

# **China - Guarantee Law, 1995**

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**Guarantee Law of the People's Republic of China** 1  
**(Adopted at the 14th Meeting of the Standing Committee of the**  
**Eighth National People's Congress on June 30, 1995, and effective**  
**as of October 1, 1995)**

**Chapter I - General Provisions** 2

**Article 1** 3

This Law is enacted for purposes of promoting capital accommodation and commodity circulation, ensuring the realization of creditors' rights and developing socialist market economy. 4

**Article 2** 5

In such economic activities as debit and credit, buying and selling, carriage of goods and contracting for processing, a creditor who needs to ensure the realization of his rights in the form of guarantee, may establish guarantee subject to the provisions of this Law. The forms of guarantee provided in this law include guarantee, mortgage, pledge, lien and earnest. 6

**Article 3** 7

Guarantee activities shall be in conformity to the principle of equality, voluntariness, fairness, honesty and trustworthiness. This law also applies to courier\*-guarantee. 8

**Article 4** 9

A third person, at the time of tendering guarantee to a creditor for a debtor, may require the debtor to tender counter guarantee. 10

**Article 5** 11

A guarantee contract is an accessory contract to a principal contract. If the principal contract is invalid, the guarantee contract shall be invalid. Where the guarantee contract stipulates otherwise, such stipulations shall apply. Where a guarantee contract is confirmed as invalid and void, the debtor, the guarantor or the creditor, who commits some mistake, shall, based on his respective mistake, bear corresponding civil liability. 12

**Chapter II - Guarantee** 13

**Section 1 - Guarantee and Guarantor** 14

**Article 6** 15

Guarantee” as the term is used in this Law means an act under which, according to an agreement between a guarantor and a creditor, the guarantor shall perform a bebt\* or bear responsibility as contracted if the debtor fails to pay the debt. 16

**Article 7** 17

A legal person, any other organization or a citizen, that has the ability of discharge of a debt may act as a guarantor. 18

**Article 8** 19

Any state organ may not act as a guarantor, however, upon approval by the State Council, those which conduct subloans\* for the purpose of using loans from foreign governments or international economic organizations shall be excluded. 20

**Article 9** 21

Any institution or social organization of public interests, such as schools, kindergartens and hospitals, may not act as a guarantor. 22

**Article 10** 23

Any branch or functionary department of an enterprise as legal person may not act as a guarantor. A branch of an enterprise as legal person, which has the power of attorney in writing from the legal person, may tender guarantee within the authorized limits. 24

**Article 11** 25

No unit or individual may force financial institutions such as banks or enterprises to tender guarantee for others. Financial institutions such as banks or enterprises have the right to refuse any acts forcing them to tender guarantee for others. 26



**Article 12**

27

In the case of two or more guarantors to a debt, each guarantor shall bear guarantee responsibility in proportion to his proper share of the guarantee as contracted. If no share of guarantee is agreed upon, the guarantor shall bear joint and several liability; the creditor may require any of the guarantors to bear full guarantee responsibility, and each guarantor shall be liable to guarantee the full realization of creditor's rights. The guarantor who has already borne guarantee responsibility shall have the right to recover compensation from the debtor, or require other guarantors who bear joint and several liability to pay the shares they ought to bear.

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**Section 2 - Guarantee Contract and Guarantee Mode**

29

**Article 13**

30

A guarantor and a creditor shall conclude a guarantee contract in the form of writing.

31

**Article 14**

32

A guarantor and a creditor may conclude a separate guarantee contract relating to a specific principal contract, and also may, within the maximum amount of claim and through negotiation, conclude one guarantee contract relating to loan contracts or trade contracts of a particular commodity, which occur consecutively in a certain period of time.

33

**Article 15**

34

A guarantee contract shall include the following particulars:

35

1. the category and amount of the principal creditor's right to be guaranteed;
2. time limit for the debtor to perform his debt;
3. mode of guarantee;
4. scope of guarantee;
5. duration of guarantee; and
6. other matters deemed as necessary to be agreed upon by both parties.

