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This English translation of the Civil Code has been prepared (up to the revisions of Act No. 78 of 2006(Effective June 21, 2006)) in compliance with the Standard Bilingual Dictionary (March 2007 edition).

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## **Civil Code (Act No. 89 of 1896)**

### **PART 2 Real Rights**

#### **Chapter 1 General Provisions**

##### Article 175 (Establishment of Real Rights)

No real rights can be established other than those prescribed by laws including this Code.

##### Article 176 (Creation and Transfer of Real Rights)

The creation and transfer of real rights shall take effect solely by the manifestations of intention of the relevant parties.

##### Article 177 (Requirements of Perfection of Changes in Real Rights concerning Immovable properties)

Acquisitions of, losses of and changes in real rights concerning immovable properties may not be asserted against third parties, unless the same are registered pursuant to the applicable provisions of the Real Estate Registration Act (Law No. 123 of 2004) and other laws regarding registration.

##### Article 178 (Requirements of Perfection of Transfer of Real Rights concerning Movable)

The transfers of real rights concerning movables may not be asserted against third party, unless the movables are delivered.

#### Article 179 (Confusion of Rights)

- (1) If ownership and other real rights with respect to the same Thing have vested in the same person, such other real rights shall be extinguished; provided, however, that, this shall not apply to cases where that Thing is, or such other real rights are, the object of the rights of a third party.
- (2) If any real rights other than ownership and other rights for which those real rights are the object have vested in the same person, such other rights shall be extinguished. In such cases, the provisions of the proviso to the preceding paragraph shall apply mutatis mutandis.
- (3) The provisions of the preceding two paragraphs shall not apply to possessory rights.

### **Chapter 2 Possessory Rights**

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

#### Article 180 (Acquisition of Possessory Rights)

Possessory rights shall be acquired by holding Thing with an intention to do so on one's own behalf.

#### Article 181 (Possession by Agents)

Possessory rights may be acquired by an agent.

#### Article 182 (Actual Delivery and Summary Delivery)

- (1) The transfers of possessory rights shall be effected by the delivery of the Thing possessed.
- (2) In cases where a transferee or his/her agent actually holds a Thing, the transfers of possessory rights may be effected by the parties' manifestations of intention alone.

#### Article 183 (Constructive Transfers)

If an agent manifests an intention that The thing possessed by it shall thenceforward be possessed on behalf of its principal, the principal shall thereby acquire possessory rights.

#### Article 184 (Transfers of Possession by Instructions)

In cases where a Thing is in an agent's possession, if the principal orders that agent to thenceforward possess that Thing on behalf of a third party, and such third party consents thereto, that third party shall acquire possessory rights.

#### Article 185 (Change in Nature of Possession)

In cases where 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 shall not change unless that possessor manifests to the person who made him/her possess the Thing that he/she has the intention of ownership, or commences possession under a new title with an intention to own from that time.

#### Article 186(Presumption regarding Nature of Possession)

- (1) It shall be presumed that a possessor possesses Thing with the intention to own, in good faith peacefully and in public.
- (2) If there is evidence of possession at two different points in time, it shall be presumed that possession continued during the interval.

#### Article 187 (Succession to Possession)

- (1) A successor to a possessor may, at the option of the successor, assert either his/her possession only, or his/her possession together with that of the predecessor.
- (2) In cases where a person asserts the possession of the predecessor together with his/her own, he/she shall also succeed to defects in the same.

### **Section 2 Effect of Possessory Rights**

#### Article 188 (Presumption of Lawfulness of Rights Exercised with respect to Possessed Thing)

It shall be presumed that a possessor lawfully has the rights that a possessor exercises with respect to Thing in his/her possession.

#### Article 189 (Acquisition of Fruits by Possessor in Good Faith)

- (1) A possessor in good faith shall acquire fruits derived from Thing in his/her possession.
- (2) If a possessor in good faith is defeated in an action on the title, he/she shall be deemed to be a possessor in bad faith as from the time when such action was brought.

#### Article 190 (Return of Fruits by Possessors in bad faith)

- (1) A possessor in bad faith shall be obligated to return fruits, and reimburse the price of fruits that he/she has already consumed, has damaged due to negligence or has failed to collect.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to persons who possess Thing through violence or duress, or by concealing the same.

#### Article 191 (Compensation for Damages by Possessors)

If possessed Thing has suffered loss or damage due to reasons attributable to the possessor, a possessor in bad faith shall be liable to compensate the person recovering the loss for the entire loss, and a possessor in good faith shall be liable to compensate such person for the loss to the extent he/she is actually enriched as a result of such loss or damage; provided, however, that a possessor who does not have the intention of holding as owner must compensate the entire loss, even if he/she is in good faith.

#### Article 192 (Immediate Acquisition)

A person who commences the possession of movables peacefully and openly by a transactional act acquires rights to exercise with respect to such movables immediately if he/she is in good faith and faultless.

#### Article 193 (Recovery of Stolen or Lost Goods)

In the cases provided for in the preceding article, if the possessed Thing is lost or stolen goods, the victim or person who lost the Thing may demand the recovery of that Thing from the possessor within two years from the time of the loss or theft.

#### Article 194

If a possessor purchased lost or stolen goods in good faith at an auction or in a public market, or from a merchant who sells similar Things, the victim or person who lost the Thing may not recover the Thing unless he/she reimburses the possessor for the price paid.

#### Article 195 (Acquisition of Rights through Possession of Animals)

A person who possesses a non-domestic animal bred by others acquires rights to exercise with respect to that animal if he/she was in good faith at the beginning of the possession, and if recovery is not demanded by the owner of the animal within one month of the time when that animal left the possession of its owner.

#### Article 196 (Possessors' Claims for Reimbursement of Expenses)

- (1) In cases where a possessor returns Thing in his/her possession, he/she may have the person recovering the Thing reimburse necessary expenses including amounts paid to preserve that Thing, provided, however, that, if the possessor has acquired fruits, ordinary necessary expenses shall be borne by the possessor.
- (2) With respect to beneficial expenses including amounts paid by a possessor to improve Thing in his/her possession, limited to cases where there is a current increase in value, the possessor may, at the election of the person recovering the

Thing, have the person recovering the Thing reimburse monies the possessor paid or the amount of the increased 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 for same.

#### Article 197 (Possessory Actions)

A possessor may bring a possessory action in accordance with the provisions of the following article through Article 202. The same shall apply to a person who takes possession on behalf of others.

#### Article 198 (Actions for Maintenance of Possession)

When a possessor is disturbed in his/her possession, he/she may claim for the discontinuation of the disturbance and compensation for damages by bringing an action for maintenance of possession.

#### Article 199 (Actions for Preservation of Possession)

When a possessor is likely to be disturbed of his/her possession, he/she may claim either for the prevention of the disturbance or for the submission of security for the compensation for damages by bringing an action for preservation of possession.

#### Article 200 (Actions for Recovery of Possession)

- (1) When a possessor is forcibly dispossessed, he/she may claim for the restoration of the Thing and compensation for damages by bringing an action for recovery of possession.
- (2) An Action for recovery of possession cannot be filed against a specific successor of the usurper of possession; provided, however, that this shall not apply if that successor had knowledge of the fact of usurpation.

#### Article 201 (Periods of Time for Bringing Possessory Actions)

- (1) Actions for maintenance of possession must be brought during the disturbance or within one year after the disturbance is extinguished; provided, however, that, in cases where possessed Thing is damaged due to construction, if one year has elapsed from the time when that construction started or if that construction has been completed, such action cannot be brought.
- (2) Actions for preservation of possession may be brought so long as the danger of disturbance exists. In such cases, the proviso to the preceding paragraph shall apply *mutatis mutandis* if possessed Thing is likely to be damaged by construction.
- (3) Actions for recovery of possession must be brought within one year of the time when possession was unlawfully usurped.

Article 202 (Relationship with Actions on Title)

- (1) Possessory Actions do not preclude actions on title, and actions on title do not preclude possessory actions.
- (2) With respect to possessory actions, no judgment may be made based on reasons relating to title.

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

Article 203 (Grounds for Extinction of Possessory Rights)

Possessory rights shall be extinguished when the possessor renounces his/her intention to possess, or loses possession of the possessed Thing; provided, however, that this shall not apply if the possessor brings an action for recovery of possession.

Article 204 (Grounds for Extinction of Agent's Possessory Rights)

- (1) In cases where a person possesses a Thing through an agent, possessory rights shall be extinguished on the grounds listed below:
  - (i) That the principal renounces his/her intention to have his/her agent possess;
  - (ii) That the agent manifests his/her intention to the principal to thenceforward possess the possessed Thing on behalf of himself/herself or a third party; or
  - (iii) That the agent has lost the direct control over the possessed Thing.
- (2) Possessory rights shall not be extinguished solely as a result of the extinction of the power of representation.

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

Article 205

The provisions of this Chapter shall apply mutatis mutandis to cases where a person exercises his/her property rights with an intention to do so on his/her own behalf.

## **Chapter 3 Ownership**

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

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

Article 206 (Content of Ownership)

An owner has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations.

Article 207 (Scope of Ownership in Land)

Ownership in land shall extend to above and below the surface of the land, subject to the restrictions prescribed by laws and regulations.

Article 208

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**Subsection 2 Neighboring Relationships**

Article 209 (Requests for Use of Neighboring Land)

- (1) An owner of land may request the use of the neighboring land to the extent necessary for constructing or repairing walls or buildings on or in the vicinity of the boundary; provided, however, that he/she may not enter the dwelling house of the neighbor without the approval of the same.
- (2) In the cases provided for in the preceding paragraph, if the neighbor sustained damages, he/she may claim compensation.

Article 210 (Right of Passage over Other Land for Access to Public Roads)

- (1) An owner of land that is surrounded by other land and has no access to public roads may pass through the other land that surrounds his/her land to reach the public roads.
- (2) The preceding paragraph shall likewise apply in cases where an owner cannot access the public roads unless he/she passes through ponds, lakes, rivers, waterways or seas, or in cases where there is a considerable difference in height between the land and the public road on account of a cliff.

Article 211

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

Article 212

A person who is entitled to the right of passage pursuant to the provisions of Article 210 must pay compensation for damage caused to the other land that he/she 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 such parcel of land may pass to the public roads only through the lands owned by others who participated in the partition. In such cases, it shall not be necessary to pay compensation.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where the owner of land assigns part of his/her land to others.

Article 214 (Prohibition of Obstruction of Natural Water Streams)

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

Article 215 (Removal of Barriers to Water Streams)

If a stream is blocked at low-lying ground due to a natural disaster or other unavoidable event, an owner of higher ground may carry out construction work necessary to remove the barrier to the stream at his/her own expense.

Article 216 (Repairs of Structures related to Streams)

If 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 owners of such other lands repair the structure or remove the barriers, or, if necessary, have the same carry out preventive construction work.

Article 217 (Customs with respect to Allocation of Expenses)

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

Article 218 (Prohibition of Installation of Structures that Discharge Rainwater to Neighboring Lands)

A landowner may not install any structure including a roof that discharges rainwater directly onto neighboring land.

Article 219 (Changes to Streams)

- (1) An owner of land containing a stream including a channel or moat may not change the course or width of the same if the land on the other side is owned by others.
- (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 he/she must return the stream to its natural course at the point where the stream meets neighboring land.

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

#### Article 220 (Running Water through Lower Ground for Discharge)

An owner of a higher ground may run water through lower grounds to dry out his/her higher ground in cases where that land is flooded, or to discharge surplus water for household or agricultural or industrial use until the water meets a public stream or sewage system. In such cases, the location and method that cause the least damage to the lower ground must be selected.

#### Article 221 (Use of Structures to Direct Water)

(1) A landowner may use structures established by owners of higher ground or lower ground in order to cause water from his/her land to pass through the same.

(2) In the cases provided for in the preceding paragraph, the person who uses the structures of others must bear the expenses of the establishment and preservation of the structures in proportion to the benefit he/she enjoys.

#### Article 222 (Construction and Use of Dams)

(1) If the owner of land containing a stream needs to construct a dam, he/she may construct that dam by fixing it to the other side even if the land on the other side is owned by others; provided, however, that he/she must pay compensation for damages arising as a result.

(2) The owner of the land on the other side may use the dam under the preceding paragraph if he/she owns part of the land containing the stream.

(3) The provisions of Paragraph 2 of the preceding article shall apply mutatis mutandis to the cases provided for in the preceding paragraph.

#### Article 223 (Installation of Boundary Markers)

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

#### Article 224 (Expenses of Installation and Preservation of Boundary Markers)

The expenses of installation and preservation of boundary markers shall be borne equally by neighbors; provided, however, that measuring expenses shall be borne in proportion to the sizes of the relevant land parcels.

#### Article 225 (Installation of Fences)

(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 can be reached between the parties, the fence under the preceding paragraph must be wooden fencing, bamboo fencing or fencing made of similar material and must be two meters high.

#### Article 226 (Expenses of Installation and Preservation of Fences)

The expenses of installation and preservation of the fences under the preceding article shall be borne equally by the neighbors.

#### Article 227 (Installation of Fences by One of Neighbors)

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

#### Article 228 (Customs relating to Installation of Fences)

If there are customs that differ from the provisions of the preceding three articles, those customs shall prevail.

#### Article 229 (Presumption of Co-ownership of Boundary Markers)

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

#### Article 230

- (1) The provisions of the preceding article shall not apply to a wall on a boundary line that forms a 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 shall likewise apply with respect to such portion of that wall that is higher than the lower building; provided, however, that this shall not apply to fire walls.

#### Article 231 (Construction Work raising Height of Co-owned Walls)

- (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, he/she must reinforce that wall as necessary or rebuild the same.
- (2) If the height of a wall is raised under the provisions of the preceding paragraph, the raised portion shall be owned solely by the person who carried out the construction work.

#### Article 232

In the cases provided for in the preceding article, if a neighbor suffers damage,

he/she may demand compensation for the same.

Article 233 (Cutting of Branches and Roots of Trees and Bamboo)

- (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) If a tree or bamboo root from neighboring land crosses a boundary line, the owner of the land may sever that root.

Article 234 (Restrictions on Buildings near Boundary Lines)

- (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 construction suspended or changed; provided, however, that, if one year has lapsed from the time when such construction started or if that building has been completed, the owner may only claim damages.

Article 235

- (1) A person who 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 others, must put up a privacy screen.
- (2) The distance under the preceding paragraph shall be 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.

Article 236 (Customs relating to Construction near Boundary Lines)

If there are customs that differ from the provisions of the preceding two articles, those customs shall prevail.

Article 237 (Restrictions on Digging near Boundary Lines)

- (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 urine 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 more than one meter.

Article 238 (Duty of Care regarding Digging near Boundary Lines)

When construction under the preceding article is to be carried out 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**

Article 239 (Ownership in Ownerless Thing)

- (1) Ownership of movables without an owner shall be acquired by possessing the same with the intention to own.
- (2) Ownership of real estate without an owner shall vest in the National Treasury.

Article 240 (Finding of Lost Property)

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 (Law No. 73 of 2006), the person who found the lost property shall acquire ownership in the same.

Article 241 (Discovery of Hidden Treasure)

If the owner of hidden treasure is not identified within six months of the time when public notice thereof is effected as prescribed by the Lost Property Act, the finder shall acquire ownership in the same; provided, however, that, with respect to hidden treasure discovered in a Thing belonging to other person, the finder and such other person shall acquire equally proportionate ownership in the same.

Article 242 (Accession to Real Estate)

The owner of real estate shall acquire ownership in a Thing that has been attached thereto as its accessory ; provided, however, that the rights of the other person who attached such Thing by virtue of his/her title shall not be precluded.

Article 243 (Accession to Movables)

If two or more movables with different owners are so joined to each other that they can no longer be separated without damaging the same, ownership of the composite Thing shall vest in the owner of the principal movables. The same shall apply if excessive expense would be required to separate the same.

