligee may not exercise the subrogor's right unless and until the obligee's claim becomes due; provided, however, that this does not apply to an act of preservation.
- (3) The obligee may not exercise the subrogor's right if the obligee's claim is not enforceable by compulsory execution.

### (Scope of Exercise by Subrogation)

Article 423-2 If the obligee exercises the subrogor's right, and the subject matter of the subrogor's right is divisible, the obligee may exercise the subrogor's right only to the extent of the amount of the obligee's own claim.

### (Payment or Delivery to Obligee)

Article 423-3 If the obligee exercises the subrogor's right, and the subject matter of the subrogor's right is the payment of money or delivery of movables, the obligee may demand that the other party make the payment or delivery to the obligee. In such a case, if the other party makes the payment or delivery to the obligee, the subrogor's right is extinguished thereby.

### (Defense of the Other Party)

Article 423-4 If the obligee exercises the subrogor's right, the other party may duly assert against the obligee any defense that can be asserted against the obligor.

### (Obligor's Authority to Collect and Dispose)

Article 423-5 Even if the obligee exercises the subrogor's right, the obligor is not precluded from independently collecting or otherwise disposing of the subrogor's right. In such a case, the other party is not precluded from performing the obligation to the obligor with respect to the subrogor's right.

### (Notice of Suit to Be Given by Obligee That Has Filed Action Concerning Exercise of Subrogor's Right)

Article 423-6 If the obligee files an action concerning the exercise of the

subrogor's right, the obligee must give a notice of suit to the obligor without delay.

(Obligee's Right of Subrogation to Preserve the Right to Request Registration)  
Article 423-7 A person that has acquired by assignment from another person a property for which the acquisition or loss of rights and the change to rights cannot be duly asserted against a third party unless registered may exercise the assignor's right to request a third party to complete the registration procedure if the assignor does not exercise that right. In such a case, the provisions of the preceding three Articles apply mutatis mutandis.

**Subsection 3 Obligee's Right to Demand Rescission of Fraudulent Act**  
**Division 1 Requirements for Obligee's Right to Demand Rescission of Fraudulent Act**

(Obligee's Demand for Rescission of Fraudulent Act)

Article 424 (1) An obligee may demand the court to rescind an act which the obligor commits knowing that it will prejudice the obligee; provided, however, that this does not apply if a person that benefits from that act (hereinafter referred to as the "beneficiary" in this Subsection) does not know, at the time of the act, that the obligee will be prejudiced.

(2) The provisions of the preceding paragraph do not apply to an act with a subject matter other than property rights.

(3) The obligee may make the demand under the provisions of paragraph (1) (hereinafter referred to as "demand for rescission of fraudulent act") only if the obligee's claim has arisen from a cause that existed before the act prescribed in paragraph (1).

(4) The obligee may not make demand for rescission of fraudulent act if the obligee's claim is not enforceable by compulsory execution.

(Special Provisions for Act of Disposing of Property in Exchange for Reasonable Value)

Article 424-2 If the obligor commits an act of disposing of a property held thereby, and, in exchange, acquires a reasonable value from the beneficiary, the obligee may make demand for rescission of fraudulent act with respect to that act only if the act satisfies all of the following requirements:

(i) the act is actually likely to cause the obligor to engage in a disposition that will be prejudicial to other obligees such as concealment and gratuitous conveyance (hereinafter referred to as "concealment or other disposition" in this Article) by changing the kind of the property through that disposition such as realization of immovables;

- (ii) the obligor, at the time of the act, has the intention to engage in concealment or other disposition of any property such as money that the obligor acquires as in exchange for the act; and
- (iii) the beneficiary, at the time of the act, knows that the obligor has the intention to engage in concealment or other disposition.

(Special Provisions for Provision of Security to Specific Obligee)

Article 424-3 (1) The obligee may make demand for rescission of fraudulent act with respect to an act concerning the provision of a security or extinguishment of an obligation that is committed by the obligor with regard to an existing obligation, only if the act satisfies all of the following requirements:

- (i) the act is committed while the obligor is unable to pay debts (meaning the condition in which the obligor, due to lack of ability to pay, is generally and continuously unable to pay debts as they become due; the same applies in item (i) of the following paragraph); and
- (ii) the act is committed by the obligor in collusion with the beneficiary with the intention to prejudice other obligees.

(2) If the act prescribed in the preceding paragraph is not within the scope of the obligor's obligation or the time of the act is not such that is required as the obligor's obligation, and it satisfies all of the following requirements, the obligee may make demand for rescission of fraudulent act with respect to that act, notwithstanding the provisions of that paragraph:

- (i) the act is committed within 30 days before the obligor became unable to pay debts; and
- (ii) the act is committed by the obligor in collusion with the beneficiary with the intention to prejudice other obligees.

(Special Provisions for Substitute Performance for Excessive Consideration)

Article 424-4 With respect to an act concerning the extinguishment of an obligation which has been committed by the obligor, if the value of the payment or delivery received by the beneficiary exceeds the amount of the obligation extinguished by that act, and the act satisfies the requirement prescribed in Article 424, the obligee may make demand for rescission of fraudulent act with regard to the part other than the part corresponding to the amount of the obligation extinguished, notwithstanding the provisions of paragraph (1) of the preceding Article.

(Demand for Rescission of Fraudulent Act against Subsequent Acquirer)

Article 424-5 If the obligee is entitled to make demand rescission for fraudulent act against the beneficiary, and a person subsequently acquires the property which has been transferred to the beneficiary, the obligee may also make

demand for rescission of fraudulent act against the subsequent acquirer only in the situations specified in the following items according to the categories set forth in the respective items:

- (i) if the subsequent acquirer acquires the property from the beneficiary: the subsequent acquirer, at the time of the acquisition, knows that the obligor's act will be prejudicial to the obligee; or
- (ii) if the subsequent acquirer acquires the property from another subsequent acquirer: the relevant subsequent acquirer and all the subsequent acquirers that previously acquired the property, at the time of their respective acquisitions, know that the obligor's act will be prejudicial to the obligee.

### **Division 2 Method of Exercising Right to Demand Rescission of Fraudulent Act**

(Demand of Return of Property or Reimbursement of Value)

- Article 424-6 (1) In making demand for rescission of fraudulent act against the beneficiary, the obligee may demand the rescission of the act committed by the obligor and also demand the return of the property which has been transferred to the beneficiary as a result of that act. If it is difficult for the beneficiary to return the property, the obligee may demand the reimbursement of its value.
- (2) In making demand for rescission of fraudulent act against the subsequent acquirer, the obligee may demand the rescission of the act committed by the obligor and also demand the return of the property which has been acquired by the subsequent acquirer. If it is difficult for the subsequent acquirer to return the property, the obligee may demand the reimbursement of its value.

(Defendant and Notice of Suit)

- Article 424-7 (1) In an action concerning demand for rescission of fraudulent act, the person specified in each of the following items according to the categories set forth in the respective items stands as a defendant:
- (i) an action concerning demand for rescission of fraudulent act against the beneficiary: the beneficiary; or
  - (ii) an action concerning demand for rescission of fraudulent act against the subsequent acquirer: the subsequent acquirer that is the other party to the demand for rescission of fraudulent act.
- (2) If the obligee files an action concerning demand for rescission of fraudulent act, the obligee must give notice of suit to the obligor without delay.

(Scope of Fraudulent Act to Be Rescinded)

- Article 424-8 (1) If the obligee makes demand for rescission of fraudulent act, and the subject matter of the act committed by the obligor is divisible, the

obligee may demand rescission of the act only to the extent of the amount of the obligee's own claim.

- (2) The preceding paragraph also applies if the obligee demands the reimbursement of value pursuant to the provisions of the second sentence of Article 424-6, paragraph (1) or the second sentence of paragraph (2) of that Article.

(Payment or Delivery to Obligee)

Article 424-9 (1) If the obligee demands the return of property from the beneficiary or subsequent acquirer pursuant to the provisions of the first sentence of Article 424-6, paragraph (1) or the first sentence of paragraph (2) of that Article, and the subject matter of the demand for return is the payment of money or delivery of movables, the obligee may demand that the beneficiary make the payment or delivery to the obligee or that the subsequent acquirer make the delivery to the obligee. In such a case, if the beneficiary or subsequent acquirer makes the payment or delivery to the obligee, they are not required to make the payment or delivery to the obligor.

- (2) The preceding paragraph also applies if the obligee demands the reimbursement of value from the beneficiary or subsequent acquirer pursuant to the provisions of the second sentence of Article 424-6, paragraph (1) or the second sentence of paragraph (2) of that Article.

### **Division 3 Effect of Exercise of Right to Demand Rescission of Fraudulent Act**

(Scope of Persons Affected by Upholding Judgment)

Article 425 A final and binding judgment upholding demand for rescission of fraudulent act is effective against the obligor and all obligees.

(Beneficiary's Right for Counter-Performance Received by Obligor)

Article 425-2 If an act concerning the disposition of property conducted by the obligor (excluding an act concerning the extinguishment of an obligation) is rescinded, the beneficiary may demand that the obligor return the counter-performance that the beneficiary completed in order to acquire the property. If it is difficult for the obligor to return the counter-performance, the beneficiary may demand the reimbursement of its value.

(Restoration of Beneficiary's Claim)

Article 425-3 If an act concerning the extinguishment of an obligation conducted by the obligor is rescinded (excluding the case of rescission pursuant to the provisions of Article 424-4), and the beneficiary returns the payment or

delivery received from the obligor or reimburse its value, this restores the beneficiary's claim against the obligor to its original state.

(Right of Subsequent Acquirer Subject to Demand for Rescission of Fraudulent Act)

Article 425-4 If an act done by the obligor is rescinded by the demand for rescission of fraudulent act made against the subsequent acquirer, the subsequent acquirer may exercise the right specified in each of the following items according to the categories set forth in the respective items; provided, however, that this is limited to the value of the counter-performance which was completed by the subsequent acquirer in order to acquire the property from the predecessor or the value of the claim which was extinguished as a result of the acquisition of the property by the subsequent acquirer from the predecessor:

- (i) if the act prescribed in Article 425-2 is rescinded: the beneficiary's right to demand return of the counter-performance or right to demand reimbursement of its value from the obligor, which should have arisen pursuant to the provisions of that Article if the act were rescinded by the demand for rescission of fraudulent act against the beneficiary; or
- (ii) if the act prescribed in the preceding Article is rescinded (excluding the case of rescission pursuant to the provisions of Article 424-4): the beneficiary's claim against the obligor, which should have been restored pursuant to the provisions of the preceding Article if the act were rescinded by demand for rescission of fraudulent act against the beneficiary.

**Division 4 Limitation on Period for Right to Demand Rescission of Fraudulent Act**

Article 426 No action for demand for rescission of fraudulent act may be filed if two years have passed from the time when the obligee came to know that the obligor committed the act knowing that it would be prejudicial to the obligee. The same applies if 10 years have passed from the time of the act.

**Section 3 Claims and Obligations with Multiple-Parties**  
**Subsection 1 General Provisions**

(Divisible Claims and Divisible Obligations)

Article 427 If there are more than one obligee or obligor, unless a particular intention is manifested, each obligee or each obligor has rights or obligations in equal ratios.

**Subsection 2 Indivisible Claims and Indivisible Obligations**

(Indivisible Claim)

Article 428 The provisions of the following Subsection (Joint and Several Claims) (excluding the provisions of Articles 433 and 435) apply mutatis mutandis if the subject matter of a claim is indivisible by nature and the claim is held by two or more obligees.

(Novation or Release between Obligor and One Obligee of Indivisible Claim)

Article 429 Even if there is a novation or release between one of the obligees of an indivisible claim and the obligor, other obligees may request the obligor to perform the obligation in whole. In such a case, the benefit which should have been allocated to that one obligee if that obligee did not lose the relevant right must be reimbursed to the obligor.

(Indivisible Obligation)

Article 430 The provisions of Subsection 4 (Joint and Several Obligation) (excluding the provisions of Article 440) apply mutatis mutandis if the subject of an obligation is indivisible by nature and there are multiple obligors.

(Changing into Divisible Claims or Divisible Obligations)

Article 431 If an indivisible claim becomes a divisible claim, each obligee may request the performance only of the share of the claim to which each obligee is entitled, and if an indivisible obligation becomes a divisible obligation, each obligor is liable only for the share of the obligation for which each obligor is liable.

### **Subsection 3 Joint and Several Claims**

(Request by Joint and Several Obligees for Performance)

Article 432 If the subject matter of a claim is divisible by nature, and two or more persons hold the claim jointly and severally based on the provisions of laws and regulations or the manifestation of intention of the parties, each obligee may request the performance in whole or in part for the benefit of all obligees, and the obligor may perform for each obligee for the benefit of all obligees.

(Novation or Release between Obligor and One Joint and Several Obligee)

Article 433 If there is a novation or release between one of the joint and several obligees and the obligor, the other obligees may not request performance of the part concerning the benefit which should have been allocated to that one obligee if the obligee did not lose the relevant right.

(Set-Off between Obligor and One Joint and Several Obligee)

Article 434 If the obligor has a claim against one of the joint and several obligees, and the obligor invokes a set-off, the set-off becomes effective against other joint and several obligees as well.

(Merger of Obligor with One Joint and Several Obligee)

Article 435 If there is a merger between one of the joint and several obligees and the obligor, the obligor is deemed to have performed the obligation.

(Principle of Relative Effect)

Article 435-2 Except in cases prescribed in Article 432 through the preceding Article, any act of one of the joint and several obligees or any circumstances which have arisen with respect to one of the joint and several obligees do not become effective in relation to other joint and several obligees; provided, however, that if one of the other joint and several obligees and the obligor manifest a particular intention, their intention prevails with respect to the effect in relation to the remaining other joint and several obligees.

#### **Subsection 4 Joint and Several Obligations**

(Request to Joint and Several Obligors for Performance)

Article 436 If the subject matter of an obligation is indivisible by nature, and two or more persons bear the obligation jointly and severally based on the provisions of laws and regulations or the manifestation of intention of the parties, the obligee may request one of the joint and several obligors, or all of the joint and several obligors, simultaneously or successively, to perform the obligation, in whole or in part.

(Invalidity of Juridical Act with Respect to One of Joint and Several Obligors)

Article 437 Even if there are grounds for the invalidity or rescission of a juridical act with respect to one of the joint and several obligors, the validity of the obligation of other joint and several obligor is not impaired.

(Novation between Obligee and One Joint and Several Obligor)

Article 438 If novation takes place between one of the joint and several obligors and the obligee, the claim is extinguished for the benefit of all joint and several obligors.

(Set-Offs by One Joint and Several Obligor)

Article 439 (1) If one of the joint and several obligors has a claim against the

obligee and invokes a set-off, the claim is extinguished for the benefit of all joint and several obligors.

- (2) Until the joint and several obligor that has the claim referred to in the preceding paragraph invokes a set-off, other joint and several obligors may refuse to perform the obligation to the obligee only to the extent of that joint and several obligor's share of the obligation.

(Merger with One of Joint and Several Obligors)

Article 440 If there is a merger between one of the joint and several obligors and the obligee, the joint and several obligor is deemed to have performed the obligation.

(Principle of Relative Effect)

Article 441 Except in cases prescribed in Articles 438, Article 439, paragraph (1), and the preceding Article, any circumstances which have arisen with respect to one of the joint and several obligors is not effective in relation to other joint and several obligors; provided, however, that if the obligee and one of the other joint and several obligors manifest a different intention, their intention prevails with respect to the effect in relation to the remaining other joint and several obligees.

(Right to Reimbursement among Joint and Several Obligors)

Article 442 (1) If one of the joint and several obligors performs the obligation or otherwise obtain a common discharge in exchange for that obligor's own property, the joint and several obligor has the right to reimbursement from other joint and several obligors for the amounts in proportion to their respective shares of the obligation of the amount of the property expended by the joint and several obligor in order to obtain the discharge (if the amount of property exceeds the amount after the common discharge, the amount thus discharged), regardless of whether the amount discharged exceeds the amount of the joint and several obligor's own share.

- (2) The reimbursement under the provisions of the preceding paragraph includes the compensation of the statutory interest which accrues on or after the day of the performance of the obligation or other discharge, and the compensation for unavoidable expenses and other loss or damage.

(Limitation on Reimbursement to Joint and Several Obligor That Has Failed to Give Notice)

Article 443 (1) If one of the joint and several obligors performs the obligation or otherwise obtains a common discharge in exchange for that obligor's own property, while knowing the existence of other joint and several obligors but

without giving notice of the common discharge to the other joint and several obligors, another joint and several obligor has a defense that can be duly asserted against the obligee, the other joint and several obligor may duly assert that defense against the joint and several obligor that obtained the discharge to the extent of the other obligor's share of the obligation. In such a case, if the other joint and several obligor duly asserts a set-off as defense against the joint and several obligor that obtained the discharge, the joint and several obligor may request the obligee to perform the obligation which should have been extinguished due to set-off.

- (2) If one of the joint and several obligors that has performed the obligation or otherwise obtained a common discharge in exchange for that obligor's own property, while knowing the existence of other joint and several obligors, fails to give notice of the acquisition of the discharge to the other joint and several obligors, and as a result, another joint and several obligor performs the obligation or performs another act in good faith to obtain discharge in exchange for that obligor's own property, the other joint and several obligor may deem that the act performed to obtain the discharge is valid.

(Allocation of Share of Person Who Does Not Have Sufficient Financial Resources for Reimbursement)

Article 444 (1) If one of the joint and several obligors does not have the sufficient financial resources to make the reimbursement, the portion that is unable to be reimbursed is borne by the joint and several obligor that demands the reimbursement and the other joint and several obligors that have the financial resources, in proportion to their respective shares of the obligation.

- (2) In the case prescribed in the preceding paragraph, if neither the joint and several obligor that demands the reimbursement nor the other obligors that have the financial resources have shares of the obligation, the portion that is unable to be reimbursed is borne equally among the joint and several obligor that demands the reimbursement and the other obligors that have the financial resources.

- (3) Notwithstanding the provisions of the preceding two paragraphs, if the joint and several obligor that demands the reimbursement is unable to receive the reimbursement due to negligence, that joint and several obligor may not request other joint and several obligors to bear their respective shares of the obligation.

(Release of One Joint and Several Obligor and Right to Reimbursement)

Article 445 Even if one of the joint and several obligors is released from the obligation or the prescription period expires for one of the joint and several obligors, other joint and several obligors may exercise the right to

reimbursement referred to in Article 442, paragraph (1) against that one joint and several obligor.

### **Subsection 5 Guarantee Obligation** **Division 1 General Provisions**

(Responsibility of Guarantor)

Article 446 (1) A guarantor has the responsibility to perform the obligation of the principal obligor when the latter fails to perform that obligation.

(2) No guarantee contract becomes effective unless it is made in writing.

(3) If a guarantee contract is concluded by electronic or magnetic record which records the terms thereof, the guarantee contract is deemed to be made in writing, and the provisions of the preceding paragraph apply.

(Scope of Guarantee Obligation)

Article 447 (1) The guarantee obligation includes interest, penalty and compensation for loss or damage in connection with the principal obligation, and all other charges secondary to that obligation.

(2) A guarantor may stipulate the amount of penalty or compensation for loss or damage with regard to the guarantor's own guarantee obligation only.

(Burden of Guarantor, and Subject Matter or Terms of Principal Obligation)

Article 448 (1) If the burden of a guarantor is more onerous than the principal obligation as to either its subject matter or terms, it is reduced to the extent of the principal obligation.

(2) Even if the subject matter or terms of the principal obligation are made more onerous after the conclusion of a guarantee contract, the burden of the guarantor remains unchanged.

(Guarantee of Voidable Obligations)

Article 449 If a guarantor that guarantees an obligation which may be voidable due to the principal obligor's limited capacity to act, is aware, at the time of entering into a guarantee contract, of the cause for its voidability, that guarantor is presumed to have assumed an independent obligation of the same subject matter in the event of non-performance by the principal obligor or rescission of the obligation.