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A guarantee contract which does not completely include the particulars provided in the preceding paragraph, may be added and amended.

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**Article 16**

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The modes of guarantee include:

44

1. general guarantee; and
2. joint and several liability guarantee.

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**Article 17**

47

A general guarantee means that, as agreed upon in guarantee contract by the parties concerned, the guarantor shall bear guarantee responsibility if the debtor fails to perform his debt. The guarantor of a general guarantee may, prior to court proceedings or arbitration over a dispute concerning the principal contract and a failure again to pay a debt after a compulsory enforcement over the debtor's property according to law, refuse to bear guarantee responsibility to a creditor. A guarantor may not execute the right provided in the preceding paragraph under any of the following circumstances:

48

1. in a case of which the change of debtor's address has caused serious difficulty to the creditor in requiring the debtor to pay his debt;
2. in a case of which a people's court accepts the debtor's bankruptcy case and the execution procedures are abated; or
3. in a case of which the guarantor waives, in written form, his right provided in the preceding paragraph.

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**Article 18**

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A joint and several liability guarantee means that, as agreed upon in a guarantee contract by the parties concerned, the guarantor and the debtor shall bear joint and several liability over a debt. If the debtor of a joint and several liability guarantee fails to pay his debt at the expiry of term for execution as stipulated by the principal contract, the creditor may require the debtor to pay his debt and also may require the guarantor to bear guarantee responsibility within the limit of his guarantee.

53

**Article 19**

54

The parties concerned who make no agreement on the mode of guarantee or make an ambiguous agreement thereon shall bear guarantee responsibility in accordance with the mode of a joint and several liability guarantee.

55

**Article 20**

56

Guarantors of general guarantee or joint and several liability guarantee enjoy the right of demur of the debtors. If a debtor waives his right of demur over a debt, the guarantor still has the right to demur. The right of demur means such right under which the debtor may, according to legal causes, challenge the claim by the creditor when the creditor executes his rights.

57

**Section 3 - Guarantee Responsibility**

58

**Article 21**

59

The scope of guarantee includes the principal creditor's right as well as interests, fines for breach of agreement, compensation for loss and damage and expenses for the realization of creditor's rights. Where a guarantee contract has otherwise stipulations, such stipulations shall apply. If the parties make no agreement on the scope of guarantee or make an ambiguous agreement thereon, the guarantor shall bear responsibility for all the debts.

60

**Article 22**

61

If, within the duration of guarantee, a creditor transfers his principal right to third person according to law, the guarantor shall continue to bear guarantee responsibility within the original scope of guarantee. Where a guarantee contract has otherwise stipulations, such stipulations shall apply.

62

**Article 23**

63

If, within the duration of guarantee, a creditor allows his debtor to transfer his debt, the guarantor's consent in writing shall be obtained, and the guarantor will no longer bear the guarantee responsibility over those debts transferred without his consent.

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**Article 24**

65

A creditor and debtor who agree to modify a principal contract shall obtain the guarantor's consent in writing. Without his consent in writing, the guarantor will no longer bear the guarantee responsibility. If the guarantee contract has otherwise stipulations, such stipulations shall apply.

66

**Article 25**

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In case the guarantor and the creditor of a general guarantee fails to stipulate the duration of guarantee, the duration of guarantee shall be six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not initiate legal proceedings against the debtor or apply for arbitration, the guarantor shall be exemption from his guarantee responsibility; if the creditor has initiated legal proceedings or applied for arbitration, the provisions concerning the discontinuance of the limitation of action shall apply to the duration of guarantee.

68

**Article 26**

69

In case the guarantor and the creditor of a joint and several liability guarantee fails to stipulate the duration of guarantee, the creditor shall have the right to require the guarantor to bear guarantee responsibility within six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not require the guarantor to bear guarantee responsibility, the guarantor shall be exemption from his guarantee responsibility.