Article 244

If the distinction of principal and accessory cannot be made between the joined movables, the owner of each movable shall co-own the composite Thing in proportion to the respective price current at the time of the accession.

#### Article 245 (Mixture)

The provisions of the preceding two articles shall apply mutatis mutandis to cases where the Things of different owners are mixed together and can no longer be distinguished.

#### Article 246 (Processing)

- (1) If a person (hereinafter in this article referred to as "Processor") contributes work to the movables of others, ownership of the Thing so worked up shall vest in the owner of the materials; provided, however, that, if the value derived from the work significantly exceeds the value of the materials, the Processor shall acquire ownership in the processed Thing.
- (2) In the cases provided for in the preceding paragraph, if the Processor supplies a portion of the materials, the Processor shall acquire ownership in the processed Thing, limited to if the value of such supplied materials plus the value derived from the work exceeds the value of the materials of others.

#### Article 247 (Effect of Accession, Mixture or Processing)

- (1) If the ownership of a Thing is extinguished in accordance with the provisions of Article 242 through the preceding article, other rights in existence in relation to such Thing shall also be extinguished.
- (2) In the cases provided for in the preceding paragraph, if the owner of a Thing has become the sole owner of the Thing formed by accession, mixture or processing (hereinafter in this paragraph referred to as "composite Thing"), other rights in existence in relation to such Thing shall thereafter exist in relation to the composite Thing, and if the owner of the Thing becomes a co-owner of the composite Thing, other rights in existence in relation to such Thing shall thereafter exist in relation to his/her share in the same.

#### Article 248 (Demands for Compensation in conjunction with Accession, Mixture or Processing)

A person who 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**

#### Article 249 (Use of property in co-ownership )

Each co-owner may use the entire property in co-ownership in proportion to his/her share.

Article 250 (Presumption of Proportion of Co-owner's Shares)

Each co-owner's share shall be presumed to be equal.

Article 251 (Changes to Co-owned Thing)

No co-owner may make any alteration to the property in co-ownership without the consent of the other co-owners.

Article 252 (Management of Co-owned Thing)

Matters regarding the management of property in co-ownership shall be determined by a majority of the value of the shares of the co-owners, except for cases provided for in the preceding paragraph; provided, however, that any co-owner may carry out acts of preservation.

Article 253 (Obligations to bear Burdens regarding property in co-ownership)

- (1) Each co-owner shall pay the expenses of management and otherwise bear burdens regarding the property in co-ownership, in proportion to his/her share.
- (2) If a co-owner does not perform the obligations under the preceding paragraph within one year, other co-owners may acquire the share of such person by paying reasonable compensation.

Article 254 (Claims on property in co-ownership)

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

Article 255 (Renunciation of Shares and Death of Co-owners)

If one of co-owners renounces his/her share or dies without an heir, his/her share shall vest in other co-owners.

Article 256 (Demands for Partition of property in co-ownership)

- (1) Each co-owner may demand the partition of property in co-ownership at any time; provided, however, that this shall not preclude concluding a contract to the effect that a partition will not occur for a period within 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 shall not apply to the property in co-ownership provided for in Article 229.

Article 258 (Partition of property in co-ownership by Judgment)

- (1) If no agreement is reached among co-owners with respect to the partition of property in co-ownership, a demand for partition of the same may be submitted to the court.
- (2) In cases provided for in the preceding paragraph, if the property in co-ownership cannot be partitioned in kind, or it is likely that the value thereof will be significantly reduced by the partition, the court may order the sale of the same at auction.

Article 259 (Performance of Obligations regarding Co-ownership)

- (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 vests in the obligors may be appropriated for the performance of the same.
- (2) If it is necessary to sell the portion of the property in co-ownership that vests in the obligors to obtain the performance under the preceding paragraph, the obligee may demand the sale of the same.

Article 260 (Participation in Partition of property in co-ownership)

- (1) Persons who hold rights with respect to property in co-ownership and the obligee of any co-owner 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 who submitted the request, that partition may not be asserted against the person who submitted the request.

Article 261 (Co-owners' Warranties upon Partitions)

Each co-owner shall bear, in proportion to his/her share, the responsibility of warranty that a seller would have as to the Thing other co-owners have acquired by partition.

Article 262 (Documents regarding property in co-ownership)

- (1) If a partition has been completed, each person who participated in the partition must retain the documents regarding the Thing he/she acquired.
- (2) Documents regarding the Thing that is partitioned for some or all co-owners must be retained by the person who acquired the largest portion of that Thing.
- (3) In the cases provided for in the preceding paragraph, if no person acquired the largest portion, the person who is to retain the documents shall be determined by mutual agreement among the persons who participated in the partition. If no agreement is reached, the court shall designate the same.

(4) The person who is to retain the documents must allow other persons who participated in the partition to use the documents at the request of the same.

#### Article 263 (Rights of Common with Nature of Co-ownership)

Rights of common that have the nature of co-ownership shall be governed by local custom and shall otherwise be subject to the application of the provisions of this Section.

#### Article 264 (Quasi Co-ownership)

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.

### **Chapter 4 Superficies**

#### Article 265 (Content of Superficies)

A superfiary shall have the right to use the land of others in order to own structures, or trees or bamboo, on that land.

#### Article 266 (Rents)

- (1) The provisions of Articles 274 through 276 shall apply mutatis mutandis to cases where the superfiary must pay periodical rent to the owners of the land.
- (2) In addition to the provisions of the preceding paragraph, provisions on leasehold shall apply mutatis mutandis to rent to the extent that application is not inconsistent with the nature of the same.

#### Article 267 (Mutatis Mutandis Application of Provisions regarding Neighboring Relationships)

The provisions of Subsection 2, Section 1 of the preceding Chapter (Neighboring Relationships) shall apply mutatis mutandis between superfiaries or between a superfiary and a landowner; provided, however, that the mutatis mutandis application of the provisions of Article 229 to holders of superficies shall be limited to cases where structures on the boundary line are installed after the creation of the superficies.

#### Article 268 (Duration of Superficies)

- (1) In cases where the duration of superficies is not fixed by the act that established the same, if there is no other custom, the superfiary may renounce their rights at any time; provided, however, that, if rent must be paid, the superfiary 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 superficiary does not renounce its rights in accordance with the provisions of the preceding paragraph, the court may, at the request of the parties concerned, fix a duration of twenty years or more but not more than fifty 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 superficieses.

#### Article 269 (Removal of Structures)

- (1) When the right of the superficiary is extinguished, he/she may restore the land to its original condition and remove structures and trees or bamboo on the same; provided, however, that, if the owner of the land gives notice that he/she will purchase the same by offering to pay an amount equivalent to the market price, the superficiary may not refuse that offer without justifiable grounds.
- (2) If there are customs that differ from the provisions of the preceding paragraph, those customs shall prevail.

#### Article 269-2 (Superficies for Underground or Overhead Space)

- (1) Underground or overhead space may be used as the object of superficieses in order to own structures by specifying limits in the vertical dimension. In such cases, restrictions on the use of that land may be added in the act that establishes superficieses for the purpose of facilitating the exercise of the superficieses.
- (2) The superficieses under the preceding paragraph may be established even in cases where third parties hold rights to use or receive profits from land if all persons who hold those rights or rights underlying the same consent. In such cases, persons who hold the rights to use or receive profits from the land cannot preclude the exercise of the superficieses to the same.

### **Chapter 5 Emphyteusis**

#### Article 270 (Content of Emphyteusis)

An emphyteuta shall have the right to engage in cultivation or livestock farming on the land of others by paying rent.

#### Article 271 (Restrictions on Alterations to Land by Emphyteutas)

An emphyteuta may not make any alteration of the land that will result in irreparable damage.

#### Article 272 (Transfer of Emphyteusis or Leasing of Land)

An emphyteuta may assign his/her rights to others, or lease the land during the duration of his/her rights to cultivate or farm livestock; provided, however, that this

shall not apply if such acts are prohibited by the act that established his/her rights.

Article 273 ((Mutatis Mutandis Application of Provisions regarding Lease)

In addition to the provisions of this Chapter and those provided for in the act that established the emphyteusis, provisions regarding lease shall apply mutatis mutandis to the obligations of a emphyteuta, to the extent that application is not inconsistent with the nature of the same.

Article 274 (Rent Reductions or Exemptions)

An emphyteuta may not demand an exemption from or reduction in the rent even if a loss of profits has been suffered due to force majeure.

Article 275 (Waiver of Emphyteusis)

If an emphyteuta 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, he/she may surrender his/her rights.

Article 276 (Demand for Extinction of Emphyteusis)

If an emphyteuta fails to pay the rent for two or more consecutive years, the landowner may demand the extinction of the emphyteusis.

Article 277 (Customs regarding Emphyteusis)

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

Article 278 (Duration of Emphyteusis)

- (1) The duration of the emphyteusis shall be twenty years or more but no more than fifty years. Even if an act establishing emphyteusis provides for a period longer than fifty years, the duration shall be fifty years.
- (2) The establishment of emphyteusis may be renewed; provided, however, that the duration of the same may not exceed fifty years from the time of renewal.
- (3) If an act establishing emphyteusis does not provide for the duration of the emphyteusis, the duration of the same shall be thirty years unless there is a custom to the contrary.

Article 279 (Removal of Structures)

The provisions of Article 269 shall apply mutatis mutandis to emphyteusis.

## **Chapter 6 Servitudes**

#### Article 280 (Content of Servitudes)

A person entitled to a servitude shall have the right to make lands of others available for the benefit of their own lands in accordance with purposes prescribed in the acts establishing the servitudes; provided, however, that those rights should not violate the provisions (limited to those that relate to public policy) under Section 1 of Chapter 3 (Extent of Ownership).

#### Article 281 (Appurtenant Nature of Servitudes)

- (1) Servitudes are appurtenant to ownership in the dominant land (hereinafter referring to the land of a person entitled to a servitude, enjoying benefits from the land of others) and shall be transferred together with that ownership, or shall be the subject of other rights that exist in relation to the dominant land; provided, however, that this shall not apply if the act establishing the servitude provides otherwise.
- (2) Servitudes may neither be assigned nor made the subject of other rights apart from the dominant land.

#### Article 282 (Indivisibility of Servitudes)

- (1) One of the co-owners of land may not extinguish, with respect to his/her own share, a servitude that exists on behalf of or in relation to the land.
- (2) In cases where land is partitioned or a portion thereof is assigned to others, a servitude shall exist on behalf of or in relation to the respective portions of the same; provided, however, that this shall not apply if the servitude, by its nature, relates only to a portion of the land.

#### Article 283 (Acquisition of Servitudes by Prescription)

A servitude can 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 shall also acquire the same.
- (2) Interruption of prescription shall not be effected against co-owners unless it is made against each co-owner who exercises the servitude.
- (3) In cases where there are two or more co-owners who exercise a servitude, even if there is cause to suspend the prescription with respect to one of them, the prescription shall run in favor of each co-owner.

#### Article 285 (Water Servitude)

- (1) If water on servient land (hereinafter referring to a land of any person other

than the one entitled to the servitude, made available for the benefit of the dominant land) subject to a water servitude is insufficient for the demand of the dominant land and the servient land, the water shall 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 shall not apply if the act establishing the servitude provides otherwise.

- (2) If more than one water servitude is created with respect to the same servient land, the persons subsequently entitled may not prevent the use of water by those previously entitled.

#### Article 286 (Obligations of Owners of Servient Land to Install Structures)

If the owner of servient land has assumed obligations to install or repair structures for the exercise of a servitude at his/her own expense by the act establishing the servitude or by a contract executed after the same, specific successors of the owner of the servient land shall also assume 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 person entitled to a servitude.

#### Article 288 (Use of Structures by the Owner of Servient Lands)

- (1) The owner of a servient land may use structures installed on the servient land for the exercise of the servitude to the extent his/her use does not obstruct the exercise of that servitude.
- (2) In the cases provided for 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 he/she receives.

#### Article 289 (Extinction of Servitude by Acquisition by Prescription of Servient Lands)

If the possessor of servient land has so possessed the same as to satisfy the requirements for acquisitive prescription, the servitude shall be extinguished thereby.

#### Article 290

The extinctive prescription of the preceding article is nullified by the person entitled to the servitude exercising his/her rights.

#### Article 291 (Extinctive Prescription of Servitudes)

The period of the extinctive prescription provided for in Paragraph 2 of Article 167

shall commence 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

In cases where dominant land is co-owned by more than one person, if there is a suspension or interruption of prescription in favor of one co-owner, such suspension or interruption shall also be effective for the benefit of other co-owners.

#### Article 293

If a person entitled to a servitude does not exercise a portion of his/her rights, only that portion shall be extinguished by prescription.

#### Article 294 (Rights of Common without the Nature of Co-Ownership)

Rights of common that do not have the nature of co-ownership shall be governed by local customs and shall otherwise be subject to the mutatis mutandis application of the provisions of this Section.

### **Chapter 7 Rights of Retention**

#### Article 295 (Content of Rights of Retention)

- (1) If a possessor of a Thing belonging to another person has a claim that has arisen with respect to that Thing, he/she may retain that thing until that claim is satisfied; provided, however, that this shall not apply if such claim has not yet fallen due.
- (2) The provisions of the preceding paragraph shall not apply in cases where possession commenced by means of a tortious act.

#### Article 296 (Indivisibility of Rights of Retention)

A holder of a right of retention may exercise his/her rights against the whole of the Thing retained until his/her claim is satisfied in its entirety.

#### Article 297 (Collection of Fruits by Holders of Rights of Retention)

- (1) A holder of a right of retention may collect fruits derived from the Thing retained, and appropriate the same to the satisfaction of his/her claim prior to other obligees.
- (2) The fruits under 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.

Article 298 (Keeping the Thing Retained by Holders of Rights of Retention)

- (1) A holder of a right of retention must possess the Thing retained with the care of a good manager.
- (2) A holder of rights of retention may not use, lease or give as a security the Thing retained unless he/she obtains the consent of the obligor; provided, however, that this shall 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 extinguished.

Article 299 (Demands for Reimbursement of Expenses by Holders of Rights of Retention)

- (1) If a holder of a right of retention incurs necessary expenses with respect to the Thing retained, he/she may have the owner reimburse the same.
- (2) If a 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, he/she may have the expenses incurred or the increase in value reimbursed at the owner's election; provided, however, that the court may, at the request of the owner, grant a reasonable period for the reimbursement of the same.

Article 300 (Exercise of Rights of Retention and Extinctive Prescription of Claims)

The exercise of a right of retention shall not preclude the running of extinctive prescription of claims.

Article 301 (Extinction of Rights of Retention by Tender of Security)

An obligor may demand that a right of retention be extinguished by tendering reasonable security.

Article 302 (Extinction of Rights of Retention by Loss of Possession)

A right of retention shall be extinguished if the holder of the right of retention loses possession of the Thing retained; provided, however, that this shall not apply if the Thing retained is leased or it is made the subject of a pledge in accordance with the provisions of Paragraph 2 of Article 298.

## **Chapter 8 Statutory Liens**

### **Section 1 General Provisions**

Article 303 (Content of Statutory Liens)

A holder of a statutory lien shall have the rights to have his/her 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.

Article 304 (Extension of Security Interest to Proceeds of Collateral)

- (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 shall likewise apply to the consideration for real rights established by the obligor on the subject matter of the statutory lien.

Article 305 (Indivisibility of Statutory Liens)

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

**Section 2 Kinds of Statutory Liens**

**Subsection 1 General Statutory Lien**

Article 306 (General Statutory Lien)

A person who has a claim that arose from the causes listed below shall have a statutory lien over the entire property of the obligor:

- (i) Expenses for the common benefit;
- (ii) An employer-employee relationship;
- (iii) Funeral expenses; or
- (iv) The supply of daily necessities.