(Requirements for Guarantor)

Article 450 (1) If an obligor has the obligation to provide a guarantor, that guarantor must:

(i) be a person with capacity to act; and

- (ii) have sufficient financial resources to pay the obligation.
- (2) If the guarantor ceases to meet the requirements set forth in item (ii) of the preceding paragraph, the obligee may demand that some other person meeting the requirements set forth in any item of the same paragraph be substituted for that guarantor.
- (3) The provisions of the preceding two paragraphs do not apply if the obligee has designated the guarantor.

(Providing Other Security)

Article 451 If an obligor is unable to provide a guarantor meeting the requirements set forth in any item of paragraph (1) of the preceding Article, the obligor may provide other security in lieu thereof.

(Defense of Demand)

Article 452 If an obligee has requested performance of an obligation from the guarantor, the guarantor may request the obligee to demand performance of the principal obligor first; provided, however, that this does not apply if the principal obligor is subject to an order commencing bankruptcy proceeding or if the principal obligor's whereabouts are unknown.

(Defense of Debtor's Financial Resources)

Article 453 Even after the obligee has made a demand to the principal obligor in accordance with the provisions of the preceding Article, the obligee must first execute on the property of the principal obligor if the guarantor proves that the principal obligor has the financial resources to pay the obligation and that the execution can be easily performed.

(Special Provisions for Joint and Several Guarantee)

Article 454 If a guarantor has assumed an obligation jointly and severally with the principal obligor, the guarantor does not have the rights set forth in the preceding two Articles.

(Effect of Defense of Demand and Defense of Debtor's Financial Resources)

Article 455 If after the guarantor makes a request or gives proof pursuant to the provisions of Article 452 or Article 453, the obligee fails to demand or to levy execution and becomes unable to obtain full performance from the principal obligor as a result of that, the guarantor is released from the obligation to the extent that the obligee would have received payment if the obligee had immediately demanded or levied execution.

(Cases with Multiple Guarantors)

Article 456 If there are multiple guarantors, the provisions of Article 427 apply even if their obligations arise from individual acts.

(Effect of Circumstance Which Arises with Respect to the Principal Obligor)

Article 457 (1) The postponement of expiry of prescription period and the renewal of prescription period due to grounds such as a request for performance in relation to the principal obligor are also effective in relation to the guarantor.

(2) A guarantor may assert against the obligee a defense that can be raised by the principal obligor.

(3) If the principal obligor has a right to set-off, right to rescind or right to cancel against the obligee, the guarantor may refuse to perform the obligation to the obligee to the extent that the principal obligor should have been released from the obligation by exercising these rights.

(Effect of Circumstance Which Arises with Respect to Jointly and Severally Liable Guarantor)

Article 458 The provisions of Article 438, Article 439, paragraph (1), Article 440, and Article 441 apply mutatis mutandis to circumstances which arise with regard to the guarantor that bears the obligation jointly and severally with the principal obligor.

(Obligee's Duty to Provide Information on the Status of Performance of Principal Obligation)

Article 458-2 If a guarantor gives guarantee as requested by the principal obligor, the obligee, upon request of the guarantor, must provide, without delay, the guarantor with information concerning whether or not there has been a default in terms of the principal of the principal obligation or any interest, penalty or compensation for loss or damage in connection with the principal obligation or any other charges secondary to the obligation, as well as the remaining amount of these items and the amount of those already due.

(Obligee's Duty to Provide Information If Principal Obligor Forfeits the Benefit of Time)

Article 458-3 (1) If the principal obligor has the benefit of time forfeits the benefit, the obligee must notify the guarantor to that effect within two months from the time when the obligee comes to know the principal obligor's forfeiture of the benefit.

(2) If the obligee fails to notify the guarantor as referred to in the preceding paragraph within the period referred to that paragraph, the obligee may not request the guarantor to perform the guarantee obligation for any delay

damages that have accrued after the principal obligor is accelerated and becomes immediately due until the obligee notifies the guarantor pursuant to the provisions of that paragraph (excluding those that should have accrued even if the principal obligor maintains the benefit of time).

- (3) The provisions of the preceding two paragraphs do not apply if the guarantor is a corporation.

(Right to Reimbursement of Guarantor Guaranteeing by Request)

Article 459 (1) If a guarantor gives guarantee as requested by the principal obligor, and performs the obligation on behalf of the principal obligor or performs any other act that causes the obligation to be extinguished in exchange for the guarantor's own property (hereinafter referred to as an "act for extinguishment of obligation"), the guarantor has a right to reimbursement from the principal obligor for the amount of property expended for that act (if the amount of property exceeds the amount of the principal obligation extinguished by the act for extinguishment of obligation, the amount thus extinguished).

- (2) The provisions of Article 442, paragraph (2) apply mutatis mutandis to the cases set forth in the preceding paragraph.

(Right to Reimbursement in Case of Guarantor Guaranteeing by Request Who Performed Obligation Before Due Date)

Article 459-2 (1) If a guarantor gives guarantee as requested by the principal obligor and performs an act for extinguishment of obligation before the due date of the principal obligation, the guarantor has the right to reimbursement from the principal obligor to the extent that the principal obligor was enriched at the time of the act. In such a case, if the principal obligor alleges to have had grounds for set-off prior to the day of the act for extinguishment of obligation, the guarantor may request the obligee to perform the obligation which should have been extinguished due to the set-off.

- (2) Reimbursement under the provisions of the preceding paragraph includes the statutory interest which accrues on and after the due date of the principal obligation and compensation for loss or damage including expenses which could not have been avoided even if an act for extinguishment of obligation were performed on or after the due date.
- (3) The right to reimbursement referred to in paragraph (1) may not be exercised before the due date of the principal obligation.

(Right of Guarantor Guaranteeing by Request to Reimbursement in Advance)

Article 460 If a guarantor has given a guarantee as requested by the principal obligor, the guarantor may exercise in advance the right to reimbursement

against the principal obligor if:

- (i) the principal obligor is subject to an order commencing bankruptcy proceeding, and the obligee does not participate in the distribution of the bankruptcy estate;
- (ii) the obligation is due; provided, however, that no extension of time granted by the obligee to the principal obligor after the conclusion of the guarantee contract may be duly asserted against the guarantor; and
- (iii) the guarantor is, without negligence, rendered a judicial decision ordering the guarantor to perform the obligation to the obligee.

(Cases in Which a Principal Obligor Reimburses a Guarantor)

- Article 461 (1) If a principal obligor reimburses a guarantor pursuant to the provisions of the preceding Article, the principal obligor may demand the guarantor to provide security or to obtain an exemption for the principal obligor until the obligee receives the full satisfaction of the entire obligation.
- (2) In the case prescribed in the preceding paragraph, the principal obligor may be released from the obligation for reimbursement by making a deposit with an official depository, by providing security, or by procuring the discharge of the liabilities of the guarantor.

(Right to Reimbursement of Guarantor Guaranteeing without Request by Principal Obligor)

- Article 462 (1) The provisions of Article 459-2, paragraph (1) apply mutatis mutandis if a person, that has given guarantee without the request of the principal obligor, performs an act for extinguishment of obligation.
- (2) A person that has become a guarantor against the will of the principal obligor has the right to reimbursement only to the extent currently enriched. In this case, if the principal obligor asserts to have grounds for set-off against the obligee prior to the day of the demand for reimbursement, the guarantor may demand that the obligee perform the obligation which would have been extinguished by that set-off.
- (3) The provisions of Article 459-2, paragraph (3) apply mutatis mutandis to the exercise of the right to reimbursement if the guarantor referred to in the preceding two paragraphs performs an act for extinguishment of obligation before the due date of the principal obligation.

(Limitation on Reimbursement for Guarantor Who Failed to Give Notice)

- Article 463 (1) If a guarantor gives guarantee as requested by the principal obligor and performs an act for extinguishment of obligation without giving prior notice to the principal obligor, the principal obligor may assert against the guarantor any defense that could have been asserted against the obligee. In

such a case, if the principal obligor asserts a set-off against the guarantor, the guarantor may request the obligee to perform the obligation which should have been extinguished due to the set-off.

- (2) If a guarantor gives guarantee as requested by the principal obligor and performs an act for extinguishment of obligation in good faith because of the principal obligor's failure to notify the guarantor of the principal obligor's performance of an act for extinguishment of obligation, the guarantor may deem that the guarantor's own act for extinguishment of obligation is valid.
- (3) If the principal obligor performs an act for extinguishment of obligation after the guarantor has performed an act for extinguishment of obligation, the principal obligor may deem that the guarantor's own act for extinguishment of obligation is valid, not only if the guarantor has given guarantee against the will of the principal obligor but also if the principal obligor has performed an act for extinguishment of obligation in good faith because of the guarantor's failure to notify the principal obligor of the guarantor's performance of act for extinguishment of obligation.

(Right to Reimbursement of Guarantor for Joint and Several Obligation or Indivisible Obligation)

Article 464 A person that has become a guarantor for one of the joint and several obligors or for one of the indivisible obligors has the right to reimbursement from the other obligors only to the extent of that person's share of the obligation.

(Right of Joint Guarantors to Reimbursement for One Obligation)

Article 465 (1) If there are multiple guarantors, and one guarantor has paid the entire amount of the obligation or any amount exceeding that guarantor's share because the principal obligation is indivisible, or because there is a special provision to the effect that each guarantor should pay the entire amount, the provisions of Articles 442 through 444 apply mutatis mutandis.

(2) Except in the cases prescribed in the preceding paragraph, if one of the guarantors that are not jointly and severally liable has paid the entire amount or any amount exceeding that guarantor's share, the provisions of Article 462 apply mutatis mutandis.

## **Division 2 Contract for Revolving Guarantee by Individual**

(Liability of Guarantor of Contract for Revolving Guarantee by Individual)

Article 465-2 (1) A guarantor to a guarantee contract under which the principal obligation is one or more unidentified obligations within a certain specified scope (hereinafter referred to as a "contract for revolving guarantee") and the

guarantor is not a corporation (hereinafter referred to as a "contract for revolving guarantee by an individual") is liable to perform the obligation in terms of the amounts of the principal of the principal obligation, any interest, penalty and compensation for loss or damage in connection with the principal obligation, and all the other charges secondary to the obligation, as well as the amount of any penalty or compensation for loss or damage which is agreed upon on with regard to the guarantee obligation, up to a certain maximum amount which pertains to all of these amounts.

- (2) A contract for revolving guarantee by an individual does not become effective unless it provides for the maximum amount prescribed in the preceding paragraph.
- (3) The provisions of Article 446, paragraphs (2) and (3) apply mutatis mutandis to the provisions concerning a maximum amount prescribed in paragraph (1) in a contract for revolving guarantee by an individual.

(Principal Crystallization Date for Contract for Revolving Guarantee by Individual for Loans)

Article 465-3 (1) If a contract for revolving guarantee by an individual under which the scope of the principal obligation includes an obligation to be borne as a result of loans or receiving a discount of a negotiable instrument (hereinafter referred to as a "loan obligation"; and this contract is hereinafter referred to as a "contract for revolving guarantee by an individual for loans") provides for the date on which the principal of the principal obligation should be crystallized (hereinafter referred to as the "principal crystallization date"), and it also provides that the principal crystallization date is to fall on or after the day on which five years have passed after the day of the conclusion of the contract for the revolving guarantee by an individual for loans, the provisions concerning the principal crystallization date do not become effective.

- (2) If a contract for revolving guarantee by an individual for loans does not provide for a principal crystallization date (or if the provisions concerning the principal crystallization date do not become effective pursuant to the provisions of the preceding paragraph), the principal crystallization date is to fall on the day on which three years have passed from the day of the conclusion of the contract for revolving guarantee by an individual for loans.
- (3) If a change of the principal crystallization date provided for in a contract for revolving guarantee by an individual for loans is to be effected, and the principal crystallization date as changed falls on a day later than the day on which five years have passed after the day of the change, that change of the principal crystallization date does not become effective; provided, however, that this does not apply if the change of the principal crystallization date is effected within two months immediately preceding the principal crystallization

date, and the principal crystallization date as changed falls on a day within five years from the original principal crystallization date.

- (4) The provisions of Article 446, paragraphs (2) and (3) apply mutatis mutandis to the provisions concerning a principal crystallization date in a contract for revolving guarantee by an individual for loans and a change thereof (excluding provisions to the effect that the principal crystallization date is to fall on a day within three years from the day of the conclusion of that contract for revolving guarantee by an individual for loans, and any change which is intended to change the principal crystallization date to a day preceding the original principal crystallization date).

(Grounds for Crystallization of Principal in Contract for Revolving Guarantee by Individual)

Article 465-4 (1) The principal of the principal obligation under a contract for revolving guarantee by an individual is crystallized in the following cases; provided, however, that in the case set forth in item (i), it is crystallized only if the procedure for compulsory execution or enforcement procedure of a security right is commenced:

- (i) if an obligee files a petition for compulsory execution or enforcement of any security right for a claim for payment of money with regard to any property of the guarantor;
- (ii) if the guarantor receives an order commencing bankruptcy proceeding; or
- (iii) the relevant principal obligor or guarantor has died.

(2) Beyond the case prescribed in the preceding paragraph, the principal of the principal obligation under a contract for revolving guarantee by an individual for loans is crystallized in the following cases; provided, however, that in the case set forth in item (i), it is crystallized only if the procedure for compulsory execution or enforcement procedure of a security right is commenced:

- (i) if the obligee files a petition for compulsory execution or enforcement of a security right for a claim for payment of money with regard to property of the principal obligor; or
- (ii) if the principal obligor receives an order commencing bankruptcy proceeding.

(Right to Reimbursement in Contract for Revolving Guarantee When the Guarantor Is a Corporation)

Article 465-5 (1) If a contract for revolving guarantee under which the guarantor is a corporation does not provide for the maximum amount prescribed in Article 465-2, paragraph (1), a guarantee contract under which the principal obligation is an obligation arising from the right to reimbursement held by the guarantor of the contract for revolving guarantee against the principal obligor

does not become effective.

- (2) If a contract for revolving guarantee under which the guarantor is a corporation and the scope of the principal obligation includes a loan obligation does not provide for the principal crystallization date, or its provisions concerning the principal crystallization date or any change thereof would not become effective should the provisions of Article 465-3, paragraph (1) or paragraph (3) be applied, a guarantee contract under which the principal obligation is an obligation arising from the right to reimbursement held by the guarantor of the revolving guarantee contract against the principal obligor does not become effective. The same applies to a contract for revolving guarantee under which the scope of the principal obligation includes an obligation arising from the right to reimbursement.
- (3) The provisions of the preceding two paragraphs do not apply if the guarantor of a guarantee contract under which the principal obligation is an obligation arising from the right to reimbursement or of a contract for revolving guarantee under which the scope of the principal obligation includes an obligation arising from the right to reimbursement is a corporation.

### **Division 3 Special Provisions for Guarantee Contract for Obligations Arising from Business**

(Preparation of Notarial Instrument and Effect of Guarantee)

Article 465-6 (1) A guarantee contract under which the principal obligation is a loan obligation assumed for business or a contract for a revolving guarantee under which the scope of the principal obligation includes a loan obligation assumed for business does not become effective unless the person that will become a guarantor manifests, prior to the conclusion of the contract, the intention to perform the guarantee obligation by means of a notarial instrument prepared within one month prior to the day of conclusion of the contract.

- (2) The notarial instrument referred to in the preceding paragraph must be prepared in compliance with the following formalities:
  - (i) the person that will become a guarantor gives the notary oral instructions regarding the particulars specified in (a) or (b) below for the category of contract set forth therein:
    - (a) a guarantee contract (excluding the one set forth in (b)): the obligee and obligor of the principal obligation, the principal of the principal obligation, whether any interest, penalty or compensation for loss or damage in connection with the principal obligation or any other charges secondary to the obligation are provided for in the contract and, if so, the details thereof, as well as the fact that the person that will become a guarantor has the

- intention to pay the entire amount of the obligation if the principal obligor fails to perform the obligation (if the person that will become a guarantor seeks to assume the obligation jointly and severally with the principal obligor, the intention to pay the entire amount of the obligation, regardless of whether the obligee has made a demand to the principal obligor, whether the principal obligor is able to perform the obligation, or whether the principal obligor has any other guarantor); or
- (b) a contract for a revolving guarantee: the obligee and obligor of the principal obligation, the scope of the principal obligation, the maximum amount under the contract for revolving guarantee, whether the principal crystallization date is provided for in the contract and, if so, the details thereof, as well as the fact that the person that will become a guarantor has the intention to pay the entire amount of the obligation with regard to the principal of the principal obligation and any interest, penalty, and compensation for loss or damage in connection with the principal obligation and any other charges secondary to the obligation, which are to arise by the principal crystallization date or the time when an event that causes the crystallization of the principal takes place, such as the events set forth in the items of Article 465-4, paragraph (1) or the items of paragraph (2) of that Article, up to the maximum amount, if the principal obligor fails to perform the obligation (if the person that will become a guarantor seeks to assume the obligation jointly and severally with the principal obligor, the intention to pay the entire amount of the obligation, regardless of whether the obligee has made a demand to the principal obligor, whether the principal obligor is able to perform the obligation, or whether the principal obligor has any other guarantor);
- (ii) the notary takes dictation from the person that will become the guarantor, and reads this aloud to, or allows its inspection by, the person that will become the guarantor;
- (iii) the person that will become a guarantor signs and seals the instrument after having approved the accuracy of the dictation taken by the notary; provided, however, that if the person that will become a guarantor is unable to sign, the notary may include a supplementary note giving the reason therefor in lieu of the signature of that person; and
- (iv) the notary includes a supplementary note to the effect that the instrument has been prepared in compliance with the formalities set forth in the preceding three items, and signs and seals the instrument.
- (3) The provisions of the preceding two paragraphs do not apply if the person that will become a guarantor is a corporation.

(Special Provisions for Formalities of Notarial Instrument on Guarantee)

- Article 465-7 (1) If a person that will become a guarantor of a guarantee contract or a contract for a revolving guarantee referred to in paragraph (1) of the preceding Article is unable to speak, the person must make a statement in front of the notary of the particulars specified in paragraph (1), item (i), (a) or (b) of that Article for the category of contract set forth therein, through an interpreter or by that person's own hand, in lieu of the oral instructions referred to in the same item. In such a case, to apply the provisions of item (ii) of that paragraph, the term "oral instructions" in that item is deemed to be replaced with "statement through an interpreter or by that person's own hand".
- (2) If a person that will become a guarantor of a guarantee contract or contract for revolving guarantee referred to in paragraph (1) of the preceding Article is unable to hear, the notary may convey the content of the dictation taken as prescribed in paragraph (2), item (ii) of that Article to the person that will become a guarantor, through an interpreter, in lieu of the reading it aloud as referred to in the same item.
- (3) If a notary prepares a notarial instrument in compliance with the formalities prescribed in the preceding two paragraphs, the notary must include a supplementary note to that effect on the instrument.

(Preparation of Notarial Instrument and Effect of Guarantee for Right to Reimbursement)

- Article 465-8 (1) The provisions of Article 465-6, paragraphs (1) and (2) and the preceding Article apply mutatis mutandis to a guarantee contract under which the principal obligation is a loan obligation assumed for business or a guarantee contract under which the principal obligation is an obligation relating to the right to reimbursement held by a guarantor against the principal debtor under a revolving guarantee contract under which the scope of the principal obligation includes a loan obligation assumed for business. The same applies to a contract for revolving guarantee under which the scope of the principal obligation includes an obligation relating to that right to reimbursement.
- (2) The provisions of the preceding paragraph do not apply if the person that will become a guarantor is a corporation.