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**Article 27**

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In the absence of the duration of guarantee, a guarantor who, subject to the provisions of Article 14 of this Law, tenders guarantee over creditor's rights occurring consecutively may, at any time, notify in writing the creditor to terminate the guarantee contract, however, the guarantor shall bear guarantee responsibility over those rights occurred prior to the time at which the notification in writing is delivered to the creditor.

72

**Article 28**

73

Where there are both guarantee and things guaranteed over one creditor's right, the guarantor shall bear guarantee responsibility over those rights beyond the things guaranteed. If the creditor surrenders the guarantee by things, the guarantor shall be exemption from his guarantee responsibility within the scope of the creditor's surrender.

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**Article 29**

75

Where, without authorization in writhing by the legal person or beyond the authorized scope, a branch of an enterprise as legal person concludes a guarantee contract with

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a creditor, such a contract shall not be binding or that part beyond the authorized scope shall not be binding, if the creditor and the enterprise as legal person have some mistake, they shall bear their corresponding civil liability according to their respective mistake; if the creditor has no mistake, the enterprise as legal person shall bear civil liability.

### **Article 30**

77

Under one of the following circumstances, the guarantor shall not bear civil liability: 1. in a case of which the parties to a principal contract maliciously collude so as to cheat the guarantor to tender guarantee; or 2. in a case of which the creditor of a principal contract resorts to such means as deceit and compulsion in making the guarantor to tender guarantee under the condition against his true intention.

78

### **Article 31**

79

A guarantor, after bearing his guarantee responsibility, shall have the right to recover compensation from the debtor.

80

### **Article 32**

81

If, after a people's court takes cognizance of a bankruptcy case filed by a debtor, a creditor fails to declare his rights, the guarantor may participate the distribution of bankruptcy property and execute the right of recourse in priority.

82

## **Chapter III - Mortgage**

83

### **Section 1 - Mortgage and Things Mortgaged**

84

#### **Article 33**

85

Mortgage" as the term is used in this Law means guarantee under which a debtor or a third person, without transferring the possession over the property listed in Article 34

86

of this Law, places such property as creditor's rights. When the debtor fails to pay his debt, the creditor shall have the right, in accordance with the provisions of this law, to get in priority compensation from the money received from converting or auctioning and selling of the property. In the preceding paragraph, the debtor or the third person is the mortgagor, the creditor is the mortgagee and the property served as guarantee is the things mortgaged.

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**Article 34**

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The following property may be mortgaged:

89

1. buildings and other objects fixed on land, which are owned by the mortgagor;

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2. machines, means of transport and other property, which are owned by the mortgagor;

91

3. use-right of state -owned land, buildings and other objects fixed on land, which the mortgagor has the right to dispose according to law;

92

4. state-owned machines, means of transport and other property, which the mortgagor has the right to dispose according to law;

93

5. the landuse\*-rights of barren mountains, barren valleys, waste hills and waste sands, which the mortgagor has contracted according to law and the contract offering party agrees on the mortgage;

94

6. other property which may be mortgaged according to law.

95

A mortgagor may mortgage the properties listed in the preceding paragraph concurrently.

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**Article 35**

97

The creditor's rights guaranteed by a mortgagor may not exceed the value of the things mortgaged. If the value of a piece of property, after being mortgaged, is higher than the creditor's rights guaranteed, the remaining part may be mortgaged again, however, the remaining part may not be exceeded.

98

**Article 36**

99

If a building on the state-owned land acquired according to law is mortgaged, the use-right of the state-owned land occupied by the said building shall be mortgaged together. If the use-right of the state-owned land acquired in the form of leasing is mortgaged, the buildings on the said state-owned land shall be mortgaged together. The Land-use right of town (township) and village enterprises may not be mortgaged individually. If the construction structures such as workshops of town (township) and village enterprises are mortgaged, the use-right for the land occupied by such structures shall be mortgaged together.