Article 307 (Statutory Liens for Expenses for Common Benefit)

- (1) Statutory liens for expenses for the common benefit shall exist with respect to the expenses of preservation, liquidation or distribution of the property of the obligor incurred for the common benefit of all obligee.
- (2) With respect to expenses that were not beneficial for all obligees, a statutory lien shall exist solely for obligees who received a benefit as a result of such expenses.

Article 308 (Statutory Liens for Employer-Employee Relationships)

Statutory liens for employer-employee relationships shall exist with respect to salaries and other claims that arose under the employer-employee relationship between the obligor and his/her employee.

Article 309 (Funeral Expenses)

- (1) Statutory liens for funeral expenses shall exist with respect to the reasonable expenses of a funeral observed for the obligor.
- (2) The statutory lien under the preceding paragraph shall also exist with respect to the reasonable expenses of a funeral observed by the obligor for a relative whom the obligor is bound to support.

#### Article 310 (Statutory Liens for Household Items)

Statutory liens for daily necessities shall 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 his/her relatives who reside with the obligor and whom the obligor is bound to support and the domestic servants of the same.

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

#### Article 311 (Statutory Liens over Movables)

A person who has a claim that arose from the causes listed below shall have a statutory lien over certain movables of the obligor:

- (i) A lease of immovable property;
- (ii) A lodging at a hotel or inn;
- (iii) The transportation of passengers or luggage;
- (iv) The preservation of movables;
- (v) The sale of movables;
- (vi) The supply of seed or fertilizer (hereinafter including eggs of silkworms or mulberry leaves used to feed silkworms);
- (vii) Agricultural labor; or
- (viii) Industrial labor.

#### Article 312 (Statutory Liens for Leases of Immovable Properties)

Statutory liens for a lease of immovable property shall exist with respect to the movables of the lessee in connection with obligations of the lessee that arose from the lease relationship including rent for that immovable property.

#### Article 313 (Scope of Subject Matter of Statutory Liens for Leases of Immovable Properties)

- (1) The statutory lien of a lessor of land shall exist with respect to 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 shall exist with respect to movables furnished to that building by the lessee.

#### Article 314

In the cases of assignment of lessee's rights or subleasing, the statutory lien of the lessor shall extend to the movables of the assignee or sublessee. The same shall apply to monies that the assignee or sublessee is to receive.

#### Article 315 (Scope of Secured Claims under Statutory Liens for Leases of Immovable Properties)

In cases where all of the lessee's property is to be liquidated, the statutory lien of the lessor shall exist only with respect to obligations, including rent, for the previous, current and next terms, and obligations to compensate for damage that arose in the previous and current terms.

#### Article 316

In cases where a lessor has received a security deposit, he/she shall have a statutory lien solely in respect of the portion of his/her claim that will not be satisfied by that security deposit.

#### Article 317 (Statutory Liens for Lodging at Hotels)

Statutory lien for lodging at hotels shall exist with respect to 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.

#### Article 318 (Statutory Liens for Transportation)

Statutory liens for transportation shall exist with respect to luggage in the possession of the transporter, in connection with transportation charges for passengers or luggage and expenses incidental to the same.

#### Article 319 (Mutatis Mutandis Application of Provisions on Immediate Acquisition)

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

#### Article 320 (Statutory Liens for Preservation of Movables)

Statutory liens for the preservation of movables shall exist with respect to movables, in connection with expenses required for the preservation of those movables, or expenses required for the preservation, approval or execution of rights regarding those movables.

#### Article 321 (Statutory Liens for Sale of Movables)

Statutory liens for the sale of movables shall exist with respect to movables, in connection with the price of those movables and interest on the same.

Article 322 (Statutory Liens for Supply of Seed or Fertilizer)

Statutory liens for the supply of seed or fertilizer shall exist with respect to fruits (including eggs of silk worms or any Thing derived from the use of mulberry leaves used to feed silkworms) derived from land where the seed or fertilizer was used, within one year of that use, in connection with the price of that seed or fertilizer and interest on the same.

Article 323 (Statutory Liens for Agricultural Labor)

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

Article 324 (Statutory Liens for Industrial Labor)

Statutory liens for industrial labor shall exist, with respect to 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 Immovable Properties**

Article 325 (Statutory Liens for Immovable Properties)

A person who has a claim that arose from the causes listed below shall have a statutory lien over certain immovable property of the obligor:

- (i) The preservation of immovable property;
- (ii) Construction work for immovable property; or
- (iii) The sale of immovable property.

Article 326 (Statutory Liens for Preservation of Immovable Properties)

Statutory liens for the preservation of immovable property shall exist with respect to immovable property, in connection with the expenses required for the preservation of that immovable property or the expenses required for the preservation, approval or execution of rights regarding that immovable property.

Article 327 (Statutory Liens for Construction Work for Immovable Properties)

- (1) Statutory lien for construction work for immovable property shall exist, with respect to immovable property, in connection with the expenses of construction work performed by a person who designs, carries out or supervises construction work regarding the immovable property of the obligor.
- (2) The statutory liens under the preceding paragraph shall exist, in cases where there is a current increase in the value of the immovable property resulting from

the construction work, with respect to that increased value.

Article 328 (Statutory Liens for Sales of Immovable properties)

Statutory liens for sales of immovable properties shall exist, with respect to immovable property, in connection with the price of that immovable property and interest on the same.

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

Article 329 (Order of Priority of General Statutory Liens)

- (1) In cases where there is conflict among general statutory liens, the order of priority shall follow the order listed in each item of Article 306.
- (2) In cases where there is conflict between a general statutory lien and a special statutory lien, the special statutory lien shall prevail over the general statutory lien; provided, however, that statutory liens on expenses for the common benefit shall have the effect of prevailing over all obligees who received the benefit of the same.

Article 330 (Order of Priority of Statutory Liens over Movables)

- (1) In cases where there is conflict among special statutory liens with respect to the same movables, the order of priority shall follow the order listed below. In such cases, if there are two or more preservers with respect to the statutory liens for preservation of movables listed in Item (ii), a new preserver shall prevail over previous preservers.
  - (i) Statutory liens for leases of immovable properties, 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 seed or fertilizer, agricultural labor and industrial labor.
- (2) In the cases provided for in the preceding paragraph, if a holder of a statutory lien ranked first knew at the time he/she acquired that claim of the existence of a holder of a statutory lien of the second or third rank, he/she cannot exercise his/her rights against those persons. The same shall likewise apply against persons who preserved Things on behalf of the holder of a statutory lien of the first rank.
- (3) Regarding fruits, the first rank shall belong to persons who engage in agricultural labor, the second rank shall belong to persons who supply seed or fertilizer, and the third rank shall belong to lessors of land.

Article 331 (Order of Priority of Statutory Liens over Immovable properties)

- (1) In cases where there is conflict among special statutory liens with respect to the

same immovable properties, the order of priority shall follow the order of the items of Article 325.

- (2) In cases where successive sales are made with respect to the same immovable properties, the order of priority of the statutory liens for the sale of the immovable properties among sellers shall follow the chronological order of the sales.

#### Article 332 (Statutory Liens with Same Priority)

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 shall be paid in proportion to the amounts of their claims.

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

#### Article 333 (Statutory Liens and Third-party Acquirers)

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

#### Article 334 (Conflict between Statutory Liens and Pledges of Movables )

In cases where there is conflict between a statutory lien and a pledge of movables, the pledgee of such movables shall have the same rights as those of the holder of a statutory lien of the first rank under Article 330.

#### Article 335 (Effect of General Statutory Liens)

- (1) Holders of general statutory liens cannot be paid out of immovable properties unless they are first paid out of property other than immovable properties and a claim that is not satisfied remains.
- (2) With respect to immovable properties, 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 cannot 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 shall not apply to cases where the proceeds of immovable properties are distributed prior to the proceeds of assets other than immovable properties, or the proceeds of immovable properties that is the subject matter of a special security are distributed prior to the proceeds of other immovable properties.

Article 336 (Perfecton of General Statutory Liens)

General statutory liens may be asserted against obligees without special security, even if the liens are not registered with respect to the relevant immovable property; provided, however, that this shall not apply to registered third parties.

Article 337 (Registration of Statutory Liens for Preservation of Immovable Properties)

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

Article 338 (Registration of Statutory Liens for Construction Work for Immovable Properties)

- (1) In order to preserve the effectiveness of statutory liens for construction work for immovable properties, the budgeted expenses of the construction work must be registered prior to the commencement of the same. In such cases, if the expenses of the construction work exceed the budgeted amount, a statutory lien shall not exist with respect to the amount in excess of the same.
- (2) The amount of increase in value of immovable properties that resulted from construction work must be evaluated by an appraiser selected by the court at the time of the participation in the distribution.

Article 339 (Registered Statutory Liens for Preservation of Immovable Properties or Construction Work for Immovable Properties)

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

Article 340 (Registration of Statutory Liens for Sales of Immovable Properties)

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

Article 341 (Mutatis Mutandis Application of Provisions regarding Mortgages)

In addition to the provisions of this Section, the provisions regarding mortgages shall apply mutatis mutandis to the effects of statutory liens, to the extent that application is not inconsistent with the nature of the same.

## **Chapter 9 Pledges**

## **Section 1 General Provisions**

### Article 342 (Content of Pledges)

Pledgees shall have the right to possess Thing received from obligors or third parties as security for their claims and to have their own claims paid prior to other obligees out of that Thing.

### Article 343 (Subject Matter of Pledges)

Pledges cannot be created over a Thing that cannot be assigned to others.

### Article 344 (Creation of Pledges)

The creation of a pledge shall take effect by delivering the subject matter of the same to the obligee.

### Article 345 (Prohibition of Possession by Pledgors as Agents)

A pledgee may not allow a pledgor to possess the Thing pledged on behalf of the pledgee.

### Article 346 (Scope of Secured Claims under Pledges)

Pledges shall secure the principal, interest, penalties, expenses of executing the pledge, expense of preserving the Thing pledged and the compensation of damage arising from failure to perform obligations or latent defects in the Thing pledged; provided, however, that this shall not apply if the act establishing the pledge provides otherwise.

### Article 347 (Retention of the Thing Pledged)

Pledgees may retain the Thing pledged until the claims provided for in the preceding article are satisfied; provided, however, that this right cannot be asserted against obligees who have priority over the pledgees.

### Article 348 (Sub-pledges)

Pledgees may sub-pledge the Thing pledged within the duration of their rights, upon their own responsibility. In such cases, the pledgees shall be responsible for any loss arising from the -pledge even if the same is caused by force majeure.

### Article 349 (Prohibition on Disposition of the Thing Pledged by Contract)

Pledgors cannot, either by the acts establishing pledges or by contracts made prior to the due dates for performance of their obligations, allow pledgees to acquire ownership of the Thing pledged as payment, nor promise to allow pledgees to dispose of it in any manner other than is prescribed by law.

Article 350 (Mutatis Mutandis Application of Provisions on Rights of Retention and Statutory Liens)

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

Article 351 (Third Party Pledgors' Rights to Obtain Reimbursement)

If persons who created pledges to secure the obligations of others have performed those obligations or have lost ownership of the Thing pledged due to the execution of the pledges, they shall have the right to obtain reimbursement from the obligors in accordance with the provisions regarding guarantee obligations.

## **Section 2 Pledges of Movable**

Article 352 (Requirements for the Perfection of Pledges of Movable)

Pledgees of movable cannot assert their pledges against third parties unless they are in continuous possession of the Thing pledged.

Article 353 (Recovery of Possession of the Thing Pledged )

Pledgees of movable may, if the pledged Thing is usurped, recover the same solely by bringing actions for recovery of possession.

Article 354 (Execution of Pledges of Movable)

If claims of pledgees of movable are not performed, they may, limited to cases where there are reasonable grounds, demand from a court immediate appropriation of the Thing pledged to the performance of the claims in accordance with the evaluation of an appraiser. In such cases, the pledgees of movable must notify the obligors in advance of the demand.

Article 355 (Order of Priority of Pledges of Movable)

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

## **Section 3 Pledges of Immovable Properties**

Article 356 (Use and Profit by Pledgees of Immovable Properties)

Pledgees of immovable property may use and receive the profits from the immovable property that is the subject matter of a pledge, in accordance with the method of its use.

Article 357 (Management Expenses Borne by Pledges of Immovable Properties)

Pledges of immovable properties shall pay the expenses of management and otherwise bear burdens in relation to the immovable properties.

Article 358 (Prohibition on Charging of Interest by Pledges of Immovable Properties)

Pledges of immovable properties cannot demand interest on their claims.

Article 359 (Cases of Other Provisions in Act of Establishment)

The provisions of the preceding three articles shall not apply in cases where the acts establishing pledges provide otherwise or execution against profits derived from the immovable properties as collateral (hereinafter referring to the execution against profits from secured immovable properties provided for in Item (ii) of Article 180 of the Civil Execution Act (Law No. 4 of 1979)) has been commenced.

Article 360 (Duration of Pledges of Immovable Properties)

- (1) The duration of pledges of immovable properties cannot exceed ten years. Even if a longer period is provided for in the act establishing the pledge, the duration of the same shall be ten years.
- (2) The creation of pledges may be renewed; provided, however, that the duration of the same cannot exceed ten years from the time of the renewal.

Article 361 (Mutatis Mutandis Application of Provisions on Mortgages)

In addition to the provisions of this Section, the provisions of the next chapter shall apply mutatis mutandis to pledges of immovable properties to the extent that application is not inconsistent with the nature of the same.

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

Article 362 (Subject Matter of Pledges of Rights)

- (1) Pledges may have property rights for their subject matters.
- (2) In addition to the provisions of this Section, the provisions of the preceding three Sections (General Provisions, Pledges of Movables and Pledges of Immovable properties) shall apply mutatis mutandis to pledges under the preceding paragraph, to the extent that application is not inconsistent with the nature of the same.

Article 363 (Creation of Pledges over Claims)

When a pledge is to be created over a claim, and the delivery of an instrument evidencing it is required for its assignment, the creation of the pledge shall take

effect by the delivery of such instrument.

**Article 364 (Requirements for Perfection of Pledges over Nominative Claims)**

If a pledge is created over a nominative claim, that pledge cannot be asserted against third parties including third party obligors unless notice of the creation of the pledge is given to third party obligors in accordance with the provisions of Article 467, or unless the third party obligors acknowledge the same.

**Article 365 (Requirements for Perfection of Pledges over Debts Payable to Order)**

If a pledge is created over debts payable to order, that pledge cannot be asserted against third parties unless the creation of the pledge is endorsed on the instrument of the same.

**Article 366 (Collection of Claims by Pledgees)**

- (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 under the preceding paragraph arrives prior to the due date of the claim of the pledgee, the pledgee may have the third party obligor deposit that amount to be paid to the pledgee. In such cases, the pledge shall exist over the amount so deposited.
- (4) If the subject matter of the pledged claim is not monies, the pledgee shall have the pledge over the Thing received as performance of the obligation.

**Article 367**

Deleted

**Article 368**

Deleted

**Chapter 10 Mortgages**

**Section 1 General Provisions**

**Article 369 (Content of Mortgages)**

- (1) A Mortgagee shall have the right to receive the performance of his/her claim prior to other obligees out of the immovable properties that the obligor or a third party provided to secure the obligation without transferring possession.
- (2) Superficies and emphyteusis can be the subject matter of a mortgage. In such

cases, the provisions of this Chapter shall apply mutatis mutandis.

#### Article 370 (Scope of Effect of Mortgages)

A mortgage shall extend to the Things that is an integral part of immovable properties that is the subject matter of the mortgage (hereinafter referred to as "Mortgaged Immovable Properties") except for buildings on the mortgaged land; provided, however, that this shall not apply in cases where the act establishing the mortgage provides otherwise or the obligee can rescind the act of the obligor in accordance with the provisions of Article 424.