(Exclusion from Application of Provisions Concerning Preparation of Notarial Instrument and Effect of Guarantee)

- Article 465-9 The provisions of the preceding three Articles do not apply to a guarantee contract under which the person that will become a guarantor is any of the following persons:
- (i) if the principal obligor is a corporation, its managing administrator, director, executive officer, or any person equivalent thereto; or

- (ii) if the principal obligor is a corporation, any of the following persons:
  - (a) a person that holds the majority of voting rights of all shareholders (excluding voting rights in respect of shares that do not allow voting rights to be exercised for all matters that may be resolved at a shareholders meeting; hereinafter the same applies in this item) of the principal obligor;
  - (b) if the majority of voting rights of all shareholders of the principal obligor is held by another stock company: a person that holds the majority of voting rights of all shareholders of that other stock company; or
  - (c) if the majority of voting rights of all shareholders of the principal obligor is held by another stock company and a person that holds the majority of voting rights of all shareholders of that other stock company: a person that holds the majority of voting rights of all shareholders of that other stock company;
  - (d) if the principal obligor is a corporation that is not a stock company: a person equivalent to the person set forth in (a), (b) or (c); or
- (iii) a person that conducts business jointly with the principal obligor (excluding one that is a corporation; hereinafter the same applies in this item) or the principal obligor's spouse who actually engages in the business conducted by the principal obligor.

(Duty to Provide Information upon Conclusion of Contract)

Article 465-10 (1) If the principal obligor requests a person to give guarantee for an obligation to be assumed for business as the principal obligation or give revolving guarantee for an obligation to be assumed for business that is included in the scope of the principal obligation, the principal obligor must provide the person so requested with information concerning the following particulars:

- (i) the status of assets, and income and expenditure;
  - (ii) whether the principal obligor has any obligation other than the principal obligation, and the amount and status of performance thereof; and
  - (iii) if the principal obligor has provided or seeks to provide any other security for the principal obligation, an indication of this and the details of the security.
- (2) If, because the principal obligor fails to provide information concerning the particulars set forth in the items of the preceding paragraph or provides information that is factually inaccurate, the person requested to guarantee misunderstands these particulars and manifests the intention to offer or accept the offer of a guarantee contract based on the misunderstanding, the guarantor may rescind the guarantee contract if the obligee knew or could have known that the principal obligor failed to provide information concerning these particulars or provided information that was factually inaccurate.

- (3) The provisions of the preceding two paragraphs do not apply if the person that gives guarantee is a corporation.

#### **Section 4 Assignment of Claims**

##### (Assignability of Claims)

Article 466 (1) A claim may be assigned; provided, however, that this does not apply if its nature does not permit the assignment.

- (2) Even if a party to a claim manifests the intention to prohibit or restrict the assignment of the claim (hereinafter referred to as the "manifestation of intention to restrict assignment"), the validity of the assignment of the claim is not impaired.

- (3) In the case prescribed in the preceding paragraph, the obligor may refuse to perform the obligation to a third party such as the assignee that knew or did not know due to gross negligence that the manifestation of intention to restrict assignment was made, and may duly assert against such third party any event that results in extinguishment of the obligation such as payment to the assignor.

- (4) The provisions of the preceding paragraph do not apply if the obligor does not perform the obligation, and the third party prescribed in that paragraph makes a demand to the obligor for the performance to the assignor by specifying a reasonable period of time, but the obligor does not perform the obligation within that period.

##### (Deposit Made by Obligor for Claim Subject to Manifestation of Intention to Restrict Assignment)

Article 466-2 (1) If a claim for payment of money subject to the manifestation of intention to restrict assignment is assigned to a third party, the obligor may deposit the amount of money equivalent to the full amount of the claim with an official depository having jurisdiction over the place of performance of the obligation (including the current domicile of the assignor if the place of performance of the obligation is determined on the basis of the current domicile of the obligee; the same applies in the following Article).

- (2) An obligor that has made a deposit pursuant to the provisions of the preceding paragraph must notify the assignor and the assignee of the deposit without delay.
- (3) Only the assignee is entitled to request the refund of the money deposited pursuant to the provisions of paragraph (1).

Article 466-3 In the case prescribed in paragraph (1) of the preceding Article, if an order commencing bankruptcy proceeding is issued with regard to the

assignor, the assignee (limited to the one that has acquired the full amount of the claim referred to in that paragraph and that may duly assert the assignment of the claim against a third party such as the obligor) may have the obligor deposit the amount of money equivalent to the full amount of the claim with an official depository having jurisdiction over the place of performance of the obligation even if the assignee knew or did not know due to gross negligence that the manifestation of intention to restrict assignment was made. In such a case, the provisions of paragraphs (2) and (3) of that Article apply *mutatis mutandis*.

(Attachment of Claim Subject to Manifestation of Intention to Restrict Assignment)

- Article 466-4 (1) The provisions of Article 466, paragraph (3) do not apply to an attaching obligee that has enforced compulsory execution against a claim that is subject to the manifestation of intention to restrict assignment.
- (2) Notwithstanding the provisions of the preceding paragraph, if a third party such as the assignee knew or did not know due to gross negligence that the manifestation of intention to restrict assignment was made, and the obligee of the assignee or other third party enforces compulsory execution against the claim referred to in that paragraph, the obligor may refuse to perform the obligation and duly assert against an attaching obligee any event that results in extinguishing the obligation such as payment to the assignor.

(Effect of Manifestation of Intention to Restrict Assignment of Claim for Deposits)

- Article 466-5 (1) Notwithstanding the provisions of Article 466, paragraph (2), the manifestation of intention to restrict assignment which is made by a party with regard to a claim for deposits in a deposit account (hereinafter referred to as a "claim for deposits") may be duly asserted against a third party such as the assignee that knew or did not know due to gross negligence that the manifestation of intention to restrict assignment was made.
- (2) The provisions of the preceding paragraph do not apply to an attaching obligee that has commenced compulsory execution against a claim for deposits that is subject to the manifestation of intention to restrict assignment.

(Assignability of Claim Yet to Arise)

- Article 466-6 (1) The assignment of a claim does not require the claim to have already arisen by the time of the manifestation of intention to assign it.
- (2) If a claim is assigned, and the claim is yet to arise by the time of the manifestation of intention to assign it, the assignee by operation of law acquires the claim when it arises.

(3) In the case prescribed in the preceding paragraph, if the assignor makes the manifestation of intention to restrict assignment by the time when the assignor gives notice under the provisions of the following Article or the obligor gives consent under the provisions of that Article (hereinafter referred to as the "time of completion of perfection"), a third party such as the assignee is deemed to have known this, and the provisions of Article 466, paragraph (3) (or paragraph (1) of the preceding Article if the claim subject to the manifestation of intention to restrict assignment is a claim for deposits) apply thereto.

(Requirement for Perfection of Assignment of Claim)

Article 467 (1) The assignment of a claim (including the assignment of a claim that is yet to arise) may not be duly asserted against the applicable obligor or any other third party, unless the assignor gives notice thereof to the obligor or the obligor has consented to the same.

(2) Notice or consent as referred to in the preceding paragraph may not be duly asserted against a third party other than the obligor unless the notice or the consent is made using an instrument bearing a certified date.

(Defense of Obligor upon Assignment of Claim)

Article 468 (1) An obligor may duly assert against the assignee any event that has taken place with regard to the assignor by the time of completion of the perfection.

(2) For the purpose of the application of the provisions of the preceding paragraph in the case referred to in Article 466, paragraph (4), the phrase "at the time of the completion of the perfection" in that paragraph is deemed to be replaced with "at the time when a reasonable period of time referred to in Article 466, paragraph (4) has elapsed"; and to apply the provisions of that paragraph in the case referred to in Article 466-3, the phrase "at the time of the completion of the perfection" in that paragraph is deemed to be replaced with "at the time when the obligor receives a request from the assignee referred to in Article 466-3 to make a deposit with an official depository pursuant to the provisions of that Article".

(Right to Set-Off upon Assignment of Claim)

Article 469 (1) An obligor may duly assert against the assignee a set-off based on a claim against the assignor that the obligor acquired before the time of satisfaction of the requirement for perfection.

(2) The preceding paragraph also applies to a claim against the assignor that the obligor acquires after the time of the completion of the perfection if the claim is any of the following; provided, however, that this does not apply if the obligor acquires a claim of another person after the time of the completion of the

perfection:

- (i) a claim that has arisen from a cause that existed before the time of the completion of the perfection; or
  - (ii) beyond what is set forth in the preceding item, a claim that has arisen from a contract under which the claim acquired by the assignee has arisen.
- (3) To apply the provisions of the preceding two paragraphs in the case referred to in Article 466, paragraph (4), the phrase "at the time of the completion of the perfection" in these provisions is deemed to be replaced with "at the time when a reasonable period of time referred to in Article 466, paragraph (4) has elapsed"; and to apply these provisions in the case referred to in Article 466-3, the phrase "at the time of the completion of the perfection" in these provisions is deemed to be replaced with "at the time when the obligor receives a request from the assignee referred to in Article 466-3 to make a deposit with an official depository pursuant to the provisions of that Article".

## **Section 5 Assumption of Obligation**

### **Subsection 1 Assumption of Obligation Not Releasing Obligor**

(Requirements for and Effect of Assumption of Obligation Not Releasing Obligor)

- Article 470 (1) An additional obligor resulting from the assumption of obligation not releasing an obligor assumes, jointly and severally with the initial obligor, an obligation of the same content as the obligation assumed by the initial obligor to the obligee.
- (2) The assumption of obligation not releasing an obligor may be effected by a contract between the obligee and the person that becomes the additional obligor.
- (3) The assumption of obligation not releasing an obligor may also be effected by a contract between the initial obligor and the person that becomes the additional obligor. In such a case, the assumption of obligation not releasing an obligor becomes effective when the obligee gives consent to the person that becomes the additional obligor.
- (4) The assumption of obligation not releasing an obligor to be effected pursuant to the provisions of the preceding paragraph is governed by the provisions concerning a third party beneficiary contract.

(Defense by Additional Obligor in Assumption of Obligation Not Releasing Obligor)

- Article 471 (1) An additional obligor may duly assert against the obligee any defense that could have been asserted by the initial obligor at the time when the assumption of obligation not releasing an obligor became effective, with

regard to the obligation that the additional obligor has assumed through the assumption of obligation not releasing the obligor.

- (2) If the initial obligor has a right to rescind or right to cancel against the obligee, the additional obligor may refuse to perform the obligation to the obligee to the extent that the initial obligor should have been released from the obligation by exercising either of these rights.

### **Subsection 2 Assumption of Obligation Releasing Old Obligor**

(Requirements for and Effect of Assumption of Obligation Releasing Old Obligor)

- Article 472 (1) A new obligor resulting from the assumption of obligation releasing an old obligor assumes an obligation of the same content as the obligation of the initial obligor to the obligee, and the initial obligor is released from their own obligation.
- (2) The assumption of obligation releasing an old obligor may be effected by a contract between the obligee and the person that becomes the replacing obligor. In such a case, the assumption of obligation releasing an old obligor becomes effective when the obligee notifies the initial obligor of the conclusion of that contract.
- (3) The assumption of obligation releasing an old obligor may also be effected if the initial obligor and the person that becomes the replacing obligor conclude a contract and the obligee gives consent to the person that becomes the replacing obligor.

(Defense by New Obligor in Assumption of Obligation Releasing Old Obligor)

- Article 472-2 (1) A new obligor may duly assert against the obligee any defense that could have been asserted by the initial obligor at the time when the assumption of obligation releasing an obligor became effective, with regard to the obligation that the replacing obligor has assumed through the assumption of obligation releasing the obligor.
- (2) If the old obligor has a right to rescind or right to cancel against the obligee, the new obligor may refuse to perform the obligation to the obligee to the extent that the initial obligor could have been released from the obligation by exercising either of these rights should the assumption of obligation releasing the obligor not be effected.

(Right to Reimbursement of New Obligor Resulting from Assumption of Obligation Releasing Old Obligor)

- Article 472-3 A new obligor resulting from the assumption of obligation releasing an old obligor does not acquire a right to reimbursement from the

obligor.

(Transfer of Security Resulting from Assumption of Obligation Releasing Old Obligor)

Article 472-4 (1) An obligee may transfer a security right that has been created as security for the obligation from which the initial obligor is released pursuant to the provisions of Article 472, paragraph (1) to the obligation assumed by the replacing obligor; provided, however, that if a person other than the replacing obligor created the security right, the obligee must obtain consent from that person.

(2) The transfer of a security right under the provisions of the preceding paragraph must be effected by manifesting the intention to the replacing obligor in advance or upon the transfer.

(3) The provisions of the preceding two paragraphs apply mutatis mutandis if there is a person that gave guarantee for the obligation from which the initial obligor is released pursuant to the provisions of Article 472, paragraph (1).

(4) In the case referred to in the preceding paragraph, the consent referred to in paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph does not become effective unless it is given in writing.

(5) If the consent referred to in the preceding paragraph is given by means of an electronic or magnetic record in which its content is recorded, the consent is deemed to have been given in writing, and the provisions of that paragraph apply thereto.

## **Section 6 Extinction of Claims**

### **Subsection 1 Performance**

#### **Division 1 General Provisions**

(Performance)

Article 473 If the obligor performs an obligation to the obligee, the claim is extinguished.

(Performance by Third Parties)

Article 474 (1) A third party may also perform an obligation.

(2) A third party that has no legitimate interest in performing an obligation may not perform the obligation against the will of the obligor; provided, however, that this does not apply if the obligee did not know that the performance is against the will of the obligor.

(3) The third party prescribed in the preceding paragraph may not perform the obligation against the will of the obligee; provided, however, that this does not apply if the third party performs the obligation as requested by the obligor,

and the obligee knew this.

- (4) The provisions of the preceding three paragraphs do not apply if the nature of an obligation does not permit the performance by a third party or if a party manifests the intention to prohibit or restrict the performance by a third party.

(Recovery of Thing Transferred in Performance of Obligation)

Article 475 If a person effecting performance has delivered a thing owned by another person in performance of the obligation, the person so effecting performance may not recover that thing without effecting valid performance *de novo*.

(Effect of Performance If Thing Delivered in Performance of Obligation Is Consumed or Assigned)

Article 476 In a case as referred to in the preceding Article, if an obligee in good faith consumes or assigns things received in performance of an obligation, that performance is valid. In such a case, if the obligee has received a claim for compensation from a third party, the obligee is not precluded from seeking reimbursement from the person performing the obligation.

(Performance by Payment into Account for Deposits)

Article 477 Performance made by making payment into the obligee's account for deposits becomes effective when the obligee acquires a right to demand the refund of the amount paid, against the obligor of the claim to be paid from deposits.

(Performance to Person That Appears to Be Authorized to Accept)

Article 478 Performance made to a person that does not constitute a person authorized to accept the performance (meaning the obligee or a third party authorized to accept performance based on the provisions of laws and regulations or the manifestation of intention of the parties; the same applies hereinafter) but that appears to be the person authorized to accept the performance in light of common sense in the transaction is effective only if the person effecting performance was acting in good faith and without negligence.

(Performance to Person Other Than Person with Right to Performance)

Article 479 Except as provided in the preceding Article, any performance made to a person other than the person with right to performance is effective only to the extent that the obligee is enriched as a result thereof.

(Performance to Holder of Receipt)

Article 480 Deleted

(Performance by Third Party Obligor of Claim Attached)

Article 481 (1) If a third party obligor of a claim that has been attached performs the obligation to that third party's own obligee, the attaching obligee is entitled to request the third party obligor to perform the obligation de novo to the extent of the damage sustained by the attaching obligee.

(2) The provisions of the preceding paragraph do not preclude the relevant third party obligor from exercising the right to reimbursement from the obligee.

(Accord and Satisfaction)

Article 482 If a person that has right to perform an obligation (hereinafter referred to as a "performer") concludes a contract with the obligee to the effect that the person is to have the obligation extinguished by making, in lieu of the payment or delivery to be performed by the obligor, another type of payment or delivery, and the performer makes that other type of payment or delivery, the payment or delivery thus made has the same effect as that of the performance of the obligation.

(Delivery of Specific Thing on As-Is Basis)

Article 483 If the subject matter of a claim is the delivery of a specific thing, and the quality of the thing may not be determined as of the time when the delivery is due in light of the cause from which the claim has arisen such as a contract and the common sense in the transaction, the person that performs the obligation must deliver the thing on an "as-is" basis as of the time when the delivery is due.

(Place and Time of Performance)

Article 484 (1) Unless a particular intention is manifested with respect to the place where the performance should take place, the delivery of a specific thing must be effected at the place where that thing was located when the relevant claim accrued, and the discharge of any other obligation must be effected at the current domicile of the obligee.

(2) If the trading hours are specified by laws and regulations or customs, performance may be made or demanded only within the trading hours.

(Expense of Performance)

Article 485 Unless a particular intention is manifested with respect to the expenses of performance, those expenses are borne by the obligor; provided, however, that if the obligee caused the expenses of performance to increase by relocating the domicile thereof or taking any other act, the amount of increase due to this is borne by the obligee.

(Request for Issuance of Receipt)

Article 486 (1) A person performing an obligation may request the person accepting performance to issue a receipt.

(2) A person performing an obligation may request the person accepting performance to provide an electronic or magnetic record on which the content of a receipt as referred to in the preceding paragraph has been recorded, in lieu of issuing that receipt; provided, however, that this does not apply if it would impose an undue burden on the person accepting performance.

(Request for Return of Instrument Evidencing Claims)

Article 487 If there is an instrument evidencing a claim and the person making the performance has made full performance, that person may demand the return of the instrument.

(Appropriation of One Payment or Delivery among Two or More Obligations Requiring the Same Kind of Payment or Delivery)

Article 488 (1) If an obligor bears to a single obligee two or more obligations which require the same kind of payment or delivery, and the payment or delivery provided in performance of the obligations is not sufficient to extinguish all of these obligations (excluding the case prescribed in paragraph (1) of the following Article), the person that makes the performance may, at the time of the payment or delivery, designate a particular obligation to which that performance should be appropriated before any others.

(2) If the person performing an obligation does not make the designation under the provisions of the preceding paragraph, the person receiving the performance may, at the time of such receipt, designate a particular obligation to which such performance should be appropriated before any others; provided, however, that this does not apply if the person performing the obligation immediately raises an objection to that appropriation.

(3) The designation of the appropriation of the performance under the preceding two paragraphs is effected through a manifestation of intention to the counterparty.

(4) Neither the person that makes the performance nor the person that accepts the performance makes designation under the provisions of paragraph (1) or paragraph (2), the performance is appropriated pursuant to the provisions of the following items:

(i) if the obligations include those which are due and those which are not yet due, the performance is appropriated to those which are due;

(ii) if all obligations are due, or none of the obligations is due, the performance is appropriated in the order of the obligations which are to result in more

- benefit to the obligor when performed;
- (iii) if all obligations would have equal benefit to the obligor when performed, the performance is appropriated in the order of the obligations which have, or should have, the earliest due date; or
  - (iv) the performance of obligations which are equal in terms of the particulars set forth in the preceding two items is appropriated in proportion to the amount of each obligation.

(Appropriation to Principal, Interest and Expenses Payable)

Article 489 (1) If the obligor is liable to pay interest and expenses in addition to principal with respect to one or more obligations (if the obligor bears two or more obligations, limited to when the obligor bears these obligations requiring the same kind of payment or delivery to the same obligee), and the person that performs the obligations makes payment or delivery which is not sufficient to extinguish the obligation in its entirety must be appropriated first to expenses, and then to interest and principal, in this order.

(2) The provisions of the preceding Article apply mutatis mutandis in the case referred to in the preceding paragraph in which the person makes payment or delivery which is not sufficient to extinguish any of expenses, interest or principal in whole.