100

**Article 37**

101

The following property may not be mortgaged;

102

1. land ownership;

103

2. use-rights of such collectively-owned land as farmland, homestead, land allotted for personal needs and hilly land allotted for private use, however, those provided in Item 5 of Article 34 and Paragraph 3 of Article 36 of this Law shall be excluded; 104
3. education facilities, medical and public health facilities and other facilities for public interests of such institutions and social organizations as schools, kindergartens and hospitals; 105
4. property with unclear ownership and use-right or dispute; 106
5. property which is attached, arrested or supervised and controlled according to law; or 107
6. other property which may not be mortgaged according to law. 108

## **Section 2 - Mortgage Contract and Registration of Things Mortgaged** 109

### **Article 38** 110

A mortgagor and a mortgagee shall conclude a mortgage contract in the form of writing. 111

### **Article 39** 112

A mortgage contract shall include the following particulars: 113

1. the category and amount of the principal creditor's right to be guaranteed; 114
2. the term for the debtor to pay his debt; 115
3. designation, amount, quality condition, location, status of ownership and status of use-rights of the things mortgaged; 116
4. scope of guarantee; and 117
5. other matters and items which the parties deem as necessary to be included. 118

A mortgage contract which fails to include completely the particulars provided in the preceding paragraph may be added and amended. 119

### **Article 40** 120

In making a mortgage contract, the mortgagee and mortgagor may not stipulate in the contract that the ownership over the things mortgaged would be transferred to be owned by the creditor if the mortgagee was not paid after the expiry of the term for performance of the debt. 121

**Article 41**

122

A party which uses the property listed in Article 42 of this Law as mortgage shall complete registration of things mortgaged, the mortgage contract shall enter into force from the date of registration.

123

**Article 42**

124

The departments which handle registration of things mortgaged are as follows:

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1. where the use-right of land on which there is no immovable object is mortgaged, it is the land administration department which issues the land use-right certificate;

126

2. where urban real estate or construction structures such as workshops of town (township) and village enterprises are mortgaged, it is the department designated by the local people's government at or above the county level;

127

3. where forest and trees are mortgaged, it is the competent forestry administrative department at or above the county level;

128

4. where aircraft, ship or transport vehicle is mortgaged, it is the registration department of such means of transport; and

129

5. where equipment or other movables\* of enterprises is mortgaged, it is the administrative department for industry and commerce in the place where such property is located.

130

**Article 43**

131

Where the parties concerned use other property as mortgage, registration of things mortgaged may voluntarily be completed, and in this case, the mortgage contract shall come into force on the date of signing. Parties concerned who fail to complete registration of things mortgaged may not challenge the third person. Where the parties apply for registration of things mortgaged, the registration department is the notary department in the place where the mortgagor is located.

132

**Article 44**

133

At the time of applying for registration of things mortgaged, the following documents or their photocopies shall be submitted to the registration department;

134

1. The principal contract and mortgage contract; and

135

2. certificate of ownership or use-right over the things to be mortgaged.

136



**Article 45**

137

The materials registered by the registration departments shall be allowed to be consulted, taken note of or photocopied.

138

**Section 3 - The Effect of Mortgage**

139

**Article 46**

140

The scope of a guarantee by mortgage includes the principal creditor's right as well as interests, fines for breach of agreement, compensations for loss and damage and expenses for the realization of mortgage. Where a mortgage contract has otherwise stipulations, such stipulations shall apply.