#### Article 371

If there is a default with respect to a claim secured by a mortgage, the mortgage shall extend to the fruits of the Mortgaged Immovable Properties derived after the default.

#### Article 372 (Mutatis Mutandis Application of Provisions on Right of Retention)

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

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

#### Article 373 (Order of Priority of Mortgages)

If more than one mortgage is created with respect to the same immovable properties, the order of priority of those mortgages shall follow the chronological order of their registration.

#### Article 374 (Changes in Order of Priority of Mortgages)

- (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 under the preceding paragraph shall not take effect unless registered.

#### Article 375 (Scope of Secured Claims under Mortgages)

- (1) If mortgagees have rights to demand periodic payments including interest, they may exercise their mortgages solely with respect to payments that have fallen due in the most recent two years; provided, however, that, if special registration is effected with respect to prior periodical payments that have fallen due, the mortgagees shall not be precluded from exercising their mortgages as from the time of that registration.

(2) In cases where mortgagees have rights to demand the compensation for damages resulting from defaults in obligations, the provisions of the preceding paragraph shall apply mutatis mutandis to the damages of the most recent two years; provided, however, that the aggregate period including the interest and other periodical payments may not exceed two years.

#### Article 376 (Disposition of Mortgages)

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

(2) In the cases provided for in the preceding paragraph, if a mortgagee disposes of his/her mortgage for the benefit of two or more persons, the order of priority of the rights of persons who receive the benefit of that disposition shall follow the chronological order noted in the registration of the mortgage.

#### Article 377 (Requirements for Perfection of Disposition of Mortgages)

(1) In the cases in the preceding article, in accordance with the provisions of Article 467, mortgagees cannot assert the disposition of mortgages against principal obligors, guarantors, mortgagors or their respective successors unless the disposition is notified to the primary obligors or the principal obligors acknowledge that disposition.

(2) If the principal obligors have received the notice or given acknowledgement under the provisions of the preceding paragraph, performance effected without the approval of the persons who receive the benefit of the disposition of mortgages cannot be asserted against those beneficiaries.

#### Article 378 (Payment of Mortgage Proceeds)

If a third party who purchases the ownership or superficies of Mortgaged Immovable Properties pay the price of the same to the relevant mortgagee at the request of the mortgagee, the mortgage shall be extinguished for the benefit of that third party.

#### Article 379 (Claims for Extinction of Mortgages)

A third party acquirer of Mortgaged Immovable Properties may make a claim for the extinction of a mortgage as prescribed in Article 383.

#### Article 380

No primary obligor, guarantor or successor of the same may make a claim for the extinction of a mortgage.

#### Article 381

A third party acquirer of Mortgaged Immovable Properties that is subject to a condition precedent may not make a claim for the extinction of a mortgage whilst whether or not the condition precedent is satisfied is still undetermined.

#### Article 382 (Timing of Claims for Extinction of Mortgages)

A third party acquirer of Mortgaged Immovable Properties must make a claim for the extinction of a mortgage before attachment by auction as a result of the execution of the mortgage takes effect.

#### Article 383 (Procedures for Claims for Extinction of Mortgages)

If a third party acquirer of Mortgaged Immovable Properties intends to make a claim for the extinction of a mortgage, he/she must send the documents listed 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 Immovable Properties and burdens of the acquirer;
- (ii) A certificate of registered matters regarding the Mortgaged Immovable Properties (limited to certificates certifying all registered matters currently in effect); and
- (iii) A document to the effect that, if the obligee does not file a petition for auction by executing the mortgage within two months, the third party acquirer of the immovable properties will pay or deposit the price provided for in Item (i) or an amount specifically designated in accordance with the order of priority of claims.

#### Article 384 (Deemed Approval of Obligees)

In the cases listed below, obligees who have received the documents listed in each item of the preceding article shall be deemed to have approved the price or amount that the third party acquirer of Mortgaged Immovable Properties has offered as stated in the document listed in Item (iii) of that article:

- (i) If the obligee does not file a petition for auction by executing the mortgage within two months after receipt of the documents listed in each item of the preceding article;
- (ii) If the obligee withdraws a petition under the preceding item;
- (iii) If a ruling dismissing a petition under Item (i) has become final and binding;  
or
- (iv) If a ruling rescinding auction procedures based on a petition under Item (i) (excluding rulings under the provisions of Paragraph 3 of Article 63 or Paragraph 3 of Article 68-3 of the Civil Execution Act applied mutatis mutandis under Article 188 of the same act, or under the provisions of Paragraph 2 of

Article 183 of the same Act in cases where the certified copy under Item (v), Paragraph 1 of the same article is provided) has become final and binding.

Article 385 (Notice of Petitions for Auction)

If an obligee who has received the documents listed in each item of Article 383 files a petition under Item (i) of the preceding article, he/she must give notice to such effect to the obligor and assignor of the Mortgaged Immovable Properties within the period under that item.

Article 386 (Effect of Claims for Extinction of Mortgages)

A mortgage shall be extinguished if all registered obligees approve the price or amount offered by the third party acquirer of the Mortgaged Immovable Properties, and the third party acquirer of the Mortgaged Immovable Properties has paid or deposited the price or amount approved.

Article 387 (Perfection of Leases with Registered Consent of Mortgagees)

- (1) If all persons holding mortgages, the registrations of which precede the registration of a lease, give their consent, and such consents are registered, the lease so registered can be asserted against those mortgagees who gave their consent.
- (2) For a mortgagee to give the consent under the preceding paragraph, the approval of the persons who hold rights for which the mortgage is the object and other persons who will suffer detriment as a result of the consent of the mortgagee must be obtained.

Article 388 (Statutory Superficies)

In cases where land and a building on the land belong to the same owner, if a mortgage is created with respect to that land or building, and the execution of that mortgage results in the creation of different owners, it shall be deemed that a superficies has been created with respect to that building. In such cases, the rent shall be fixed by the court at the request of the parties.

Article 389 (Auction of Buildings on Mortgaged Lands)

- (1) If a building is constructed on mortgaged land after the creation of a mortgage, the mortgagee may auction the building together with the land; provided, however, that his/her right of priority may be exercised solely against the proceeds of the land.
- (2) The provisions of the preceding paragraph shall not apply in cases where the owner of that building has rights with respect to the possession of the mortgaged land that can be asserted against the mortgagee.

Article 390 (Purchases of Mortgaged Immovable Properties by Third Party Acquirers)

A third party acquirer of Mortgaged Immovable Properties may be the purchaser at the auction of the same.

Article 391 (Claims for Reimbursement of Expenses by Third Party Acquirers of Mortgaged Immovable Properties)

If a third party acquirer of Mortgaged Immovable Properties has incurred necessary or beneficial expenses with respect to the Mortgaged Immovable Properties, he/she shall be entitled to obtain reimbursement of the same out of the proceeds of the Mortgaged Immovable Properties prior to other obligees, in accordance with the distinctions in Article 196.

Article 392 (Distribution of Proceeds in cases of Joint Mortgage)

- (1) In cases where an obligee holds mortgages on several immovable properties to secure the same claim, if the proceeds of those immovable properties are to be distributed simultaneously, the obligee shall divide the burden of the claim in proportion to the value of each immovable property.
- (2) In cases where an obligee holds mortgages on several immovable properties to secure the same claim, if the proceeds from a particular immovable property alone are to be distributed, the mortgagee may receive the payment of his/her entire claim out of those proceeds. In such cases, subordinated mortgagees may exercise their mortgages in subrogation of that mortgagee, up to the amount that that mortgagee who receives payment would otherwise be entitled to receive from the proceeds of other immovable properties, in accordance with the provisions of the preceding paragraph.

Article 393 (Note in Registration of Subrogation in case of Joint Mortgages)

A person who exercises a mortgage by way of subrogation under the provisions of the second sentence of Paragraph 2 of the preceding article may note his/her subrogation in the registration of that mortgage.

Article 394 (Payment from Assets other than Mortgaged Immovable Properties)

- (1) A mortgagee may receive payment from assets other than the Mortgaged Immovable Properties, limited to the extent of the portion of his/her claim not paid from the proceeds of that Mortgaged Immovable Properties.
- (2) The provisions of the preceding paragraph shall not apply to cases where the proceeds of other assets are to be distributed prior to the proceeds of the Mortgaged Immovable Properties. In such 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.

#### Article 395 (Suspension of Delivery by Users of Mortgaged Buildings)

- (1) Any person who uses or receives profits from a building subject to a mortgage by virtue of a lease that cannot be asserted against the mortgagee, and who is listed as follows (in the following paragraph referred to as "Mortgaged Building User") shall not be required to deliver that building to the purchaser thereof until six months have elapsed from the time when the purchaser purchased that building at auction:
- (i) A person who has been using or receiving profits from the building since prior to the commencement of auction procedures; or
  - (ii) A person who is using or receiving profits from the building by virtue of a lease given after the commencement of auction procedures by the administrator of compulsory administration or execution against profits from secured immovable properties.
- (2) The provisions of the preceding paragraph shall not apply in cases where the purchaser 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 in that paragraph that has occurred after the time of purchase by the purchaser, establishing a reasonable period, and no payment is made within that reasonable period.

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

#### Article 396 (Extinctive Prescription of Mortgages)

No mortgage shall be extinguished by prescription in relation to obligors and mortgagors unless it is extinguished simultaneously with the claim the mortgage secures.

#### Article 397 (Extinction of Mortgages by Acquisition by Prescription of Mortgaged Immovable Properties)

If a person who is neither an obligor nor a mortgagor has possessed the Mortgaged Immovable Properties in complete conformity with the requirements for acquisitive prescription, the mortgage shall be extinguished thereby.

#### Article 398 (Renouncement of Mortgaged Superficies)

Even if a holder of superficies or an emphyteuta who created mortgage on his/her superficies or emphyteusis renounces his/her rights, the renouncement cannot be asserted against the mortgagee.

## Section 4 Revolving Mortgages

### Article 398-2 (Revolving Mortgages)

- (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 accrue continuously with the obligor pursuant to a specific cause, or claims on negotiable instruments or checks may be treated as claims that are to be secured by a Revolving Mortgage, notwithstanding the provisions of the preceding paragraph.

### Article 398-3 (Scope of Secured Claims under Revolving Mortgages)

- (1) A revolving mortgagee may exercise his/her Revolving Mortgage up to the maximum amount with respect to all fixed payments of principal as well as periodical payments including interest and compensation for damages resulting from failure to perform obligations.
- (2) In cases where a claim on a negotiable instrument or check acquired by way of causes other than the transactions with the obligor is treated as a claim to be secured by a Revolving Mortgage, if any of the following grounds exist, such Revolving Mortgage may be exercised only with respect to claims acquired before such grounds arose; provided, however, that even with respect to claims acquired after such grounds arose, the exercise of the Revolving Mortgage shall not be precluded as far as the claims were acquired without knowledge of those grounds:
  - (i) The suspension of payments by the obligor;
  - (ii) A petition for the commencement of bankruptcy procedures, the commencement of rehabilitation procedures, the commencement of reorganization procedures or the commencement for special liquidation with respect to the obligor; or
  - (iii) A petition for auction in relation to Mortgaged Immovable Properties or attachment for delinquent taxes.

### Article 398-4 (Alterations in Scope of Secured Claims under Revolving Mortgages and of Obligors)

- (1) The scope of the claims to be secured by a Revolving Mortgage may be altered if the alteration is effected before the principal is fixed. The same shall likewise

apply with respect to alterations of obligors.

- (2) In order to effect the alterations under the preceding paragraph, it is not required that the approval of third parties including subordinated obligees be obtained.
- (3) If the alteration under Paragraph 1 is not registered before the principal is fixed, it shall be deemed that such alteration was not effected.

#### Article 398-5 (Alterations in Maximum Amounts of Revolving Mortgages)

Alterations in the maximum amount of a Revolving Mortgage cannot be made unless the approval of the interested parties is obtained.

#### Article 398-6 (Provision of Date for Fixing Principal of Revolving Mortgage)

- (1) With respect to the principal secured by a Revolving Mortgage, the date when the principal is to be fixed may be prescribed or changed.
- (2) The provisions of Paragraph 2 of Article 398-4 shall apply mutatis mutandis to the cases under 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 an alteration in the date under Paragraph 1 is not effected before the old date, the principal secured shall be fixed on that old date.

#### Article 398-7 (Assignments of Secured Claims under Revolving Mortgages)

- (1) A person who acquires a claim from a revolving mortgagee before the principal is fixed may not exercise the Revolving Mortgage with respect to such claim. The same shall likewise apply to a person who made payment for or on behalf of an obligor before the principal was fixed.
- (2) If an obligation is assumed before the principal is fixed, the revolving mortgagee may not exercise his/her Revolving Mortgage with respect to the obligation of the person who assumes the obligation.
- (3) If any novation due to a change of obligee or obligor is effected before the principal is fixed, the parties may not transfer the Revolving Mortgage to the obligations after the novation, notwithstanding the provisions of Article 518.

#### Article 398-8 (Inheritances of Revolving Mortgagees or Obligors)

- (1) If an inheritance of a revolving mortgagee commences before the principal is fixed, the Revolving Mortgage shall secure the claims that exist at the time of the commencement of the inheritance and shall otherwise secure claims the heir prescribed by agreement between the heirs and the revolving mortgagor acquires after the commencement of the inheritance.
- (2) If an inheritance of an obligor commences before the principal is fixed, the

Revolving Mortgage shall secure the obligations that exist at the time of the commencement of the inheritance and shall otherwise secure the claims that the heir prescribed by agreement between the revolving mortgagee and the revolving mortgagor assumes after the commencement of the inheritance.

- (3) The provisions of Paragraph 2 of Article 398-4 shall apply mutatis mutandis to cases where an agreement is made under the preceding two paragraphs.
- (4) If the agreements under Paragraph 1 and Paragraph 2 are not registered within six months of the commencement of the inheritance, principal secured shall be deemed to have been fixed at the time of the commencement of the inheritance.

#### Article 398-9 (Mergers of Revolving Mortgagees or Obligor)

- (1) If there is a merger with respect to a revolving mortgagee before the principal is fixed for that revolving mortgagee, the Revolving Mortgage shall secure the claims that exist at the time of the merger and shall otherwise secure claims that a juridical person that survives the merger or a juridical person 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 fixed for that obligor, the Revolving Mortgage shall secure the obligations that exist at the time of the merger and shall otherwise secure the obligations that a juridical person that survives the merger or a juridical person that is incorporated by the merger assumes after the merger.
- (3) In the cases provided for in the preceding two paragraphs, the revolving mortgagor may demand that the principal secured be fixed; provided, however, that this shall not apply, in the cases provided for in the preceding paragraph, if the relevant obligor is the revolving mortgagor.
- (4) If a demand is made in accordance with the provisions of the preceding paragraph, the principal secured shall be deemed to have been fixed at the time of the merger.
- (5) The demand under the provisions of Paragraph 3 may not be made if two weeks have elapsed since the day when the revolving mortgagor acquired knowledge of the merger. The same shall apply if one month has elapsed from the day of the merger.

#### Article 398-10 (Company Splits of Revolving Mortgagees or Obligor)

- (1) If, before the principal is fixed, a split in which the relevant revolving mortgagee is the company to be split is effected, the Revolving Mortgage shall secure the claims that exist at the time of the split and shall otherwise secure 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 fixed, a split in which the relevant obligor is the company to be split is effected, the Revolving Mortgage shall secure the obligations that exist at the time of the split and shall otherwise secure 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 shall apply mutatis mutandis to cases under the preceding two paragraphs.

