

CIVIL CODE OF VIETNAM

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates civil matters.

PART ONE

GENERAL PROVISIONS

CHAPTER I

Tasks and Effectiveness of Civil Code

Article 1 *Tasks and governing scope of Civil Code*

The Civil Code regulates the legal status of and the legal standards for conduct of individuals, legal entities and other subjects; the rights and obligations of subjects in property and personal relations arising from civil relations, marriage and family, business, trade and labour (hereinafter together referred to as *civil relations*).

The Civil Code shall have the tasks of protecting the legal rights and interests of individuals and organizations and the interests of the State and the public; of ensuring equality and legal stability in civil relations; of contributing to the satisfaction of the physical and spiritual needs of the people, and of promoting socio-economic development.

Article 2 *Effectiveness of Civil Code*

1. The Civil Code shall apply to civil relations established as from the date of effectiveness of the Code, unless otherwise provided by the Code or a resolution of the National Assembly.
2. The Civil Code shall apply throughout the Socialist Republic of Vietnam.
3. The Civil Code shall apply to civil relations involving foreign elements, except as otherwise provided by an international treaty of which the Socialist Republic of Vietnam is a member.

Article 3 *Application of customary practice and analogous law*

Matters which are not addressed by law nor agreed by the parties may be regulated by customary practice and, if there is no customary practice, they may be regulated by analogous provisions of law provided that

such customary practice and analogous provisions of law must not be inconsistent with the principles set out in this Code.

CHAPTER II

Basic Principles

Article 4 *Principle of free and voluntary undertaking and agreement*

The law guarantees the freedom to undertake and agree on the establishment of civil rights and obligations if such undertakings and agreements do not breach matters prohibited by law and are not contrary to social ethics.

In civil relations, parties shall be entirely voluntary and no party may force, prohibit, coerce, intimidate or hinder any other party.

All lawful undertakings and agreements shall bind the parties and must be respected by individuals, legal entities and other subjects.

Article 5 *Principle of equality*

All parties are equal in civil relations and differences in ethnicity, gender, social status, economic position, belief, religion, education and occupation may not be used as reasons for unequal treatment.

Article 6 *Principle of goodwill and honesty*

In civil relations, parties must act with goodwill and honesty in the establishment and implementation of civil rights and obligations and no party may deceive another party.

Article 7 *Principle of bearing civil liability*

Parties must perform strictly their civil obligations and shall be liable for the failure to perform or the incorrect performance of any such obligations. If a party does not perform its civil obligations voluntarily, it may be compelled to do so by law.

Article 8 *Principle of respect for good morals and traditions*

The establishment and implementation of civil rights and obligations must ensure preservation of ethnic identity and shall respect and promote the good customs, practices and traditions, solidarity, mutual support, [*the tradition of*]¹ each person² for the community and the community for each person, and the high moral values of the various ethnic groups living in Vietnam.

Ethnic minorities shall enjoy favourable conditions in their civil relations in order to improve steadily their physical and spiritual life.

Assistance to elderly persons, young children and disabled persons in the implementation of civil rights and obligations shall be encouraged.

¹ *Phillips Fox Note: Throughout this translation, words not appearing in the Vietnamese text have been inserted in italics in square parentheses to aid comprehension.*

² *Phillips Fox Note: The Vietnamese text interchanges between 'individual' and 'person'. In this respect, this translation attempts to mirror the Vietnamese text.*

Article 9 *Principle of respect for and protection of civil rights*

1. All civil rights of individuals, legal entities and other subjects shall be respected and shall be protected by law.
2. When the civil rights of a subject are violated, the subject shall have the right to take self-protective measures pursuant to this Code or may request the competent body or organization to:
 - (a) Recognize the civil rights of the subject;
 - (b) Order the compulsory termination of the violating act;
 - (c) Order a public apology or correction;
 - (d) Order the performance of civil obligations;
 - (dd) Order compensation for damage.

Article 10 *Principle of respect for interests of State, interests of public, and legal rights and interests of other persons*

The establishment and implementation of civil rights and obligations must not infringe the interests of the State, the interests of the public, or the legal rights and interests of other persons.

Article 11 *Principle of compliance with law*

The establishment and implementation of civil rights and obligations must comply with this Code and other provisions of the law.

Article 12 *Principle of conciliation*

Conciliation between the parties in accordance with law is encouraged in civil relations.

No one may use or threaten to use force when participating in civil relations or in the resolution of civil disputes.

Article 13 *Bases for establishing civil rights and obligations*

Civil rights and obligations may be established on the following bases:

1. Legal civil transactions.
2. Decisions of a court or other competent State body.
3. Legal events as provided by law.
4. Creation of moral values³ which are the subject of intellectual property ownership rights.
5. Lawful possession of property.

³ *Phillips Fox Note: The literal translation is "spiritual value".*

6. Causing damage through acts contrary to law.
7. Unauthorized performance of acts.
8. Unlawful⁴ possession or use of, or deriving benefits from, property.
9. Other bases as provided by law.

CHAPTER III

Individuals

SECTION 1

Civil Legal Capacity and Capacity for Civil Acts of Individuals

Article 14 *Civil legal capacity of individuals*

1. The civil legal capacity of an individual means the capability of the individual to have civil rights and civil obligations.
2. All individuals have equal civil legal capacity.
3. The civil legal capacity of an individual commences at birth and terminates at death.

Article 15 *Content of civil legal capacity of individuals*

An individual has the following civil rights and obligations:

1. Personal rights associated with or not associated with property.
2. Ownership rights, inheritance rights, and other rights with respect to property.
3. Rights to enter into civil relations and have obligations arising out of such relations.

Article 16 *No restriction on civil legal capacity of individuals*

The civil legal capacity of an individual may not be restricted, except where provided by law.

Article 17 *Capacity for civil acts of individuals*

The capacity for civil acts of an individual shall be the capability of the individual to establish and exercise civil rights and perform civil obligations through his or her acts.

Article 18 *Adults and minors*

Adults are persons who are eighteen (18) or more years of age. Minors are persons who are under eighteen (18) years of age.

⁴ *Phillips Fox Note: The literal translation is "without legal grounds".*

Article 19 *Capacity for civil acts of adults*

Other than in the circumstances provided in articles 22 and 23 of this Code, an adult shall have full capacity for civil acts.

Article 20 *Capacity for civil acts of minors from six to under eighteen years of age*

1. A person who is from six to under eighteen (18) years of age must have the consent of his or her legal representative to establish and perform civil transactions, except for civil transactions which are performed for the purpose of meeting the needs of daily life appropriate to the age group or where otherwise provided by law.
2. A person who is from fifteen (15) to under eighteen (18) years of age and has sufficient property to secure the performance of obligations may establish and perform civil transactions without the consent of his or her legal representative, except where otherwise provided by law.

Article 21 *Persons lacking capacity for civil acts*

A child who is under six years of age does not have the capacity for civil acts. All civil transactions of a child who is under six years of age must be established and performed by his or her legal representative.

Article 22 *Loss of capacity for civil acts*

1. A court shall, based on the opinion of an authorized examination organization and at the request of a person with related rights or interests, issue a decision to declare a loss of capacity for civil acts in respect of a person who is incapable of being aware of or controlling his or her own acts due to any mental or other illness.

Where the basis on which a person has been declared as having lost the capacity for civil acts no longer exists, the court shall, at the request of such person or any person with related rights or interests, issue a decision to revoke the decision declaring the loss of capacity for civil acts.

2. All civil transactions of a person who has lost the capacity for civil acts shall be established and performed by his or her legal representative.

Article 23 *Restricted capacity for civil acts*

1. At the request of a person with related rights or interests or of a relevant body or organization, a court may issue a decision to declare a person whose addiction to drugs or other stimulants has ruined the property of his or her family as having restricted capacity for civil acts.
2. The legal representative of a person with restricted capacity for civil acts and the scope of such representation shall be determined by a court. The consent of the legal representative must be obtained in respect of all civil transactions relating to the property of a person with restricted capacity for civil acts, except for transactions to meet the needs of daily life.
3. Where the basis on which a person has been declared as having restricted capacity for civil acts no longer exists, the court shall, at the request of such person or any person with related rights or interests or a relevant body or organization, issue a decision to revoke the decision declaring restricted capacity for civil acts.

SECTION 2

Personal Rights

Article 24 *Personal rights*

Personal rights provided for in this Code are civil rights personal to each individual and may not be transferred to other persons, except where otherwise provided by law.

Article 25 *Protection of personal rights*

When the personal rights of an individual are infringed, such person is entitled to:

1. Make his or her own denial.
2. Demand, or request a competent body or person to compel, the infringing party to terminate the infringing act and to issue a public apology and retraction.
3. Demand, or request a competent body or person to compel, the infringing party to compensate for damage.

Article 26 *Rights with respect to surnames and given names*

1. Each individual has the right to have a surname and given name. The surname and given name of a person shall be determined according to the names in his or her birth certificate.
2. An individual shall establish and exercise civil rights and perform civil obligations in his or her surname and given name as recognized by the authorized State body.
3. The use of aliases and pseudonyms must not cause damage to the legal rights or interests of other persons.

Article 27 *Right to change surnames and given names*

1. An individual has the right to request the authorized State body to recognize a change of surname and/or given name in any of the following cases:
 - (a) Where that person has a surname and/or given name which causes confusion or has an adverse effect on his or her family feelings or on his or her honour, legal rights or interests;
 - (b) Where the adoptive father or mother of the person wishes to change the name of their adopted child; or if a person ceases to be an adopted child and the person or his or her biological father or mother wishes to reclaim the surname and/or given name which was given by his or her biological father or mother;
 - (c) Where the father or mother of the person has been identified and they wish, or the person wishes, to change the name of the person;
 - (d) Where the surname of the person is to be changed from that of the father to that of the mother or *vice versa*;
 - (dd) Where the person was lost⁵ and his or her surname and given name are to be changed upon discovering the origin of his or her bloodline;

⁵ *Phillips Fox Note: Here, "lost" is used in the sense of a person who has no knowledge of his or her bloodline.*

- (e) Where the surname and/or given name of the person are to be changed upon a re-determination of the gender of the person;
 - (g) Other cases as provided by law.
2. The changing of the surname and/or given name of a person who is nine or more years of age shall be subject to the consent of such person.
 3. The changing of a surname and/or given name shall not change or terminate the civil rights and obligations which were established in the former surname and/or given name.

Article 28 *Right to identification of ethnicity*

1. An individual shall have his or her ethnicity identified at birth in accordance with the ethnicity of his or her father and mother. Where the father and mother belong to two different ethnic groups, the ethnicity of the person shall be that of his or her father or mother in accordance with the relevant customary practice, or as mutually agreed between the father and mother.
2. An adult or the biological father, biological mother or guardian of a minor shall have the right to request the authorized State body to re-determine his or her ethnicity in any of the following cases:
 - (a) In accordance with the ethnicity of the father or the mother where they belong to two different ethnic groups;
 - (b) In accordance with the ethnicity of the biological father or mother in the case where the person was adopted by a person belonging to another ethnicity because the identity of the biological father or mother was unknown.
3. If the biological father, biological mother or guardian of a minor requests the authorized State body to re-determine the ethnicity of a minor who is fifteen (15) years of age or more pursuant to clause 2 of this article, the minor must consent to the request.

Article 29 *Right to declaration of birth*

When an individual is born, he or she has the right to have his or her birth declared.

Article 30 *Right to declaration of death*

1. When a person dies, a relative or the head of the house or the body or organization where the person died must make a declaration of death for the deceased.
2. If a newborn child dies after birth, the birth must be declared and the death must be declared; declaration of birth and declaration of death shall not be required in the case of death in the womb or a stillborn baby.

Article 31 *Rights of individual with respect to his or her photograph*

1. An individual has rights with respect to his or her photograph.
2. The use of a photograph of an individual must have the consent of the person; in the case of a person who has died, has lost the capacity for civil acts or is still a minor, there must be consent provided by his or her parent, spouse, adult child or the legal representative of such person, except

where [*use of the photograph*] is in the interests of the State or the public interest or where otherwise provided by law.

3. It shall be strictly prohibited to use the photograph of another person where the honour, dignity or reputation of a person in the photo is infringed.

Article 32 *Right to safety of life, health and physical body*

1. Individuals are entitled to the safety of their life, health and physical body.
2. When any person has a life threatening accident or illness, a person who discovers such situation has the responsibility to take such person to a medical facility; medical facilities may not refuse to provide treatment and must use all available means and capabilities for any treatment.
3. The consent of a person is required for the application of new medical cures to that person and for the anaesthetization, surgery, amputation and transplant of his or her bodily organs. If the person is a minor, has lost the capacity for civil acts or is unconscious, the consent of a parent, spouse, adult child or guardian of such person must be obtained. Where there is a threat to the life of a patient and it is not possible to wait for consent from one of the above persons, a decision of the head of the medical facility is required.
4. Post-mortem operations may be performed in the following circumstances:
 - (a) The deceased person expressed consent prior to death;
 - (b) In the absence of such consent, the consent of a parent, spouse, adult child or guardian of the deceased was obtained;
 - (c) In necessary cases, pursuant to the decision of the medical organization or authorized State body.