141

**Article 47**

142

Where, upon the expiration of the term for performance of the debt, the things mortgaged are arrested by a people's court according to law due to the failure of the debtor in performing his debt, the mortgagee shall have the right, from the date of arrest, to collect naturally accrued yields arising from the things mortgaged as well as the statutory accrued interests which the mortgagor may collect from the things mortgaged. If the mortgagee fails to notify the genuine facts of arresting the things mortgaged to the liable person who shall pay the statutory accrued interests, the force of mortgage shall not be extended to such naturally accrued yields. The naturally accrued yields mentioned in the preceding paragraph shall be used to write off the expenses for collecting such naturally accrued yields in priority.

143

**Article 48**

144

A mortgagor who gives his property already leased out as mortgages shall advise the leasee\* thereof in writing, and the original leasing contract shall continue to be valid.

145

**Article 49**

146

A mortgagor who, in the course of mortgage, assigns the things mortgaged which are registered shall advise the mortgagee and inform the assignee on the condition that the assigned things have already been mortgaged; if the mortgagor fails to advise the mortgagee or fails to inform the assignee, the act of assignment shall be invalid and void. Where the price money of things mortgaged assigned is apparently lower than their value,

147

the mortgagee may require the mortgagor to tender corresponding guarantee; If the mortgagor fails to tender, the things mortgaged may not be assigned. The money received by the mortgagor from assignment of the things mortgaged shall compensate in priority the creditor's rights guaranteed to the mortgagee or be deposited at the third person agreed with the mortgagee, that part in excess of the creditor's rights is owned by the mortgagor, and the part in shortage shall be paid by the debtor.

#### **Article 50**

148

A mortgage may not be separated from the creditor's rights and transferred individually, or act as guarantee for other creditor's rights.

149

#### **Article 51**

150

Where the act of a mortgagor is sufficient to make the value of the things mortgaged decrease, the mortgagee has the right to require the mortgagor to stop his act. When the value of things mortgaged decreases, the mortgagee has the right to require the mortgagor to restore the value of the things mortgaged, or to tender guarantee which matches the decreased value. If the mortgagor is not to blame for the value decrease of things mortgaged, the mortgagee could require the mortgagor to tender guarantee only within the scope of the compensation obtained for loss and damage. The part of value not decreased shall continue to act as the guarantee for the creditor's rights.

151

#### **Article 52**

152

A mortgage exists concurrently with the creditor's rights so guaranteed, and if the creditor's rights cease to exist, so cease to exist the mortgage.

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### **Section 4 - Realization of Mortgage**

154

#### **Article 53**

155

A mortgagee who is not compensated upon the expiration of the term for performance of the debt may, through agreement with the mortgagor, be compensated from the money received from converting the things mortgaged into cash or from auctioning and selling of the things mortgaged, and if no agreement is reached, the mortgagee may file a suit in a people's court. After the things mortgaged are converted into cash or auctioned or sold the money in excess of the amount of creditor's rights shall be owned by the mortgagor, and the part in shortage shall be paid by the debtor.

156

**Article 54**

157

Where one piece of property is mortgaged to two or more creditors, the money received from auction or sale of the things mortgaged shall be used for compensation according to the following provisions:

158

1. where the mortgage contracts come into force through registration, it shall be distributed according to the registration order of the things mortgaged; if the order is the same, it shall be distributed according to the percentage of creditor's rights; and

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2. where the mortgage contracts come into force on the date of signing, if the things mortgaged have been registered, it shall be distributed according to the provisions of Item 1 of this Article; if such things are not registered, it shall be distributed according to the time order of the entry into force of these contracts, if the order is the same, it shall be distributed according to the percentage of creditor's rights. Those that the things mortgaged are already registered shall have the priority in getting compensation than those not registered.

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**Article 55**

161

After a mortgage contract of urban real estate is signed, the newly constructed buildings on this land do not fall within the things mortgaged. When the mortgaged real estate needs to be auctioned, such newly constructed buildings may be auctioned together with the things mortgaged, however, the mortgagee shall not have the priority in getting compensation from the money received from auction of such newly constructed buildings. If the use-right of a contracted waste land is mortgaged according to the provisions of this Law or the use-right of the land occupied by construction structures such as workshops of town (township) and village enterprises are mortgaged, after the realization of mortgage, the collective ownership and usage purpose of the land may not be changed without going through legal procedures.