#### Article 398-11 (Disposition of Revolving Mortgages)

- (1) Before the principal is fixed, a revolving mortgagee cannot dispose of a Revolving Mortgage under the provisions of Paragraph 1 of Article 376; provided, however, that he/she shall not be precluded from applying that Revolving Mortgage to secure other claims.
- (2) The provisions of Paragraph 2 of Article 377 shall not apply to payments made before the principal is fixed in the cases provided for in the proviso to the preceding paragraph.

#### Article 398-12 (Assignments of Revolving Mortgages)

- (1) Before the principal is fixed, a revolving mortgagee may assign a Revolving Mortgage, with the approval of the revolving mortgagor.
- (2) A revolving mortgagee may divide his/her Revolving Mortgage into two Revolving Mortgages and assign either of the same in accordance with the provisions of the preceding paragraph. In such cases, the rights for which that Revolving Mortgage is the subject matter shall be 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 who holds the rights for which that Revolving Mortgage is the subject matter must be obtained.

#### Article 398-13 (Partial Assignments of Revolving Mortgages)

Before the principal is fixed, a revolving mortgagee may, with the approval of the revolving mortgagor, effect a partial assignment of the Revolving Mortgage (hereinafter in this Section referring to assignments of Revolving Mortgages that the assignor effects without dividing the Revolving Mortgage in order to co-own the same with the assignee).

#### Article 398-14 (Co-ownership of Revolving Mortgages)

- (1) Co-owners of a Revolving Mortgage shall be paid in proportion to the amount of their respective claims; provided, however, that, if before the principal is fixed, a

proportion other than the above is agreed, or if it is agreed that a certain person should be paid prior to the others, that agreement shall prevail.

- (2) A co-owner in a Revolving Mortgage may, with the consent of the other co-owners, assign rights of the same in accordance with the provisions of Paragraph 1 of Article 398-12.

#### Article 398-15 (Assignments or Waivers of Order of Priority of Mortgages and Assignments or Partial Assignments of Revolving Mortgages)

If a revolving mortgagee who has accepted an assignment or waiver of the order of priority of a mortgage has assigned or partially assigned his/her Revolving Mortgage, the assignee shall receive the benefit of the assignment or waiver of that order of priority.

#### Article 398-16 (Joint Revolving Mortgages)

The provisions of Articles 392 and 393 shall apply with respect to Revolving Mortgages, limited to cases where, simultaneously with the establishment of the same, it is registered that a Revolving Mortgage has been established on several immovable properties to secure the same claim.

#### Article 398-17 (Alterations of Joint Revolving Mortgages)

- (1) An alteration 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 shall not take effect unless registration is effected with respect to all immovable properties over which that Revolving Mortgages are established.
- (2) The principal that is to be secured by the Revolving Mortgages for which the registration under the preceding article is effected shall be fixed even where grounds that would fix the same with respect to one immovable property alone arise.

#### Article 398-18 (Aggregate Revolving Mortgages)

A person who has Revolving Mortgages on several immovable properties may exercise his/her 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.

#### Article 398-19 (Requests for Fixing of Principal of Revolving Mortgages)

- (1) If three years have elapsed from the time of the creation of a Revolving Mortgage, the revolving mortgagor may request the fixing of the principal secured.  
In such cases, the principal secured shall be fixed when two weeks have elapsed

since the time of that request.

- (2) A revolving mortgagee may request the fixing of the principal secured at any time. In such cases, the principal secured shall be fixed on the request of the same.
- (3) The provisions of the preceding two paragraphs shall not apply in cases where the date on which the principal secured is to be fixed is prescribed.

#### Article 398-20 (Grounds for Fixing of Principal of Revolving Mortgages)

- (1) The principal secured by a Revolving Mortgage shall be fixed in the following cases:
  - (i) If the revolving mortgagee has filed, with respect to the Mortgaged Immovable Properties, a petition for auction or execution against profits from secured immovable properties or the attachment under the provisions of Article 304 cited in Article 372; provided, however, that this provision shall apply only in cases where the commencement of either auction procedures or execution procedures against secured immovable properties to realize profits, or an attachment has been effected;
  - (ii) If the revolving mortgagee has effected an attachment for delinquent taxes against the Mortgaged Immovable Properties;
  - (iii) If two weeks have elapsed from the time when the revolving mortgagee acquired knowledge of the commencement of auction procedures or attachment for delinquent taxes against the Mortgaged Immovable Properties; or
  - (iv) If the obligor or revolving mortgagor has become subject to a ruling for the commencement of bankruptcy procedures.
- (2) If the effect of the commencement of auction procedures, the attachment under Item (iii) of the preceding paragraph or the ruling to commence bankruptcy procedures under Item (iv) of that paragraph has been extinguished, it shall be deemed that the principal secured was not fixed; provided, however, that this shall not apply if any 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 fixed.

#### Article 398-21 (Requests for Reductions in Maximum Amount of Revolving Mortgages)

- (1) After the principal is fixed, the revolving mortgagor 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 periodical payments including interest and the amount of damages due to default in obligations that will arise in the following two years.
- (2) As to reductions in the maximum amount of Revolving Mortgages for which

registration under Article 398-16 has been effected, the request under the preceding paragraph shall be sufficient if made with respect to one of those immovable properties.

#### Article 398-22 (Requests for Extinction of Revolving Mortgages)

- (1) If the amount of the obligations actually in existence after the principal is fixed exceeds the maximum amount of the Revolving Mortgage, a person who created his/her Revolving Mortgage to secure obligations of others or a third party who acquired ownership, superficies, emphyteusis or a lease that can be asserted against any third party with respect to the Mortgaged Immovable Properties, may request the extinction of that Revolving Mortgage by tendering or depositing an amount equivalent to that maximum amount. In such cases, that tender or deposit shall have the effect of payment.
- (2) Revolving Mortgages for which registrations are effected under Article 398-16 shall be extinguished if the request for extinction in accordance with the preceding paragraph is made with respect to one immovable property.
- (3) The provisions of Articles 380 and 381 shall apply mutatis mutandis to the requests for extinction under Paragraph 1.

## **Chapter 2 Contracts**

### **Section 1 General Provisions**

#### **Subsection 1 Formation of Contracts**

##### Article 521 (Offers that Specify Period for Acceptance)

- (1) An offer which specifies a period for acceptance may not be revoked.
- (2) If an offeror does not receive notice of acceptance of the offer set forth in the preceding paragraph within the period referred to in the same paragraph, the offer shall cease to be effective.

##### Article 522 (Late Arrival of Notices of Acceptance)

- (1) Even in cases where the notice of acceptance of the offer under Paragraph 1 of the preceding Article arrives after the lapse of the period referred to in the same paragraph, if the offeror is in a position to know that the notice was dispatched at a time which, under normal circumstances, would have allowed the notice to arrive within that period, the offeror must dispatch a notice of late arrival to the other party without delay; provided, however, that this shall not apply when the offeror dispatches the notice of delay before the arrival of the notice of acceptance.
- (2) When the offeror fails to give the notice of late arrival referred to in the main

clause of the preceding paragraph, the notice of acceptance shall be deemed to have arrived within the period referred to in Paragraph 1 of the preceding Article.

Article 523 (Effect of Delayed Acceptance)

The offeror may deem a delayed acceptance to be a new offer.

Article 524 (Offers that do not Specify Period for Acceptance)

An offer made to a person at a distance without specifying a period for acceptance may not be revoked until the lapse of a reasonable period for the offeror to receive a notice of acceptance.

Article 525 (Offeror's Death or Loss of Capacity to Act)

The provisions of Paragraph 2 of Article 97 shall not apply where the offeror expresses his/her intention to the contrary, or the other party has come to know the fact of the offeror's death or loss of capacity to act.

Article 526 (Time of Formation of Contract between Persons at Distance)

- (1) A contract between persons at a distance shall be formed upon dispatch of the notice of acceptance.
- (2) In cases where no notice of acceptance is required due to the offeror's manifestation of intention or usage of trade, the contract shall be formed upon the occurrence of any fact which ought to be regarded as a manifestation of intention of acceptance.

Article 527 (Late Arrival of Notices of Revocation of Offer)

- (1) Even if a notice to revoke an offer arrives after the dispatch of the acceptance notice, if the offeree is in a position to know that the notice was dispatched at a time which, under normal circumstances would have allowed the notice to arrive before the dispatch of the acceptance notice, the offeree must dispatch a notice of the late arrival to the offeror without delay.
- (2) If the offeree fails to give the notice of late arrival referred to in the preceding paragraph, it shall be deemed that no contract was formed.

Article 528 (Acceptances which Modify Offer)

If the offeree has accepted the offer by adding any condition or by making any other modification, it shall be deemed that the offeree has refused the offer and has made a new offer.

Article 529 (Advertisements Offering Prizes)

A person who places an advertisement to the effect that any person who performs a

defined act will be given a set reward (hereinafter in this Subsection referred to as an "advertiser offering prizes") shall be obligated to give the reward to the person who has performed the act.

#### Article 530 (Revocation of Advertisements Offering Prizes)

- (1) In the case set forth in the preceding Article, the advertiser offering prizes may revoke its advertisement using a method identical to that used for the above advertisement whilst no person has completed the designated act; provided, however, that this shall not apply when a statement to the effect that the offer will not be revoked was made in the advertisement.
- (2) Where revocation may not be carried out by the method provided in the main clause of the preceding paragraph, the revocation may be carried out by another method. In such cases, the revocation shall only be effective against persons with knowledge of the revocation.
- (3) If the advertiser offering prizes specifies the period during which the designated act must be performed, it shall be presumed that the advertiser has waived its right to revoke.

#### Article 531 (Right to Receive Rewards in Advertisements Offering Prizes)

- (1) If more than one person has performed the act designated in the advertisement, only the person who performed the act first shall be entitled to receive the reward.
- (2) Where two or more persons have performed the act set forth in the preceding paragraph simultaneously, each shall be entitled to receive an equal share of the reward; provided, however, that the person entitled to the reward shall be selected by lot if the reward is by nature indivisible, or the advertisement provides that only one person is entitled to receive the reward.
- (3) The provisions of the preceding two paragraphs shall not apply if the advertisement expresses any intention to the contrary.

#### Article 532 (Advertisement Offering Prizes to Most Outstanding Applicant)

- (1) If, in cases where two or more persons have performed the act designated in the advertisement, the reward is to be given only to the most outstanding applicant, the advertisement shall be effective only if it specifies the application period.
- (2) In the cases of the preceding paragraph, the most outstanding applicant shall be judged by the person specified in the advertisement and if no such person is specified in the advertisement, by the person who places the advertisement.
- (3) Applicants may not raise any objection to the judge's decision referred to in the preceding paragraph.
- (4) The provision of the second paragraph of the preceding Article shall apply mutatis mutandis to cases where the acts of two or more persons are judged to be

equal.

## **Subsection 2 Effect of Contracts**

### **Article 533 (Defense for Simultaneous Performance)**

A party to a bilateral contract may refuse to perform his/her own obligation until the other party tenders the performance of his/her obligation; provided, however, that this shall not apply if the obligation of the other party is not yet due.

### **Article 534 (Obligees to Assume Risk)**

- (1) In cases where the purpose of a bilateral contract is the creation or transfer of real rights regarding specified things, if the things have been lost or damaged due to reasons not attributable to the obligor, such loss or damage shall fall on the obligee.
- (2) The provisions of the preceding paragraph shall apply to any contract regarding unspecified things from the time when the things have been identified in accordance with the provisions of Paragraph 2 of Article 401.

### **Article 535 (Assumption of Risk in Bilateral Contract with Condition Precedent)**

- (1) The provisions of the preceding Article shall not apply where the subject matter of a bilateral contract with conditions precedent is lost whilst the conditions are pending.
- (2) If the subject matter of a bilateral contract with conditions precedent has been lost or damaged due to reasons not attributable to the obligor, the loss or damage shall fall on obligee.
- (3) In cases where the subject matter of a bilateral contract with conditions precedent has been lost or damaged due to reasons attributable to the obligor, if the condition has been satisfied, the obligee may, at his/her choice, demand performance or exercise the obligee's right to cancel. In such cases, claims for damages shall not be precluded.

### **Article 536 (Obligors' Assumption of Risk)**

- (1) Except in the cases provided for in the preceding two Articles, if the performance of any obligation has become impossible due to reasons not attributable to either party, the obligor shall not have the right to receive performance in return.
- (2) If the performance of any obligation has become impossible due to reasons attributable to the obligee, the obligor shall not lose his/her right to receive performance in return. In such cases, if the obligor gains any benefit as a result of being released from his/her own obligation, the obligor must reimburse the obligee for the benefit.

Article 537 (Contracts for the Benefit of Third Parties)

- (1) If one of the parties promises in a contract that he/she will tender a certain performance to any third party, the third party shall have the right to claim that performance directly from the obligor.
- (2) In the cases set forth in the preceding paragraph, rights of the third party shall accrue when the third party has expressed his/her intention to the obligor to enjoy the benefit of the contract under that paragraph.

Article 538 (Determination of Rights of the Third Party)

After rights of the third party have come into existence in accordance with the provisions of the preceding Article, the parties may not modify or extinguish those rights.

Article 539 (Obligors' Defense)

The obligor may raise the defense founded on the contract referred to in Paragraph 1 of Article 537 against a third party who is to enjoy the benefit of the contract.

**Subsection 3 Cancellation of Contracts**

Article 540 (Exercise of Right to Cancel)

- (1) If one of the parties has a right to cancel in accordance with the provisions of the contract or law, the cancellation shall be effected by manifestation of intention to the other party.
- (2) The manifestation of intention under the preceding paragraph may not be revoked.

Article 541 (Right to Cancel for Delayed Performance)

In cases where one of the parties does not perform his/her obligations, if the other party demands performance of the obligations, specifying a reasonable period and no performance is tendered during that period, the other party may cancel the contract.

Article 542 (Right to Cancel for Delayed Performance where Time is of the Essence)

In cases where, 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 performance is carried out at a specific time and date or within a certain period of time, if one of the parties has failed to perform at the time that period lapses, the other party may immediately cancel the contract without making the demand referred to in the preceding Article.

Article 543 (Right to Cancel for Impossibility of Performance)

If performance has become impossible, in whole or in part, the obligee may cancel the contract; provided, however, that this shall not apply if the failure to perform the obligation is due to reasons not attributable to the obligor.

Article 544 (Indivisible Nature of Right to Cancel)

- (1) If one party is constituted 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 set forth in the preceding paragraph, if the right to cancel is extinguished with respect to one of the persons who constitute a party, it shall also be extinguished with respect to the other persons.

Article 545 (Effect of Cancellation)

- (1) If one of the parties exercises his/her right to cancel, each party shall assume an obligation to restore the other party to that other party's original position; provided, however, that this shall not prejudice the rights of a third party.
- (2) In the case set forth 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) The exercise of the right to cancel shall not preclude claims for damages.

Article 546 (Cancellation of Contract and Simultaneous Performance)

The provisions of Article 533 shall apply *mutatis mutandis* to the preceding Article.

Article 547 (Extinguishment of Right to Cancel by Demand)

If no period is provided 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, to the effect that the holder of the right to cancel is to give a definite answer as to whether or not the right will be exercised within that period. In such cases, if no notice of cancellation is received within that period, the right to cancel shall be extinguished.

Article 548 (Extinguishment of Right to Cancel by Acts of Holder of Right to Cancel)

- (1) The right to cancel shall be extinguished if the holder of the right to cancel has significantly damaged, or has become unable to return, the subject matter of the contract due to his/her act or negligence, or has converted the subject matter into any other kind of thing by processing or alteration.
- (2) The right to cancel shall not be extinguished if the subject matter of the contract has been lost or damaged due to reasons not attributable to any act or negligence of the holder of the right to cancel.