Article 33 *Right to donate body organs*

An individual has the right to donate his or her body organs for the purpose of medical treatment of another person or for scientific research.

The donation and use of body organs shall be implemented in accordance with law.

Article 34 *Right to donate body and body organs after death*

An individual has the right to donate his or her body and body organs after death for the purpose of medical treatment of another person or for scientific research.

The donation and use of the body and body organs of a deceased person shall be implemented in accordance with law.

Article 35 *Right to receive human body organs*

An individual has the right to receive human body organs belonging to another person for the purpose of medical treatment of such individual.

It shall be strictly prohibited to receive and use human body organs belonging to another person for commercial purposes.

Article 36 *Right to re-establish gender*

An individual has the right to re-establish his or her gender.

The re-establishment of the gender of a person is implemented where the gender of such person is subject to a congenital defect or has not yet been accurately formed and requires medical intervention in order to identify clearly the gender.

The re-establishment of the gender of a person shall be implemented in accordance with law.

Article 37 *Right to protection of honour, dignity and reputation*

The honour, dignity and reputation of an individual shall be respected and shall be protected by law.

Article 38 *Right to privacy*

1. The right to privacy of an individual shall be respected and shall be protected by law.
2. The collection and publication of information and data about the private life of an individual must have the consent of that person or, where that person has died, has lost the capacity for civil acts or is not yet fifteen (15) years of age, the consent of a parent, spouse, adult child or representative of that person must be obtained, except where the collection and publication of information and data is required pursuant to a decision of an authorized State body.
3. The safety of the mail, telephone, electronic mail and other forms of electronic information of an individual shall be ensured and kept confidential.
4. Control of the mail, telephone, electronic mail and other forms of electronic information of an individual may only be conducted in cases provided by law and pursuant to a decision issued by an authorized State body.

Article 39 *Right to marry*

Male and female persons who satisfy fully the conditions for marriage as provided by the law on marriage and family have the right to marry freely.

The voluntary marriage between persons of different ethnic groups or religions, between persons in accordance with religious rites or without religious rites, and between Vietnamese citizens with foreign persons shall be respected and shall be protected by law.

Article 40 *Right to equality between husband and wife*

Husbands and wives are equal and have equal rights and obligations with respect to all aspects of the family and in civil intercourse and shall build together a comfortable, equal, progressive, happy and stable family.

Article 41 *Rights of family members to enjoy each other's care*

Members of a family have the right to enjoy mutual care and assistance in accordance with the good moral traditions of the Vietnamese family.

Children and grandchildren who are minors are entitled to enjoy the care of and upbringing by their parents and grandparents. Children and grandchildren have the duty to respect, care for and support their parents and grandparents.

Article 42 *Right to divorce*

A wife or husband or both have the right to request a court to resolve a divorce.

Article 43 *Right to acknowledge or not acknowledge father, mother or child*

1. A person who is not acknowledged as the father, mother or child of another person has the right to request the authorized State body to identify him or her as the father, mother or child of that person.
2. A person who is acknowledged as the father, mother or child of another person has the right to request the authorized State body to identify him or her as not being the father, mother or child of that person.

Article 44 *Right to adopt children and be adopted*

The rights of an individual to adopt a child or to be adopted shall be recognized and shall be protected by law.

The process of adopting a child or being adopted shall be implemented in accordance with law.

Article 45 *Rights with respect to nationality*

An individual has the right to nationality.

The recognition of, any changes to and the obtaining or surrendering of Vietnamese citizenship shall be implemented in accordance with the law on nationality.

Article 46 *Right to safety of place of residence*

An individual has the right not to have his or her place of residence intruded on.

The entry into the place of residence of a person shall require the consent of that person.

The execution of a search of the place of residence of a person may only be performed in cases provided by law and pursuant to a decision issued by the authorized State body. The search must be conducted strictly in accordance with the order and procedures provided by law.

Article 47 *Right to freedom of belief and religion*

1. An individual has the right to freedom of belief and religion and [*the right*] to follow or not to follow a religion.
2. No one may infringe the right to freedom of belief and religion or take advantage of beliefs or religion in order to infringe the interests of the State, the interests of the public or the legal rights or interests of other persons.

Article 48 *Right to freedom of movement and residence*

1. An individual has the right to freedom of movement and residence as provided by law.
2. The freedom of movement and residence of an individual may only be restricted pursuant to a decision of the authorized State body and in accordance with the order and procedures provided by law.

Article 49 *Right to work*

An individual has the right to work.

Each person has the right to work and the freedom to choose a job or occupation without being discriminated against on the basis of ethnicity, gender, social status, belief or religion.

Article 50 *Right to freedom to do business*

The right to freedom to do business of an individual shall be respected and shall be protected by law.

An individual has the right to choose a form, sector and line of business or profession, to establish an enterprise, to enter into contracts freely and to hire labour, and has other rights in accordance with law.

Article 51 *Right to freedom of research and creation*

1. An individual is entitled freely to engage in scientific and technical research, discover, invent, make technical improvements and rationalize production; and is entitled to compose and criticize literature and arts and to participate in other research and creative activities.
2. The right to freedom of research and creation shall be respected and shall be protected by law. No one may hinder or restrict the right to freedom of research and creation of an individual.

SECTION 3

Place of Residence

Article 52 *Place of residence*

1. The place of residence of an individual is the place where such person usually lives.
2. Where the place of residence of an individual is not able to be determined in accordance with clause 1 of this article, the place of residence of that person shall be the place where he or she is currently living.

Article 53 *Place of residence of minors*

1. The place of residence of a minor is the place of residence of the father and mother of the minor; if the mother and father have separate places of residence, the place of residence of the minor shall be the place of residence of the father or mother with whom the minor usually lives.
2. A minor who is fifteen (15) or more years of age may have a place of residence separate from the place of residence of his or her parents if so agreed by his or her parents or so provided by law.

Article 54 *Place of residence of wards*

1. The place of residence of a ward is the place of residence of the guardian of that ward.
2. A ward may have a place of residence separate from the place of residence of his or her guardian if so agreed by his or her guardian or so provided by law.

Article 55 *Place of residence of husbands and wives*

1. The place of residence of a husband and wife is the place where the husband and wife usually live together.
2. A wife and husband may have separate places of residence if they so agree.

Article 56 *Place of residence of military personnel*

1. The place of residence of military personnel performing military service is the place at which the unit of the military personnel is stationed.
2. The place of residence of military officers, regular military personnel and national defence workers and officials shall be the place at which their unit is stationed, except where they have places of residence as provided in clause 1 of article 52 of this Code.

Article 57 *Place of residence of individuals performing itinerant occupations*

The place of residence of a person performing itinerant work on a ship, boat or other facility for performing the itinerant occupation is the place of registration of such ship, boat or facility, unless he or she has a place of residence as provided in clause 1 of article 52 of this Code.

SECTION 4

Guardianship

Article 58 *Guardianship*

1. Guardianship means an individual or organization (hereinafter referred to as a *guardian*) is required by law or is appointed to take care of and protect the legal rights and interests of a minor or a person who has lost his or her capacity for civil acts (hereinafter referred to as a *ward*).
2. A ward includes:
 - (a) A minor who no longer has parents, or whose parents: are not able to be identified; have lost their capacity for civil acts or have had their capacity for civil acts restricted; have had their rights restricted by a court; or do not have the means to care for and educate such minor and the parents request [*the minor to be a ward*];
 - (b) A person who has lost his or her capacity for civil acts.
3. A person provided for in 2(a) of this article who is under fifteen (15) years of age and a person provided for in clause 2(b) of this article must have a guardian.
4. A person may be the guardian of more than one person, but a person may only be the ward of one guardian, except where the guardian is the mother, father, grandfather or grandmother in accordance with clause 2 of article 61 or clause 3 of article 62 of this Code.

Article 59 *Supervision of guardianship*

1. The relative of a ward shall be responsible to appoint a representative to act as supervisor of a guardianship in order to monitor, activate and inspect the guardian in the performance of the guardianship and to consider and resolve in a timely manner any proposal or recommendation of the guardian in relation to the guardianship.

Relative of a ward means the spouse, parent or child of the ward; and if there is no such person, relative of a ward means the grandparent or biological sibling of the ward; and if there is also no such person, relative of a ward means the uncle or aunt of the ward.

2. If there is no relative of a ward or if the relatives fail to appoint a supervisor of the guardianship in accordance with clause 1 of this article, the people's committee of the commune, ward or township in which the guardian resides shall appoint a supervisor of the guardianship.
3. The supervisor of a guardianship must be a person having full capacity for civil acts.

Article 60 *Conditions for individuals to act as guardians*

An individual who satisfies all of the following conditions may act as a guardian:

1. Having full capacity for civil acts.
2. Having good ethics; not being a person subject to criminal prosecution or a person who has been convicted but has not yet served his or her sentence for a deliberate crime of violation of the life, health, honour, dignity or property of another person.
3. Having necessary means to ensure the performance of the guardianship.

Article 61 *Natural guardian of minor*

With respect to a minor who has lost both parents, or whose parents: are not able to be identified; have lost their capacity for civil acts or have had their capacity for civil acts restricted; have had their rights restricted by a court; or do not have the means to care for and educate the minor, if the parents so request, the natural guardian shall be determined as follows:

1. Unless the biological siblings otherwise agree, the eldest brother or sister shall be the guardian for his or her younger siblings who are minors provided that, if the eldest brother or sister fails to satisfy all conditions for acting as a guardian, the next eldest sibling shall be the guardian.
2. Where there is no biological sibling or where the biological siblings fail to satisfy all conditions to act as guardian, the paternal grandparents or the maternal grandparents shall be the guardian; if no such relative satisfies all conditions for acting as a guardian, an uncle or aunt shall be the guardian.

Article 62 *Natural guardian of person having lost his or her capacity for civil acts*

1. Where a wife has lost her capacity for civil acts, the husband shall be the guardian. Where a husband has lost his capacity for civil acts, the wife shall be the guardian.
2. Where both parents have lost their capacity for civil acts, or where one parent has lost the capacity for civil acts and the other parent fails to satisfy all conditions to act as guardian, the eldest child shall

be the guardian. If the eldest child fails to satisfy all conditions to act as guardian, the next eldest child shall be the guardian.

3. Where an adult who has lost his or her capacity for civil acts does not have a spouse or children, or where his or her spouse or children all fail to satisfy all conditions to act as guardian, the parents of that adult shall be the guardian.

Article 63 *Appointment of guardians*

Where a minor or a person who has lost his or her capacity for civil acts does not have a natural guardian in accordance with the provisions of articles 61 and 62 of this Code, the people's committee of the commune, ward or township in which the ward resides shall be responsible to appoint a guardian or request a charitable organization to undertake the guardianship.

Article 64 *Procedures for appointment of guardians*

1. The appointment of a guardian must be made in writing, specifying the reason for appointing the guardian, the specific rights and obligations of the guardian and the status of the property of the ward.
2. The appointment of a guardian must have the consent of the person who is appointed to be the guardian.

Article 65 *Obligations of guardians with respect to minors under fifteen years of age*

The guardian of a person who is aged under fifteen (15) years of age has the following obligations:

1. To take care of and educate the ward.
2. To represent the ward in civil transactions, except where the law provides that persons who are under fifteen (15) years of age are able to establish and perform civil transactions by themselves.
3. To manage the property of the ward.
4. To protect the legal rights and interests of the ward.

Article 66 *Obligations of guardians with respect to minors from fifteen years to eighteen years of age*

The guardian of a person who is from fifteen (15) to eighteen (18) years of age has the following obligations:

1. To represent the ward in civil transactions, except where the law provides that persons who are from fifteen (15) to under eighteen (18) years of age may establish and perform civil transactions by themselves.
2. To manage the property of the ward.
3. To protect the legal rights and interests of the ward.

Article 67 *Obligations of guardians with respect to minors having lost capacity for civil acts*

The guardian of a person who has lost the capacity for civil acts has the following obligations:

1. To take care of and to ensure the treatment of illness of the ward.
2. To represent the ward in civil transactions.
3. To manage the property of the ward.