(Appropriation of Performance by Agreement)

Article 490 Notwithstanding the provisions of the preceding two Articles, if the person that makes performance and the person that accepts performance agree on the order of appropriation of performance, the performance is appropriated according to the agreed-upon order.

(Appropriation in Cases More Than One Performance Should Be Tendered)

Article 491 If more than one performance should be tendered to discharge a single obligation, if the person that must perform tenders any performance which is not sufficient to extinguish such obligation in its entirety, the provisions of the preceding three Articles apply mutatis mutandis.

(Effect of Tender of Performances)

Article 492 Upon tendering the performance, the obligor is relieved from any and all responsibilities which may arise from the non-performance of the obligation.

(Method of Tender of Performances)

Article 493 The tender of the performance must be made actually consistent with the main purport of the obligation; provided, however, that if the obligee

refuses to accept that performance in advance or if any act is required on the part of the obligee with respect to the performance of the obligation, it is sufficient for the obligor to request the acceptance thereof by giving a notice that the tender of the performance has been prepared.

## **Division 2 Deposit of Subject Matter of Performance**

### **(Deposit)**

Article 494 (1) In the following cases, a performer may deposit the subject matter of the performance with an official depository for the benefit of the obligee. In such a case, the claim is extinguished when the performer makes the deposit:

(i) the performer tenders the performance, and the obligee refuses to accept it;

or

(ii) the obligee is unable to accept the performance.

(2) The preceding paragraph also applies if the performer is unable to ascertain the obligee; provided, however, that this does not apply if the performer is negligent in this respect.

### **(Method of Deposit)**

Article 495 (1) The deposit under the provisions of the preceding Article must be made with the official depository having jurisdiction over the place where the relevant obligation is performed.

(2) If there is no specific provision in laws and regulations with respect to the official depository, the court, at the request of the performer, must designate the depository and appoint a custodian of the thing to be deposited.

(3) A person that has effected a deposit pursuant to the provisions of the preceding Article must notify the obligee of the deposit without delay.

### **(Recovery of Deposited Thing)**

Article 496 (1) As long as the obligee does not accept the deposit, or the judgment which pronounces that the deposit is effective does not become final and binding, the performer may recover the deposited thingy. In such case, it is deemed that no deposit has been effected.

(2) The provisions of the preceding paragraph do not apply in cases any pledge or mortgage has been extinguished due to the deposit.

### **(Thing Not Suitable for Deposit)**

Article 497 In the following cases, the performer may, with the permission of the court, sell the thing that is the subject matter of performance at public auction and deposit the proceeds of such sales with an official depository:

- (i) the thing is not suitable for deposit;
- (ii) the price of the thing is likely to decline due to causes such as loss and damage;
- (iii) excessive expenses are required for the preservation of the thing; or
- (iv) beyond the cases set forth in the preceding three items, there are circumstances that make it difficult to deposit the thing.

(Demand for Return of Deposited Thing)

Article 498 (1) If the property that is the subject matter of performance or the proceeds referred to in the preceding Article are deposited, the obligee may demand the return of the deposited thing.

(2) If the obligor is to effect performance in exchange for payment or delivery by the obligee, the obligee may not receive deposited thing without making that payment or delivery.

### **Division 3 Subrogation by Performance**

(Requirements for Subrogation by Performance)

Article 499 A person that has performed the obligation for the benefit of the obligor is subrogated to the claim of the obligee.

Article 500 The provisions of Article 467 apply *mutatis mutandis* in the case referred to in the preceding Article (unless a person with a legitimate interest in making performance is subrogated to the claim of the obligee).

(Effect of Subrogation by Performance)

Article 501 (1) A person that is subrogated to the claim of the obligee pursuant to the provisions of the preceding two Articles may exercise any and all rights possessed by the obligee as the effect of, and as a security for, the claim held by the obligee.

(2) The exercise of rights under the provisions of the preceding paragraph is allowed only to the extent that the person that is subrogated to the claim of the obligee is entitled to seek reimbursement from the obligor based on the person's own rights (if one of the guarantors is subrogated to the claim of the obligee in relation to other guarantors, only to the extent that the guarantor is entitled to seek reimbursement from the other guarantors based on that guarantor's own rights).

(3) In the case referred to in paragraph (1), the following provisions apply in addition to the provisions of the preceding paragraph:

- (i) a third party acquirer (meaning a person that has acquired from the obligor the property that is the subject of security; hereinafter the same applies in

- this paragraph) is not subrogated to the claim of the obligee in relation to any guarantors or third-party collateral providers;
- (ii) one of the third party acquirers is subrogated to the claim of the obligee in relation to other third party acquirers in proportion to the price of each property;
  - (iii) the provisions of the preceding item apply mutatis mutandis if one of the third-party collateral providers is subrogated to the claim of the obligee in relation to other third-party collateral providers;
  - (iv) between a guarantor and a third-party collateral provider, the subrogation to the claim of the obligee is effected depending on the number of these persons involved; provided, however, that if there are two or more third-party collateral providers, they are subrogated to the claim of the obligee in proportion to the price of each property with respect to the amount which remains after deduction of the share of the guarantor; and
  - (v) a person that has acquired from a third party acquirer the property that is the subject of security is deemed to be a third party acquirer, and the provisions of items (i) and (ii) apply thereto; and a person that has acquired from a third-party collateral provider the property that is the subject of security is deemed to be a third-party collateral provider, and the provisions of items (i) and (iii) and the preceding item apply thereto.

(Subrogation by Partial Performance)

- Article 502 (1) If performance by subrogation occurs with respect to one part of a claim, the subrogee, with the consent of the obligee, may exercise the rights of the subrogee together with the obligee in proportion to the value of the subrogee's performance.
- (2) Even in a case as referred to in the preceding paragraph, the obligee may exercise the obligee's right independently.
  - (3) The right to be exercised by the obligee in the case referred to in the preceding two paragraphs prevails over the right to be exercised by the subrogee with regard to money to be obtained as a result of the exercise of the rights such as the proceeds from the sale of the property that is the subject of security for the claim of the obligee.
  - (4) In the case referred to in paragraph (1), the cancellation of a contract based on the failure to perform the obligation may be effected only by the obligee. In such a case, the obligee must reimburse to the subrogee the value of the performance that the subrogee effected plus interest.

(Delivery of Instrument Evidencing Claims by Obligee)

- Article 503 (1) An obligee that has received full performance by way of subrogation must deliver to the subrogee the instruments regarding the claim

and any collateral that the obligee possesses.

- (2) If performance by subrogation occurs with respect to a part of a claim, the obligee must enter the particulars of that subrogation in the instruments regarding the claim and allow the subrogee to supervise the custody of the collateral that the obligee possesses.

(Loss of Security by Obligee)

Article 504 (1) If there is a person that has legitimate interest in performing an obligation (hereinafter referred to as a "person entitled to subrogation" in this paragraph), and the obligee causes the security thereof to be lost or diminished intentionally or negligently, the person entitled to subrogation is relieved from responsibility to the extent that that person can no longer seek the reimbursement due to the loss or diminution in the security available upon subrogation. If the person entitled to subrogation is a third-party collateral provider, the same applies to a third party that has acquired from the person entitled to subrogation the property that is the subject of security and to the specific successor thereof.

- (2) The provisions of the preceding paragraph do not apply if the obligee is found to have reasonable grounds in light of the common sense in the transaction for causing the security to be lost or diminished.

### **Subsection 2 Set-Offs**

(Requirements for Set-Offs)

Article 505 (1) If two persons bear an obligation to each other that has the same kind of purpose and if both obligations are due, each obligor may be relieved from the obligation by setting off the value of that obligation against the corresponding amount of the obligation of the other obligor; provided, however, that this does not apply if the nature of the obligation does not permit such a set-off.

- (2) Notwithstanding the provisions of the preceding paragraph, if a party manifests the intention to prohibit or restrict a set-off, that manifestation of the intention may be duly asserted against a third party only if the third party knew or did not know due to gross negligence it.

(Method and Effect of Set-Offs)

Article 506 (1) Set-offs are effected through the manifestation of one party's intention to the other. In such a case, no condition or time limit may be added to the manifestation of intention.

- (2) A manifestation of intention as referred to in the preceding paragraph is effective retroactive to the time when the obligations of both parties became

eligible to be set-off.

(Set-Offs between Obligations with Different Places of Performance)

Article 507 Set-offs may be effected even if the places of performance of both obligations are different. In such case, the party seeking to effect the set-off must compensate the counterparty for any damage suffered as result of such set-off.

(Set-Offs Using a Claim Extinguished by Prescription as Claim Used to Assert Set-Off)

Article 508 If a claim extinguished by prescription was eligible for set-off prior to its extinguishment, the obligee may use that claim for the set-off.

(Prohibition of Effecting Set-Offs Against Claims Arising from Tortious Acts as Passive Set-Off Claim)

Article 509 The obligor of either of the following obligations may not duly assert a set-off against the obligee; provided, however, that this does not apply if the obligee acquires a claim corresponding to the relevant obligation from another person:

- (i) an obligation for compensation for loss or damage based on a tort committed in bad faith; or
- (ii) an obligation for compensation for loss or damage for death or injury to person (excluding the one set forth in the preceding item).

(Prohibition of Set-Offs Against Any Claim Exempt from Attachment as Passive Set-Off Claim)

Article 510 If any claim is exempt from attachment, the obligor of that claim may not assert the set-off as defense against the obligee of that claim.

(Prohibition of Set-Offs Against Any Claim Attached)

Article 511 (1) A third party obligor of a claim which has been attached may not assert set-off as defense with any claim acquired after the attachment against the attaching obligee, but may duly assert against the same a set-off based using a claim acquired before the attachment.

(2) Notwithstanding the provisions of the preceding paragraph, if a claim acquired after the attachment has arisen from a cause that existed before the attachment, the third party obligor may use that claim for a set-off against the attaching obligee; provided, however, that this does not apply if the third party obligor acquires the claim of another person after the attachment.

(Appropriation of Set-Off)

Article 512 (1) If an obligee manifests the intention to effect a set-off using one or more claims held by the obligee against the obligor against one or more obligations borne by the obligee to the obligor, the claims held and the obligations borne by the obligee are extinguished by a set-off at the corresponding amount, in the order of time when they become eligible for set-off, unless otherwise agreed upon by the parties.

(2) In the case referred to in the preceding paragraph, if the claims held by the obligee that seeks a set-off are insufficient to extinguish all of the obligations borne by the obligee, the following provisions apply, unless otherwise agreed upon by the parties:

(i) if the obligee has two or more obligations (excluding the case prescribed in the following item), the provisions of Article 488, paragraph (4), items (ii) through (iv) apply mutatis mutandis; and

(ii) if the obligee is liable to pay interest and expenses in addition to principal with regard to one or more obligations borne by the obligee, the provisions of Article 489 apply mutatis mutandis; in this case, the term "preceding Article" in paragraph (2) of that Article is deemed to be replaced with "paragraph (4), items (ii) through (iv) of the preceding Article".

(3) In the case referred to in paragraph (1), if the obligations held by the obligee that seeks a set-off are insufficient to extinguish all of the claims held by the obligee, the provisions of the preceding paragraph apply mutatis mutandis.

Article 512-2 The provisions of the preceding Article apply mutatis mutandis to a set-off if the claims held by the obligee against the obligor include a claim for which more than one payment or delivery should be made as the performance of a single obligation. The same applies to a set-off if the obligations borne by the obligee to the obligor include an obligation for which more than one payment or delivery should be made as the performance of a single obligation.

### **Subsection 3 Novation**

(Novation)

Article 513 If the parties conclude a contract which gives rise to a new obligation that falls under any of the following as a replacement of the previous obligation, the previous obligation is extinguished by novation:

(i) an obligation that makes a material change to the content of the performance of the previous obligation;

(ii) an obligation for which the previous obligor is substituted by a third party;  
or

(iii) an obligation for which the previous obligee is substituted by a third party.

(Novation by Substitution of Obligor)

Article 514 (1) A novation by substitution of obligor may be effected by a contract concluded between the obligee and a person that becomes the obligor after the novation. In such a case, the novation becomes effective when the obligee notifies the obligor prior to the novation of the conclusion of the contract.

(2) The obligor after the novation by substitution of obligor does not acquire a right to reimbursement from the obligor prior to the novation.

(Novation by Substitution of Obligee)

Article 515 (1) A novation by substitution of obligee may be effected by a contract concluded among the obligee prior to the novation, a person that becomes the obligee after the novation, and the obligor.

(2) A novation by substitution of obligee may not be duly asserted against a third party unless it is made using an instrument bearing a certified date.

Articles 516 and 517 Deleted

(Transfer of Security to Obligation After Novation)

Article 518 (1) To the extent of the amount of the obligation prior to the novation, the obligee (in the case of a novation by substitution of obligee, the obligee prior to the novation) may transfer the pledge or mortgage created as the security of that obligation to the obligation in effect after the novation; provided, however, that if any third party created that security, the consent of the third party must be obtained.

(2) The transfer of the pledge or mortgage referred to in the preceding paragraph must be effected by manifesting the intention to the other party to the novation (in the case of a novation by substitution of obligee, the obligor) in advance or upon the transfer.

**Subsection 4 Release**

Article 519 If an obligee manifests the intention to release an obligor from an obligation to that obligor, the obligee's claim is extinguished.

**Subsection 5 Merger**

Article 520 If a claim and obligation becomes vested in the same person, such claim is extinguished; provided, however, that this does not apply if such a claim is the subject matter of the right of a third party.

**Section 7 Negotiable Instruments of Value**  
**Subsection 1 Negotiable Instruments Payable to Order**

(Assignment of Negotiable Instrument Payable to Order)

Article 520-2 Assignment of a negotiable instrument payable to order does not become effective unless the instrument is indorsed and delivered to the assignee.

(Method of Indorsement of Negotiable Instrument Payable to Order)

Article 520-3 With regard to assignment of a negotiable instrument payable to order, the provisions concerning the method of indorsement in the Negotiable Instrument Act (Act No. 20 of 1932) apply mutatis mutandis depending on the nature of the negotiable instrument payable to order.

(Presumption of Right of Holder of Negotiable Instrument Payable to Order)

Article 520-4 If the holder of a negotiable instrument payable to order proves that holder's rights by means of an uninterrupted series of indorsements, the holder is presumed to lawfully hold rights embodied on the instrument.

(Good Faith Acquisition of Negotiable Instrument Payable to Order)

Article 520-5 If a person, for any reason, loses possession of a negotiable instrument payable to order, and the holder of the instrument proves the holder's rights pursuant to the provisions of the preceding Article, the holder is not obligated to return the instrument; provided, however, that this does not apply if the holder has acquired the instrument in bad faith or due to gross negligence.

(Limitation on Defense of Obligor in Case of Assignment of Negotiable Instrument Payable to Order)

Article 520-6 The obligor of a negotiable instrument payable to order may not duly assert against an assignee in good faith any grounds which could have been duly asserted against the obligee before the assignment of the instrument, except for the particulars written on the instrument or any result which necessarily arises from the nature of the instrument.

(Pledge of Negotiable Instrument Payable to Order)

Article 520-7 The provisions of Article 520-2 through the preceding Article apply mutatis mutandis to the creation of a pledge on a negotiable instrument payable to order.

(Place of Payment of Negotiable Instrument Payable to Order)

Article 520-8 Payment of a negotiable instrument payable to order must be made at the current domicile of the obligor.

(Presentation of Negotiable Instrument Payable to Order and Delay in Performance)

Article 520-9 Even if a due date is specified for the performance of an obligation of a negotiable instrument payable to order, the obligor of the instrument is responsible for the delay on and after the time the holder of the instrument presents it and requests its performance after the due date has arrived.

(Right to Examine of Obligor of Negotiable Instrument Payable to Order)

Article 520-10 The obligor of a negotiable instrument payable to order has the right, but not the duty, to examine the identity of the holder of the instrument and the signature and seal affixed thereon; provided, however, that the payment of the obligation is invalid if the obligor is acting in bad faith or is grossly negligent.

(Forfeiture of Negotiable Instrument Payable to Order)

Article 520-11 A negotiable instrument payable to order may be made invalid through the public notification proceedings prescribed in Article 100 of the Non-Contentious Case Procedures Act (Act No. 51 of 2011).

(Method of Exercising Right in Case of Forfeiture of Negotiable Instrument Payable to Order)

Article 520-12 If the holder of a negotiable instrument payable to order for the delivery of things such as money or of negotiable instruments of value loses the negotiable instrument payable to order, and files a petition for public notification prescribed in Article 114 of the Non-Contentious Case Procedures Act, the holder may have the obligor deposit the subject matter of the obligation or have the same perform the obligation in line with the purport of the negotiable instrument payable to order by providing reasonable security.

## **Subsection 2 Registered Negotiable Instruments Payable to Holder**

(Assignment of Registered Negotiable Instrument Payable to Holder)

Article 520-13 Assignment of a registered negotiable instrument payable to holder (meaning a negotiable instrument on which the name of the obligee is written with a supplementary note that payment should be made to its holder; the same applies hereinafter) does not become effective unless the instrument is delivered to the assignee.

(Presumption of Right of Holder of Registered Negotiable Instrument Payable to Holder)

Article 520-14 The holder of a registered negotiable instrument payable to holder is presumed to lawfully hold rights embodied on the instrument.

(Good Faith Acquisition of Registered Negotiable Instrument Payable to Holder)

Article 520-15 If a person, for any reason, loses possession of a registered negotiable instrument payable to holder, and the holder of the instrument proves that holder's rights pursuant to the provisions of the preceding Article, the holder is not obligated to return the instrument; provided, however, that this does not apply if the holder has acquired the instrument in bad faith or due to gross negligent.

(Limitation on Defense of Obligor in Case of Assignment of Registered Negotiable Instrument Payable to Holder)

Article 520-16 The obligor of a registered negotiable instrument payable to holder may not duly assert against an assignee in good faith any grounds which could have been duly asserted against the obligee before the assignment of the instrument, except for the particulars written on the instrument or any result which necessarily arises from the nature of the instrument.

(Pledge of Registered Negotiable Instrument Payable to Holder)

Article 520-17 The provisions of Article 520-13 through the preceding Article apply mutatis mutandis to the creation of a pledge on a registered negotiable instrument payable to holder.

(Application Mutatis Mutandis of Provisions on Negotiable Instruments Payable to Order)

Article 520-18 The provisions of Articles 520-8 through 520-12 apply mutatis mutandis to registered negotiable instruments payable to holder.

### **Subsection 3 Other Registered Negotiable Instruments**

Article 520-19 (1) Negotiable instruments on which the name of the obligee is written, other than negotiable instruments payable to order and registered negotiable instruments payable to holder, may be assigned or made the subject of a pledge only in compliance with the formalities concerning the assignment of claims or the creation of a pledge for this purpose, and only with the effect of the assignment or the creation.

(2) The provisions of Articles 520-11 and 520-12 apply mutatis mutandis to the

negotiable instruments referred to in the preceding paragraph.

#### **Subsection 4 Bearer Instruments**

Article 520-20 The provisions of Subsection 2 (Registered Negotiable Instruments Payable to Holder) apply mutatis mutandis to bearer instruments.

(Freedom of Conclusion and Terms of Contract)

Article 521 (1) Unless otherwise provided for in laws and regulations, any person may freely decide whether or not to conclude a contract.

(2) Parties to a contract may freely decide the terms of the contract, subject to the restrictions prescribed by laws and regulations.

(Formation and Formality of Contract)

Article 522 (1) A contract is formed when a party manifests the intention to offer to conclude a contract (hereinafter referred to as an "offer") showing the terms of the contract and the other party accepts the offer.

(2) Unless otherwise provided for in laws and regulations, it is not required to satisfy any formalities such as preparation of a written document in order to form a contract.

### **Chapter II Contracts**

#### **Section 1 General Provisions**

##### **Subsection 1 Formation of Contracts**

(Offers That Specify Period for Acceptance)

Article 523 (1) An offer which specifies a period for acceptance may not be revoked; provided, however, that this does not apply if the offeror reserves the right to revoke.