## **Section 2 Gifts**

### **Article 549 (Gifts)**

Gifts shall become effective by the manifestation by one of the parties of his/her intention to give his/her property to the other party gratuitously, and the acceptance of the other party thereof.

### **Article 550 (Revocation of Gift Not in Writing)**

Gifts not in writing may be revoked by either party; provided, however, that this shall not apply to any portion of the gift for which performance has been completed.

### **Article 551 (Warranty by Donor)**

- (1) The donor shall not be liable for any defect in or absence of the thing or right that is the subject matter of the gift; provided, however, that this shall not apply if the donor has knowledge of the defect or absence and fails to inform the donee thereof.
- (2) With respect to encumbered gifts, the donor shall assume a warranty identical to that borne by the seller, to the extent of that encumbrance.

### **Article 552 (Periodic Gifts)**

Periodic gifts shall lose its effect on the death of the donor or the donee.

### **Article 553 (Encumbered Gifts)**

With respect to gifts with burden, in addition to the provisions of this Section, the provisions regarding bilateral contracts shall apply mutatis mutandis, to the extent those provisions are not inconsistent with the nature of gifts with burden.

### **Article 554 (Gifts on Donor's Death)**

With respect to gifts that become effective on the death of the donor, the provisions regarding testamentary gifts shall 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**

#### **Article 555 (Sale)**

A sale shall become effective when one of the parties promises to transfer a certain real rights to the other party and the other party promises to pay the purchase

money for it.

Article 556 (Pre-contract of Sales Exercisable by One Party)

- (1) A pre-contract to sell or purchase made by one party shall take the effect of a sale when the other party has manifested his/her intention to complete such sale.
- (2) If no period is provided in relation to the manifestation of intention set forth in the preceding paragraph, the other party to the pre-contact may issue a notice of demand to the other party, specifying a reasonable period, to the effect that the other party is to give a definite answer as to whether or not he/she will complete the sale within that period. In such cases, if the other party fails to give a definite answer within that period, the pre-contract of sale by one party shall lose its effect.

Article 557 (Earnest Money)

- (1) When the buyer delivers earnest money to the seller, the buyer may cancel the contract by forfeiting his/her earnest money or the seller may cancel the contract by reimbursing twice its amount, until either party commences performance of the contract.
- (2) The provisions of Paragraph 3 of Article 545 shall not apply to cases set forth in the preceding paragraph.

Article 558 (Expenses of Contracts for Sale)

The expenses of contracts for sale shall be borne equally by both parties.

Article 559 (Mutatis Mutandis Application to Contracts for Value)

The provisions of this Section shall apply mutatis mutandis to contracts for value other than contracts for sale; provided, however that this shall not apply when it is not permitted by the nature of the contract for value.

**Subsection 2 Effect of Sale**

Article 560 (Seller's Obligation when Selling Rights of Others)

If the subject matter of the sale is the rights of others, the seller shall assume an obligation to acquire the rights and transfer the same to the buyer.

Article 561 (Seller's Warranty when Selling Rights of Others)

In the cases set forth in the preceding Article, if the seller cannot acquire and transfer to the buyer the rights the seller has sold, the buyer may cancel the contract. In such cases, if the buyer knew, at the time of the contract, that the rights did not belong to the seller, the buyer may not demand compensation for damages.

Article 562 (Innocent Seller's Right of Cancellation in a Sale of Others' Rights)

- (1) In cases where the seller, at the moment of the contract, does not know that the rights the seller has sold do not belong to him/her, if the seller cannot acquire the rights and transfer the same to the buyer, the seller may cancel the contract by compensating any damages.
- (2) In the cases set forth in the preceding paragraph, if the buyer, at the moment of the contract, knows that the rights the buyer has bought do not belong to the seller, the seller may cancel the contract by simply notifying the buyer to the effect that the seller cannot transfer the rights sold.

Article 563 (Seller's Warranty where Rights Partially Belonged to Others)

- (1) If the seller cannot transfer any part of the rights which are the subject matter of the sale because the part of the rights belongs to others, the seller may demand a reduction of the purchase money in proportion to the value of the part in shortage.
- (2) In the cases set forth in the preceding paragraph, a buyer in good faith may cancel the contract if the buyer would not have bought the rights if the rights consisted only of the remaining portion.
- (3) A demand for the reduction in the purchase money or cancellation of the contract shall not preclude a buyer in good faith from making a claim for damages.

Article 564

The rights under the preceding Article must be exercised within one year from the time when the buyer knew the facts if the buyer was in good faith, or within one year from the time of the contract if the buyer had knowledge, as the case may be.

Article 565 (Seller's Warranty in Cases of Shortage in Quantity or Partial Loss of Object)

The provisions of the preceding two Articles shall apply mutatis mutandis in cases where there is any shortage in the object of a sale made for a designated quantity, or in cases where part of the object was already lost at the time of the contract, if the buyer did not know of the shortage or loss.

Article 566 (Seller's Warranty in cases of Superficies or Other Rights)

- (1) In cases where the subject matter of the sale is encumbered with for the purpose of a superficies, an emphyteusis, an easement, a right of retention or a pledge, if the buyer does not know the same and cannot achieve the purpose of the contract on account thereof, the buyer may cancel the contract. In such cases, if the contract cannot be cancelled, the buyer may only demand compensation for damages.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis in cases

where an easement that was referred to as being in existence for the benefit of immovable property that is the subject matter of a sale, does not exist, and in cases where a leasehold is registered with respect to the immovable property.

- (3) In the cases set forth in the preceding two paragraphs, the cancellation of the contract or claim for damages must be made within one year from the time when the buyer comes to know the facts.

#### Article 567 (Seller's Warranty in cases of Mortgage or Other Rights)

- (1) If the buyer loses his/her ownership of immovable property that is the object of a sale because of the exercise of an existing statutory lien or mortgage, the buyer may cancel the contract.
- (2) If the buyer preserves his/her ownership by incurring expenditure for costs, he/she may claim reimbursement of those costs from the seller.
- (3) In the cases set forth in the preceding two paragraphs, the buyer may claim compensation if he/she suffered loss.

#### Article 568 (Warranty in cases of Compulsory Auctions)

- (1) The successful bidder at compulsory auction may cancel the contract or demand a reduction from the purchase money against the obligor in accordance with the provisions from Article 561 through to the preceding Article.
- (2) In the cases set forth in the preceding paragraph, if the obligor is insolvent, the successful bidder may demand total or partial reimbursement of the proceeds against the obligees who 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 obligors knew of the absence but demanded an auction, the successful bidder may demand compensation for damages against those persons.

#### Article 569 (Seller's Warranty for Claims)

- (1) If the seller of a claim warrants the solvency of the obligor, it shall be 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 shall be presumed that he/she warranted the solvency as at the due date.

#### Article 570 (Seller's Warranty against Defects)

If there is any latent defect in the subject matter of a sale, the provisions of Article 566 shall apply *mutatis mutandis*; provided, however, that this shall not apply in cases of compulsory auction.

#### Article 571 (Seller's Warranty and Simultaneous Performance)

The provisions of Article 533 shall apply mutatis mutandis to the cases set forth from Article 563 through to Article 566 and in the preceding Article.

Article 572 (Special Agreement Disclaiming Warranty)

Even if the seller makes a special agreement to the effect that the seller will not provide the warranties set forth from Article 560 through to the preceding Article, 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 himself/herself created for or assigned to a third party.

Article 573 (Due Date for Payment of Purchase money)

If there is a due date for the delivery of the subject matter of the sale, it shall be presumed that the same due date was also agreed for the payment of the purchase money.

Article 574 (Place of Payment of Purchase money)

If the purchase money is to be paid simultaneously with delivery of the subject matter of the sale, the payment must be made at the place of delivery.

Article 575 (Ownership in Fruit and Payment of Interest on Purchase money)

- (1) If any subject matter of a sale that is not delivered yet bears any fruit, the fruit shall vest in the seller.
- (2) The buyer shall assume an obligation to pay the interest on the purchase money from the day of delivery; provided, however, that, if a due date is provided for the payment of the purchase money, it shall not be necessary to pay the interest until that due date arrives.

Article 576 (Refusal by Buyer to Pay Purchase money where Loss of Rights is Likely)

If the buyer is likely to lose the rights he/she has bought, in whole or in part, due to the existence of persons who assert rights to the subject matter of the sale, the buyer may refuse to pay the purchase money, in whole or in part, in proportion to the extent of that likelihood; provided, however, that this shall not apply if the seller has provided reasonable security.

Article 577 (Refusal by Buyer to Pay Purchase money in cases of Registered Mortgage)

- (1) If any mortgage is registered on immovable property that has been purchased, the buyer may refuse to pay the purchase money 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 shall apply mutatis mutandis to cases where a statutory lien or pledge is registered on the immovable property that has been bought.

#### Article 578 (Seller's Demand for Deposit of Purchase money)

In the cases of the preceding two paragraphs, the seller may demand that the buyer deposit the purchase money.

### **Subsection 3 Redemption**

#### Article 579 (Special Agreement on Redemption)

The buyer of immovable property may cancel the sale by refunding the purchase money 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 cases, unless a contrary intention is manifested by the parties, it shall be deemed that the fruit of the immovable property and the interest on the purchase money have been set off against each other.

#### Article 580 (Period for Redemption)

- (1) The period for the redemption may not exceed ten years. If any special agreement provides for any period longer than the above, the period shall be ten years.
- (2) If a period for the redemption is agreed, no further extension may be effected subsequently.
- (3) If no period for the redemption is agreed, the redemption must be effected within five years.

#### Article 581 (Perfection of Special Agreement on Redemption)

- (1) If the special agreement on redemption is registered simultaneously with the contract for sale, the redemption shall also be effective against third parties.
- (2) The rights of a lessee who effected registration can be asserted against the seller while the lease remains effective, limited to a period not exceeding one year; provided, however, that this shall not apply if the lease is entered into with the purpose of harming the seller.

#### Article 582 (Exercise of Right of Redemption by way of Subrogation)

If an obligee of the seller intends to effect redemption on behalf of the seller in accordance with 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 immovable property as evaluated by a court-appointed appraiser, and, if any positive balance remains, by refunding the same to the seller.

#### Article 583 (Implementation of Redemption)

- (1) A seller may not effect redemption unless the seller provides the purchase money 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 immovable property, the seller must reimburse those expenses in accordance with the provisions of Article 196; provided, however, that, with respect to useful expenses, the court may, at the seller's request, grant a reasonable period for the reimbursement.

#### Article 584 (Sale of Co-ownership Interest with Special Agreements on Redemption)

If one of the co-owners of immovable property sells his/her equity interest with special agreements on its redemption and the immovable property is then divided or subjected to auction, the seller may redeem the portion or purchase money that the buyer receives or is to receive; provided, however, that any division or auction effected without notice to the seller may not be asserted against the seller.

#### Article 585

- (1) In the cases of the preceding Article, if the buyer is the successful bidder at the auction of the immovable property, the seller may effect the redemption by paying the auction price and the costs provided for in Article 583. In such cases, the seller shall acquire full ownership of the immovable property.
- (2) If the buyer has become the successful bidder at an auction as the result of the request of division by other joint owner(s), the seller may not effect the redemption with respect only to his/her own share.

### **Section 4 Exchange**

#### Article 586

- (1) An exchange shall become effective by the mutual promises by the parties to transfer any property right other than the ownership of money.
- (2) In cases where one of the parties promises to transfer the ownership of money together with other rights, the provisions regarding purchase money for sale contracts shall apply mutatis mutandis to that money.

### **Section 5 Loans for Consumption**

#### Article 587 (Loans for Consumption)

A loan for consumption shall become effective when one of the parties receives money or other things from the other party by promising that he/she will return by means of things that are the same in kind, quality and quantity.

#### Article 588 (Quasi-loans for Consumption)

In cases where any person has an obligation to provide money or other things under any arrangement which is not a loan for consumption, if the parties agree to regard such things as the subject matter of a loan for consumption, it shall be deemed that this establishes a loan for consumption.

#### Article 589 (Pre-contract of Loans for Consumption and Commencement of Bankruptcy Procedures)

The pre-contract of a loan for consumption shall lose its effect if a ruling for the commencement of bankruptcy procedures is subsequently made against one of the parties.

#### Article 590 (Lender's Warranty)

- (1) If there is any latent defect in any borrowed Thing in a loan for consumption with interest, the lender must replace it with another Thing without defect. In such cases, claims for damages shall not be precluded.
- (2) In a loan for consumption without interest, the borrower may return the value of a borrowed Thing that is defective. In such cases, the provisions of the preceding paragraph shall apply *mutatis mutandis* if the lender knew of the defect but did not disclose the same to the borrower.

#### Article 591 (Timing of Returns)

- (1) If the parties do not define the time for return of borrowed Things, the lender may demand their return, specifying a reasonable period.
- (2) The borrower may return borrowed Things at any time.

#### Article 592 (Reimbursement of Value)

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 return the current value of the Things; provided, however, that this shall not apply in the cases provided for in Paragraph 2 of Article 402.

### **Section 6 Loans for Use**

#### Article 593 (Loans for Use)

A loan for use shall become effective when one of the parties receives a defined Thing from the other party by promising that he/she will return the Thing after he/she has gratuitously made use of and taken the profits of the same .

#### Article 594 (Borrower's Use and Profit)

- (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 preceding two paragraphs, the lender may cancel the contract.

#### Article 595 (Responsibility for Costs of Borrowed Things)

- (1) The borrower shall bear the ordinarily necessary costs of borrowed Things.
- (2) The provisions of Paragraph 2 of Article 583 shall apply mutatis mutandis to costs other than the ordinarily necessary costs under the preceding paragraph.

#### Article 596 (Lender's Warranty)

The provisions of Article 551 shall apply mutatis mutandis to loans for use.

#### Article 597 (Timing of Returns of Borrowed Things)

- (1) A borrower must return borrowed Things at the time specified in the contract.
- (2) When the parties have not specified a time for return, the borrower must return the borrowed Things when he/she has completed to make use of or take the profits of the same in compliance with the purposes provided for in the contract; provided, however, that the lender may demand the immediate return of the borrowed Things even before the completion of using or taking profits if a period sufficient for using or taking profits has elapsed.
- (3) If the parties have not specified the timing of the return and the purposes of the using and taking profits, the lender may demand the return of the borrowed Things at any time.

#### Article 598 (Removal by Borrower)

A borrower may restore a borrowed Thing to its original condition and remove anything attached to the same.

#### Article 599 (Termination of Loan for Use upon Death of Borrower)

Loans for use shall lose its effect on the death of the borrower.

Article 600 (Restriction on Period of Rights to Demand Compensation for Damages and Reimbursement of Costs)

Claims for compensation for damages resulting from using or taking profits of the Thing inconsistent with the main purport of the contract, and for the reimbursement of costs incurred by the borrower, must be submitted within one year from the time when the lender receives the return of the borrowed Things.

## **Section 7 Leases**

### **Subsection 1 General Provisions**

Article 601 (Leases)

A lease shall become effective when one of the parties promises to make a certain Thing available for the using and taking the profits by the other party and the other party promises to pay rent for the same.

Article 602 (Short-term Leases)

In cases where a person with limited capacity to act or a person with no authority with respect to the act of disposition makes a lease contract, the leases listed in the following items shall not exceed the terms prescribed respectively in those items:

- (i) Leases of forest for the purpose of planting or felling trees: 10 years;
- (ii) Leases of land other than the leases listed in the preceding item: 5 years;
- (iii) Lease of a building: 3 years; and
- (iv) Lease of a movable : 6 months.

Article 603 (Renewal of Short-term Leases)

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 3 months prior to the expiration of the term for a building, and within 1 month prior to the expiration of the term for a movable.

Article 604 (Duration of Lease)

- (1) The duration of a lease may not exceed twenty years. Even if the contract prescribes a longer term, the term shall be 20 years.
- (2) The duration of a lease may be renewed; provided, however, that such period may not exceed twenty years from the time of the renewal.