4. To protect the legal rights and interests of the ward.

Article 68 *Rights of guardians*

A guardian has the following rights:

1. To use the property of the ward to take care of and to pay for the essential needs of the ward.
2. To be reimbursed for all necessary expenditure for the management of the property of the ward.
3. To represent the ward in the establishment and performance of civil transactions and in the protection of the legal rights and interests of the ward.

Article 69 *Management of property of wards*

1. A guardian shall be responsible to manage the property of a ward as if it were the property of such guardian.
2. A guardian shall undertake transactions relating to the property of the ward for the interests of the ward. The sale, exchange, lease, loan, pledge, mortgage or deposit of any property and other transactions with a high value conducted by the guardian must have the consent of the supervisor of the guardianship.

A guardian may not make a gift of the property of a ward to another person.

3. Unless the transaction is undertaken for the interests of the ward and the supervisor of the guardianship consents to the transaction, all civil transactions between a guardian and a ward of that guardian in relation to the property of that ward shall be invalid.

Article 70 *Replacement of guardians*

1. A guardian shall be replaced in the following circumstances:
 - (a) The guardian no longer satisfies all of the conditions provided in article 60 of this Code;
 - (b) A guardian being an individual dies or is declared by a court to be a missing person, or a guardian being an organization terminates its operation;
 - (c) The guardian commits a serious breach of his or her obligations as guardian;
 - (d) The guardian proposes that he or she be replaced and there is another person who agrees to act as guardian.
2. In the case of an automatic replacement of a guardian, the persons provided for in articles 61 and 62 of this Code shall be the automatic replacement guardians; and if there is no such automatic replacement, a guardian shall be appointed in accordance with the provisions in article 63 of this Code.
3. The replacement of an appointed guardian shall be implemented in accordance with the procedures set out in articles 64 and 71 of this Code.

Article 71 *Transfer of guardianship by appointed guardians*

1. Upon replacement of a guardian, the person who formally conducted the guardianship must transfer the guardianship to the new replacement within fifteen (15) days from the date of replacement.

2. The transfer of guardianship must be made in writing, specifying the reason for the transfer and the status of the property of the ward at the time of the transfer. The person who appointed the guardian [and] the supervisor of the guardianship shall witness the transfer of guardianship.
3. In the case of a replacement of a guardian due to the former guardian being an individual who died or who was declared by a court to have lost capacity for civil acts or to have restricted capacity for civil acts or to be a missing person; or in the case of an organization being the guardian, where the organization terminates its operation, the person who appointed the guardian shall prepare minutes specifying the status of the property of the ward and the rights and obligations which arose during the course of performing the guardianship for the purpose of transfer to the new guardian, and such minutes shall be witnessed by the supervisor of the guardianship.
4. A transfer of guardianship must be recognized by the people's committee of the commune, ward or township in the place where the new guardian resides.

Article 72 *Termination of guardianship*

Guardianship shall terminate in the following circumstances:

1. The ward attains full capacity for civil acts.
2. The ward dies.
3. A parent of the ward satisfies fully the conditions to exercise his or her rights and to perform his or her obligations.
4. The ward accepts the status of an adopted child.

Article 73 *Consequences of termination of guardianship*

1. When guardianship is terminated, the guardian shall settle the property to the ward or to the parents of the ward within three months from the date on which the guardianship terminates.

If a ward dies, the guardian shall settle the property to the heir of that ward within three months from the date on which the guardianship terminates. If an heir has not yet been identified upon expiry of that period, the guardian shall continue to manage the property of the ward until the property is settled in accordance with the law on inheritance and the guardian shall notify the people's committee of the commune, ward or township of the locality in which the guardian resides.

Property settlement shall be conducted under the supervision of the supervisor of the guardianship.

2. Rights and interests arising from civil transactions conducted in the interests of the ward shall be implemented as follows:
 - (a) Transferred to the ward when the ward attains full capacity for civil acts;
 - (b) Transferred to the parents of the ward in the cases provided in clauses 3 and 4 of article 72 of this Code;
 - (c) Transferred to the heir of the ward in the case where the ward dies.

SECTION 5

**Search Notice for Persons Absent from Place of Residence,
Declaration of Missing Persons, Declaration of Death**

Article 74 *Request for search notice for person absent from his or her place of residence and management of property of such person*

Where a person has disappeared for six consecutive months, any person with related rights or interests may request a court for a search notice for the person absent from his or her place of residence in accordance with the law on civil proceedings and may request a court to take measures to manage the property of the absent person in accordance with article 75 of this Code.

Article 75 *Management of property of person absent from his or her place of residence*

1. At the request of a person with related rights or interests, a court shall hand over the property of a person who is absent from his or her place of residence to the following persons for management:
 - (a) With respect to property the management of which the absent person has authorized, the person so authorized shall continue to manage the property;
 - (b) With respect to joint property, the remaining joint owners shall manage the property;
 - (c) Property which the husband or wife is currently managing shall continue to be managed by the husband or wife. If the husband or wife has died, has lost the capacity for civil acts or has had his or her capacity for civil acts restricted, his or her adult children or his or her parents shall manage the property.
2. Where none of the persons provided for in clause 1 of this article exist, a court shall appoint a person from amongst the relatives of the person absent from his or her place of residence in order to manage the property of such person. If there are no relatives, the court shall appoint another person to manage the property.

Article 76 *Obligation of persons managing property of person absent from his or her place of residence*

The person managing property of a person who is absent from his or her place of residence has the following obligations:

1. To retain and preserve the property of the absent person as if it were his or her own.
2. To sell immediately any property being crops or other products which are in danger of deteriorating.
3. Pursuant to a court decision, to perform the obligations of the absent person to support others and pay due debts by recourse to the property of the absent person.
4. To return the property of the absent person upon his or her return and to inform a court thereof; to compensate for any damage caused during the course of management of the property due to his or her fault.

Article 77 *Rights of persons managing property of person absent from his or her place of residence*

A person managing property of a person who is absent from his or her place of residence has the following rights:

1. To manage the property of the absent person.
2. To appropriate a portion of the property of the absent person to perform the obligations of such person to support others and to pay due debts.
3. To be reimbursed for all necessary expenditure relating to the management of the property.

Article 78 *Declaration that person is missing*

1. Where a person has disappeared for two or more consecutive years and there is no reliable information on whether such person is alive or dead although all notification and search measures

have been applied in accordance with the law on civil proceedings, the court may, at the request of a person with related rights or interests, declare that such person is missing. The two year time-limit shall commence from the date of the last information regarding such person. If the date of the last information is not able to be determined, the two year time-limit shall commence from the first day of the month following the month of the last information. If the day or month of the last information is not able to be determined, the time-limit shall commence from the first day of the year following the year of the last information.

2. Where the wife or husband of a person who has been declared missing applies for divorce, a court shall grant the divorce.

Article 79 *Management of property of persons declared missing*

The person currently managing the property of a person absent from his or her place of residence in accordance with the provisions in clause 1 of article 75 of this Code shall continue to do so until the absent person is declared missing by a court, and such person has the rights and obligations provided in articles 76 and 77 of this Code.

Where a court resolves a divorce for the husband or wife of a person who has been declared missing, the property of the missing person shall be handed over to the adult children or to the parents of the missing person for management. If there is no such person, the property shall be handed over to a relative of the missing person for management; and if there is no relative, the court shall appoint another person to manage the property.

Article 80 *Revocation of decisions declaring person missing*

1. Where a person who has been declared missing returns or where there is reliable information that such person is still alive, at the request of such person or of a person with related rights and interests, a court shall issue a decision revoking the decision declaring that such person is missing.
2. Upon return of a person who had been declared missing, such person shall be entitled to redeem his or her property from the person managing the property after management expenses have been paid.
3. Where the wife or husband of a person who had been declared missing has been granted a divorce, the decision granting the divorce shall retain legal effect notwithstanding the return of the person who had been declared missing or the reliable information that such person is still alive.

Article 81 *Declaration that person is dead*

1. A person with related rights and interests may request the court to issue a decision declaring that a person is dead in any of the following cases:
 - (a) If, after three years from the date on which the decision of a court declaring that the person is missing becomes legally effective, there is still no reliable information that such person is alive;
 - (b) If the person went missing during a war and there is no reliable information that such person is alive for five years from the date on which the war ended;
 - (c) If the person was in an accident, catastrophe or natural disaster and there is no reliable information that such person is alive for one year from the date on which such event occurred, except where otherwise provided by law;
 - (d) If the person has been missing for five or more consecutive years and there is no reliable information available as to whether such person is alive or dead. The time-limit in this case shall be calculated in accordance with clause 1 of article 78 of this Code.
2. Depending on the facts of each particular case, a court shall determine the date of death of a person declared dead in the cases provided in clause 1 of this article.

Article 82 *Personal and property relations relating to persons declared dead by court*

1. When a court decision declaring that a person is dead becomes legally effective, all relations relating to marriage, family and other personal relations of such person shall be resolved in the same manner as if the person were dead.
2. The property relations of a person who is declared dead by a court shall be resolved in the same manner as if the person were dead; and the property of such person shall be dealt with in accordance with the law on inheritance.

Article 83 *Revocation of decision declaring person dead*

1. When a person who has been declared dead returns or where there is reliable information that such person is still alive, at the request of such person or of a person with related rights and interests, a court shall issue a decision revoking the decision declaring that such person is dead.
2. Personal relations of a person who has been declared dead shall be restored when a court issues a decision revoking the decision declaring that such person is dead, except in the following cases:
 - (a) Where a court has granted a divorce pursuant to clause 2 of article 78 of this Code to the husband or wife of a person who had been declared dead, such decision shall retain legal effect;
 - (b) Where the husband or wife of a person who had been declared dead has remarried, such marriage shall retain legal effect.
3. A person who had been declared dead but who is still alive has the right to claim his or her property from the persons who received his or her inheritance *[and/or]* the value of the remaining property.

Where the heir of a person who a court had declared dead is aware that such person is still alive but intentionally concealed such information in order to enjoy an inheritance, the heir must return all of the property received, including any benefits and income derived, and if any damage has been caused, the heir must also compensate.

CHAPTER IV

Legal Entities

SECTION 1

General Provisions on Legal Entities

Article 84 *Legal entities*

An organization shall be recognized as a legal entity if it satisfies all of the following conditions:

1. It was legally established.
2. It has a sophisticated⁶ organizational structure.
3. It has property independent from other individuals and organizations and it fulfils voluntarily its obligations by recourse to such property.
4. It participates independently in legal relations in its own name.

⁶ *Phillips Fox Note: The literal translation is "tight".*

Article 85 *Establishment of legal entities*

A legal entity may be established on the initiative of an individual or organization or in accordance with a decision of the authorized State body.

Article 86 *Civil legal capacity of legal entities*

1. The civil legal capacity of a legal entity means the capability of that entity to have civil rights and obligations which are consistent with its operational objectives.
2. The civil legal capacity of a legal entity arises from the time when it is established and terminates from the time when the entity is wound up.
3. In civil relations, the legal or authorized representative of a legal entity shall act in the name of the entity.

Article 87 *Names of legal entities*

1. A legal entity must have its own name in the Vietnamese language, which shall clearly reflect the organizational form of the legal entity and distinguish it from other legal entities in the same field of activity.
2. A legal entity must use its own name in civil transactions.
3. The name of a legal entity shall be recognized and shall be protected by law.

Article 88 *Charters of legal entities*

1. Where the law provides that a legal entity must have a charter, the charter of the entity must be adopted by its founding members or by a general meeting of its members. The charter of a legal entity must be recognized by a competent State body if the law so requires.
2. The charter of a legal entity shall include the following principal contents:
 - (a) Name of entity;
 - (b) Purpose and scope of operation;
 - (c) Head office;
 - (d) Legal capital (if any);
 - (dd) Organizational structure; procedures for appointment, election, designation, dismissal and resignation of and duties and powers of positions of the management body and other bodies;
 - (e) Rights and obligations of members;
 - (g) Procedures for amending and supplementing the charter;
 - (h) Conditions for consolidation, merger, division, demerger and dissolution of the entity.

3. Any amendments of and additions to the charter of a legal entity must be recognized by a competent State body if the law so requires.

Article 89 *Management bodies of legal entities*

1. A legal entity must have a management body.
2. The organization, duties and powers of the management body of a legal entity shall be provided in the charter of the legal entity or in the decision establishing the legal entity.

Article 90 *Head offices of legal entities*

The head office of a legal entity is the place where the executive body of the entity is located.

The liaison address of a legal entity is the address of the head office of the legal entity. A legal entity may choose another location to serve as its liaison address.

Article 91 *Representatives of legal entities*

1. The representative of a legal entity may be a legal representative or an authorized representative. The person who is the representative of a legal entity must comply with the provisions in Chapter VII of Part One of this Code.
2. The legal representative of a legal entity shall be stated in the decision establishing the legal entity or in its charter.