162

**Article 56**

163

The mortgagee shall have the right of priority for compensation from the money received from auctioning of the use-right of allotted state-owned land after payment equivalent to the amount payable as the transfer of land use-right according to law.

164

**Article 57**

165

A third person who guarantees by mortgage for a debtor shall have the right over the debtor for compensation after the realization of mortgage.

166

**Article 58** 167

A mortgage shall cease to exist with the disappearance of the things mortgaged, however, compensation received from the disappearance thereof shall be served as mortgaged property. 168

**Section 5 - Mortgage of Maximum Amount** 169

**Article 59** 170

Mortgage of maximum amount" as the term is used in this Law means that, as agreed upon by a mortgagor and a mortgagee and within the maximum amount of creditor's rights, the things mortgaged are served as guarantee to creditor's rights occurring consecutively within a certain period of time. 171

**Article 60** 172

A borrowing contract may be accompanied by a mortgage contract of maximum amount. A contract signed by a creditor and a debtor on a particular commodity occurring transactions consecutively in a certain period of time may be accompanied by a mortgage contract of maximum amount. 173

**Article 61** 174

Creditor's rights of a principal contract with mortgage of maximum amount may not be transferred. 175

**Article 62** 176

Apart from the provisions of this section, other provisions of this Chapter shall also apply to mortgage of maximum amount. 177

**Chapter IV - Pledge** 178

**Section 1 - Pledge of Movables\*** 179

**Article 63** 180

Pledge of movables" as the term is used in this Law means guarantee under which the 181

debtor or a third person transfers his movables to be possessed by the creditor, and uses such movables as creditor's rights. If the debtor fails to pay the debt, the creditor has the right, in accordance with the provisions of this Law, to get compensation in priority from the money received from converting such movables into cash or from auctioning and selling such movables. Subject to the provisions in the preceding paragraph, the debtor or the third person is a pledger, the creditor is a pledgee, and the movables so transferred are the things pledged.

**Article 64** 182

A pledger and a pledgee shall conclude a pledge contract in a written form. A pledge contract shall enter into force from the time when the things pledged are transferred to be possessed by the pledgee. 183

**Article 65** 184

A pledge contract shall include the following particulars: 185

1. category and amount of the principal creditor's right to be guaranteed; 186
2. time limit for the debtor to pay his debt; 187
3. name, quantity, quality and descriptions of the things pledged; 188
4. scope of the guarantee; 189
5. time for the transfer and delivery of the things pledged; and 190
6. other matters and items deemed by the parties as necessary to be included. 191

A pledge contract which fails to completely include the particulars provided in the preceding paragraph may be added and amended. 192

**Article 66** 193

A pledger and a pledgee may not stipulate in their contract that the ownership over the things pledged would be transferred to the pledgee if the pledgee is not fully compensated and paid upon the expiration of the term for performance of the debt. 194

**Article 67** 195

The scope of guarantee by pledge includes the principal creditor's right as well as interests, fine for breach of agreement, compensation for loss and damage, maintenance costs of the things pledged and expenses for the realization of the pledge. Where a pledge contract has otherwise stipulations, such stipulations shall apply. 196

**Article 68**

197

A pledgee has the right to collect the derivatives of the hypothecated assets. Should there be other arrangements in the hypothecation contract, those arrangements shall be followed instead. The derivative referred to in the preceding paragraph shall first be used to write off the expenses for collecting the derivatives.

198

**Article 69**

199

A pledgee shall be liable to properly keep and maintain the things pledged. If the things pledged are lost or damaged due to improper maintenance, the pledgee shall bear civil liability. If a pledgee can not properly keep and maintain the things pledged, which might cause disappearance of or damage to them, the pledger may require the pledgee to deposit the things pledged, or require to clear off the creditor's rights in advance and to return the things pledged.