### **Subsection 2 Effect of Lease**

Article 605 (Perfection of Leasehold)

A lease of immovable property, when registered, shall also be effective against a person who subsequently acquires real rights with respect to the immovable property.

Article 606 (Repairs of Leased Things)

- (1) A lessor shall assume an obligation to effect repairs necessary for using and taking the profits of the leased Things.
- (2) The lessee may not refuse if the lessor intends to engage in any act that is necessary for the preservation of the leased Thing.

Article 607 (Act to Preserve against the Will of the Lessee)

In cases where the lessor intends to engage in an act to preserve the leased Thing against the will of the lessee, if the lessee cannot achieve the purpose of the lease as a result of the same, the lessee may cancel the contract.

Article 608 (Lessee's Demand for Reimbursement of Costs)

- (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 useful expenses with respect to the leased Thing, the lessor must reimburse those expenses on termination of the lease in compliance with the provisions of Paragraph 2 of Article 196; provided, however, that the court may, at the lessor's request, grant a reasonable period for the reimbursement of the same.

Article 609 (Demand for Reduction of Rent due to Decrease in Profits)

A lessee of land for the purpose of profit making may, if he/she obtains profits less than the rent due to force majeure, demand that the amount of the rent be reduced to the level of the amount of the profits; provided, however, that this shall not apply with respect to leases of residential land.

Article 610 (Termination due to Decrease in Profits)

In the cases of the preceding Article, the lessee referred to in that Article may cancel the contract if he/she has made profits less than the rent for at least two consecutive years due to force majeure.

Article 611 (Demands for Reduction of Rent due to Partial Loss of Leased Thing)

- (1) If any part of a leased thing is lost due to reasons not attributable to the negligence of the lessee, the lessee may demand a reduction of the rent in proportion to the value of the lost part.

(2) In the cases set forth in the preceding paragraph, if the lessee cannot achieve the purpose of the lease with the remaining portion only, the lessee may cancel the contract.

#### Article 612 (Restrictions on Assignment and Subleasing of Leasehold)

- (1) A lessee may not assign the lessee's rights 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.

#### Article 613 (Effect of Subleases)

- (1) If a lessee lawfully subleases a leased Thing, the sublessee shall assume a direct obligation to the lessor. In such cases, advance payment of rent may not be asserted against the lessor.
- (2) The provisions of the preceding paragraph shall not preclude the lessor from exercising his/her rights against the lessee.

#### Article 614 (Timing of Payment of Rent)

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.

#### Article 615 (Obligation of Lessee to Give Notice)

If the leased Thing requires any repair, or if any person asserts rights with respect to the leased Thing, the lessee must notify the lessor without delay; provided, however, that this shall not apply if this is already known to the lessor.

#### Article 616 (Mutatis Mutandis Application of Loans for Use)

The provisions of Paragraph 1 of Article 594, Paragraph 1 of Article 597 and Article 598 shall apply mutatis mutandis to leases.

### **Subsection 3 Termination of Leases**

#### Article 617 (Offers to Terminate Leases with Indefinite Terms)

- (1) If the parties do not specify the term of a lease, either party may request to terminate it at any time. In such cases, the leases listed in the following items shall terminate on the expiration of the respective periods from the day of the request to terminate prescribed respectively in those items:

- (i) Leases of land: one year;
  - (ii) Leases of buildings: three months; and
  - (iii) Leases of movables and seating hire facilities: one day.
- (2) With respect to leases of land with harvest seasons, the request to terminate must be made after the end of that season and before the next start of cultivation.

#### Article 618 (Reservation of Rights to Terminate Leases with Definite Terms)

Even if the parties specify the term of a lease, the provisions of the preceding Article shall apply mutatis mutandis if one party reserves, or both parties reserve, the right to terminate during that period.

#### Article 619 (Presumption of Renewal of Leases)

- (1) In cases where a lessee continues to make use or take the profits of the Thing after the expiration of the term of the lease, if a lessor who knows of the same raises no objection, it shall be presumed that a further lease is entered into under conditions identical to those of the previous lease. In such cases, each party may request to terminate in accordance with the provisions of Article 617.
- (2) If one of the parties has provided security for the previous lease, the security shall be extinguished upon expiration of the term; provided, however, that this shall not apply to a security deposit.

#### Article 620 (Effect of Cancellations of Leases)

In cases where a lease is cancelled, the cancellation shall be effective solely toward the future. In such cases, if one of the parties is negligent, claims for damages against that party shall not be precluded.

#### Article 621 (Limitation on Periods of Rights to Demand Compensation for Damages and Reimbursement of Costs)

The provisions of Article 600 shall apply mutatis mutandis to leases.

#### Article 622

deleted

### **Section 8 Employment**

#### Article 623 (Employment)

An employment contract shall become effective when one of the parties promises to the other party that he/she will engage in work and the other party promises to pay remuneration for the same.

Article 624 (Timing of Payment of Remuneration)

- (1) An employee may not demand remuneration until the work he/she promised to perform has been completed.
- (2) Remuneration specified with reference to a period may be claimed on the expiration of that period.

Article 625 (Restrictions on Assignment of Employer's Rights)

- (1) An employer may not assign his/her rights to third parties unless the employer obtains the employee's consent.
- (2) An employee may not cause any third party to work on his/her behalf unless the employee obtains the employer's consent.
- (3) If an employee causes any third party to work in violation of the provisions of the preceding paragraph, the employer may cancel the contract.

Article 626 (Cancellation of Employment with Indefinite Term)

- (1) If the term of employment exceeds five years, or employment is to continue during the life of either party or any third party, either party may cancel the contract at any time after the expiration of five years; provided, however, that said five years shall be ten years with respect to employment for the purpose of apprenticeship in commerce and industry.
- (2) If a person intends to cancel a contract under the provisions of the preceding paragraph, he/she must give notice three months in advance.

Article 627 (Offer to Terminate Employment with Indefinite Term)

- (1) If the parties have not specified the term of employment, either party may request to terminate at any time. In such cases, employment shall terminate on the expiration of two weeks from the day of the request to terminate.
- (2) If remuneration is specified with reference to a period, the request to terminate may be made with respect to the following period of time onward; provided, however, that the request to terminate must be made in the first half of the current period.
- (3) If remuneration is specified with reference to a period of six months or more, the request to terminate under the preceding paragraph must be made three months before the termination.

Article 628 (Cancellation of Employment due to Unavoidable Reasons)

Even in cases where the parties have specified the term of employment, if there are unavoidable reasons, either party may immediately cancel the contract. In such cases, if the reasons arise from the negligence of either one of the parties, that party shall be liable to the other party for damages.

Article 629 (Presumption of Renewal of Employment)

- (1) In cases where an employee continues to engage in his/her work after the expiration of a term of employment, if an employer knows of the same and raises no objection, it shall be presumed that the further employment is entered into under conditions identical to those of the previous employment. In such cases, each party may request to termination under the provisions of Article 627.
- (2) If either party has provided security for the previous employment, the security shall be extinguished on the expiration of the term; provided, however, that this shall not apply to fidelity bonds.

Article 630 (Effect of Cancellation of Employment)

The provisions of Article 620 shall apply *mutatis mutandis* to employment.

Article 631 (Request to Terminate due to Commencement of Bankruptcy Procedures for Employer)

In cases where the employer is subject to a ruling for the commencement of bankruptcy procedures, the employee or the trustee in bankruptcy may request to terminate under 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 damages suffered as a result of the termination.

**Section 9 Contracts for Work**

Article 632 (Contracts for Work)

A contract for work shall 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.

Article 633 (Timing of Payment of Remuneration)

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(1) shall apply *mutatis mutandis*.

Article 634 (Contractor's Warranty)

- (1) If there is any defect in the subject matter of work performed, the party ordering the work may demand that the contractor repair the defect, specifying a reasonable period; provided, however, that this shall not apply if the defect is not significant and excessive costs would be required for the repair.
- (2) The party ordering the work may demand compensation for damages in lieu of,

or in addition to, the repair of the defect. In such cases, the provisions of Article 533 shall apply mutatis mutandis.

#### Article 635

If there is any defect in the subject matter of work performed and the purpose of the contract cannot be achieved because of the defect, the party ordering the work may cancel the contract; provided, however, that this shall not apply to a building or other structure on land.

#### Article 636 (No Application of Provisions on Contractor's Warranty)

The provisions of the preceding two Articles shall not apply if the defect in the subject matter of the work arises due to the nature of the materials supplied by, or instructions given by, the party ordering the work; provided, however, that this shall not apply if the contractor knew that the materials or instructions were inappropriate but did not disclose the same.

#### Article 637 (Duration of Contractor's Warranty)

- (1) The demand for repair or claim for damages and cancellation of the contract under the preceding three Articles must be made within one year from the time of the delivery of the subject matter of the work.
- (2) Where no delivery of the subject matter is required, the period referred to in the preceding paragraph commences to run from the time of the completion of the work.

#### Article 638

- (1) A contractor for a building or other structure on land shall be liable for a warranty against defects in the structure or ground for the period of five years from delivery; provided, however, that the period shall be ten years for structures made of stone, earth, bricks, concrete, steel and other similar structures.
- (2) If any structure is lost or damaged due to the defects set forth in the preceding paragraph, the party ordering the work must exercise the rights under the provisions of Article 634 within one year from the time of the loss or damage.

#### Article 639 (Extension of Duration of Warranty)

The periods set forth in Article 637 and Paragraph 1 of the preceding Article may be extended by contract so long as they do not exceed the period of time provided for the extinctive prescription under the provisions of Article 167.

#### Article 640 (Special Agreement of No Warranty)

Even if the contractor agrees to a special agreement to the effect that the

contractor will not be liable for the warranty provided in Article 634 or Article 635, the contractor may not be released from the contractor's liability with respect to facts the contractor knew and did not disclose.

#### Article 641 (Cancellation of Contract by Party Ordering Work)

The party ordering work may cancel the contract at any time whilst the contractor has not completed the work by compensating any damages.

#### Article 642 (Cancellation on Commencement of Bankruptcy Procedures for Party Ordering Work)

- (1) In cases where the party ordering work is subject to a ruling for the commencement of bankruptcy procedures, the contractor or the trustee in bankruptcy may cancel the contract. In such cases, the contractor may participate in the distribution of the bankrupt estate with respect to remuneration for the work already performed and any costs not included in that remuneration.
- (2) In the cases set forth in the preceding paragraph, claims for damages suffered as a result of the cancellation of the contract shall be permitted only for contractors under contracts cancelled by the trustee in bankruptcy. In such cases, the contractors shall participate in the distribution of the bankrupt estate with respect to such damages.

### **Section 10 Mandates**

#### Article 643 (Mandates)

A mandate shall become effective when one of the parties mandates the other party to perform a juristic act, and the other party accepts the mandate.

#### Article 644 (Duty of Care of Mandatary)

A mandatary shall assume a duty to administer the mandated business with the care of a good manager compliance with the main purport of the mandate.

#### Article 645 (Reports by Mandatary)

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 completion of the mandate.

#### Article 646 (Delivery of Received Things by Mandatary)

- (1) The mandatary must deliver to the mandator monies and other Things that he/she has received during the course of administering the mandated business. The same shall apply to fruits the mandatary has reaped.

- (2) The mandatary must transfer to the mandator rights the mandatary has acquired in his/her own name on behalf of the mandator.

#### Article 647 (Mandatary's Responsibility for Consumption of Monies)

If the mandatary has consumed monies for his/her personal benefit that the mandatary is to deliver to the mandator, or any monies that are to be 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 any damages still remain, the mandatary shall be liable to compensate for the same.

#### Article 648 (Remuneration for Mandatary)

- (1) In the absence of any special agreements, the mandatary may not claim remuneration from the mandator.
- (2) In cases where the mandatary is to receive remuneration, the mandatary may not claim the same until and unless he/she has performed the mandated business; provided, however, that if the remuneration is specified with reference to period, the provisions of Paragraph 2 of Article 624 shall apply mutatis mutandis.
- (3) If the mandate terminates during performance due to reasons not attributable to the mandatary, the mandatary may demand remuneration in proportion to the performance already completed.

#### Article 649 (Mandatary's Claims for Advance for Costs)

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.

#### Article 650 (Mandatary's Claims for Reimbursement of Expense)

- (1) If the mandatary has incurred 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 incurred.
- (2) If the mandatary has incurred 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 the mandatary suffers any loss due to the administration of the mandated business without negligence in the mandatary, he/she may claim compensation for the loss from the mandator.

#### Article 651 (Cancellation of Mandate)

- (1) A mandate may be cancelled by either party at any time.
- (2) If one of the parties cancels a mandate at a time that is detrimental to the other party, the former party must compensate the damages suffered by the other party; provided, however, that this shall not apply if there are unavoidable grounds.

#### Article 652 (Effect of Cancellation of Mandate)

The provision of Article 620 shall apply mutatis mutandis to mandates.

#### Article 653 (Grounds for Termination of Mandate)

A mandate shall terminate when:

- (i) The mandator or mandatary dies;
- (ii) The mandator or mandatary is subject to a ruling for the commencement of bankruptcy procedures;
- (iii) The mandatary is subject to an order for the commencement of guardianship.

#### Article 654 (Disposition after Termination of Mandate)

In cases where a mandate has terminated, if there are pressing circumstances, the mandatary or his/her heir or legal representative must effect necessary dispositions until the time when the mandator or his/her heir or legal representatives is able to take charge of the mandated business.

#### Article 655 (Requirement for Perfection of Termination of Mandate)

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.

#### Article 656 (Quasi-Mandate)

The provisions of this Section shall apply mutatis mutandis to mandates of business that do not constitute juristic acts.

### **Section 11 Deposits**

#### Article 657 (Deposits)

A deposit shall become effective when one of the parties receives a certain Thing by promising that he/she will retain it for the other party.

#### Article 658 (Use of Deposited Thing and Retention by Third Parties)

- (1) A depositary may not use, or allow third parties to retain, the Thing deposited without obtaining the consent of the depositor.
- (2) The provisions of Article 105 and paragraph 2 of Article 107 shall apply mutatis mutandis to cases where a depositary may allow third parties to retain deposited

Things.

Article 659 (Duty of Care of Gratuitous Depositary)

A person who has undertaken a deposit gratuitously shall assume a duty to retain the Thing deposited exercising care identical to that he/she exercises for his/her own property.

Article 660 (Obligation of Depositary to Give Notice)

If a third party asserting rights with respect to the Thing deposited has brought a lawsuit against the depositary, or has effected an attachment, provisional attachment, or provisional disposition, the depositary must notify the depositor of that fact without delay.

Article 661 (Compensation of Damages by Depositor)

The depositor must compensate the depositary for damages that occur due to the nature of or defects in the Thing deposited; provided, however, that this shall not apply if the depositor did not, without negligence, know of such nature or defect, or the depositary knew of the same.

Article 662 (Depositor's Demand for Return)

Even if the parties specify the time for the return of the Thing deposited, the depositor may demand the return of the same at any time.

Article 663 (Timing of Return of the Thing Deposited)

- (1) If the parties have not specified the timing of the return of the Thing deposited, the depositary may return the same at any time.
- (2) If the timing of the return is specified, the depositary may not return the deposited goods prior to the due date unless there are unavoidable grounds.

Article 664 (Place of Return of the Thing Deposited)

The place for the return of the Thing deposited must be at the place where they are to be retained; provided, however, that, if the depositary has changed the place of retention on reasonable grounds, the return may be made at that current place of retention.

Article 665 (Mutatis Mutandis Application of Provisions on Mandate)

The provisions of Article 646 to Article 650 (excluding Paragraph 3 of this Article) shall apply mutatis mutandis to deposits.