Article 92 *Representative offices and branches of legal entities*

1. A legal entity may establish representative offices and branches at places other than the place of the head office of the legal entity.
2. Representative office means a dependent unit of a legal entity with the task, according to its authorization, to represent and protect the interests of the legal entity.
3. Branch means a dependent unit of a legal entity with the task of performing all or part of the functions of the legal entity, including its authorized representative functions.
4. Representative offices and branches are not legal entities. The head of a representative office or branch shall perform his or her duties as authorized by the legal entity within the authorized scope and for the authorized duration.
5. A legal entity shall have the civil rights and obligations which arise from transactions established and performed by its representative offices and branches.

Article 93 *Civil liability of legal entities*

1. A legal entity must bear civil liability with respect to the civil rights and obligations established and performed in the name of the legal entity by its representatives.
2. A legal entity shall fulfil its civil liability by recourse to its property but shall not have civil liability with respect to the civil obligations established and performed by a member other than in the name of the legal entity.

3. A member of the legal entity shall not have civil liability with respect to the civil obligations of the legal entity.

Article 94 *Consolidation of legal entities*

1. Legal entities of the same type may be consolidated to form a new legal entity in accordance with the provisions in the charter, as agreed by such legal entities, or pursuant to a decision of the authorized State body.
2. After consolidation, the former legal entities are wound up and their civil rights and obligations are transferred to the new legal entity.

Article 95 *Merger of legal entities*

1. A legal entity may be merged (hereinafter referred to as the *merged legal entity*) into another legal entity of the same type (hereinafter referred to as the *merging legal entity*) in accordance with the provisions in the charter, as agreed by such legal entities, or pursuant to a decision of the authorized State body.
2. After merger, the merged legal entity is wound up and its civil rights and obligations are transferred to the merging legal entity.

Article 96 *Division of legal entities*

1. A legal entity may be divided into a number of legal entities in accordance with the provisions in the charter or pursuant to a decision of the authorized State body.
2. After division, the divided legal entity is wound up and its civil rights and obligations are transferred to the new legal entities.

Article 97 *Demerger of legal entities*

1. A legal entity may be demerged into a number of legal entities in accordance with the provisions in the charter or pursuant to a decision of the authorized State body.
2. After demerger, the demerged legal entities and the demerging legal entities shall perform their rights and obligations in a manner consistent with their operational objectives.

Article 98 *Dissolution of legal entities*

1. A legal entity may be dissolved in the following cases:
 - (a) In accordance with the provisions in its charter;
 - (b) Pursuant to a decision of the authorized State body;
 - (c) Upon expiry of its term of operation as provided in its charter or in the decision of the authorized State body.
2. Prior to dissolution, a legal entity must fulfil all of its property obligations.

Article 99 *Termination of legal entities*

1. A legal entity shall terminate in the following cases:
 - (a) Consolidation, merger, division or dissolution of the legal entity in accordance with articles 94, 95, 96 and 98 of this Code;
 - (b) Declaration of bankruptcy in accordance with the law on bankruptcy.
2. A legal entity terminates from the time when its name is removed from the legal entity registry or as from the time stated in a decision of an authorized State body.
3. When a legal entity terminates, its assets shall be resolved in accordance with law.

SECTION 2

Types of Legal Entities

Article 100 *Types of legal entities*

1. State bodies and units of the people's armed forces.
2. Political organizations and socio-political organizations.
3. Economic organizations.
4. Socio-political professional organizations, social organizations, socio-professional organizations.
5. Social funds and charitable funds.
6. Other organizations which satisfy all of the conditions provided in article 84 of this Code.

Article 101 *Legal entities being State bodies and units of people's armed forces*

1. A State body or unit of the people's armed forces to which the State has allocated property in order for such body to exercise the functions of State administration and other functions not for business purposes is a legal entity when participating in civil relations.
2. A State body or unit of the people's armed forces shall have civil liability with respect to the exercise of its functions and the performance of its duties by recourse to the funds allocated to it from the State Budget.
3. Where a State body or unit of the people's armed forces engages in revenue-generating activity in accordance with law, it shall have civil liability with respect to such activity by recourse to the property obtained from such activity.

Article 102 *Legal entities being political organizations and socio-political organizations*

1. A political organization and socio-political organization which manages, uses or disposes of property under its ownership for the purpose of achieving political or social objectives in accordance with its charter is a legal entity when participating in civil relations.
2. The property of a political organization and socio-political organization may not be distributed to its members.
3. A political organization and socio-political organization shall have civil liability by recourse to its property, except such property as the law provides may not be used for the fulfilment of civil liability.

Article 103 *Legal entities being economic organizations*

1. State owned enterprises, co-operatives, limited liability companies, shareholding companies, enterprises with foreign owned capital and other economic organizations satisfying all of the conditions provided in article 84 of this Code are legal entities.
2. An economic organization must have a charter.
3. An economic organization shall have civil liability by recourse to its property.

Article 104 *Legal entities being socio-political professional organizations, social organizations and socio-professional organizations*

1. A socio-political professional organization, social organization and socio-professional organization which is permitted to be established by and has its charter approved by the authorized State body and the members of which are individuals or organizations contributing voluntarily property or membership fees for the purpose of supporting the objectives of the organization and the common needs of the members is a legal entity when participating in civil relations.
2. A socio-political professional organization, social organization and socio-professional organization shall have civil liability by recourse to its property.
3. When a socio-political professional organization, social organization and socio-professional organization terminates operation, its property shall not be distributed to its members but shall be settled in accordance with law.

Article 105 *Legal entities being social funds and charitable funds*

1. A social fund or charitable fund permitted to be established by and having its charter approved by the authorized State body and operating for the purpose of encouraging the development of culture, science and charity and other not-for-profit social and humanitarian objectives is a legal entity when participating in civil relations.
2. The property of a social fund or charitable fund shall be administered, used and disposed of in accordance with law and consistent with the operational objectives of the fund as provided in the charter of the fund.
3. A social fund or charitable fund shall only be permitted to engage in the activities provided in its charter approved by the authorized State body to the extent of its property and shall have civil liability by recourse to such property.
4. An organization which establishes a social fund or charitable fund shall not have civil liability with respect to the activities of such fund by recourse to its property, and may not distribute the property of such fund during the course of the operations of the fund.

Where a social fund or charitable fund terminates its operation, its property may not be distributed to its founding members but shall be settled in accordance with law.

CHAPTER V

Family Households and Co-Operative Groups

SECTION 1

Family Households

Article 106 *Family households*

Family households, the members of which have household property⁷ used in common economic activities involving agriculture, forestry and fishery production or production and business activities in a number of other sectors provided by law, are subjects when participating in civil relations in such sectors.

Article 107 *Representatives of family households*

1. The head of the household is the representative of the family household in civil transactions in respect of the common interests of the household. The father, mother or another adult member may be the head of the household.

The head of the household may authorize another adult member to act as the representative of the household in civil transactions.

2. Civil transactions established and performed in the common interests of the household by the representative of the family household shall give rise to rights and obligations of the entire family household.

Article 108 *Household property of family households*

The household property of a family household comprises land use rights, forest use rights, forest land which the family household cultivates, property which the members of the household contribute or create together and which is therefore household property or which is given as household property, property which is inherited in common, and other property which the members agree to be household property of the household.

Article 109 *Appropriation, use and disposal of household property of family households*

1. Members of a family household may appropriate and use household property of the family household in accordance with agreed methods.
2. Members of a family household who are fifteen (15) years or more of age must agree to the disposal of property being material for production [or] household property with a large value. In the case of other household property, the majority of the members who are fifteen (15) years or more of age must agree to its disposal.

Article 110 *Civil liability of family households*

1. A family household shall have civil liability with respect to the exercise of civil rights and performance of civil obligations established and performed in the name of the family household by its representative.
2. A family household shall have civil liability by recourse to its household property. If the household property is insufficient to fulfil the common obligations of the household, the members shall be jointly liable by recourse to their own separate properties.

⁷ *Phillips Fox Note: The literal translation is "common property".*

SECTION 2

Co-operative Groups

Article 111 *Co-operative groups*

1. A co-operative group formed on the basis of a co-operation contract certified by the people's committee of the commune, ward or township and entered into by three or more individuals who jointly contribute property and their efforts in order to perform certain tasks, to enjoy benefits mutually and to bear liabilities jointly, is a subject in civil relations.

A co-operative group which satisfies all of the conditions to become a legal entity in accordance with law may register its activities as a legal entity with the authorized State body.

2. A co-operation contract shall contain the following principal items:
 - (a) Purpose and term of the co-operation contract;
 - (b) Full names and places of residence of the head and the members of the group;
 - (c) Amounts of property contributed, if any; and methods for distributing the benefits and income amongst the group members;
 - (d) Rights, obligations and responsibilities of the head and of the members of the group;
 - (dd) Conditions for admitting members to and for expelling members from the group;
 - (e) Conditions which are grounds for the group to be wound up;
 - (g) Other agreements.

Article 112 *Members of co-operative groups*

An individual who is eighteen (18) or more years of age and who has full capacity for civil acts may be a member of a co-operative group.

A co-operative group has the right to enter into labour contracts with non-members for the performance of specific tasks.

Article 113 *Representatives of co-operative groups*

1. The representative of a co-operative group in civil transactions shall be the head of the group as appointed by its members.

The head of a co-operative group may authorize a member to perform certain tasks necessary for the group.

2. Civil transactions established and performed by the representative of a co-operative group for the purpose of the activities of the group and in accordance with a decision of a majority of the group members shall give rise to rights and obligations of the entire co-operative group.

Article 114 *Property of co-operative groups*

1. Property which has been contributed or jointly created by group members and property which has been given to the whole group shall be the group property⁸ of the co-operative group.
2. The members of the group shall administer and use the group property in accordance with agreed methods.
3. The disposal of any group property being materials for production shall require the consent of all members. With respect to the disposal of other types of group property, the consent of a majority of the members shall be required.

Article 115 *Obligations of group members*

A group member has the obligation:

1. To co-operate in accordance with the principles of equality, mutual benefit, mutual assistance and ensuring the common interests of the group.
2. To compensate the group for any damage arising from the fault of such member.

Article 116 *Rights of group members*

A group member has the right:

1. To receive benefits and income from the activities of the group as agreed.
2. To participate in the decision-making process with respect to issues relating to the activities of the group, and to inspect the activities of the group.

Article 117 *Civil liability of co-operative groups*

1. A co-operative group shall have civil liability with respect to the exercise of rights and the performance of obligations established and performed in its name by its representative.
2. A co-operative group shall have civil liability by recourse to its property; if the group property is insufficient for the fulfilment of the common obligations of the group, the members shall be jointly liable by recourse to their own property in proportion to their respective contributions of their own property.

Article 118 *Admission of new members to groups*

A co-operative group may only admit a new member with the consent of the majority of the members, unless they have some other agreement.

Article 119 *Withdrawal from co-operative groups*

1. A member has the right to withdraw from a co-operative group on the terms and conditions agreed.
2. A member withdrawing from a co-operative group has the right to demand the return of property which he or she contributed to the group and to receive his or her share of the group property and must perform his or her obligations to the group as agreed. If the distribution of the share of his or her property in kind adversely affects the continuation of the operations of the group, the value of such property shall be distributed instead.

Article 120 *Termination of co-operative groups*

⁸ *Phillips Fox Note: The literal translation is "common property".*

1. A co-operative group shall terminate in the following circumstances:

- (a) Upon expiry of the term stated in the co-operation contract;
- (b) The objective of the co-operation has been achieved;
- (c) The members agree to terminate the group.

In the case of termination, the co-operative group must so notify the people's committee of the commune, ward, or township which certified the co-operation contract.

2. A co-operative group may be terminated pursuant to a decision of the authorized State body in cases provided by law.

3. Upon termination, a co-operative group must pay the debts of the group. If the group property is insufficient to pay the debts, the separate property of the members shall be used to pay debts in accordance with article 117 of this Code.

If there is group property remaining after debts have been fully paid, such property shall be distributed among the members in proportion to their respective contributions, unless there is some other agreement.

CHAPTER VI

Civil Transactions

Article 121 *Civil transactions*

Civil transaction means a contract or a unilateral legal act which gives rise to, changes or terminates civil rights and civil obligations.

Article 122 *Conditions for effective civil transactions*

1. A civil transaction shall be effective when it satisfies all of the following conditions:

- (a) Persons participating in the transaction have capacity for civil acts;
- (b) The objective and contents of the transaction are not contrary to the law or social morals;
- (c) Persons participating in the transaction act entirely voluntarily.

2. The form of a civil transaction is a condition for its effectiveness in cases where the law so provides.

Article 123 *Objectives of civil transactions*

The objectives of a civil transaction are the lawful interests which the parties wish to achieve at the time when they enter into such transaction.