(2) If an offeror does not receive notice of acceptance of the offer referred to in the preceding paragraph within the period referred to in that paragraph, the offer ceases to be effective.

(Effect of Delayed Acceptance)

Article 524 The offeror may deem a delayed acceptance to be a new offer.

(Offers That Do Not Specify Period for Acceptance)

Article 525 (1) An offer made without specifying a period for acceptance may not be revoked until the passage of a reasonable period of time for the offeror to receive a notice of acceptance; provided, however, that this does not apply if the offeror reserves the right to revoke.

- (2) Notwithstanding the provisions of the preceding paragraph, an offer referred to in that paragraph which has been made to a person with whom the offeror is having a dialogue may be revoked at any time while the dialogue continues.
- (3) If an offeror does not receive from a person with whom the offeror is having a dialogue a notice of acceptance of the offer referred to in paragraph (1) while the dialogue continues, the offer ceases to be effective; provided, however, that this does not apply if the offeror manifests the intention to maintain the effect of the offer after the end of the dialogue.

(Death of Offeror)

Article 526 If an offeror dies, comes to be in a constant state wherein the offeror lacks mental capacity, or becomes subject to restrictions on legal capacity to act after issuing notice of the offer, and the offeror has manifested the intention not to make the offer effective should any of these facts occur, or the other party comes to know that any of these facts has occurred before issuing a notice of acceptance, that offer is not effective.

(Time of Formation of Contract When No Notice of Acceptance Is Required)

Article 527 If no notice of acceptance is required due to the offeror's manifestation of intention or customs of the transaction, a contract is formed upon the occurrence of any fact which should be regarded as a manifestation of intention of acceptance.

(Acceptances Modifying Offers)

Article 528 If the offeree has accepted the offer by adding a condition or making other modifications, it is deemed that the offeree has refused the offer and made a new offer.

(Offers of Reward to the Public)

Article 529 A person that makes an offer to the public indicating that a person that performs an certain act will be given a certain reward (hereinafter referred to as an "offer of reward to the public") is obligated to give the reward to the person that performs the act, regardless of whether or not the person performing that act knows of the offer.

(Offers of Reward to the Public Made by Specifying Period for Performance of Requested Act)

Article 529-2 (1) An offeror of reward to the public may not revoke the offer to the public made by specifying a period during which the requested act should be performed; provided, however, that this does not apply if, in the offer to the public, the offeror reserves the right to revoke the offer.

- (2) The offer to the public referred to in the preceding paragraph ceases to be effective if no person completes the requested act within that period.

(Offers of Reward to the Public Made Without Specifying Period for Performance of Requested Act)

Article 529-3 An offeror of reward to the public may revoke the offer to the public made without specifying a period during which the requested act should be performed, if no person completes the requested act; provided, however, that this does not apply if, in the offer to the public, the offeror manifests the intention not to revoke the offer.

(Method of Revocation of Offers of Reward to the Public)

Article 530 (1) Revocation of an offer to the public by the same method as the one used to make a previous offer to the public is effective in relation to any person that does not know about it.

- (2) Revocation of an offer to the public may be carried out by a method that is different from the one used to make a previous offer to the public; provided, however, that the revocation is effective only in relation to persons who know about it.

(Right to Receive Rewards Offered to the Public)

Article 531 (1) If more than one person has performed the act requested in an offer to the public, only the person performing the act first holds the right to receive the reward.

- (2) If two or more persons have performed the act referred to in the preceding paragraph simultaneously, each holds the right to receive an equal share of the reward; provided, however, that the person to receive the reward is selected by lot if the reward is indivisible by nature or if the offer prescribes that only one person will receive the reward.
- (3) The provisions of the preceding two paragraphs do not apply if the offeror manifests an intention to the contrary in the offer to the public.

(Offer of Reward to Most Outstanding Applicant of the Public)

Article 532 (1) If an offer to the public stipulates that only the most outstanding applicant is to receive the reward in the event that two or more persons have performed the act requested in that offer, the offer to the public is effective only if it specifies an application period.

- (2) In the cases referred to in the preceding paragraph, the most outstanding applicant is judged by a person specified in the offer to the public and if no such person is specified in the offer, by the person that makes that offer.
- (3) Applicants may not raise objection to the judge's decision under the preceding

paragraph.

- (4) The provisions of paragraph (2) of the preceding Article apply *mutatis mutandis* if the acts of two or more persons are judged to be of the same level.

### **Subsection 2 Effect of Contracts**

(Defense of Simultaneous Performance)

Article 533 A party to a bilateral contract may refuse to perform that party's own obligation until the other party tenders the performance of that other party's obligation (including the performance of an obligation to compensate for loss or damage in lieu of the performance of an obligation); provided, however, that this does not apply if the obligation of the other party is not yet due.

Articles 534 and 535 Deleted

(Obligors' Burden of Risk)

Article 536 (1) If the performance of an obligation becomes impossible due to grounds not attributable to either party, the obligee may refuse to perform counter-performance.

- (2) If the performance of an obligation becomes impossible due to grounds attributable to the obligee, the obligee may not refuse to complete counter-performance. In such a case, if the obligor benefits from being released from that obligation, the obligor must reimburse the obligee for the benefit.

(Third Party Beneficiary Contract)

Article 537 (1) If one of the parties promises in a contract to render a certain performance to a third party, the third party has the right to claim that performance directly from the obligor.

- (2) The validity of the contract referred to in the preceding paragraph is not impaired even if a third party does not exist or a third party is not specified at the time of its formation.

- (3) In the case referred to in paragraph (1), rights of the third party accrue when the third party has manifested intention of availing of the benefit of the contract under that paragraph to the obligor.

(Determination of Rights of the Third Party)

Article 538 (1) After rights of the third party have accrued pursuant to the provisions of the preceding Article, the parties may not modify or extinguish those rights.

- (2) If, after rights of the third party accrue pursuant to the provisions of the preceding Article, the obligor does not perform the obligation to the third party,

the other party to the contract referred to in paragraph (1) of that Article may not cancel the contract without the consent of the third party.

(Obligors' Defense)

Article 539 The obligor may duly assert a defense based on the contract referred to in Article 537, paragraph (1) against a third party that benefits from the contract.

### **Subsection 3 Transfer of Contractual Status**

Article 539-2 If one of the parties to a contract made an agreement with a third party to transfer that party's contractual status to that third party, and the other party to the contract gives consent to the transfer, the contractual status is transferred to the third party.

### **Subsection 4 Cancellation of Contracts**

(Exercise of Right to Cancel)

Article 540 (1) If one of the parties has the right to cancel pursuant to the provisions of the contract or the law, the cancellation is effected by manifestation of intention to the other party.

(2) The manifestation of intention referred to in the preceding paragraph may not be revoked.

(Cancellation After Demand)

Article 541 If one of the parties does not perform that party's obligation, and the other party demands performance of that obligation, specifying a reasonable period of time, but no performance is completed during that period, the other party may cancel the contract; provided, however, that this does not apply if the non-performance of the obligations upon the passage of the period is minor in light of the contract and the common sense in the transaction.

(Cancellation Without Demand)

Article 542 (1) In the following cases, the obligee may immediately cancel the contract without making the demand referred to in the preceding Article:

(i) if the performance of the whole of the obligation is impossible;

(ii) if the obligor unequivocally manifests the intention to refuse to perform the obligation in whole;

(iii) if the performance of part of the obligation is impossible, or if the obligor clearly manifests the intention to refuse to perform part of the obligation and the purpose of the contract cannot be achieved by the performance of the

- remaining part of the obligation;
- (iv) if, due to the nature of the contract or a manifestation of intention by the parties, the purpose of the contract cannot be achieved unless the obligation is performed at a specific time on a specific date or within a certain period of time, and the obligor fails to perform the obligation at that time or before that period of time expires; or
  - (v) beyond the cases set forth in the preceding items, if the obligor does not perform the obligation and it is obvious that the obligor is unlikely to perform the obligation to the extent necessary to achieve the purpose of the contract even if the obligee makes the demand referred to in the preceding Article.
- (2) In the following cases, the obligee may immediately cancel a part of the contract without making the demand referred to in the preceding Article:
- (i) the performance of the part of the obligation is impossible; or
  - (ii) the obligor clearly manifests the intention to refuse to perform the part of the obligation.

(Non-Performance Due to Grounds Attributable to Obligee)

Article 543 If non-performance of an obligation is due to grounds attributable to the obligee, the obligee may not cancel the contract under the preceding two Articles.

(Indivisible Nature of Right to Cancel)

- Article 544 (1) If one party to a contract is comprised of two or more persons, the cancellation of the contract may be effected only by, or against, all of those persons.
- (2) In the case referred to in the preceding paragraph, if the right to cancel is extinguished with respect to one of the persons that constitute a party to the contract, it is also extinguished with respect to the other persons.

(Effect of Cancellation)

- Article 545 (1) If one of the parties exercises the right to cancel, each party assumes an obligation to restore the other party to that other party's original state; provided, however, that this may not prejudice the rights of a third party.
- (2) In the case referred to in the main clause of the preceding paragraph, if any monies are to be refunded, interest must accrue from the time of the receipt of those monies.
- (3) In the case referred to in the main clause of paragraph (1), if a thing other than money is to be returned, fruits that have accrued on or after the time of the receipt of the thing must also be returned.
- (4) The exercise of the right to cancel does not preclude claims for compensation

for loss or damage.

(Cancellation of Contract and Simultaneous Performance)

Article 546 The provisions of Article 533 apply mutatis mutandis to the preceding Article.

(Extinguishment of Right to Cancel by Demand)

Article 547 If no period of time is specified for the exercise of the right to cancel, the other party may issue a notice of demand to the holder of the right to cancel, specifying a reasonable period of time, to the effect that the holder of the right to cancel is to give a definite answer as to whether the holder will cancel or not within that period of time. In this case, if no notice of cancellation is received within that period, the right to cancel is extinguished.

(Extinguishment of Right to Cancel by Damage Caused to Object Intentionally by Holder of Right to Cancel)

Article 548 The right to cancel is extinguished if the holder of the right to cancel, intentionally or negligently, causes significant damage to, or makes it impossible to return the object of the contract, or converts the object into another kind of thing by processing or alteration; provided, however, that this does not apply if the holder of the right to cancel does not know of the holder's right to cancel.

### **Subsection 5 Standard Terms of Contract**

(Agreement on Standard Terms of Contract)

Article 548-2 (1) In the following cases, a person making an agreement to conduct a standard transaction (meaning a transaction conducted by a specified person with an unspecified and large number of persons as the counterparties, in which the uniformity of the whole or part of the transaction is reasonable to both parties; the same applies hereinafter) (that agreement is referred to as an "agreement on standard transaction" in the following Article) is deemed to have made an agreement on individual terms of the standard form contract (referring to a collection of provisions prepared by that specific person with the purpose of applying them as the terms of a contract for a standard transaction; the same applies hereinafter):

- (i) if the person agrees to apply the standard terms of contract as the terms of contract; or
- (ii) if the person that has prepared the standard terms of contract (hereinafter referred to as the "preparer of the standard terms") manifests to the counterparty the intention to apply the standard terms of contract as the

terms of the contract in advance.

- (2) Notwithstanding the provisions of the preceding paragraph, the person is deemed not to have agreed to any provisions as referred to in that paragraph that restrict the rights or expand the duties of the counterparty and that are found, in light of the manner and circumstances of the standard transaction as well as the common sense in the transaction, to unilaterally prejudice the interests of the counterparty in violation of the fundamental principle prescribed in Article 1, paragraph (2).

(Disclosure of Details of Standard Terms)

Article 548-3 (1) A preparer of the standard terms that conducts or seeks to conduct a standard transaction must disclose the details of the standard terms of contract by a reasonable method without delay if the counterparty requests this within a reasonable period of time before or after an agreement on standard transaction is made; provided, however, that this does not apply if the preparer has already delivered to the counterparty a document that contains the standard terms of contract or provided the other party with an electronic or magnetic record that contains the same.

- (2) The provisions of the preceding Article do not apply if the preparer of the standard terms of contract refuses the request referred to in the preceding paragraph before an agreement on standard transaction is made; provided, however, that this does not apply if a temporary communication failure takes place or the preparer has a legitimate reason to refuse it.

(Amendment to Standard Terms of Contracts)

Article 548-4 (1) In the following cases, a preparer of the standard terms of contract may, by amending the standard terms of contract, modify the terms of the contract without making separate agreements with each of the counterparties and deem that the parties have agreed to the amended provisions of the standard terms of contract:

- (i) if the amendment to the standard terms of contract conforms to the general interest of the counterparties; or
  - (ii) if the amendment to the standard terms of contract does not run afoul of the purpose of the contract, and it is reasonable in light of the circumstances concerning the amendment such as the necessity of the amendment, the appropriateness of the details of the amended conditions, whether or not it is provided in the contract that the standard terms of contract may be subject to an amendment pursuant to the provisions of this Article, and the details of such provisions.
- (2) If a preparer of the standard form contract is to amend the standard form contract under the provisions of the preceding paragraph, the preparer must

specify the time when the amendment takes effect, and make the intention to amend the standard form contract, the details of the amended standard general conditions, and the time when the amendment takes place known (to the appropriate scope of persons) by an appropriate method such as using the internet.

- (3) An amendment to the standard general conditions under the provisions of paragraph (1), item (ii) does not become effective unless it is made known (to the appropriate scope of persons) pursuant to the provisions of that paragraph by the time when the amendment takes effect as referred to in the preceding paragraph.
- (4) The provisions of Article 548-2, paragraph (2) do not apply to an amendment to the standard terms of contract under the provisions of paragraph (1).

## **Section 2 Gifts**

(Gifts)

Article 549 Gifts become effective by the manifestation of intention by one of the parties to give a certain property to the other party gratuitously, and the acceptance of the other party thereof.

(Cancellation of Gift Not in Writing)

Article 550 Gifts not in writing may be cancelled by either party; provided, however, that this does not apply to a portion of the gift for which performance has been completed.

(Donor's Obligation to Deliver)

Article 551 (1) The donor is presumed to have promised to deliver or transfer the thing or right that is the subject matter of the gift, while maintaining its condition as of the time when it is specified as the subject matter of the gift.

(2) With respect to gifts with burden, the donor provides the same warranty as that of a seller, to the extent of that burden.

(Periodic Gifts)

Article 552 A gift that is to be delivered periodically ceases to be effective on the death of the donor or the donee.

(Gifts with Burden)

Article 553 With respect to gifts with burden, beyond what is provided for in this Section, the provisions regarding bilateral contracts apply mutatis mutandis, to the extent those provisions are not inconsistent with the nature of gifts with burden.

(Gifts on Donor's Death)

Article 554 With respect to gifts that become effective on the death of the donor, the provisions regarding bequests apply mutatis mutandis, to the extent they are not inconsistent with the nature of gifts that become effective on the death of the donor.

### **Section 3 Sale**

#### **Subsection 1 General Provisions**

(Sale)

Article 555 A sale becomes effective when one of the parties promises to transfer certain property rights to the other party and the other party promises to pay the price for this.

(Option Contracts for Purchase and Sales Exercisable by One Party)

Article 556 (1) An option contract for a purchase and sale made by one party becomes effective when the other party manifests the intention to complete the purchase and sale.

(2) If no period is provided in relation to the manifestation of intention referred to in the preceding paragraph, the party to the option contract may issue a notice of demand to the other party, specifying a reasonable period of time, to the effect that the other party is to give a definite answer as to whether or not that party will complete the sale within that period. In such cases, if the other party fails to give a definite answer within that period, the option contract for a purchase and sale by one party ceases to be effective.

(Earnest Money)

Article 557 (1) If the buyer pays earnest money to the seller, the buyer may cancel the contract by waiving the earnest money, or the seller may cancel the contract by actually providing the buyer with twice its amount; provided, however, that this does not apply after the counterparty commences performance of the contract.

(2) The provisions of Article 545, paragraph (4) do not apply to the cases referred to in the preceding paragraph.

(Expenses of Contracts for Sale)

Article 558 The expenses associated with contracts for sale are borne equally by both parties.

(Mutatis Mutandis Application to Contracts for Value)

Article 559 The provisions of this Section apply mutatis mutandis to contracts for value other than contracts for sale; provided, however, that this does not apply when it is not permitted by the nature of the contract for value.

### **Subsection 2 Effect of Sale**

(Seller's Obligation for Satisfaction of Requirements for Perfection of Transfer of Rights)

Article 560 The seller bears an obligation to enable the buyer to satisfy the requirements for perfection of the transfer of the right that is the subject matter of the sale, such as completing registration.

(Seller's Obligation When Purchasing and Selling Rights of Others)

Article 561 If the subject matter of a sale is another person's right (including a part of a right that belongs to another person), the seller bears an obligation to acquire the right and transfer it to the buyer.

(Buyer's Right to Demand Cure)

Article 562 (1) If the subject matter delivered to the buyer does not conform to the terms of the contract with respect to the kind, quality or quantity, the buyer may demand that the seller cure the non-conformity of performance by repairing the subject matter, delivering the substitute or delivering the replenishment; provided, however, that the seller may cure the non-conformity of performance by a method that is different from the method demanded by the buyer if it does not impose any undue burden on the buyer.

(2) If the non-conformity referred to in the preceding paragraph is due to grounds attributable to the buyer, the buyer may not demand that the seller cure the non-conformity of performance under the provisions of that paragraph.

(Buyer's Right to Demand Reduction of Price)

Article 563 (1) In the case prescribed in the main clause of paragraph (1) of the preceding Article, if the buyer demands that the seller cure the non-conformity of performance by specifying a reasonable period of time but the non-conformity of performance is not cured within that period, the buyer may request a reduction of the price in proportion to the degree of non-conformity.

(2) Notwithstanding the provisions of the preceding paragraph, in the following cases, a buyer in good faith may request a reduction of the price immediately without making demand referred to in that paragraph:

- (i) if it is impossible to cure the non-conformity of performance;
- (ii) if the seller unequivocally manifests the intention to refuse to cure the non-conformity of performance;

- (iii) if, due to the nature of the contract or a manifestation of intention by the parties, the purpose of the contract is unable to be achieved unless the performance is carried out at a specific time on a specific date or within a certain period of time, and the seller fails to cure the non-conformity of the performance at the time or before the period expires; or
  - (iv) beyond the cases set forth in the preceding items, it is obvious that the seller is unlikely to cure the non-conformity of the performance even if the buyer makes the demand referred to in the preceding paragraph.
- (3) If the non-conformity referred to in paragraph (1) is due to grounds attributable to the buyer, the buyer may not request a reduction of the price under the provisions of the preceding two paragraphs.

(Claim for Compensation for Loss or Damage and Exercise of Right to Cancel by Buyer)

Article 564 The provisions of the preceding two Articles do not preclude the buyer from claiming compensation for loss or damage pursuant to the provisions of Article 415 or exercising the right to cancel pursuant to the provisions of Articles 541 and 542.

(Seller's Warranty in Case of Non-Conformity of Transferred Right to Terms of Contract)

Article 565 The provisions of the preceding three Articles apply mutatis mutandis if the right transferred by the seller to the buyer does not conform to the terms of the contract (including the case in which the seller fails to transfer part of a right that belongs to another person).

(Limitation on Period of Warranty with Respect to Kind or Quality of Subject Matter)

Article 566 If the subject matter delivered by the seller to the buyer does not conform to the terms of the contract with respect to the kind or quality, and the buyer fails to notify the seller of the non-conformity within one year from the time when the buyer becomes aware of it, the buyer may not demand cure of the non-conformity of performance, demand a reduction of the price, claim compensation for loss or damage, or cancel the contract, on the grounds of the non-conformity; provided, however, that this does not apply if the seller knew or did not know due to gross negligence the non-conformity at the time of the delivery.