Article 666 (Deposits for Consumption)

- (1) The provisions of Section 5 (Loans for Consumption) shall apply mutatis mutandis to cases where a depositary may, under the contract, consume the Thing deposited.
- (2) Notwithstanding the provisions of Paragraph 1 of Article 591 which shall apply mutatis mutandis under the preceding paragraph, if the contract referred to in the preceding paragraph does not specify the timing of the return, the depositor may demand the return at any time.

## **Section 12 Partnerships**

### Article 667 (Partnership Contracts)

- (1) A partnership contract shall become effective when each of the parties promises to engage in joint business by making a contribution.
- (2) The subject of the contribution may be services .

### Article 668 (Joint Ownership in Partnership Property)

The contributions of the partners and other partnership property shall be jointly owned by all partners.

### Article 669 (Responsibility for Failure to Provide Monetary Contribution)

In cases where monies are the subject of the contribution, if any partner fails to contribute his/her share of the contribution, he/she must pay interest on the same and otherwise compensate for damages.

### Article 670 (Method of Business Management)

- (1) The management of partnership business shall be determined by the majority of the partners.
- (2) If more than one person is delegated to manage the business referred to in the preceding paragraph under the partnership contract (referred to in the following paragraph as "Operating Officers"), the same shall be determined by majority.
- (3) Notwithstanding the provisions of the preceding two paragraphs, the ordinary business of a partnership may be performed by each partner or each Operating Officer individually; provided, however, that this shall not apply if other partners or Operating Officers raise objections prior to the completion of the business.

### Article 671 (Mutatis Mutandis Application of Provisions on Mandates)

The provisions of Article 646 to Article 650 shall apply mutatis mutandis to partners who manage the business of a partnership.

### Article 672 (Resignations and Dismissals of Operating Partners)

- (1) If one or more partners are delegated to manage partnership business under the partnership contract, those partners may not resign without reasonable grounds.
- (2) The partners referred to in the preceding paragraph may be dismissed by the unanimous agreement of the other partners, limited to cases where there are justifiable grounds.

Article 673 (Inspections by Partners of Condition of Partnership Business and Property)

Each partner may inspect the condition of the business and property of the partnership even if he/she does not have the right to manage the business of the partnership.

Article 674 (Proportions of Partners' Distributions of Profits and Losses)

- (1) If partners have not specified the proportions of the distributions of the partnership's profits and losses, the proportions shall be determined in proportion to the value of each partner's contribution.
- (2) If the proportions of the distributions are specified solely with respect to either profits or losses, it shall be presumed that the proportions are common to profits and losses.

Article 675 (Exercise of Right of Creditors of the Partnership against Partners)

If a creditor of a partnership did not, when his/her claim arose, the proportions of the partners' shares of losses, the creditor may exercise his/her rights against each partner in equal proportions.

Article 676 (Disposal Partners' Shares and Division of Partnership Property)

- (1) If a partner disposes of his/her share with respect to the partnership property, the disposal may not be asserted against the partnership and third parties who had dealings with the partnership.
- (2) A partner may not seek the division of the partnership property before the same is liquidated.

Article 677 (No Set-off by Obligor of Partnership)

An obligor of a partnership may not set off his/her obligation against his/her claim against the partners.

Article 678 (Withdrawal of Partners)

- (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 are

unavoidable grounds, a partner may not withdraw at a time that is detrimental to the partnership.

- (2) Even in cases where the duration of the partnership is specified, each partner may withdraw if there are unavoidable grounds.

#### Article 679

In addition to the cases referred to in the preceding Article, partners shall withdraw on the following grounds:

- (i) The partner dies;
- (ii) The partner is subject to a ruling for the commencement of bankruptcy procedures;
- (iii) The partner is subject to an order for the commencement of guardianship;
- (iv) The partner has been expelled.

#### Article 680 (Expulsion of Partners)

The expulsion of a partner may be effected by the unanimous agreement of the other partners, limited to cases where there are justifiable grounds; provided, however, that the expulsion may not be asserted against a partner who is expelled unless a notice to that effect is given to that partner.

#### Article 681 (Refunds of Shares of Withdrawing Partners)

- (1) Accounts as between the withdrawing partner and other partners must be settled according to the condition of the partnership property as at the time of the withdrawal.
- (2) The share of the withdrawing partner may be refunded in money, regardless of the kind of his/her 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.

#### Article 682 (Causes of Dissolution of Partnerships)

A partnership shall be dissolved on the successful completion of the business that is its object, or by the impossibility of such successful completion.

#### Article 683 (Request for Dissolution of Partnerships)

Each partner may request the dissolution of the partnership if there are unavoidable grounds.

#### Article 684 (Effect of Cancellation of Partnership Contracts)

The provisions of Article 620 shall apply mutatis mutandis to partnership contracts.

Article 685 (Liquidation of Partnerships and Appointment of Liquidators)

- (1) When a partnership is dissolved, the liquidation shall be administered jointly by all partners or by a liquidator appointed by the same.
- (2) A liquidator shall be appointed by a majority of all partners.

Article 686 (Method of Management of Liquidators' Business)

The provisions of Article 670 shall apply mutatis mutandis to cases where there is more than one liquidator.

Article 687 (Resignations and Dismissals of Liquidators who are Partners)

The provisions of Article 672 shall apply mutatis mutandis to cases where the liquidator is appointed from among the partners under the partnership contract.

Article 688 (Duties and Authority of Liquidators and Method of Division of Residual Assets)

- (1) A liquidator shall have the duties to:
  - (i) conclude the current business
  - (ii) collect debts and perform obligations; and
  - (iii) deliver the residual assets.
- (2) The liquidator may perform any and all acts in order to perform its duties listed in the respective items of the preceding paragraph.
- (3) Residual assets shall be distributed in proportion to the value of the contributions of each partner.

**Section 13 Life Annuities**

Article 689(Life Annuities)

Life annuities shall become effective when one of the parties promises to deliver monies or 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.

Article 690 (Accounting for Life Annuities)

Life annuities shall be calculated on a daily basis.

Article 691 (Cancellation of Contracts for Life Annuities)

- (1) In cases where the obligor in a life annuity has received the principal for the life annuity, if the obligor 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 the amount of the life annuity he/she has

already received to the obligor of the life annuity, less the amount of the interest on that principal.

(2) The provisions of the preceding paragraph shall not preclude claims for damages.

Article 692 (Cancellation of Contracts for Life Annuities and Simultaneous Performance)

The provisions of Article 533 shall apply mutatis mutandis to cases referred to in the preceding Article.

Article 693 (Declaration of Continuation of Claim for Life Annuity)

(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, declare that the life annuity claim shall continue for a reasonable period.

(2) The provisions of the preceding paragraph shall not preclude the exercise of the rights provided in Article 691.

Article 694 (Testamentary Gifts of Life Annuities)

The provisions of this Section shall apply mutatis mutandis to testamentary gifts of life annuities.

#### **Section 14 Settlements**

Article 695 (Settlements)

A settlement shall become effective when the parties to a dispute promise to settle the dispute through reciprocal concessions.

Article 696 (Effect of Settlements)

In cases where it is admitted at settlement that one of the parties has the rights that are the subject of the dispute, or that the other party did not have the rights, if conclusive evidence is obtained to the effect that the first party did not have the rights in the past, or that the other party did have the rights, the rights are regarded as either transferred to the first party or extinguished at settlement.

#### **Chapter 3 Negotiorum Gestio (Management of Business)**

Article 697 (Negotiorum Gestio (Management of Business))

(1) A person who commences the management of a business for another person without being obligated to do so (hereinafter in this Chapter referred to as "Manager") must manage that business (hereinafter referred to as "Management

of Business") in accordance with the nature of the business, using the method that best conforms to the interests of that another person (the principal).

- (2) The Manager must engage in Management of Business in accordance with the intentions of the principal if the Manager knows, or is able to conjecture that intention.

#### Article 698 (Urgent Management of Business)

If a Manager engages in the Management of Business in order to allow a principal to escape imminent danger to the principal's person, reputation or property, the Manager shall not be liable to compensate for damages resulting from the same unless he/she has acted in bad faith or with gross negligence.

#### Article 699 (Obligation of Managers to Give Notice)

A Manager must notify the principal that the Manager has commenced the Management of Business; provided, however, that this shall not apply if the principal already knows of the same.

#### Article 700 (Continuation of Management of Business by Managers)

A Manager must continue the Management of Business until the principal or his/her heirs or legal representatives can undertake it; provided, however, that this shall not apply in cases where it is evident that the continuation of the Management of Business is contrary to the intentions of the principal, or is disadvantageous to the principal.

#### Article 701 (Mutatis Mutandis Application of Provisions on Mandates)

The provisions from Article 645 through to Article 647 shall apply mutatis mutandis to the Management of Business.

#### Article 702 (Managers' Claims for Reimbursement of Costs)

- (1) If a Manager has incurred useful expenses for a principal, the Manager may claim reimbursement of those costs from the principal.
- (2) The provisions of Paragraph 2 of Article 650 shall apply mutatis mutandis to cases where a Manager has incurred useful obligations on behalf of the principal.
- (3) If a Manager has engaged in the Management of Business against the intention of the principal, the provisions of the preceding two paragraphs shall apply mutatis mutandis, solely to the extent the principal is actually enriched.

### **Chapter 4 Unjust Enrichment**

#### Article 703 (Obligation to Return Unjust Enrichment)

A person who has benefited (hereinafter in this Chapter referred to as "beneficiary") from the property or labor of others without legal cause and has thereby caused loss to others shall assume an obligation to return that benefit, to the extent the benefit exists.

**Article 704 (Obligation of Beneficiaries in Bad Faith to Return)**

A Beneficiary in bad faith must return the benefit received together with interest thereon. In such cases, if any damages still remain, the Beneficiary shall be liable to compensate for the same.

**Article 705 (Performance knowing of Absence of Obligation)**

A person who has tendered anything as performance of an obligation may not demand the return of the thing tendered if the person knew, at the time, that the obligation did not exist.

**Article 706 (Performance before Due Date)**

If an obligor has tendered anything as performance of an obligation that has not yet fallen due, the obligor may not demand the return of the thing tendered; provided, however, that, if the obligor tendered anything by mistake, the obligee must return the benefit gained as a result.

**Article 707 (Performance of Obligations of Others)**

- (1) In cases where a person who is not an obligor has performed an obligation by mistake, if the obligee has, in good faith, allowed the instrument to be lost, damaged the instrument, waived the security or lost the claim by prescription, the person who performed the obligation may not demand the return of the performance.
- (2) The provisions of the preceding paragraph shall not preclude the person who performed an obligation from exercising his/her right of subrogation against the obligor.

**Article 708 (Performance for Illegal Causes)**

A person who has tendered performance of an obligation for an illegal cause may not demand the return of the thing tendered; provided, however, that this shall not apply if the illegal cause existed solely in relation to the Beneficiary.

**Chapter 5 Torts**

**Article 709 (Damages in Torts)**

A person who has intentionally or negligently infringed any right of others, or

legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

Article 710 (Compensation for Damages Other than Property)

Persons liable for damages under the provisions of the preceding Article must also compensate for damages other than those to property, regardless of whether the body, liberty or reputation of others have been infringed, or property rights of others have been infringed.

Article 711 (Compensation for Damages to Next of Kin)

A person who has taken the life of another must compensate for damages to the father, mother, spouse and children of the victim, even in cases where the property rights of the same have not been infringed.

Article 712 (Capacity for Liability)

In cases where a minor has inflicted damages on others, if the minor does not have sufficient intellectual capacity to appreciate his/her liability for his/her own act, the minor shall not be liable to compensate for that act.

Article 713

A person who has inflicted damages on others while he/she lacks the capacity to appreciate his/her liability for his/her own act due to mental disability shall not be liable to compensate for the same; provided, however, that this shall not apply if he/she has temporarily invited that condition, intentionally or negligently.

Article 714 (Liability of Person Obligated to Supervise a Person without Capacity)

(1) In cases where a person without capacity to assume liability is not liable in accordance with the provisions of the preceding two Articles, the person with the legal obligation to supervise the person without capacity to assume liability shall be liable to compensate for damages that the person without capacity to assume liability has inflicted on a third party; provided, however, that this shall not apply if the person who has the obligation to supervise did not fail to perform his/her obligation or if the damages could not have been avoided even if he/she had not failed to perform his/her obligation.

(2) A person who supervises a person without capacity to assume liability, on behalf of a person who has the obligation to supervise, shall also assume the liability under the preceding paragraph.

Article 715 (Liability of Employers)

(1) A person who employs others for a certain business shall be liable for damages

inflicted on a third party by his/her employees with respect to the execution of that business; provided, however, that this shall not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damages could not have been avoided even if he/she had exercised reasonable care.

- (2) A person who supervises the business on behalf of the employer shall also assume the liability under the preceding paragraph.
- (3) The provisions of the preceding two paragraphs shall not preclude the employer or supervisor from exercising their right to obtain reimbursement against the employee.

#### Article 716 (Liability of Party Ordering Work)

A party ordering work shall not be liable for the damages a contractor inflicted on a third party with respect to his/her work; provided, however, that this shall not apply if the party ordering work is negligent in his/her order or instructions.

#### Article 717 (Liability of Possessor and Owner of Structure on Land)

- (1) If any defect in the installation or preservation of any structure on land causes damages to others, the possessor of such structure shall be liable to the victims to compensate for those damages; provided, however, that, if the possessor has used necessary care to prevent the damages arising, the owner must compensate for the damages.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where there is any defect in the planting or support of bamboos and trees.
- (3) In the cases of the preceding two paragraphs, if there is another person who is liable for the cause of the damages, the possessor or owner may exercise their right to obtain reimbursement against such person.

#### Article 718 (Liability of Possessor of Animal)

- (1) A possessor of an animal shall be liable to compensate for the damages that the animal has inflicted on others; provided, however, that this shall not apply if he/she managed the animal with reasonable care according to the kind and nature of the animal.
- (2) A person who manages the animal on behalf of the possessor shall also assume the liability under the preceding paragraph.

#### Article 719 (Liability of Joint Tortfeasors)

- (1) If more than one person has inflicted damages on others by their joint tortious acts, each of them shall be jointly and severally liable to compensate for those damages. The same shall apply if it cannot be ascertained which of the joint tortfeasors inflicted the damages.

(2) The provisions of the preceding paragraph shall apply to any person who incited or was an accessory to the perpetrator, by deeming him/her to be one of the joint tortfeasors.

#### Article 720 (Self-Defense and Aversion of Present Danger )

(1) A person who, in response to the tortious act of another, unavoidably commits a harmful act to protect himself/herself, the rights of a third party, or any legally protected interest, shall not be liable for damages; provided, however, that the victim shall not be precluded from claiming damages against the person who committed the tortious act.

(2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where a Thing belonging to others is damaged to avoid imminent danger arising from that Thing.

#### Article 721 (Fetus' Capacity to Hold Rights regarding the Right to Demand Compensation for Damages)

An unborn child shall be deemed to have been already born with respect to the right to demand compensation for damages.

#### Article 722 (Method of Damages and Comparative Negligence)

(1) The provisions of Article 417 shall apply mutatis mutandis to compensation for damages in tort.

(2) If a victim is negligent, the court may determine the amount of compensation by taking that factor into consideration.

#### Article 723 (Recovery in Defamation)

The court may, at the request of the victim, order a person who defamed others, to effect appropriate measures to restore the reputation of the victim in lieu of, or in addition to, damages.

#### Article 724 (Restriction of Period of Right to Demand Compensation for Damages in Tort)

The right to demand compensation for damages in tort shall be extinguished by the operation of prescription if it is not exercised by the victim or his/her legal representative within three years from the time when he/she comes to know of the damages and the identity of the perpetrator. The same shall apply when twenty years have elapsed from the time of the tortious act.