Article 124 *Forms of civil transactions*

1. Civil transactions may be created verbally, in writing or through specific acts.

Civil transactions by way of electronic means in the form of data messages shall be deemed to be written civil transactions.

2. Where the law provides that a civil transaction must be in writing, notarized, certified [*and/or*] registered or that application must be made for permission for such transaction, such provisions must be complied with.

Article 125 *Conditional civil transactions*

1. Where parties have an agreement on the conditions which will give rise to or which will rescind⁹ a civil transaction, such transaction shall arise or be rescinded upon occurrence of such conditions.
2. In the case where the condition which will give rise to or which will rescind a civil transaction does not occur due to the deliberate impeding action of one of the parties or of a third person, such condition shall be deemed to have occurred. If the efforts of one of the parties or of a third person promotes deliberately the occurrence of the condition in order to give rise to or to rescind the civil transaction, such condition shall be deemed not to have occurred.

Article 126 *Interpretation of civil transactions*

1. Where a civil transaction may be understood in different ways, the interpretation of such civil transaction shall be conducted in accordance with the following order:
 - (a) In accordance with the real intention of the parties at the time when the transaction was entered into;
 - (b) In a manner consistent with the objectives of the transaction;
 - (c) In accordance with the customary practice of the place where the transaction was entered into.

⁹ *Phillips Fox Note: An alternative translation is "terminate".*

2. The interpretation of civil contracts shall be conducted in accordance with the provisions in article 409 of this Code, and the interpretation of contents of wills shall be conducted in accordance with the provisions in article 673 of this Code.

Article 127 *Invalid civil transactions*

Civil transactions failing to satisfy any one of the conditions provided in article 122 of this Code shall be invalid.

Article 128 *Invalidity of civil transactions due to breach of legal prohibitions or contravention of social morals*

Civil transactions with an objective and contents which breach legal prohibitions or which contravene social morals shall be invalid.

Legal prohibitions means provisions of law which do not permit a subject to perform specific acts.

Social morals are standards of general behaviour as between persons in social life, and which are recognized and respected by the community.

Article 129 *Invalidity of civil transactions due to falsification*

Where parties enter into a civil transaction falsely for the purpose of concealing another transaction, such false transaction shall be invalid; notwithstanding, the transaction which is concealed shall be valid, unless it is also invalid pursuant to provisions of this Code. Where parties enter into a civil transaction falsely for the purpose of evading responsibilities to a third person, such transaction shall be invalid.

Article 130 *Invalidity of civil transactions established and performed by minors and persons having lost their capacity for civil acts or having had their capacity for civil acts restricted*

Where a civil transaction is entered into and performed by a minor, or a person who has lost the capacity for civil acts or has restricted capacity for civil acts, if the law provides that such transaction must be entered into and performed by the representative of such person, a court shall, at the request of the representative of such person, declare such transaction invalid.

Article 131 *Invalidity of civil transactions due to misunderstandings*

Where one party misunderstands the contents of a transaction and enters into the transaction due to the unintentional fault of a second party, the first party has the right to request the second party to change the contents of such transaction and, if the second party does not agree, the first party has the right to request the court to declare the transaction invalid.

The case of one party misunderstanding the contents of a transaction due to the intentional fault of a second party shall be resolved in accordance with article 132 of this Code.

Article 132 *Invalidity of civil transactions due to deception or threat*

Any party participating in a civil transaction as a result of deception or threat has the right to request a court to declare such transaction invalid.

Deception in a transaction means an intentional act of a party or of a third person for the purpose of misleading the other party as to the subject, nature of the entity, or contents of the civil transaction which has caused the other party to enter into the transaction.

Threat in a transaction means an intentional act of a party or of a third person which compels the other party to implement the transaction in order to avoid danger to life, health, honour, reputation, dignity or property or that of its parents, spouse, children.

Article 133 *Invalidity of civil transactions entered into by persons incapable of being aware of or controlling their acts*

A person who has the capacity for civil acts but has entered into a transaction at a time when he or she was incapable of being aware of or controlling his or her acts has the right to request a court to declare such civil transaction invalid.

Article 134 *Invalidity of civil transactions due to non-compliance with form*

Where the law provides that the form of a civil transaction is a condition for its validity but the parties fail to comply with the form, at the request of one or all parties, a court or an authorized State body may make a decision compelling the parties to implement the formalities as provided for the transaction within a specified period of time. If such formalities are not complied with within such period of time, the transaction shall be deemed invalid.

Article 135 *Partially invalid civil transactions*

A civil transaction shall be partially invalid when one part of a transaction is invalid but such invalidity does not affect the validity of the remaining parts.

Article 136 *Time-limit for requesting court to declare civil transaction invalid*

1. The time-limit within which a request may be made to a court to declare a civil transaction invalid pursuant to articles 130 to 134 inclusive of this Code shall be two years as from the date the civil transaction is entered into.
2. There is no restriction on the time-limit within which a request may be made to a court to declare a civil transaction invalid pursuant to articles 128 and 129 of this Code.

Article 137 *Legal effect of invalidity of civil transactions*

1. An invalid civil transaction shall not give rise to civil rights and obligations of the parties or to changes and termination of such rights and obligations as from the time the transaction is entered into.
2. Where a civil transaction is invalid, the parties shall restore everything to its original state and shall return to each other what they have received. If restitution is not able to be made in kind, it may be paid in money, except where the transacted property, benefits and income which had been received are confiscated in accordance with law. The party at fault which caused damage must compensate.

Article 138 *Protection of interests of bona fide third parties with respect to invalid civil transactions*

1. Where a civil transaction is invalid but the transacted property is moveable property the ownership of which is not required to be registered and such property has already been transferred to a bona fide third person by way of another transaction, the transaction with the third person shall remain valid, except in the case provided in article 257 of this Code.
2. Where the transacted property is immovable property or is moveable property the ownership of which is required to be registered, and where the transacted property has been transferred to a bona fide third person by way of another transaction, the transaction with the third person shall be valid, except where the bona fide third person received the property by way of an auction or a transaction with another party being the owner of such property pursuant to a judgment or decision of an authorized State body but thereafter such person is not the owner of the property as a result of the judgment or decision being amended or rescinded.

CHAPTER VII

Representation

Article 139 *Representation*

1. Representation means a person (hereinafter referred to as the *representative*) acting in the name and for the benefit of another person (hereinafter referred to as the *principal*) enters into and performs a civil transaction within the scope of representation.
2. Individuals, legal entities and other subjects may enter into and perform civil transactions through a representative. An individual may not allow another person to represent him or her if the law provides that the individual must personally enter into and perform such transaction.
3. The representation relationship shall be established in accordance with law or in accordance with an authorization.
4. A person has rights and obligations arising from a civil transaction established by a representative.
5. A representative must have full capacity for civil acts, except in the case provided in clause 2 of article 143 of this Code.

Article 140 *Legal representation*

Legal representation means representation which is required by law or pursuant to a decision of an authorized State body.

Article 141 *Legal representatives*

Legal representatives shall comprise:

1. The father or mother with respect to a minor.
2. The guardian with respect to a ward.
3. The person appointed by a court with respect to a person with restricted capacity for civil acts.
4. The head of a legal entity in accordance with the charter of the legal entity or pursuant to a decision of an authorized State body.
5. The head of the family household with respect to a family household.
6. The head of the co-operative group with respect to a co-operative group.
7. Other persons in accordance with law.

Article 142 *Authorized representation*

1. Authorized representation means representation which is established pursuant to a power of attorney between the representative and the principal.
2. The parties may agree on the form of authorization, except where the law provides that there must be a written power of attorney.

Article 143 *Authorized representatives*

1. An individual or legal representative of a legal entity may authorize another person to enter into and perform a civil transaction.
2. A person aged from fifteen (15) years to below eighteen (18) years may be a legal representative pursuant to a power of attorney, except where the law provides that the civil transaction must be entered into and or performed by a person who has reached eighteen (18) years of age.

Article 144 *Scope of representation*

1. A legal representative has the right to enter into and perform all civil transactions in the interests of the principal, unless otherwise provided by law.
2. The scope of representation pursuant to authorization shall be established in accordance with a power of attorney.
3. A representative may only perform civil transactions within his or her scope of representation.
4. A representative must inform third parties in civil transactions of the scope of his or her representation.
5. A representative may not establish or perform civil transactions with himself or herself, or with a third person for which the representative also acts, unless otherwise provided by law.

Article 145 *Consequences of civil transactions entered into and performed by unauthorized persons*

1. A civil transaction entered into and performed by an unauthorized person shall not give rise to rights and obligations with respect to the principal, unless the representative or principal so agree. Any person transacting with an unauthorized representative must notify the principal or representative for such principal in order to reply within a specified time; if there is no reply upon expiry of that time, such transaction shall not give rise to rights and obligations with respect to the principal, but the person who was the unauthorized representative must, nevertheless, fulfil obligations to the person with which he or she transacted, unless such person knew or should have known that the representative was unauthorized.
2. A person having transacted with an unauthorized person has the right to terminate unilaterally the performance of or to rescind the civil transaction entered into and to demand compensation for any damage, except where such person knew or should have known that the representative was unauthorized.

Article 146 *Consequences of civil transactions entered into and performed by representatives beyond scope of representation*

1. A civil transaction entered into and performed by a representative beyond his or her scope of representation shall not give rise to rights and obligations of the principal with respect to that part of the transaction which exceeded the scope of representation, unless the principal consents or knew and did not object; if [*the principal*] does not consent, the representative must fulfil obligations owing to the person with which he or she has transacted in respect of that part of the transaction which is beyond the scope of representation.
2. A person having entered into a transaction with such representative has the right to terminate unilaterally or rescind the civil transaction with respect to that part which is beyond the scope of representation or with respect to the entire transaction and demand compensation for any damage, except where such person knew or should have known that the scope of representation was exceeded.

3. Where a person and a representative enter into and perform a civil transaction deliberately beyond the scope of representation of the representative and thereby cause damage to the principal, they shall be jointly liable to compensate for the damage.

Article 147 *Termination of representation*

1. The legal representation of an individual shall terminate in the following circumstances:
 - (a) The principal attains adulthood or his or her capacity for civil acts has been restored;
 - (b) The principal dies;
 - (c) Other circumstances as provided by law.
2. The authorized representation of an individual shall terminate in the following circumstances:
 - (a) Upon expiry of the term of the authorization or upon completion of the authorized task;
 - (b) The authorizing person revokes the authorization or the authorized person renounces the authorization;
 - (c) The authorizing person or the authorized person dies, or a court declares that capacity for civil acts is lost or capacity for civil acts is restricted or declares that such person is missing or dead.

Upon termination of an authorized representation, the representative must pay all property obligations to the principal or to the heir of the principal.

Article 148 *Termination of representation of legal entities*

1. The legal representation of a legal entity shall terminate when the entity terminates.
2. The authorized representation of a legal entity shall terminate in the following circumstances:
 - (a) Upon expiry of the term of authorization or upon completion of the authorized task;
 - (b) The legal representative of the legal entity revokes the authorization or the authorized person renounces the authorization;
 - (c) The legal entity is wound up or the authorized person dies, or a court declares that capacity for civil acts is lost or capacity for civil acts is restricted or declares that such person missing or dead.

Upon termination of an authorized representation, the representative must pay all property obligations to the principal or to the heir of the principal.

CHAPTER VIII

Time-Limits

Article 149 *Time-limits*

1. Time-limit means a length of time calculated from one point of time to another.
2. A time-limit may be calculated by reference to minutes, hours, days, weeks, months or years, or by reference to the happening of an event.

Article 150 *Methods for calculating time-limits*

1. The method for calculating a time-limit shall be applied in accordance with the provisions of this Code, unless otherwise agreed or otherwise provided by law.
2. A time-limit shall be calculated according to the Gregorian calendar.

Article 151 *Detailed provisions on time-limits and point of time for calculating time-limits*

1. Where the parties have agreed on a time-limit which is one year, half of one year, one month, half of one month, one week, one day, one hour or one minute, but such length of time is not continuous, the time-limit shall be calculated as follows:
 - (a) One year shall be three hundred and sixty five (365) days;
 - (b) Half of one year shall be six months;
 - (c) One month shall be thirty (30) days;
 - (d) Half of one month shall be fifteen (15) days;
 - (dd) One week shall be seven days;
 - (e) One day shall be twenty four (24) hours;
 - (g) One hour shall be sixty (60) minutes;
 - (h) One minute shall be sixty (60) seconds.
2. Where the parties have agreed on a point of time which is at the beginning of a month, the middle of a month or the end of a month, such point of time shall be determined as follows:
 - (a) The beginning of a month shall be the first day of that month;
 - (b) The middle of a month shall be the fifteenth day of that month;
 - (c) The end of a month shall be the last day of that month.
3. Where the parties have agreed on a point of time which is at the beginning of the year, the middle of a year or the end of a year, such point of time shall be determined as follows:
 - (a) The beginning of a year shall be the first day of January;
 - (b) The middle of a year shall be the last day of June;
 - (c) The end of a year shall be the last day of December.