(Transfer of Risk for Loss of Subject Matter)

Article 567 (1) If the seller delivers the subject matter (limited to one that has been ascertained as the subject matter of the sale; hereinafter the same applies

in this Article) to the buyer, and the subject matter is lost or damaged after the time of the delivery due to any grounds not attributable to either party, the buyer may not demand cure of the non-conformity of performance, demand a reduction of the price, claim compensation for loss or damage, or cancel the contract, on the ground of the loss or damage. In such a case, the buyer may not refuse to pay the price.

- (2) The preceding paragraph also applies if the seller tenders the performance of the obligation of delivery by delivering the subject matter that conforms to the terms of the contract, but the buyer refuses to accept or is unable to accept the performance, and the subject matter is lost or damaged after the time of the tender of the performance due to any grounds not attributable to either party.

(Warranty in Cases of Auctions)

Article 568 (1) The successful bidder at an auction based on the provisions of the Civil Execution Act and other laws (hereinafter referred to as an "auction" in this Article) may cancel the contract or demand a reduction of the price against the obligor pursuant to the provisions of Articles 541 and 542 and the provisions of Article 563 (including as applied mutatis mutandis pursuant to Article 565).

- (2) In the cases referred to in the preceding paragraph, if the obligor is insolvent, the successful bidder may demand total or partial reimbursement of the proceeds against the obligees that received the distribution of the proceeds.
- (3) In the cases set forth in the preceding two paragraphs, if obligors knew of the absence of the object or right and did not disclose the same, or if obligees knew of the absence but demanded an auction, the successful bidder may claim compensation for loss or damage against those persons.
- (4) The provisions of the preceding three paragraphs do not apply to the non-conformity with respect to the kind or quality of the subject matter of an auction.

(Seller's Warranty for Claims)

Article 569 (1) If the seller of a claim warrants the solvency of the obligor, it is presumed that the seller warranted the solvency as at the time of the contract.

- (2) If the seller of a claim which is not due yet warrants the future solvency of the obligor, it is presumed that the seller warranted the solvency as at the due date.

(Buyer's Demand for Reimbursement of Expenses for Immovables Subject to Mortgage)

Article 570 If any statutory lien, pledge or mortgage that does not conform to the terms of the contract exists on immovables that have been purchased, and the

buyer incurs expenses to preserve ownership of the immovables, the buyer may demand the reimbursement of the expenses from the seller.

#### Article 571 Deleted

(Special Agreement Disclaiming Warranty)

Article 572 Even if the seller makes a special agreement to the effect that the seller does not warrant in the case prescribed in the main clause of Article 562, paragraph (1) or Article 565, the seller may not be released from that responsibility with respect to any fact that the seller knew but did not disclose, and with respect to any right that the seller personally created for or assigned to a third party.

(Due Date for Payment of Price)

Article 573 If there is a due date for the delivery of the subject matter of the sale, it is presumed that the same due date was also agreed upon for the payment of the price.

(Place of Payment of Price)

Article 574 If price is to be paid simultaneously with delivery of the subject matter of a sale, payment must be made at the place of delivery.

(Ownership in Fruits and Payment of Interest on Price)

Article 575 (1) If the subject matter of a sale which has not yet been delivered bears fruits, the fruits vest in the seller.

(2) The buyer bears the obligation to pay interest on the price beginning from the day of delivery; provided, however, that if a due date is provided for the payment of the price, it is not necessary to pay the interest until that due date arrives.

(Buyer's Refusal to Pay Price When There Is a Likelihood That the Buyer Will Be Unable to Acquire Rights)

Article 576 If the buyer is likely to be unable to acquire or likely to lose the rights that the buyer has bought, in whole or in part, due to grounds such as the existence of persons asserting rights to the subject matter of the sale, the buyer may refuse to pay the price, in whole or in part, in proportion to the degree of that likelihood; provided, however, that this does not apply if the seller has provided reasonable security.

(Refusal by Buyer to Pay Price in Cases Registration of Mortgage Is Found)

Article 577 (1) If a mortgage that does not conform to the terms of the contract is

registered on immovables that have been purchased, the buyer may refuse to pay the price until the completion of the procedures of the claim for extinguishment of the mortgage. In such cases, the seller may demand that the buyer file the claim for extinguishment of the mortgage without delay.

- (2) The provisions of the preceding paragraph apply *mutatis mutandis* if a statutory lien or pledge that does not conform to the terms of the contract is registered on the immovables that have been bought.

(Seller's Demand for Deposit of Proceeds)

Article 578 In the cases referred to in the preceding two Articles, the seller may demand that the buyer deposit the proceeds.

### **Subsection 3 Redemption**

(Special Agreement on Redemption)

Article 579 The buyer of immovables may cancel the sale by refunding the price (or any amount specified by agreement if otherwise agreed upon; the same applies in Article 583, paragraph (1)) and costs of the contract paid by the buyer in accordance with a special agreement on redemption executed simultaneously with the contract for sale. In such a case, unless a particular intention is manifested by the parties, it is deemed that the fruit of the immovables and the interest on the price have been set off against each other.

(Period for Redemption)

Article 580 (1) A redemption period may not exceed 10 years. If any special agreement provides for any period longer than this, that period is considered to be 10 years.

- (2) If a period for the redemption is agreed upon, no further extension may be effected subsequently.

- (3) If no period for the redemption is agreed upon, the redemption must be effected within five years.

(Perfection of Special Agreement on Redemption)

Article 581 (1) If the special agreement on redemption is registered simultaneously with the contract for sale, the redemption may be duly asserted against third parties.

- (2) The rights of a lessee that satisfies the requirements for perfection prescribed in Article 605-2, paragraph (1) after the registration referred to in the preceding paragraph is completed may be duly asserted against the seller while the lease remains effective, limited to a period not exceeding one year; provided, however, that this does not apply if the lease is entered into with the

purpose of harming the seller.

(Exercise of Right of Redemption by Subrogation)

Article 582 If an obligee of a seller seeks to effect redemption on behalf of the seller pursuant to the provisions of Article 423, the buyer may extinguish the right of redemption by paying the debts of the seller, to the extent of the balance obtained by deducting the amount the seller is to pay from the current value of the immovables as evaluated by a court-appointed appraiser, and, if any positive balance remains, by refunding the same to the seller.

(Implementation of Redemption)

Article 583 (1) A seller may not effect redemption unless the seller provides the price and the costs of the contract within the period provided for in Article 580. (2) If a buyer or subsequent acquirer incurs expenses with respect to immovables, the seller must reimburse those expenses in accordance with the provisions of Article 196; provided, however, that with respect to beneficial expenses, the court may, at the seller's request, grant a reasonable period of time for the reimbursement.

(Sale of Co-Ownership Interest with Special Agreements on Redemption)

Article 584 If one of the co-owners of immovables sells the equity interest thereof with a special agreement on its redemption and the immovables are then divided or auctioned, the seller may redeem with respect to the part or price that the buyer receives or is to receive; provided, however, that any division or auction effected without notice to the seller may not be duly asserted against the seller.

Article 585 (1) In a case as referred to in the preceding Article, if the buyer is the successful bidder at the auction of the immovables, the seller may effect the redemption by paying the auction price and the costs provided for in Article 583. In such cases, the seller acquires full ownership of the immovables. (2) If a buyer became the successful bidder at an auction as the result of the request for division by another co-owner, the seller may not effect the redemption with respect only to the seller's own interest.

#### **Section 4 Exchange**

Article 586 (1) An exchange becomes effective by the mutual promises by the parties to transfer any property right other than the ownership of money. (2) If one of the parties to an exchange promises to transfer the ownership of money together with other rights, the provisions for sale contracts apply

mutatis mutandis to that money.

## **Section 5 Loans for Consumption**

(Loans for Consumption)

Article 587 A loan for consumption becomes effective when a first party receives money or any other thing from a second party, having promised to return a thing of the same type, quality, and quantity.

(Loan for Consumption Made in Writing)

Article 587-2 (1) Notwithstanding the provisions of the preceding Article, a loan for consumption made in writing becomes effective when a first party promises to deliver money or any other thing and a second party promises to return a thing of the same type, quality, and quantity as the thing delivered.

(2) The borrower of a loan for consumption made in writing may cancel the contract until the borrower receives the money or other thing from the lender. In such a case, if the lender sustains any damage from the cancellation of the contract, the lender may claim compensation therefor.

(3) A loan for consumption made in writing ceases to be effective if either of the parties receives an order commencing bankruptcy proceedings before the borrower receives the thing such as money from the lender.

(4) If a loan for consumption is made by means of an electronic or magnetic record in which its content is recorded, the loan for consumption is deemed to have been made in writing, and the provisions of the preceding three paragraphs apply thereto.

(Quasi-Loans for Consumption)

Article 588 If any person has an obligation to pay money or deliver other thing under any arrangement, and the parties agree to regard such thing as the subject matter of a loan for consumption, it is deemed that this establishes a loan for consumption.

(Interest)

Article 589 (1) In the absence of any special agreement, the lender may not demand interest from the borrower.

(2) If there is any special agreement referred to in the preceding paragraph, the lender may demand from the borrower interest that accrues from the day on which the borrower receives the thing such as money.

(Lender's Obligation to Deliver)

Article 590 (1) The provisions of Article 551 apply mutatis mutandis to a loan for

consumption without a special agreement referred to in paragraph (1) of the preceding Article.

- (2) Irrespective of whether there is any special agreement referred to in paragraph (1) of the preceding Article, if the thing delivered from the lender does not conform to the terms of the contract with respect to the kind or quality, the borrower may return the value of the delivered thing.

(Timing of Returns)

Article 591 (1) If the parties do not define the time for return of borrowed things, the lender may demand their return, specifying a reasonable period of time.

- (2) The borrower may return the borrowed thing at any time, irrespective of whether the parties have defined the time of return of the thing.

- (3) If the parties defined the time of return of the borrowed thing, and the lender sustains any damage because the borrower returns the thing prior to the time of return, the lender may claim compensation therefor from the borrower.

(Reimbursement of Value)

Article 592 If the borrower has become unable to return things in the same kind, quality and quantity as that of the things the borrower received from the lender, the borrower must reimburse the current value of the things; provided, however, that this does not apply in the cases provided for in Article 402, paragraph (2).

## **Section 6 Loans for Use**

(Loans for Use)

Article 593 A loan for use becomes effective if one of the parties promises to deliver a certain thing, and the other party promises to return the thing when the contract is terminated after the other party gratuitously uses and makes profit of the borrowed thing.

(Lender's Right to Cancel Loan for Use Before the Receipt of Borrowed Thing)

Article 593-2 The lender may cancel the contract up until the borrower receives the borrowed thing; provided, however, that this does not apply to a loan for use made in writing.

(Borrower's Use and Profit)

Article 594 (1) A borrower must make use of and take the profits of the thing in compliance with the method of use specified by the contract or by the nature of the thing which is the subject matter of the contract.

- (2) A borrower may not allow third parties to make use of or take the profits of

the thing without obtaining the approval of the lender.

- (3) If a borrower has made use of or taken the profits of the thing in violation of the provisions of the preceding two paragraphs, the lender may cancel the contract.

(Responsibility for Costs of Borrowed Thing)

Article 595 (1) The borrower bears the ordinarily necessary expenses of borrowed thing.

- (2) The provisions of Article 583, paragraph (2) apply mutatis mutandis to costs other than the ordinarily necessary expenses referred to in the preceding paragraph.

(Lender's Obligation to Deliver)

Article 596 The provisions of Article 551 apply mutatis mutandis to loans for use.

(Termination of Loan for Use upon Expiration of Period of Loan)

Article 597 (1) If the parties specify a period of a loan for use, the loan for use is terminated upon the expiration of the period.

- (2) If the parties do not specify a period of a loan for use, but they specify the purpose of using and making profit from the borrowed thing, the loan for use is terminated when the borrower finishes using and making profit from the thing in line with the purpose.
- (3) A loan for use is terminated upon the death of the borrower.

(Cancellation of Loan for Use)

Article 598 (1) In the case prescribed in paragraph (2) of the preceding Article, upon the passage of a period that is sufficient for the borrower to use and make profit from the borrowed thing in line with the purpose referred to in that paragraph, the lender may cancel the contract.

- (2) If the parties do not specify a period of a loan for use or a purpose of using and making profit from the borrowed thing, the lender may cancel the contract at any time.
- (3) The borrower may cancel the contract at any time.

(Removal by Borrower)

Article 599 (1) If the borrower attaches anything to the borrowed thing after receiving it, the borrower has an obligation to remove the attached thing when the loan for use is terminated; provided, however, that this does not apply to anything that is unable to be detached from the borrowed thing or that requires excessive expenses for the detachment.

- (2) The borrower may remove anything that the borrower has attached to the

borrowed thing after receiving it.

- (3) If any damage is caused to the borrowed thing after the borrower receives it, the borrower has an obligation to restore the damaged thing when the loan for use is terminated; provided, however, that this does not apply if the damage is caused due to any grounds not attributable to the borrower.

(Restriction on Period to Claim Compensation for Loss or Damage and Reimbursement of Costs)

Article 600 (1) Claims for compensation for loss or damage resulting from using or taking profits of the thing inconsistent with the main purport of the contract and for the reimbursement of expenditures incurred by the borrower must be submitted within one year from the time when the lender receives the return of the borrowed things.

- (2) With regard to the claim for compensation for loss or damage referred to in the preceding paragraph, the prescription period does not expire until one year has elapsed from the time when the lender receives the return of the borrowed thing.

## **Section 7 Leases**

### **Subsection 1 General Provisions**

(Leases)

Article 601 A lease becomes effective if one of the parties promises to make a certain thing available for the other party to use and make profit, and the other party promises to pay rent for the leased thing and return the delivered thing when the contract is terminated.

(Short-Term Leases)

Article 602 If a person with no authority of disposition makes a lease contract, the leases set forth in the following items must not exceed the terms specified in those items; any longer term specified by a contract is reduced to the term specified in the relevant item:

- (i) leases of forest for the purpose of planting or felling trees: 10 years;
- (ii) leases of land other than the leases set forth in the preceding item: five years;
- (iii) lease of a building: three years; and
- (iv) lease of movables: six months.

(Renewal of Short-Term Leases)

Article 603 The terms prescribed in the preceding Article may be renewed; provided, however, that the renewal must be carried out within one year prior

to the expiration of the term for land, and within three months prior to the expiration of the term for a building, and within one month prior to the expiration of the term for movables.

(Duration of Lease)

- Article 604 (1) The duration of a lease may not exceed 50 years. Even if the contract prescribes a longer term, that term is considered to be 50 years.
- (2) The duration of a lease may be renewed; provided, however, that the term may not exceed 50 years from the time of the renewal.

### **Subsection 2 Effect of Lease**

(Perfection of Lease of Immovables)

- Article 605 A lease of immovables, when registered, may be duly asserted against a third party such as a person that subsequently acquires real rights with respect to the immovables.

(Transfer of Status of Lessor of Immovables)

- Article 605-2 (1) If a lease is perfected in accordance with the laws and regulations including the preceding Article, and Articles 10 and 31 of the Act on Land and Building Leases (Act No. 90 of 1991), and the relevant immovables are assigned, the status of the lessor of the immovables is transferred to its assignee.
- (2) Notwithstanding the provisions of the preceding paragraph, if the assignor and the assignee of immovables agree that the assignor reserves the status of lessor and that the assignee leases the immovables to the assignor, the status of lessor is not transferred to the assignee. In such a case, if a lease between the assignor and the assignee or any successor thereof is terminated, the status of lessor that the assignor has reserved is transferred to the assignee or any successor thereof.
- (3) The status of lessor under the provisions of paragraph (1) or the second sentence of the preceding paragraph may not be duly asserted against the lessee unless the transfer of ownership for the immovables under lease is registered.
- (4) If the status of lessor is transferred to the assignee or any successor thereof pursuant to the provisions of paragraph (1) or the second sentence of paragraph (2), the assignee or any successor thereof succeeds to the obligation to reimburse expenses under the provisions of Article 608 and the obligation to refund the security deposit prescribed in Article 622-2, paragraph (1) under the provisions of that paragraph.

(Transfer of Status of Lessor of Immovables by Agreement)

Article 605-3 If the assignor of immovables is the lessor, the status of lessor may be transferred to the assignee by agreement between the assignor and the assignee, without the consent of the lessee. In such a case, the provisions of paragraphs (3) and (4) of the preceding Article apply mutatis mutandis.

(Demand by Lessee of Immovables for Discontinuation of Disturbance)

Article 605-4 If the lessee of immovables satisfies the requirements for perfection prescribed in Article 605-2, paragraph (1), the lessee may seek as specified in each of the following items in the cases set forth in the respective items:

- (i) a third party disturbs the lessee's possession of the immovables: demanding that the third party discontinue disturbance; or
- (ii) a third party is in possession of the immovables: demanding that the third party return it.

(Repairs by Lessor)

Article 606 (1) A lessor assumes an obligation to effect repairs necessary for using and making profit of the leased thing; provided, however, that this does not apply if repairs are necessary due to any grounds attributable to the lessee. (2) A lessee may not refuse if the lessor seeks to engage in an act that is necessary for the preservation of the leased thing.

(Act of Preservation against the Will of the Lessee)

Article 607 If a lessor seeks to engage in an act of preservation against the will of the lessee and the lessee cannot achieve the purpose of the lease as a result of this, the lessee may cancel the contract.

(Repairs by Lessee)

Article 607-2 If repairs are necessary for the leased thing, the lessee may make repairs in the following cases:

- (i) the lessee notifies the lessor of the necessity of repairs or the lessor becomes aware of the necessity of repairs, but the lessor does not make the necessary repairs within a reasonable period of time; or
- (ii) there are pressing circumstances.

(Lessee's Demand for Reimbursement of Costs)

Article 608 (1) If a lessee has defrayed necessary expenses with respect to the leased thing which ought to be borne by the lessor, the lessee may immediately demand the reimbursement of the same from the lessor. (2) If the lessee has incurred beneficial expenses with respect to the leased thing,

the lessor must reimburse those expenses on termination of the lease in compliance with the provisions of Article 196, paragraph (2); provided, however, that the court may, at the lessor's request, grant a reasonable period of time for the reimbursement of the same.

(Demand for Reduction of Rent Due to Decrease in Profits)

Article 609 If a lessee of land that is meant for cultivation or livestock farming obtains profits less than the rent due to force majeure, the lessee may demand that the amount of the rent be reduced to the level of the amount of the profits.

(Cancellation Due to Decrease in Profits)

Article 610 In the cases referred to in the preceding Article, the lessee referred to in that Article may cancel the contract if the lessee has made profits less than the rent for at least two consecutive years due to force majeure.

(Reduction of Rent Due to Partial Loss of a Leased Thing)

Article 611 (1) If it comes to no longer be possible to use or profit from part of a leased thing due to grounds such as loss and this is caused by grounds not attributable to the lessee, the rent is reduced in proportion to the value of the part that can no longer be used or profited from.

(2) If it comes to no longer be possible to use or profit from part of a leased thing due to grounds such as loss and the lessee is unable to achieve the purpose of the lease with the remaining part alone, the lessee may cancel the contract.

(Restrictions on Assignment of Lease and Subleasing)

Article 612 (1) A lessee may not assign the lease or sublease a leased thing without obtaining the approval of the lessor.

(2) If the lessee allows any third party to make use of or take the profits of a leased thing in violation of the provisions of the preceding paragraph, the lessor may cancel the contract.

(Effect of Subleases)

Article 613 (1) If a lessee lawfully subleases a leased thing, the sublessee is liable to perform an obligation based on the sublease directly to the lessor, to the extent of the scope of the lessee's obligation based on the lease between the lessor and the lessee. In such a case, advance payment of rent may not be duly asserted against the lessor.

(2) The provisions of the preceding paragraph do not preclude the lessor from exercising rights against the lessee.