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**Article 70**

201

Where the things pledged exist the probability of loss, damage or apparent decrease in value, which is sufficient to harm the rights of the pledgee, the pledgee may require the pledger to tender corresponding guarantee. If the pledger fails to tender, the pledgee may auction or sell the things pledged, and make a agreement with the pledger that the money received from auction or sale shall be used to pay in advance the creditor's rights so guarantee or deposit at the third person agreed upon with the pledger.

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**Article 71**

203

Where the debtor performs his debt at the expiration of the term for performance of the debt or the pledger pays in advance the creditor's rights so guaranteed, the pledgee, shall return the things pledged. A pledgee who is not paid at the expiration of the term for performance of the debt may, by agreement with the pledger, convert the things pledged into cash or auction or sell the things pledged. After the things pledged are converted into cash or auctioned off or sold, the proportion of the money in excess of the amount of creditor's rights shall be owned by the pledger, and the proportion in shortage shall be paid by the debtor.

204

**Article 72**

205

A third person who tenders guarantee by pledge for the debtor shall, after the pledgee has realized his rights of pledge, have the right to get compensation from the debtor.

206

**Article 73** 207

A pledge shall cease to exist along with the disappearance of the things pledged. The compensation received from such disappearance shall be served as pledged property. 208

**Article 74** 209

A pledge exists together with creditor's rights guaranteed. At the time the creditor's rights cease to exist, the pledge shall also cease to exist. 210

**Section 2 - Pledge of Rights** 211

**Article 75** 212

The following rights may be pledged: 213

1. draft, cheque, promissory notes, bonds, deposit certificates, warehouse receipt and bills of lading; 214

2. shares and stocks, which are duly transferable according to law; 215

3. property rights in the exclusive use right of trademark, patent right and the copyrights, which are transferable according to law; and 216

4. other rights which may be pledged according to law. 217

**Article 76** 218

Where drafts, cheques, promissory notes, bonds, deposit certificates, warehouse receipts or bills of lading are used as pledge, the certificates of right shall be delivered to the pledgee within the time limit as contracted. The pledge contract shall come into force on the date of delivery of such certificates. 219

**Article 77** 220

Where drafts, promissory notes, cheques bonds, deposit certificates, warehouse receipts or bills of lading, on which the date of cashing or taking delivery of goods is marked, are used as pledge, and if such date of cashing or taking delivery of goods of such drafts, promissory notes, cheques, bonds, deposit certificates, warehouse receipts or bills of lading is earlier than the time limit for performance of the debt, the pledgee may cash or taking delivery of goods prior to the expiration of the time limit for performance of the debt, and by agreement with the pledger, use the amount so cashed or goods taken delivery of to 221

pay in advance the creditor's rights guaranteed or deposit at the third person agreed upon with the pledger.

**Article 78**

222

Where stocks which are transferable according to law are used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with the securities registration organization. A pledge contract shall come into force on the date of registration. Stocks, once used as pledge, may not be transferred, however, those consented through negotiation by the pledger and the pledgee may be transferred, the money received from such transfer by the pledger shall be used to pay in priority the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee. Where shares of limited liability companies are used as pledge, the relevant provisions concerning shares transfer of the Company Law shall apply thereto. The pledge contract shall come into force from the date on which the shares pledge is recorded in the name list of shareholders.

223

**Article 79**

224

Where the property right in the exclusive use rights of trademarks, the patent rights or the copyrights, which is transferable according to law, is used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with their respective administrative department. The pledge contract shall come into force on the date of registration.

225

**Article 80**

226

After the right provided in Article 79 of this Law is used as pledge, the pledger may not transfer or license others to use them, however, those consented through negotiation by the pledger and the pledgee may transferred or licensed to others for use. The transfer remuneration and royalties received by the pledger shall be used to pay in advance the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee.