Article 152 *Commencement of time-limits*

1. Where a time-limit is stated by reference to minutes or hours, it shall commence from a defined moment of time.
2. Where a time-limit is stated by reference to days, weeks, months or years, the first day of the time-limit shall not be taken into account and the time-limit shall commence from the day following the defined date.
3. Where a time-limit is stated by reference to the happening of an event, the date on which the event happens shall not be taken into account and the time-limit shall commence from the day following the date on which the event happened.

Article 153 *End of time-limits*

1. Where a time-limit is stated by reference to days, the time-limit shall end at the last moment of the last day of the time limit.
2. Where a time-limit is stated by reference to weeks, the time-limit shall end at the last moment of the corresponding day of the last week of the time limit.
3. Where a time limit is stated by reference to months, the time-limit shall end at the last moment of the corresponding day of the last month of the time-limit. If the month in which the time-limit ends does not have a corresponding day, the time-limit shall end on the last day of such month.
4. Where a time-limit is stated by reference to years, the time-limit shall end at the last moment of the corresponding day and month of the last year of the time-limit.
5. Where the last day of a time-limit is a Sunday or public holiday, the time-limit shall end at the last moment of the next working day following such day.
6. The last moment of the last day of a time-limit shall be precisely twelve o'clock midnight on that day.

CHAPTER IX

Limitation Periods¹⁰

Article 154 *Limitation periods*

Limitation period means a time-limit provided by law where, upon its expiry, a subject may enjoy civil rights, be released from civil obligations, or lose the right to initiate legal action or the right to request resolution of a civil case.

Article 155 *Types of limitation periods*

1. A limitation period for enjoying civil rights is the time limit where, upon its expiry, a subject enjoys civil rights.
2. A limitation period for a release from civil obligations is the time limit where, upon its expiry, a person with civil obligations is released from the performance of those civil obligations.
3. A limitation period for initiating legal action is the time-limit within which a subject has the right to initiate legal action to request a court to resolve a civil case to protect the infringed legal rights or interests of the subject. When such time-limit expires, the right to initiate such legal action shall be lost.
4. A limitation period for requesting resolution of a civil case is the time-limit within which a subject has the right to request a court to resolve a civil case in order to protect the legal rights and interests of an individual, body or organization, or a public interest, or the interest of the State. When such time-limit expires, the right to request shall be lost.

Article 156 *Method for calculating limitation periods*

A limitation period shall be calculated from the first moment of time of the first day and shall end at the last moment of time of the last day of the period.

Article 157 *Effectiveness of limitation periods for enjoyment of civil rights and release from civil obligations*

¹⁰ *Phillips Fox Note: This term is used to refer to both periods of time within which events may occur and periods of time which must expire before an event can occur.*

1. Where the law provides that a subject may enjoy civil rights or be released from civil obligations by reference to a limitation period, the enjoyment of civil rights or the release from civil obligations shall take effect only upon expiry of the limitation period.
2. The limitation period for enjoyment of civil rights shall not apply in the following cases:
 - (a) Possession of property belonging to the State without any legal grounds;
 - (b) Enjoyment of personal rights not associated with property.
3. The limitation period for release from civil obligations shall not apply to the performance of civil obligations owing to the State, except where otherwise provided by law.

Article 158 *Continuity of limitation periods for enjoyment of civil rights and release from civil obligations*

1. The limitation period for enjoyment of civil rights or release from civil obligations shall continue uninterrupted from its beginning to its expiry. If there is an event causing an interruption, the limitation period shall recommence from the moment when the event causing the interruption ends.
2. The limitation period for enjoyment of civil rights or release from civil obligations shall be suspended upon occurrence of any of the following events:
 - (a) An authorized State body makes a resolution with respect to the civil rights and obligations which are the subject of the limitation period;
 - (b) Civil rights or obligations which are the subject of a limitation period are disputed by a person with related rights or obligations.
3. The limitation period shall continue uninterrupted where the enjoyment of civil rights or the release from civil obligations or the right to initiate legal action is lawfully transferred to another person.

Article 159 *Commencement of limitation periods for initiating legal action for civil cases and limitation periods for requesting resolution of civil cases*

1. The commencement of the limitation period for initiating legal action for a civil case shall be calculated from the date on which the legal rights or interests are infringed, unless otherwise provided by law.
2. The commencement of the limitation period for requesting resolution of a civil case shall be calculated from the date when the right to request arises, unless otherwise provided by law.

Article 160 *Non-applicability of limitation periods*

A limitation period for initiating legal action for a civil case shall not apply in the following cases:

1. Claim for the return of property belonging to the State.
2. Request for the protection of personal rights which are infringed, unless otherwise provided by law.
3. Other cases as provided by law.

Article 161 *Time periods excluded from limitation periods for initiating legal action for civil cases and from limitation periods for requesting resolution of civil cases*

The time period during which one of the following events occurs shall be excluded from limitation periods for initiating legal action for civil cases and from limitation periods for requesting resolution of civil cases:

1. An event of *force majeure* or other objective hindrance which renders the person with the right to initiate [*legal action for a civil case*] or make the request not able to do so within the limitation period.

An event of *force majeure* is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken.

An objective hindrance is a hindrance which in an objective context results in a person with civil rights or obligations not knowing that his or her lawful rights and interests have been infringed or not being able to exercise his or her rights or fulfil his or her civil obligations.

2. The person with the right to initiate [*legal action for a civil case*] or to make the request is a minor or has lost his or her capacity for civil acts or has a restricted capacity for civil acts, and does not yet have a representative.
3. The representative of a minor or [*the representative*] of a person who has lost his or her capacity for civil acts or who has a restricted capacity for civil acts dies and has not yet been replaced, or the representation is not able to continue for other legitimate reasons.

Article 162 *Re-commencement of limitation period for initiating legal action for civil cases*

1. The limitation period for initiating [*legal action for a civil case*] shall re-commence in the following cases:
 - (a) The obligor has acknowledged a part or all of its obligations to the person initiating;
 - (b) The obligor has fulfilled part of its obligations to the person initiating;
 - (c) The parties have become reconciled.
2. The limitation period for initiating [*legal action for a civil case*] shall re-commence from the date following the date on which the event provided in clause 1 of this article occurs.

PART TWO

PROPERTY AND OWNERSHIP RIGHTS

CHAPTER X

General Provisions

Article 163 *Property*

Property comprises objects, money, valuable papers and property rights.

Article 164 *Ownership rights*

Ownership rights comprise the rights of an owner to possess, use and dispose of the property of the owner in accordance with law.

An owner is an individual, a legal entity or other subject having all of the three abovementioned rights with respect to property.

Article 165 *Principles for exercising ownership rights*

An owner shall be entitled to conduct all acts as intended by the owner with respect to property but may not cause damage or adversely impact on the interests of the State, the public interest, or the lawful rights and interests of other persons.

Article 166 *Bearing risk in relation to property*

The owner must bear the risk in relation to property which is destroyed or damaged as a result of an event of *force majeure*, unless otherwise agreed or otherwise provided by law.

Article 167 *Registration of property ownership rights*

Ownership rights of immovable property shall be registered in accordance with the provisions of this Code and the law on registration of immovable property. Ownership rights of moveable property shall not be required to be registered, except where otherwise provided by law.

Article 168 *Point of time when property ownership rights are transferred*

1. The transfer of ownership rights with respect to immovable property shall be effective as from the time of registration of ownership, except where otherwise provided by law.
2. The transfer of ownership with respect to moveable property shall be effective as from the time such moveable property is transferred, except where otherwise provided by law.

Article 169 *Protection of ownership rights*

1. The ownership rights of an individual, legal entity or other subject shall be recognized and protected by law.
2. No one may be unlawfully deprived of or limited in relation to his or her ownership rights with respect to his or her property.

An owner is entitled to himself or herself protect his or her ownership rights and to stop any person infringing his or her ownership rights and to search for and reclaim the property which has been possessed, used or disposed of unlawfully by another person.

3. In cases of extreme necessity for reasons of national defence and security or the national interest, the State may compulsorily acquire or requisition with compensation the property of an individual, legal entity or other subject in accordance with law.

Article 170 *Basis for creating ownership rights*

Ownership rights are created with respect to property in the following cases:

1. Through labour or lawful production and business activities.
2. Transfer of ownership rights as agreed or pursuant to a decision of an authorized State body.
3. Receipt of benefits and income.
4. Formation of new objects through merging, mixing or processing.
5. Inheritance of property.

6. Acquisition in accordance with law of objects which have been abandoned, lost, mislaid or buried, of stray poultry or livestock, or of aquaculture stock.
7. Bona fide possession of property but without any legal basis in a continuous and overt manner and consistent with the limitation period provided in clause 1 of article 247 of this Code.
8. Other cases as provided by law.

Article 171 *Basis for terminating ownership rights*

Ownership rights terminate in the following cases:

1. The owners transfers his or her ownership rights to another person.
2. The owner renounces his or her ownership rights.
3. The property is destroyed.
4. The property is realized in order to fulfil the obligations of the owner.
5. The property is requisitioned.
6. The property is confiscated.
7. Where other persons have established ownership rights under the conditions provided by law with respect to objects which have been lost or mislaid, to stray poultry or livestock, or to aquaculture stock; and where other persons have established ownership rights with respect to property in accordance with clause 1 of article 247 of this Code.
8. Other bases as provided by law.

Article 172 *Forms of ownership*

On the basis of the regime of ownership by the entire people, collective ownership and private ownership, forms of ownership shall comprise State ownership; collective ownership; private ownership; common ownership; ownership of political organizations and socio-political organizations, and ownership of socio-political professional organizations, social organizations and socio-professional organizations.

Article 173 *Rights of persons not being owner of property*

1. Any person not being the owner shall only have the right to possess, use and dispose of property not belonging to such person in accordance with an agreement with the owner of such property or in accordance with law.
2. Rights of persons not being the owner of property shall comprise:
 - (a) Right to use land;
 - (b) Right to an easement over¹¹ adjacent immovable property;
 - (c) Other rights as agreed or as provided by law.
3. The fact that the owner of property transfers ownership of the property to another person is not a basis for terminating the rights of persons not being the owner of such property as provided in clause 2 of this article.

¹¹ *Phillips Fox Note: The literal translation is "limited use of".*

4. The rights of persons not being the owner of property shall be protected in accordance with article 261 of this Code.
5. The rights of persons not being the owner of property must be registered, including the right to use land and the right to an easement over adjacent immovable property as agreed and other rights as provided by law.

CHAPTER XI

Types of Property

Article 174 *Immovable property and moveable property*

1. Immovable property comprises the following types of property:
 - (a) Land;
 - (b) Houses and structures attached to land, including property attached to such houses and structures;
 - (c) Other property attached to land;
 - (dd) Other property as provided by law.
2. Moveable property is property which is not immovable property.

Article 175 *Benefits and income*

1. Benefits means the natural products of property.
2. Income means the gain derived from the exploitation of property.

Article 176 *Primary objects and auxiliary objects*

1. A primary object is an independent object the utility of which is able to be exploited in accordance with its function.
2. An auxiliary object is an object which directly supports the exploitation of the utility of a primary object and which is part of the primary object but which may be separated from it.

Upon performance of an obligation to transfer a primary object, any auxiliary objects must also be transferred, unless otherwise agreed.

Article 177 *Divisible objects and indivisible objects*

1. A divisible object is an object which, after being divided, retains its original characteristics and use functions.
2. An indivisible object is an object which, after being divided, is not able to retain its original characteristics and use functions.

When it is necessary to divide an indivisible object, it must be valued in terms of money for the purpose of division.

Article 178 *Consumable objects and non-consumable objects*

1. A consumable object is an object which, after being having been used once, loses or is not capable of retaining its original characteristics, appearance and use functions.

A consumable object may not be the object of a lease contract or of a bailment contract.

2. A non-consumable object is an object which, after having been used many times, substantially retains its original characteristics, appearance and use functions.

Article 179 *Generic objects and distinctive objects*

1. Generic objects are objects which have the same appearance, characteristics and use functions and which are able to be defined by units of measure.

Generic objects which have the same quality are interchangeable.

2. A distinctive object is an object which is distinguishable from other objects by its own characteristic markings, appearance, colour, material, nature or position.