(3) If the lessee lawfully subleases a leased thing, the lessor may not duly assert against the sublessee the cancellation by agreement of the lease with the

lessee; provided, however, that this does not apply if, at the time of the cancellation, the lessor has a right to cancel due to non-performance on the part of the lessee.

(Timing of Payment of Rent)

Article 614 Rent must be paid at the end of the month with respect to movables, buildings and land for residential purpose, and at the end of the year with respect to other land; provided, however, that with respect to anything with a harvest season, the rent must be paid without delay after that season.

(Obligation of Lessee to Give Notice)

Article 615 If a leased thing requires any repair or if a person asserts a right with respect to a leased thing, the lessee must notify the lessor without delay; provided, however, that this does not apply if it is already known to the lessor.

(Use and Making of Profit by Lessee)

Article 616 The provisions of Article 594, paragraph (1) apply mutatis mutandis to leases.

### **Subsection 3 Termination of Leases**

(Termination of Lease Due to Loss of the Whole of a Leased Thing)

Article 616-2 If it comes to no longer be possible to use or profit from the whole of a leased thing due to grounds such as loss, the lease is terminated thereby.

(Notice of Termination of Leases with Indefinite Terms)

Article 617 (1) If the parties do not specify the term of a lease, either party may give a notice of termination at any time. In such cases, a lease as set forth in one of the following items terminates when the term prescribed in that item has passed after the day of the notice of termination:

- (i) leases of land: one year;
- (ii) leases of buildings: three months; and
- (iii) leases of movables and party room: one day.

(2) With respect to leases of land with harvest seasons, the notice of termination must be given after the end of that season and before the next start of cultivation.

(Reservation of Rights to Terminate Leases with Definite Terms)

Article 618 Even if the parties specify the term of a lease, the provisions of the preceding Article apply mutatis mutandis if one party reserves, or both parties reserve, the right to terminate during that period.

(Presumption of Renewal of Leases)

Article 619 (1) If a lessee continues to make use or take the profits of the thing after the expiration of the term of the lease and a lessor that knows of the same raises no objection, it is presumed that a further lease is entered into under conditions identical to those of the previous lease. In such cases, each party may give a notice of termination pursuant to the provisions of Article 617.

(2) If one of the parties has provided security for the previous lease, the security is extinguished upon expiration of the term; provided, however, that this does not apply to a security deposit prescribed in Article 622-2, paragraph (1).

(Effect of Cancellations of Leases)

Article 620 If a lease is cancelled, the cancellation becomes effective solely toward the future. In such a case, the cancellation does not preclude a claim for compensation for loss or damage.

(Lessee's Obligation of Restoration)

Article 621 If any damage is caused to the leased thing after the lessee receives it (excluding any wear of the leased thing caused by the ordinary manner of using and making profit from it and any aging degradation of the leased thing; hereinafter the same applies in this Article), the lessee has an obligation to restore the damaged thing when the lease is terminated; provided, however, that this does not apply if the damage is caused due to any grounds not attributable to the lessee.

(Application Mutatis Mutandis of Provisions on Loan for Use)

Article 622 The provisions of Article 597, paragraph (1), Article 599, paragraphs (1) and (2), and Article 600 apply mutatis mutandis to leases.

#### **Subsection 4 Security Deposit**

Article 622-2 (1) If a lessor receives a security deposit (meaning money to be delivered by the lessee to the lessor under any name, for the purpose of securing an obligation to pay money that is owed by the lessee to the lessor based on a lease, such as an obligation to pay rent; hereinafter the same applies in this Article), the lessor must return to the lessee the amount that remains after deducting the amount of the obligation to pay money that is owed by the lessee to the lessor based on the lease, from the amount of security deposit received, in the following cases:

(i) if the lease is terminated, and the lessor receives the return of the leased thing; or

- (ii) if the lessee assigns the lease lawfully.
- (2) If the lessee fails to perform an obligation to pay money based on the lease, the lessor may appropriate the security deposit to the payment of the obligation. In such a case, the lessee may not demand that the lessor appropriate the security deposit to the payment of the obligation.

## **Section 8 Employment**

### (Employment)

Article 623 An employment contract becomes effective when a first party promises to a second party that the first party will engage in work and the second party promises to pay remuneration for this.

### (Timing of Payment of Remuneration)

- Article 624 (1) An employee may not demand remuneration until the work the employee promised to perform has been completed.
- (2) Remuneration specified with reference to a period may be claimed after the passage of that period.

### (Remuneration in Proportion to Performance)

- Article 624-2 In the following cases, an employee may demand remuneration in proportion to the obligation already performed thereby:
- (i) if the employee is no longer able to engage in work due to any grounds not attributable to the employer; or
  - (ii) if employment is terminated during the course of performance.

### (Restrictions on Assignment of Employer's Rights)

- Article 625 (1) An employer may not assign the rights of the employer to a third party without obtaining the employee's consent.
- (2) An employee may not cause a third party to work on behalf of the employee without obtaining the employer's consent.
- (3) If an employee causes a third party to work in violation of the provisions of the preceding paragraph, the employer may cancel the contract.

### (Cancellation of Employment with Definite Term)

- Article 626 (1) If the term of employment exceeds five years, or the end of the term is not fixed, either party may cancel the contract at any time after the passage of five years.
- (2) If a person seeking to cancel a contract pursuant to the provisions of the preceding paragraph must give notice three months in advance if the person is an employer, or two weeks in advance if the person is an employee.

(Notice of Termination of Employment with Indefinite Term)

Article 627 (1) If the parties have not specified a term of employment, either party may give notice of termination at any time. In such cases, employment terminates on the expiration of two weeks from the day of the notice of termination.

(2) If remuneration is specified with reference to a period, an employer's notice of termination may be given with respect to the following period of time onward; provided, however, that the notice of termination must be given in the first half of the current period.

(3) If remuneration is specified with reference to a period of six months or more, the notice of termination referred to in the preceding paragraph must be given three months before the termination.

(Cancellation of Employment Due to Compelling Reasons)

Article 628 Even if the parties have specified a term of employment, either party may immediately cancel the contract if there is a compelling reason to do so. In such cases, if the reasons arise from the negligence of either one of the parties, that party is liable to the other party for compensation for loss or damage.

(Presumption of Renewal of Employment)

Article 629 (1) If an employee continues to engage in that employee's work after the expiration of a term of employment and the employer knows of this and raises no objection, it is presumed that the further employment is entered into under conditions identical to those of the previous employment. In such cases, each party may give a notice of termination pursuant to the provisions of Article 627.

(2) If either party has provided security for the previous employment, the security is extinguished on the expiration of the term; provided, however, that this does not apply to fidelity guarantee deposit.

(Effect of Cancellation of Employment)

Article 630 The provisions of Article 620 apply mutatis mutandis to employment.

(Notice of Termination Due to Commencement of Bankruptcy Proceeding for Employer)

Article 631 If the employer is subject to an order commencing bankruptcy proceeding, the employee or the bankruptcy trustee may give a notice of termination pursuant to the provisions of Article 627 even if the employment is for a definite term. In such cases, neither party may claim compensation from the other party for loss or damage suffered as a result of the termination.

## Section 9 Contracts for Work

(Contracts for Work)

Article 632 A contract for work become effective when one of the parties promises to complete work and the other party promises to pay remuneration for the outcome of the work.

(Timing of Payment of Remuneration)

Article 633 Remuneration must be paid simultaneously with delivery of the subject matter of work performed; provided, however, that if no delivery of a thing is required, the provisions of Article 624, paragraph (1) apply mutatis mutandis.

(Remuneration in Proportion to Benefit Received by Party Ordering Work)

Article 634 In the following cases, if the party ordering work receives any benefit from the performance of any divisible portion of the outcome of the work that the contractor has already completed, that portion is deemed to be the completed work; in this case, the contractor may demand remuneration in proportion to the benefit to be received by the party ordering work:

- (i) if the contractor is no longer able to complete the work due to any grounds not attributable to the party ordering work; or
- (ii) if the contract for work is cancelled before the completion of work.

Article 635 Deleted

(Limitation on Contractor's Warranty)

Article 636 If the contractor delivers to the party ordering work of a content the subject matter of work that does not conform to the terms of the contract with respect to the kind or quality (in the case of the subject matter of work that is not required to be delivered, if the subject matter of work does not conform to the terms of the contract with respect to the kind or quality when the work is finished), the party ordering work may not demand cure of the non-conformity of performance, demand a reduction of the remuneration, claim compensation for loss or damage, or cancel the contract, on the grounds of the non-conformity caused by the nature of the materials that the party ordering work has provided or any instructions that the relevant party has given; provided, however, that this does not apply if the contractor knew that the materials or instructions were inappropriate but did not notify the ordering party of this.

(Limitation on Period of Warranty with Respect to Kind or Quality of Subject

Matter)

Article 637 (1) In the case prescribed in the main clause of the preceding Article, if the party ordering work fails to notify the contractor of the non-conformity to the terms of the contract within one year from the time when the party becomes aware of it, the party ordering work may not demand cure of the non-conformity of performance, demand a reduction of the remuneration, claim compensation for loss or damage, or cancel the contract.

(2) The provisions of the preceding paragraph do not apply if the contractor knew or did not know due to gross negligence the non-conformity referred to in that paragraph at the time when the contractor delivers the subject matter of work (in the case of the subject matter of work that is not required to be delivered, when the work is finished).

Articles 638 to 640 Deleted

(Cancellation of Contract by Party Ordering Work)

Article 641 The party ordering work may cancel the contract at any time whilst the contractor has not completed the work by paying compensation for loss or damage.

(Cancellation on Commencement of Bankruptcy Proceeding for Party Ordering Work)

Article 642 (1) If the party ordering work receives an order commencing bankruptcy proceeding, the contractor or the bankruptcy trustee may cancel the contract; provided, however, that this does not apply to the cancellation of the contract by the contractor after the work is completed.

(2) In the case prescribed in the preceding paragraph, the contractor may participate in the distribution of the bankruptcy estate with respect to the remuneration for the work already completed and expenses not included therein.

(3) In the cases referred to in paragraph (1), claims for compensation for loss or damage suffered as a result of the cancellation of the contract are permitted only for contractors under contracts cancelled by the bankruptcy trustee. In such a case, the contractors participate in the distribution of the bankruptcy estate with respect to such compensation for loss or damage.

## **Section 10 Mandates**

(Mandates)

Article 643 A mandate becomes effective when a first party asks a second party with performing a juridical act, and the second party accepts this.

(Duty of Care of Mandatary)

Article 644 A mandatary bears a duty to administer the mandated business with the due care of a prudent manager in compliance with the main purport of the mandate.

(Appointment of Sub-Mandatary)

Article 644-2 (1) A mandatary may not appoint a sub-mandatary unless the mandatary obtains the permission of the mandator or there is a compelling reason to do so.

(2) In the case of mandate upon which the mandator grants authority to represent to the mandatary, if the mandatary appoints a sub-mandatary with authority to represent, the sub-mandatary has the same rights and obligations as those of the mandatary in relation to the mandator within the scope of authority thereof.

(Reports by Mandatary)

Article 645 A mandatary must, if so requested by the mandator, report the current status of the administration of the mandated business at any time, and must report the process and results without delay upon termination of the mandate.

(Delivery of Received Things by Mandatary)

Article 646 (1) A mandatary must deliver to the mandator monies and other things received during the course of administering the mandated business. The same applies to fruits the mandatary has reaped.

(2) A mandatary must transfer to the mandator rights that the mandatary has acquired in the mandatary's own name on behalf of the mandator.

(Mandatary's Responsibility for Consumption of Monies)

Article 647 If the mandatary has personally consumed monies that were to be delivered to the mandator or used for the benefit of the mandator, the mandatary must pay interest for the period from the day of that consumption. In such cases, if loss or damage persists, the mandatary is liable to compensate for the same.

(Remuneration for Mandatary)

Article 648 (1) In the absence of any special agreements, the mandatary may not claim remuneration from the mandator.

(2) If a mandatary is to receive remuneration, the mandatary may not claim this until after having performed the mandated business; provided, however, that if

the remuneration is specified with reference to period, the provisions of Article 624, paragraph (2) apply *mutatis mutandis*.

- (3) In the following cases, the mandatary may demand remuneration in proportion to the performance already completed:
- (i) if the mandatary is no longer able to perform the mandated business due to any grounds not attributable to the mandator; or
  - (ii) if the mandate is terminated during the course of performance.

(Remuneration for Result)

Article 648-2 (1) If the parties agree that remuneration will be paid for any result that may be obtained through the performance of the mandated business, and the result is required to be delivered, remuneration must be paid simultaneously upon the delivery of the result.

- (2) The provisions of Article 634 apply *mutatis mutandis* if the parties agree that remuneration will be paid for any result that may be obtained through the performance of the mandated business.

(Mandatary's Claims for Advance for Costs)

Article 649 If costs will be incurred in administering the mandated business, the mandator must, at the request of the mandatary, pay an advance for those costs.

(Mandatary's Claims for Reimbursement of Expense)

Article 650 (1) If the mandatary has expended costs found to be necessary for the administration of the mandated business, the mandatary may claim reimbursement of those costs from the mandator and any interest on the same from the day the costs were expended.

- (2) If the mandatary has borne any obligation found to be necessary for the administration of the mandated business, the mandatary may demand that the mandator perform the obligation on the mandatary's behalf. In such cases, if the obligation has not yet fallen due, the mandatary may require the mandator to tender reasonable security.
- (3) If a mandatary incurs loss or damage that is not due to the negligence of the mandatary in order to administer the mandated business, the mandatary may claim compensation for this from the mandator.

(Cancellation of Mandate)

Article 651 (1) A mandate may be cancelled by either party at any time.

- (2) In the following cases, a party that has cancelled a mandate pursuant to the provisions of the preceding paragraph must compensate for damage suffered by the other party; provided, however, that this does not apply if there was a

compelling reason for the cancellation:

- (i) if the party cancels the mandate at a time that is detrimental to the other party; or
- (ii) if the mandator cancels the mandate for which the purpose includes the interests for the mandatary (excluding the profit to be obtained exclusively by receiving remuneration).

(Effect of Cancellation of Mandate)

Article 652 The provisions of Article 620 apply mutatis mutandis to mandates.

(Grounds for Termination of Mandate)

Article 653 A mandate terminates when:

- (i) the mandator or mandatary dies;
- (ii) the mandator or mandatary is subject to an order commencing bankruptcy proceeding;
- (iii) the mandatary is subject to a decision for the commencement of guardianship.

(Disposition after Termination of Mandate)

Article 654 If a mandate has terminated but there are pressing circumstances, the mandatary or the heir or legal representative thereof must effect the necessary actions until the time when the mandator or the heir or legal representative of the mandatary is able to take charge of the mandated business.

(Requirements for Assertion of Termination of Mandate)

Article 655 The grounds of termination of mandate may not be asserted against the other party unless the other party was notified of or knew of the same.

(Quasi-Mandate)

Article 656 The provisions of this Section apply mutatis mutandis to entrustments of business that do not constitute juridical acts.

## **Section 11 Bailment**

(Bailment)

Article 657 A bailment becomes effective if one of the parties asks the other party to keep a certain thing in custody, and the other party gives consent to keeping it in custody.

(Cancellation of Bailment by Bailor Prior to Receipt of Bailed Thing)

Article 657-2 (1) A bailor may cancel the contract up until the bailee receives the bailed thing. In such a case, if the bailee sustains any damage due to the cancellation of the contract, the bailee may demand compensation for damage from the bailor.

(2) A gratuitous bailee may cancel the contract up until the bailee receives the bailed thing; provided, however, that this does not apply to a bailment made in writing.

(3) If the bailor does not deliver the bailed thing even after the passage of the scheduled time of receipt of the bailed thing, and the bailee (in the case of a gratuitous bailment, limited to the bailee of a bailment made in writing) demands the delivery by specifying a reasonable period of time but the bailor fails to deliver the thing, the bailee may cancel the contract.

#### (Use of Bailed Thing and Custody by Third Parties)

Article 658 (1) A bailee may not use the bailed thing without obtaining the consent of the bailor.

(2) The bailee may not have a third party keep the bailed thing in custody unless the bailee obtains the consent of the bailor or there is a compelling reason to do so.

(3) A sub-bailee has the same rights and obligations as those of the bailee in relation to the bailor within the scope of authority thereof.

#### (Duty of Care of Gratuitous Bailee)

Article 659 A gratuitous bailee bears a duty to keep the bailed thing while exercising the same level of care that the bailee would exercise for their own property.

#### (Obligation of Bailee to Give Notice)

Article 660 (1) If a third party claiming rights with respect to the bailed thing has filed a lawsuit against the bailee, or has effected an attachment, provisional seizure, or provisional disposition, the bailee must notify the bailor of that fact without delay; provided, however, that this does not apply if the bailor already knows it.

(2) Even if a third party claims a right for the bailed thing, the bailee must return the bailed thing to the bailor unless the bailor gives instructions to the contrary; provided, however, that this does not apply if the bailee notifies the bailor in advance as referred to in the preceding paragraph or is not required to notify pursuant to the provisions of the proviso to that paragraph, and the bailee delivers the bailed thing to a third party based on a final and binding judgment (including anything that has the same effect as a final and binding judgment) ordering the delivery of the bailed thing to that third party.

(3) If the bailee is required to return the bailed thing to the bailor pursuant to the provisions of the preceding paragraph, the bailee is not liable to compensate any damage sustained by a third party due to the delivery of the bailed thing to the bailor.

(Compensation for Loss or Damage by Bailor)

Article 661 The bailor must compensate the bailee for damage that occur due to the nature of or defects in the bailed things; provided, however, that this does not apply if the bailor did not, without negligence, know of such nature or defect, or the bailee knew of the same.

(Bailor's Demand for Return)

Article 662 (1) Even if the parties specify the time for the return of the bailed things, the bailor may demand the return of the same at any time.

(2) In the case prescribed in the preceding paragraph, if the bailee sustains any damage because the bailor demands the return of the bailed thing prior to the time of return, the bailee may claim compensation therefor from the bailor.

(Timing of Return of the Bailed Thing)

Article 663 (1) If the parties have not specified the timing of the return of the bailed thing, the bailee may return the same at any time.

(2) If the timing of the return is specified, the bailee may not return the deposited thing prior to the due date unless there is a compelling reason to do so.

(Place for Return of Bailed Thing)

Article 664 Bailed things must be returned at the place where they are to be retained; provided, however, that if the bailee has changed the place of retention for a legitimate reason, the bailed thing may be returned at that current place of retention.

(Limitation on Period of Claims for Compensation for Loss or Damage and Reimbursement of Expenses)

Article 664-2 (1) Claims for compensation for loss or damage sustained by the bailor due to the loss or damage to part of the bailed thing and for reimbursement of expenses incurred by the bailee must be submitted within one year from the time when the bailor receives the return of the bailed thing.

(2) With regard to the claim for compensation for loss or damage referred to in the preceding paragraph, the prescription period does not expire until one year has elapsed from the time when the bailor receives the return of the bailed thing.

(Mutatis Mutandis Application of Provisions on Mandate)

Article 665 The provisions of Articles 646 through 648, Article 649, and Article 650, paragraphs (1) and (2) apply mutatis mutandis to bailments.

(Bailments of Mixed Things)

Article 665-2 (1) If the things bailed by two or more persons are the same in kind and quality, the bailee may keep these things in custody by mixing them only if the bailee obtains the consent of the respective bailors.

(2) If the bailee keeps the bailed things by two or more bailors in custody by mixing them based on the provisions of the preceding paragraph, each bailor may demand the return of the thing in the same quantity as the thing bailed by respective bailor.

(3) In the case prescribed in the preceding paragraph, if any part of the bailed things is lost, each bailor may demand the return of the thing at the percentage of the thing bailed by respective bailor to all bailed things mixed and kept in custody by the bailee. In such a case, no bailor is precluded from claiming compensation for loss or damage.