227

**Article 81**

228

Apart from the provisions of this Section, the provisions of Section 1 of this Chapter shall apply to the pledge of rights.

229



## Chapter V - Lien

230

### Article 82

231

Lien” as the term is used in this Law means that, subject to the provisions of Article 84 of this law, a creditor possesses the movables of the debtor as contracted, and if the debtor fails to pay his debt within the term as contracted, the creditor shall have the right to keep lien of such property in accordance with the provisions of this Law, and take the priority in compensation from the money received from converting such property into cash or from auctioning off and selling such property.

232

### Article 83

233

The scope of guarantee by lien covers the principal creditor's right, as well as interests, fines for breach of agreement, compensation for loss and damage, maintenance costs of things under lien and expenses for the realization of the lien.

234

### Article 84

235

With respect to the creditor's rights arising from maintenance contract, transport contract, processing and consignment contract, if the debtor fails to pay his debt, the creditor shall have the right of lien. The provisions of the preceding paragraph shall apply to other contracts which are subject to liens as provided by law. The parties may stipulate in the contract the things which may not be under lien.

236

### Article 85

237

If a piece of property under lien is divisible thing, the value of the thing under lien shall be equivalent to the amount of a debt.

238

### Article 86

239

The lienor\* shall be liable to properly maintain and keep the things under lien. If the loss of or damage to the things under lien is caused due to improper maintenance and storage, the lienor shall bear civil liability.

240

### Article 87

241

A creditor and a debtor shall stipulate in a contract that, after the creditor takes lien of property, the debtor shall perform his debt within a term not less than two months. If the

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creditor and the debtor fail to make such stipulations in the contract, the creditor shall, after taking lien of the debtor's property, determine a term longer than two months and notify the debtor to perform his debt in that term.

If the debtor fails to perform his debt as scheduled, the creditor may, by agreement with the debtor, convert the things under lien into cash or auction off and sell the things under lien. 243

After the conversion into cash of the things under lien or auction and sale of such things, the proportion of money in excess of the creditor's right shall be owned by the debtor, the proportion in shortage shall be paid by the debtor. 244

**Article 88** 245

A right of lien ceases to exist under the following reasons: 246

1. where the creditor's right ceases to exist; or 247

2. where the debtor tenders separate guarantee which is accepted by the creditor. 248

**Chapter VI - Earnest** 249

**Article 89** 250

The parties concerned may stipulate that one party pays earnest as a guarantee for the creditor's rights to the other party. After the debtor pays his debt, such earnest shall be converted as the amount of price or be returned. The party which pays such earnest shall, if failing to perform his debt as contracted, have no right to require for the return of the earnest; and the party which accepts earnest shall, if failing to perform his debt as contracted, return two times of the earnest. 251

**Article 90** 252

Earnest shall be stipulated in a written form. The parties concerned shall also stipulate in the earnest contract the term for payment of earnest. An earnest contract shall come into force from the date on which the earnest is actually paid. 253

**Article 91** 254

The amount of earnest shall be stipulated by the parties, but may not exceed 20 percent of the amount of the subject-matter of the principal contract. 255

**Chapter VII - Supplementary Provisions** 256

**Article 92** 257

Immovables"\* as the term is used in this Law means land as well as the things fixed on the land such as buildings and forest and trees. 258

Movables" as the term is used in this Law means the things other than the immovables. 259

**Article 93** 260

For the purpose of this Law, guarantee contract, mortgage contract, pledge contract or earnest contract" may be a written contract which is separately concluded, including letters and mail and facsimiles of guarantee nature among the parties concerned, and also may be the guarantee clauses in the principal contract. 261

**Article 94** 262

To convert into cash or sell the things mortgaged, things pledged or things under lien, the market price shall be taken as a reference. 263

**Article 95** 264

This Law shall enter into force on October 1, 1995. 265

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