An obligation to transfer a distinctive object is only able to be fulfilled by transferring that particular distinctive object.

Article 180 *Integrated objects*

An integrated object is an object comprised of parts or components which fit together and are connected with each other to make up a complete form whereby if one of the parts or components is missing, or if there is a part or component which is not of the right specification or type, it is not able to be used or its utility value is decreased.

An obligation to transfer an integrated object must be fulfilled by transferring all parts or components thereof, unless otherwise agreed.

Article 181 *Property rights*

Property rights are rights which are able to be valued in terms of money and may be transferred in civil transactions, including intellectual property rights.

CHAPTER XII

Content of Ownership Rights

SECTION 1

Right to Possess

Article 182 *Right to possess*

The right to possess is the right to keep and manage property.

Article 183 *Lawful possession*

Lawful possession is the possession of property in the following circumstances:

1. The owner possesses the property.
2. A person is authorized by the owner to manage the property.

3. A person is transferred the right to possess through a civil transaction in accordance with law.
4. A person finds and keeps, in accordance with conditions provided by law, property which has been abandoned, property for which no owner is able to be determined, or property which has been lost, mislaid or buried or sunken.
5. A person finds and keeps, in accordance with the conditions provided by law, domestic animals, poultry or aquaculture stock which have been lost.
6. Other cases as provided by law.

Article 184 *Right to possess of owners*

Where an owner possesses its own property, such owner may do all things to keep and manage the property in accordance with his or her wishes provided that it is not contrary to law or social morals to do so.

Possession by an owner shall not be restricted or interfered with at any time¹², except where the owner transfers possession to another person or where otherwise provided by law.

Article 185 *Right to possess of persons managing property under authorization of owner*

1. When an owner authorizes another person to manage his or her property, the authorized person shall exercise the right to possess such property within the scope, in the manner and for the duration determined by the owner.
2. A person authorized to manage property is not able to become the owner of the property delivered [for management] on the grounds of the time-limits provided in clause 1 of article 247 of this Code.

Article 186 *Right to possess of persons to which property is delivered¹³ through civil transactions*

1. Where an owner delivers property to another person through a civil transaction which does not include the transfer of ownership rights, the person to which the property is delivered must undertake the possession of such property in a manner consistent with the purpose and content¹⁴ of the transaction.
2. The person to which the property is delivered has the right to use such property and is entitled to transfer the right to possess and use the property to another person if the owner so agrees.
3. The person to which the property is delivered is not able to become the owner of that property on the grounds of the time-limits provided in clause 1 of article 247 of this Code.

Article 187 *Right to possess lost, mislaid, buried or sunken property and property the owner of which is not able to be identified*

1. The person finding lost, mislaid, buried or sunken property must immediately inform or return the property to its owner. If the owner is unknown, such person must inform or submit such property to the people's committee of the nearest commune, ward or township or the nearest local police station or other authorized State body in accordance with law.

A person finding property the owner of which is not able to be identified or which is lost, mislaid, buried or sunken property is entitled to possess such property from the time of discovery until the

¹² Phillips Fox Note: The literal translation is "in terms of time".

¹³ Phillips Fox Note: The literal translation is "handed over".

¹⁴ Phillips Fox Note: This is the literal translation.

time when the property is returned to the owner or the time when the property is submitted to the authorized State body.

2. With respect to property which has been dispersed by other persons in order to conceal breaches of the law or to evade the fulfilment of a civil obligation, the person making the discovery must immediately inform or submit the property to the authorized State body.

Article 188 *Right to possession of domestic animals, poultry and aquaculture stock having been lost*

A person finding domestic animals, poultry or aquaculture stock having been lost must inform or return the property to its owner; if the owner is not able to be identified, [such person] shall be entitled to possess such property from the time of discovery until the time when the property is returned to the owner.

Article 189 *Unlawful possession in good faith*

Unlawful possession of property is possession of property not in accordance with article 183 of this Code.

A person possessing property unlawfully but in good faith is a possessor which does not know and is not able to know that the possession of such property is unlawful.

Article 190 *Continuous possession*

Continuous possession of property is possession of property which occurs over a period of time without dispute relating to such property, including when the property is delivered to another person for possession.

Article 191 *Overt possession*

Possession of property shall be deemed to be overt possession¹⁵ when it occurs in a transparent manner, without concealment; [when] property currently being possessed is used in accordance with its functions and use purpose and is preserved and retained by the possessor as if it were his or her own property.

SECTION 2

Right to Use

Article 192 *Right to use*

Right to use means the right to exploit the use purpose of, and to enjoy the benefits and income derived from, property.

Article 193 *Right to use of owners*

Where the owner exercises the right to use property under its ownership, the owner may exploit the use purpose of, and enjoy the benefits and income derived from, the property in accordance with the wishes of the owner provided that this will not cause damage to or adversely affect the interests of the State or the public or the legal rights and interests of other persons.

Article 194 *Right to use of persons not being owners*

1. The right to use property may be transferred to another person by contract or in accordance with law.

A person not being the owner shall have the right to use property strictly in accordance with its functions, use purpose and proper methods.

¹⁵ *Phillips Fox Note: The literal translation is "publicly known possession".*

2. A person possessing property unlawfully but in good faith shall also have the right to exploit the use purposes of, and to enjoy the benefits and income derived from, the property in accordance with law.

SECTION 3

Right of Disposal

Article 195 *Right of disposal*

Right of disposal means the right to transfer ownership rights with respect to property or to renounce such ownership rights.

Article 196 *Conditions for disposal*

Disposal of property must be performed by a person having the capacity for civil acts in accordance with law.

Where the law provides formalities and procedures for disposal of property, such formalities and procedures must be complied with.

Article 197 *Right of disposal of owners*

Owners shall have the right to sell, exchange, give, loan, bequeath, renounce or implement other forms of disposal in conformity with the law on property.

Article 198 *Right of disposal of persons not being owners*

A person not being the owner of property shall only have the right to dispose of the property pursuant to authorization from the owner or in accordance with provisions of the law.

A person being authorized by an owner to dispose of property must perform the disposal in a manner consistent with the wishes and the interests of the owner.

Article 199 *Restrictions on right of disposal*

1. The right of disposal shall only be restricted in cases where the law so provides.
2. Where a property for sale is an historic or cultural relic, the State shall have the right of first refusal to purchase.

Where a legal entity, individual or other subject has the right of first refusal to purchase certain property in accordance with law, upon the sale of such property, the owner must grant such right of first refusal to purchase to such [*legal entity, individual or other*] subject.

CHAPTER XIII

Forms of Ownership

SECTION 1

State Ownership

Article 200 *State owned property*¹⁶

¹⁶ Phillips Fox Note: The literal translation is "Property under form of State ownership".

The following property belongs to the State: land, natural forests, planted forests funded by capital from the State Budget, mountains, rivers and lakes, water sources, underground natural resources, maritime resources, continental shelf and airspace, and the capital and assets invested by the State in enterprises and facilities of branches and areas of the economy, culture, society, sciences, technology, foreign affairs and national defence and security, together with other property provided by law.

Article 201 *Exercise of right of owner with respect to State owned property*

1. The State of the Socialist Republic of Vietnam shall exercise the rights of the owner with respect to State owned property.
2. The Government shall manage uniformly and ensure the appropriate, efficient and economic use of State owned property.

Article 202 *Management, use and disposal of State owned property*

The management, use and disposal of State owned property shall be performed within the scope and in accordance with the procedures provided by law.

Article 203 *Exercise of State ownership rights with respect to property invested in State owned enterprises*

1. Where State owned property is invested in a State owned enterprise, the State shall exercise the rights of the owner with respect to such property in accordance with the law on enterprises.
2. State owned enterprises have the right to manage and use capital, land, natural resources and other property invested by the State in accordance with the law on enterprises.

Article 204 *Exercise of State ownership rights with respect to property allocated to State bodies and units of armed forces*

1. Where property in the category of State owned property is allocated to a State body or unit of the armed forces, the State shall exercise the right to inspect and supervise management and use of such property.
2. The State body or unit of the armed forces has the right to manage the property allocated to it by the State and to use such property for the correct purpose in accordance with law.

Article 205 *Exercise of State ownership rights with respect to property allocated to political organizations, socio-political organizations, and socio-political professional organizations*

1. Where property in the category of State owned property is allocated to a political organization, socio-political organization or socio-political professional organization, the State shall exercise the right to inspect and supervise management and use of such property.
2. The political organization, socio-political organization or socio-political professional organization has the right to manage property allocated to it by the State and to use such property for the correct purpose, within the scope and in accordance with the methods and procedures provided by law, and consistent with the functions and duties of such organization as provided in its charter.

Article 206 *Rights of enterprises, family households, co-operatives and individuals with respect to use and exploitation of property in category of State owned property*

Where the law so provides and the authorized State body so permits, enterprises, family households, co-operatives and individuals may use land and exploit aquatic resources and other natural resources in the category of State owned property provided that they must use it for the correct purpose and effectively and [must] fulfil all of their obligations to the State in accordance with law.

Article 207 *Property in category of State owned property not having been allocated to organizations or individuals for management*

With respect to property in the category of State owned property which has not been allocated to organizations or individuals for management, the Government shall organize protection, investigation and survey, and formulation of zoning in order to make [such property] available for use.

SECTION 2

Collective Ownership

Article 208 *Collective ownership*

Collective ownership means the ownership by a co-operative group or other stable collective economic form in which individuals or family households contribute capital and labour jointly for production and business co-operation purposes in order to achieve the common objectives provided in its charter, and in accordance with the principles of voluntariness, equality, democracy and joint management and enjoyment of benefits.

Article 209 *Property under collective ownership*

Property under the ownership of a collective comprises property which is formed from sources being contributions from members, lawful income derived from production and business activities, and support from the State and other sources in accordance with law.

Article 210 *Possession, use and disposal of property under collective ownership*

1. The possession, use and disposal of property under collective ownership must comply with the law and the charter of the collective [and must] ensure the stable development of the collective ownership.
2. Property under collective ownership may be delegated to the members to be exploited and used by them through their labour in production and business activities in order to expand production and for general economic development for the interests and needs of the members.
3. Members of a collective shall have the right of first refusal to purchase, lease or "thue khoan"¹⁷ the property under collective ownership.

SECTION 3

Private Ownership

Article 211 *Private ownership*

Private ownership means the ownership by an individual of his or her lawful property.¹⁸

¹⁷ Phillips Fox Note: This is a form of lease having no English equivalent. Refer to articles 501 to 511.

¹⁸ Phillips Fox Note: There is no reference to private ownership by other subjects (that is, non-individuals).

Private ownership comprises individual ownership, ownership by small owners and ownership by private capitalists¹⁹.

Article 212 *Property under private ownership*

1. Property under private ownership comprises lawful revenue, savings, residential houses, commodities of daily life, means of production, capital, benefits, income and other lawful property of an individual.

Lawful property under private ownership shall not be limited in terms of quantity and value.

2. An individual is not entitled to own property which the law provides may not be owned privately.

Article 213 *Possession, use and disposal of property under private ownership*

1. An individual has the right to possess, use and dispose of property under his or her ownership for the purpose of satisfying the needs of daily life, consumption or production and business activities and other purposes in accordance with law.
2. The possession, use and disposal of property under private ownership must not cause damage to or adversely affect the interests of the State or the public or the legal rights and interests of other persons.

SECTION 4

Multiple Ownership

Article 214 *Multiple ownership*²⁰

Multiple ownership means ownership of property by more than one owner.

Multiple ownership comprises ownership in common and joint ownership.

Property under multiple ownership is multiple ownership property²¹.

Article 215 *Creation of multiple ownership rights*

Multiple ownership rights shall be created as agreed by the owners or in accordance with provisions of the law or in accordance with customary practice.

Article 216 *Ownership in common*

1. Ownership in common is multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is specified.
2. Each of the owners in common has rights and obligations with respect to the multiple ownership property corresponding to its share of the ownership rights, unless otherwise agreed.

Article 217 *Joint ownership*

¹⁹ Phillips Fox Note: This is the literal translation.

²⁰ Phillips Fox Note: The literal translation is "mutual ownership".

²¹ Phillips Fox Note: The literal translation is "mutual property".

1. Joint ownership means multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is not specified.

Joint ownership includes divisible joint ownership and indivisible joint ownership.

2. Joint owners have equal rights and obligations with respect to the multiple ownership property.

Article 218 *Mixed multiple ownership*

1. Mixed multiple ownership means ownership of property in respect of which owners from different economic sectors contribute capital for the purpose of conducting production and business for profit-making purposes.
2. Property which is formed from sources being capital contribution by owners, lawful profits derived from production and business activities or other lawful sources in accordance with law is mixed multiple ownership property.
3. The possession, use and disposal of property under mixed multiple ownership must comply with the provisions of article 216 of this Code and other relevant laws relating to capital contribution; to the organization and operation of production and business activities; to the administration and management of property; and to the liability for property and distribution of profits.