(Deposit of Fungibles)

Article 666 (1) If a bailee may consume the bailed thing by contract, the bailee must return the thing that is the same kind, quality and quantity as the bailed thing.

(2) The provisions of Articles 591 and 592 apply mutatis mutandis to the case prescribed in the preceding paragraph.

(3) The provisions of Article 591, paragraphs (2) and (3) apply mutatis mutandis to the case of a bailment of money by a contract concerning deposits.

## **Section 12 Partnerships**

(Partnership Contracts)

Article 667 (1) A partnership contract becomes effective when each of the parties promises to make a contribution and engage in a joint undertaking.

(2) The subject of the contribution may be services.

(Non-Performance of Other Partners)

Article 667-2 (1) The provisions of Articles 533 and 536 do not apply to a partnership contract.

(2) A partner may not cancel a partnership contract on the grounds that other parties do not perform the obligations based on the partnership contract.

(Nullity of Manifestation of Intention by One Partner)

Article 667-3 Even if there are any grounds for the nullity or rescission of a manifestation of intention by one of the partners, the validity of the partnership contract is not impaired in relation to other partners.

(Co-Ownership in Partnership Property)

Article 668 The contributions of the partners and other partnership property is co-owned by all partners.

(Responsibility for Failure to Provide Monetary Contribution)

Article 669 If monies are the subject of contribution and a partner fails to make the contribution, that partner must pay interest on the same and otherwise compensate for loss or damage.

(Methods of Deciding and Executing Business)

- Article 670 (1) The partnership business is decided by the majority of the partners and executed by each partner.
- (2) The decision and execution of the partnership business may be delegated to one or more partners or a third party, pursuant to the provisions of the partnership contract.
- (3) The person delegated as referred to in the preceding paragraph (hereinafter referred to as a "person who executes business") decides and executes the partnership business. In such a case, if there are two or more persons who execute business, the partnership business is decided by the majority of these persons who execute business and is executed by each of them.
- (4) Notwithstanding the provisions of the preceding paragraph, the partnership business is not precluded to be decided based on the consent of all partners or executed by all partners.
- (5) Notwithstanding the provisions of the preceding paragraphs, the ordinary business of a partnership may be performed by each partner or each person who executes business independently; provided, however, that this does not apply if other partners or persons who execute business raise objections prior to the completion of the business.

(Agency of Partnership)

- Article 670-2 (1) In executing the partnership business, each partner may act as an agent of other partners with the consent of the majority of partners.
- (2) Notwithstanding the provisions of the preceding paragraph, if any person is delegated to be a person who executes business, only the person who executes business may act as an agent of partners. In such a case, if there are two or more persons who execute business, each person who executes business may

act as an agent of partners only if the person obtains the consent of the majority of the persons who execute business.

- (3) Notwithstanding the provisions of the preceding two paragraphs, each partner and each person who executes business may act as an agent of partners independently when performing the ordinary business of the partnership.

(Mutatis Mutandis Application of Provisions on Mandates)

Article 671 The provisions of Articles 646 through 650 apply mutatis mutandis to partners who decide or execute the business of a partnership.

(Resignations and Dismissals of Partners Who Execute Business)

- Article 672 (1) If one or more partners are delegated to decide and execute partnership business pursuant to the provisions of the partnership contract, those partners may not resign without a legitimate reason.
- (2) The partners referred to in the preceding paragraph may be dismissed by the unanimous agreement of the other partners, but only for just cause.

(Inspections by Partners of Status of Partnership Business and Property)

Article 673 Each partner may inspect the status of the business and property of the partnership even if the partner does not have the right to decide and execute the business of the partnership.

(Proportions of Partners' Distributions of Profits and Losses)

- Article 674 (1) If parties have not specified the proportions of distributions of the partnership's profits and losses, these proportions are determined in accordance with the value of each partner's contribution.
- (2) If the proportions of distributions have been specified solely with respect to either profits or losses, it is presumed that those proportions are common to profits and losses.

(Exercise of Right of Creditors of Partnership)

- Article 675 (1) A creditor of a partnership may exercise the rights of the creditor against the partnership property.
- (2) A creditor of a partnership may, at the choice of the creditor, exercise the rights of the creditor against each partner in proportion to their shares of loss or in equal proportions; provided, however, that if a creditor of a partnership knew the proportion of each partner's share of loss at the time of occurrence of the claim, the exercise of the creditor's rights is based on those proportions.

(Disposition of Partners' Interests and Division of Partnership Property)

Article 676 (1) If a partner has disposed of the interest of the partner with respect to the partnership property, that partner may not duly assert that disposition against the partnership or third parties that had dealings with the partnership.

(2) A partner may not independently exercise the rights with regard to a claim that is included in the partnership property based on that partner's interest in the claim.

(3) A partner may not seek the division of the partnership property before liquidation.

(Prohibition of Exercise of Rights by Creditors of Partners against Partnership Property)

Article 677 A partner's creditor may not exercise the rights of that creditor against the partnership property.

(Admission of Partners)

Article 677-2 (1) Partners may admit a new partner to a partnership based on the consent of all partners or pursuant to the provisions of the partnership contract.

(2) A partner that is admitted to a partnership pursuant to the provisions of the preceding paragraph after it is formed is not liable to perform the obligations of the partnership that arose before that partner's admission.

(Withdrawal of Partners)

Article 678 (1) If a partnership contract does not specify the duration of the partnership, or specifies that the partnership is to continue for the life of a certain partner, each partner may withdraw at any time; provided, however, that unless there is a compelling reason to do so, a partner may not withdraw at a time that is detrimental to the partnership.

(2) Even if the duration of the partnership is specified, each partner may withdraw if there is a compelling reason to do so.

Article 679 Beyond the cases referred to in the preceding Article, partners withdraw on the following grounds:

(i) the partner dies;

(ii) the partner is subject to an order commencing bankruptcy proceeding;

(iii) the partner is subject to a decision for the commencement of guardianship;

(iv) the partner has been expelled.

(Expulsion of Partners)

Article 680 The expulsion of a partner may be effected by the unanimous

agreement of the other partners, but only for just cause; provided, however, that the expulsion may not be duly asserted against a partner who is expelled unless a notice to that effect is given to that partner.

(Liability of Withdrawing Partner)

Article 680-2 (1) A withdrawing partner is liable to perform obligations of the partnership that have arisen before that partner's withdrawal, to the extent of that partner's previous liability. In such a case, until a creditor receives the full performance of the obligation, the withdrawing partner may demand that the partnership provide security or exempt the partner from liability in relation to the partnership.

(2) A withdrawing partner acquires a right to reimbursement from the partnership if the partner performs an obligation of the partnership prescribed in the preceding paragraph.

(Returns of Interests of Withdrawing Partners)

Article 681 (1) Accounts as between the withdrawing partner and other partners must be settled according to the status of the partnership property as at the time of the withdrawal.

(2) The interest of the withdrawing partner may be refunded in money, regardless of the kind of the withdrawing partner's contribution.

(3) With respect to any matter not yet completed at the time of the withdrawal, accounts may be made up subsequent to the completion of that matter.

(Causes of Dissolution of Partnerships)

Article 682 A partnership is dissolved on any of the following grounds:

(i) the successful completion of the business that is the object of the partnership;

(ii) the expiration of the duration of the partnership specified by the partnership contract;

(iii) the occurrence of any cause of dissolution specified by the partnership contract; or

(iv) the consent of all partners.

(Request for Dissolution of Partnerships)

Article 683 Each partner may request the dissolution of the partnership if there is a compelling reason to do so.

(Effect of Cancellation of Partnership Contracts)

Article 684 The provisions of Article 620 apply mutatis mutandis to partnership contracts.

(Liquidation of Partnerships and Appointment of Liquidators)

Article 685 (1) When a partnership is dissolved, liquidation is administered jointly by all partners or by a liquidator appointed by the partner.

(2) A liquidator is appointed by a majority of all partners.

(Methods of Deciding and Executing Liquidators' Business)

Article 686 The provisions of Article 670, paragraphs (3) through (5), and Article 670-2, paragraphs (2) and (3) apply mutatis mutandis if there is more than one liquidator.

(Resignations and Dismissals of Liquidators Who Are Partners)

Article 687 The provisions of Article 672 apply mutatis mutandis if the liquidator is appointed from among the partners pursuant to the provisions of the partnership contract.

(Duties and Authority of Liquidators and Method of Division of Residual Assets)

Article 688 (1) The duties of a liquidator are to:

- (i) conclude current business;
- (ii) collect debts and perform obligations; and
- (iii) deliver residual assets.

(2) The liquidator may perform any and all acts in order to perform the duties set forth in the items of the preceding paragraph.

(3) Residual assets are distributed in proportion to the value of the contributions of each partner.

### **Section 13 Life Annuities**

(Contracts for Life Annuities)

Article 689 Contracts for life annuities become effective when one of the parties promises to pay monies or deliver other things to the other party or a third party periodically until the death of the first party, the other party or the third party.

(Computation of Life Annuities)

Article 690 Life annuities are calculated on a daily basis.

(Cancellation of Contracts for Life Annuities)

Article 691 (1) If the obligor in a life annuity has received the principal for the life annuity but fails to pay the life annuity or fails to perform other

obligations, the other party may demand the return of the principal. In such cases, the other party must return to the obligor of the life annuity the amount of the life annuity already received, after deducting the amount of the interest on that principal.

(2) The provisions of the preceding paragraph do not preclude claims for compensation for loss or damage.

(Cancellation of Contracts for Life Annuities and Simultaneous Performance)

Article 692 The provisions of Article 533 apply mutatis mutandis to cases referred to in the preceding Article.

(Declaration of Continuation of Claim for Life Annuity)

Article 693 (1) If a death provided for in Article 689 occurs due to grounds attributable to the obligor in a life annuity, the court may, at the request of the obligee in the life annuity or the obligee's heirs, pronounce that the life annuity claim continues for a reasonable period of time.

(2) The provisions of the preceding paragraph do not preclude the exercise of the rights provided in Article 691.

(Bequests of Life Annuities)

Article 694 The provisions of this Section apply mutatis mutandis to bequests of life annuities.

## **Section 14 Settlements**

(Settlements)

Article 695 A settlement becomes effective when the parties to a dispute promise to settle the dispute through reciprocal concessions.

(Effect of Settlements)

Article 696 If it has been acknowledged in a settlement that one of the parties has the rights that are the subject of the dispute or that the other party did not have those rights, and conclusive evidence is then obtained indicating that the first party did not have those rights in the past or that the other party did have those rights, the rights are regarded as either having been transferred to the first party or extinguished in the settlement.

## **Chapter III Benevolent Intervention in Another's Business**

(Benevolent Intervention in Another's Business)

Article 697 (1) A person that has begun to manage a business for another person

without being obligated to do so (hereinafter in this Chapter referred to as a "manager") must manage that business, in accordance with the nature of the business, in the way that best suits the interests of the principal (hereinafter referred to as "benevolent intervention in another's business").

- (2) A manager must engage in benevolent intervention in another's business in accordance with the intentions of the principal if the manager knows, or is able to conjecture that intention.

(Urgent Benevolent Intervention in Another's Business)

Article 698 If a manager engages in benevolent intervention in another's business in order to allow a principal to escape imminent danger to the principal's person, reputation, or property, the manager is not liable to compensate for damage resulting from this unless the manager has acted in bad faith or with gross negligence.

(Obligation of Managers to Give Notice)

Article 699 A manager must notify the principal without delay that the manager has commenced benevolent intervention in the principal's business; provided, however, that this does not apply if the principal already knows of this.

(Continuation of Benevolent Intervention in Another's Business by Managers)

Article 700 A manager must continue the benevolent intervention in another's business until the principal or an heir or legal representative thereof is able to undertake it; provided, however, that this does not apply if it is evident that the continuation of the benevolent intervention in another's business is contrary to the will of the principal, or is disadvantageous to the principal.

(Mutatis Mutandis Application of Provisions on Mandates)

Article 701 The provisions of Article 645 through Article 647 apply mutatis mutandis to the benevolent intervention in another's business.

(Managers' Claims for Reimbursement of Costs)

Article 702 (1) If a manager has incurred beneficial expenses for a principal, the manager may claim reimbursement of those costs from the principal.

(2) The provisions of Article 650, paragraph (2) apply mutatis mutandis if a manager has incurred beneficial obligations on behalf of the principal.

(3) If a manager has engaged in the benevolent intervention in another's business against the will of the principal, the provisions of the preceding two paragraphs apply mutatis mutandis, solely to the extent currently enriched.

## **Chapter IV Unjust Enrichment**

(Obligation to Return Unjust Enrichment)

Article 703 A person that has benefited (hereinafter in this Chapter referred to as "beneficiary") from the property or labor of another person without legal cause and has thereby caused a loss to another person bears the duty to return that benefit, to the extent the benefit exists.

(Obligation of Beneficiaries in Bad Faith to Return)

Article 704 A beneficiary in bad faith must return the benefit received together with interest thereon. In such cases, if any damage still remains, the beneficiary is liable to compensate for this.

(Performance Knowing of Absence of Obligation)

Article 705 A person that has paid money or delivered anything as performance of an obligation may not demand the return of the money paid or thing delivered if the person knew, at the time, that the obligation did not exist.

(Performance before Due Date)

Article 706 If an obligor has paid money or delivered anything as performance of an obligation that has not yet fallen due, the obligor may not demand the return of the money paid or thing delivered; provided, however, that if the obligor tendered anything by mistake, the obligee must return the benefit gained as a result.

(Performance of Obligations of Others)

Article 707 (1) If a person that is not an obligor has performed an obligation by mistake and the obligee, acting in good faith, has allowed the instrument to be lost, has damaged the instrument, has waived the security, or has lost the claim by prescription, the person performing the obligation may not demand the return of subject matter of the performance.

(2) The provisions of the preceding paragraph do not preclude the person performing an obligation from exercising the right to reimbursement against the obligor.

(Denial of Claim for Return for Illegal Causes)

Article 708 A person that has paid money or delivered thing for an obligation for an illegal cause may not demand the return of the money paid or thing delivered; provided, however, that this does not apply if the illegal cause existed solely in relation to the Beneficiary.

## **Chapter V Torts**

(Compensation for Loss or Damage in Torts)

Article 709 A person that has intentionally or negligently infringed the rights or legally protected interests of another person is liable to compensate for damage resulting in consequence.

(Compensation for Loss or Damage Other than of Property)

Article 710 A person liable for compensation for loss or damage pursuant to the provisions of the preceding Article must also compensate for loss or damage other than of property, regardless of whether that person infringed the body, liberty or reputation of another person, or infringed property rights of another person.

(Compensation for Loss or Damage to Close Relatives)

Article 711 A person that has taken the life of another must compensate for loss or damage to the father, mother, spouse, and children of the victim, even if the property rights of the same have not been infringed.

(Capacity for Liability)

Article 712 If a minor has inflicted damage on another person but did not have sufficient intellectual capacity to appreciate their own liability for that act, that minor is not liable to compensate for that act.

Article 713 A person who has inflicted damage on another person while in a condition wherein the person lacked the capacity to appreciate their own liability for their acts due to a mental disability is not liable to compensate for this; provided, however, that this does not apply if the person has temporarily caused that condition, intentionally or negligently.

(Liability of Person Obligated to Supervise a Person without Capacity to Assume Responsibility)

Article 714 (1) When a person without capacity to be assume responsibility is not liable pursuant to the provisions of the preceding two Articles, the person with the statutory obligation to supervise the person without capacity to assume responsibility is liable to compensate for damage that the person without capacity to be assume responsibility has inflicted on a third party; provided, however, that this does not apply if the person who has the obligation to supervise has not failed to perform that person's obligation or if the damage could not have been avoided even if that person had not failed to perform that person's obligation.

(2) A person who supervises a person without capacity to be assume

responsibility on behalf of the person who has the obligation to supervise also has the liability referred to in the preceding paragraph.

(Liability of Employers)

Article 715 (1) A person that employs another person for a business undertaking is liable to compensate for damage inflicted on a third party by that person's employees with respect to the execution of that business; provided, however, that this does not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damage could not have been avoided even if the employer had exercised reasonable care.

(2) A person that supervises a business on behalf of the employer also has the liability referred to in the preceding paragraph.

(3) The provisions of the preceding two paragraphs do not preclude the employer or supervisor from exercising their right to reimbursement against the employee.

(Liability of Party Ordering Work)

Article 716 A party ordering work is not liable to compensate for damage a contractor inflicted on a third party with respect to that work; provided, however, that this does not apply if the party ordering work is negligent with regards to the order or instructions.

(Liability of Possessor and Owner of Structure on Land)

Article 717 (1) If a defect in the installation or preservation of a structure on land causes damage to another person, the possessor of that structure is liable to the person incurring damage to compensate for the damage; provided, however, that if the possessor has exercised the necessary care to prevent the damage, the owner must compensate for the damage.

(2) The provisions of the preceding paragraph apply *mutatis mutandis* if there is a defect in the planting or supporting of bamboo or trees.

(3) In the cases referred to in the preceding two paragraphs, if there is another person that is liable for the cause of the damage, the possessor or owner may exercise their right to reimbursement against that person.

(Liability of Possessor of Animal)

Article 718 (1) A possessor of an animal is liable to compensate for damage that the animal inflicts on another person; provided, however, that this does not apply if the possessor managed the animal while exercising reasonable care according to the kind and nature of the animal.

(2) A person who manages an animal on behalf of a possessor also assumes the liability referred to in the preceding paragraph.

(Liability of Joint Tortfeasors)

Article 719 (1) If more than one person has inflicted damage on another person by a joint tort, each of them is jointly and severally liable to compensate for the damage. The same applies if it cannot be ascertained which of the joint tortfeasors inflicted the damage.

(2) A person who has abetted or aided a perpetrator is deemed to be a joint tortfeasor, and the provisions of the preceding paragraph apply.

(Self-Defense and Necessity)

Article 720 (1) A person that, in response to the tortious act of another, is compelled to commit a harmful act to protect rights or legally protected interests of the person or of a third party, is not liable for compensation for loss or damage; provided, however, that this does not preclude a victim from filing a claim of compensation for loss or damage against the person that committed the tortious act.

(2) The provisions of the preceding paragraph apply mutatis mutandis if the person in question damages a thing belonging to another person in order to avert an imminent danger arising from that thing.

(Fetus' Capacity to Hold Rights Regarding Claim for Compensation for Loss or Damage)

Article 721 An unborn child is deemed to have been already born with respect to the claim for compensation for loss or damage.

(Method of Compensation for Loss or Damage, Deduction of Interim Interest, and Comparative Negligence)

Article 722 (1) The provisions of Articles 417 and 417-2 apply mutatis mutandis to compensation for loss or damage caused by tort.

(2) If a victim is negligent, the court may determine the amount of compensation for loss or damage by taking that into consideration.

(Recovery in Defamation)

Article 723 The court may order a person that has defamed another person to take appropriate measures to restore the reputation of the victim in lieu of or in addition to compensation for loss or damage, at the request of the victim.

(Extinctive Prescription of Claim for Compensation for Loss or Damage Caused by Tort)

Article 724 In the following cases, the claim for compensation for loss or damage caused by tort is extinguished by prescription:

- (i) the right is not exercised within three years from the time when the victim or legal representative thereof comes to know the damage and the identity of the perpetrator; or
- (ii) the right is not exercised within 20 years from the time of the tortious act.

(Extinctive Prescription of Claim for Compensation for Loss or Damage Arising from Death to Person or Injury to Person Caused by Tort)

Article 724-2 For the purpose of the application of the provisions of item (i) of the preceding Article with regard to the extinctive prescription of the claim for compensation for loss or damage for death or injury to person caused by tort, the term "three years" in the same item is deemed to be replaced with "five years".