Article 219 *Multiple ownership by husbands and wives*

1. Multiple ownership by a husband and wife is joint ownership.
2. A husband and wife jointly create and develop multiple ownership property through their efforts and have equal rights to possess, use and dispose of such property.
3. A husband and wife shall discuss, agree on or authorize each other in relation to the possession, use and disposal of the multiple ownership property.
4. The multiple ownership property of a husband and wife may be divided as agreed or pursuant to a decision of a court.

Article 220 *Multiple ownership by communities*

1. Multiple ownership by a community is the ownership by a family line, hamlet, village, tribal village, mountainous hamlet, ethnic hamlet, religious community or other community of property which is formed in accordance with customary practice, which is jointly contributed to and raised by the members of the community or which was given to the whole [*community*], and property which is obtained from other lawful sources for the purpose of satisfying the common lawful interests of the entire community.
2. Members of a community shall jointly manage, use and dispose of multiple ownership property in the interests of the community as agreed or in accordance with customary practice, but not inconsistent with the law or social morals.
3. Multiple ownership property by a community is joint property.

Article 221 *Possession of multiple ownership property*

The owners of multiple ownership property shall manage jointly such property in accordance with the principle of unanimity, unless otherwise agreed or otherwise provided by law.

Article 222 *Use of multiple ownership property*

1. Each owner in common has the right to exploit, and to enjoy the benefits and income derived from, the multiple ownership property in proportion to its share of the ownership rights, unless otherwise agreed or otherwise provided by law.
2. Joint owners have equal rights to exploit, and to enjoy the benefits and income derived from, the multiple ownership property, unless otherwise agreed.

Article 223 *Disposal of multiple ownership property*

1. Each owner in common has the right to dispose of its share of the ownership rights as agreed or as provided by law.
2. Disposal of joint property shall be implemented as agreed by the owners of the property or as provided by law.
3. Where an owner of multiple ownership property sells its share of the ownership rights, the other owners of the property have the right of first refusal to purchase such share. Such owner may sell [*such share*] to other persons if no other owner purchases within three months in the case of immovable property, or within one month in the case of moveable property, from the date on which the other owners received notice of the sale and the conditions of the sale.

In the case where there is a sale of a share of the multiple ownership rights in breach of this regulation on priority purchase right, within the time-limit of three months from the date of discovery of the breach, any one of the multiple owners has the right to request a court to transfer to it the rights and obligations of the purchaser; and the party at fault which caused damage shall be liable to compensate for damage.

4. Where one of the owners of multiple ownership property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall belong to the State, except in the case of multiple ownership by communities where the share of ownership rights shall belong to the remaining members.

Article 224 *Division of multiple ownership property*

1. Where multiple ownership [*property*] is divisible, each owner has the right to request the property to be divided. If the owners have agreed not to divide the property within a certain period of time, each owner only has the right to request the property to be divided upon expiry of that period. Where the property is not able to be divided in kind, it shall be valued in terms of money for the purposes of division.
2. Where a person requests one of the owners of multiple ownership property to fulfil a payment obligation and such owner does not have private property or sufficient private property to make the payment, the requesting person has the right to request that the multiple ownership property be divided in order to receive monetary payment and such person shall be entitled to participate in the division of the property, unless otherwise provided by law.

If the shares of ownership rights are not able to be divided in kind or if such a division is opposed by the remaining owners, the requesting person has the right to request the owner with the obligation to sell to sell its share of ownership rights in order to fulfil the payment obligation.

Article 225 *Multiple ownership in apartment buildings*

1. The areas, equipment and furnishings which are for common use in an apartment building are under multiple ownership of all owners of the apartments in the apartment building and are indivisible, unless otherwise provided by law or unless all of the owners reach some other agreement.
2. The owners of the apartments in an apartment building have equal rights and obligations with respect to the management and use of common areas and equipment.

3. Where an apartment building is destroyed, the owners of the apartments in the apartment building may use the land surface area of such apartment building in accordance with law.

Article 226 *Termination of multiple ownership*

Multiple ownership shall terminate in the following circumstances:

1. The multiple ownership property has been divided.
2. One of the owners of the multiple ownership [*property*] is entitled to enjoy the property in its entirety.
3. The multiple ownership property no longer exists.
4. Other cases as provided by law.

SECTION 5

Ownership by Political Organizations and Socio-Political Organizations

Article 227 *Ownership by political organizations and socio-political organizations*

Ownership by a political organization or socio-political organization means the ownership by such organization [*as a whole*] for the purpose of achieving the common objectives as provided in the charter of the organization.

Article 228 *Property under ownership of political organizations and socio-political organizations*

1. Property under the ownership of a political organization or socio-political organization comprises property formed from sources being contributions by members, property which is given to the whole [*organization*], and property which is obtained from other sources in accordance with law.²²

State owned property which has been transferred to the ownership of a political organization or a socio-political organization shall be property under the ownership of such organization.

2. State owned property which is allocated to a political organization or socio-political organization for management and use is not property under the ownership of such organization.

Article 229 *Possession, use and disposal of property under ownership of political organizations and socio-political organizations*

A political organization or socio-political organization shall exercise the rights to possess, use and dispose of property under its ownership in accordance with law and consistent with the operational objectives provided in the charter of the organization.

²² *Phillips Fox Note: The translation of this sentence has been significantly restructured.*

SECTION 6

Ownership by Socio-Political Professional Organizations, Social Organizations and Socio-Professional Organizations

Article 230 *Ownership by socio-political professional organizations, social organizations and socio-professional organizations*

Ownership by a socio-political professional organization, social organization or socio-professional organization means the ownership by such organization as a whole for the purpose of achieving the common objectives of the members as provided in the charter of the organization.

Article 231 *Property under ownership of socio-political professional organizations, social organizations and socio-professional organizations*

Property under the ownership of a socio-political professional organization, social organization or socio-professional organization comprises property formed from sources being contributions from members, property which is given to the whole [*organization*] and property which is obtained from other lawful sources.

Article 232 *Possession, use and disposal of property under ownership of socio-political professional organizations, social organizations and socio-professional organizations*

A socio-political professional organization, social organization or socio-professional organization shall exercise the rights to possess, use and dispose of property under its ownership in accordance with law and consistent with the operational objectives provided in the charter of the organization.

CHAPTER XIV

Creation and Termination of Ownership Rights

SECTION 1

Creation of Ownership Rights

Article 233 *Creation of ownership rights with respect to property earned from labour and lawful business and production activities*

Workers and persons conducting lawful business and production activities have ownership rights with respect to property earned from labour and the lawful business and production activities from the time when such property is earned.

Article 234 *Creation of ownership rights as agreed*

A person to which property has been transferred through a contract of sale and purchase or by a gift, exchange or loan has the right to own such property from the time of transfer of the property, unless otherwise agreed by the parties or otherwise provided by law.

Article 235 *Creation of ownership rights with respect to benefits and income*

An owner or the person using property has ownership rights with respect to the benefits and income [derived from such property] as agreed or in accordance with law from the time when such benefits and income are derived.

Article 236 *Creation of ownership rights in case of merger*

1. Where property of more than one owner²³ is merged to form an indivisible object and it is not possible to determine whether the property which is merged is a primary object or an auxiliary object, the newly formed object shall be the multiple ownership property of such owners. If the property which is merged consists of a primary object and [an] auxiliary object[s], the newly formed object shall belong to the owner of the primary object from the time when the new object is formed. The owner of the new property must pay the value of the auxiliary object to its owner, unless otherwise agreed.
2. Where a person merges the moveable property of another person with its own moveable property, even though it knew or should have known that such property was not its own and it did not have the consent of the owner of the property which was merged, the owner of the property which is merged shall have one of the following rights:
 - (a) To request the person having merged the property to deliver the new property to it and to pay the value of the property;
 - (b) If the owner of the property which is merged does not wish to take the new property, to request the person having merged the property to pay the value of the merged property and to compensate for any damage.
3. Where a person merges the moveable property of another person with its own immovable property, even though it knew or should have known that such property was not its own and it did not have the consent of the owner of the property which was merged, the owner of the property which is merged

²³ *Phillips Fox Note: The literal translation is "many different owners".*

has the right to request the person having merged the property to pay the value of the merged property and to compensate for any damage.

Article 237 *Creation of ownership rights in case of mixing*

1. Where the property of more than one owner is mixed to form a new indivisible object, the new object shall be the multiple ownership property of such owners from the moment of mixing.
2. Where a person has mixed the property of another person with its own property, even though it knew or should have known that such property is not its own and it does not have the consent of the owner of the property which has been mixed, the owner of the property which has been mixed may:
 - (a) Request the person having mixed the property to deliver the new property to it and pay such person the value of the property of such person;
 - (b) If the owner of the property which has been mixed does not wish to take the new property, request the person having mixed the property to pay the value of the property *[of the owner]* and to compensate for any damage.

Article 238 *Creation of ownership rights in case of processing*

1. An owner of raw materials which are processed to form a new object is also the owner of the newly formed object.
2. A person using raw materials under the ownership of another person for processing *[who acts]* in good faith shall become the owner of the new property, but must pay the value of the raw materials to the owner and compensate it for any damage.
3. Where a person processes *[raw materials]* not in good faith, the owner of the raw materials has the right to request that the new object be delivered to it. Where the raw materials are owned by more than one person, such persons shall become the owners of the newly formed object in proportion to the value of the raw materials owned by each person. The owners of the raw materials processed not in good faith may request the person carrying out the processing to compensate for any damage.

Article 239 *Creation of ownership rights with respect to abandoned objects and objects the owner of which is not able to be identified*

1. An abandoned object is an object in respect of which the owner has renounced its ownership rights.

A person finding an abandoned object which is moveable property shall have the right to own such property in accordance with law. If the found object is immovable property, it shall belong to the State.
2. A person finding an object the owner of which is not able to be identified must inform or deliver the object to the people's committee of the nearest commune, ward or township or the nearest local police station in order that a public announcement may be made notifying the owner to reclaim the object.

The delivery of the object must be minuted, specifying the surnames, given names and addresses of the finder and the receiver and the condition, quantity and volume of the property delivered.

The people's committee or local police station which received the object must notify the finder of the results of their inquiries in order to determine the owner.

Where the object, the owner of which is not able to be identified, is moveable property, if the owner [of the object] is still not able to be identified after one year from the date of the public announcement, such property shall be under the ownership of the finder in accordance with law. Where the object is immovable property, if the owner is still not able to be identified after six years from the date of the public announcement, such property shall belong to the State. The finder shall be entitled to enjoy a monetary reward in accordance with law.

Article 240 *Creation of ownership rights with respect to buried or sunken objects which are found*

Ownership rights with respect to a buried or sunken object which is found, but which has no owner or the owner of which is not able to be identified, shall be determined, after deducting search and maintenance expenses, as follows:

1. A found object which is an historic or cultural relic shall belong to the State and the finder shall be entitled to enjoy a monetary reward in accordance with law.
2. A found object which is not an historic or cultural relic, and which has a value equivalent up to ten (10) months wages at the minimum monthly wage rate provided by the State, shall belong to the finder; if the value of the found object is more than the equivalent of ten (10) months wages at the minimum monthly wage rate provided by the State, the finder shall be entitled to the value of ten (10) months wages at the minimum monthly wage rate provided by the State plus fifty (50) per cent of the remaining value of the object in excess of the ten (10) months wages at the minimum monthly wage rate provided by the State, with the remaining value belonging to the State.

Article 241 *Creation of ownership rights with respect to objects which other persons have lost or mislaid*

1. A person finding an object which another person has lost or mislaid and being aware of the address of the person having lost or mislaid the object must inform or return the object to such person. If [the finder] is not aware of the address of the person having lost or mislaid the object, it must inform or deliver the object to the people's committee of the nearest commune, ward or township or the nearest local police station in order that a public announcement may be made notifying the owner to reclaim the object.

The people's committee or local police station which received the object must notify the finder of the results of their inquiries in order to determine the owner.

2. If, after one year from the date of the public announcement of the object having being found, the owner of the object is still not able to be identified or the owner does not claim the object, and if the value of the object is up to [the equivalent of] ten (10) months wages at the minimum monthly wage rate provided by the State, the object shall belong to the finder. If the value of the object found is more than [the equivalent of] ten (10) months wages at the minimum monthly wage rate provided by the State, after deducting costs of preservation, the finder shall be entitled to the value of ten (10) months wages at the minimum monthly wage rate provided by the State plus fifty (50) per cent of the remaining value of the object in excess of the ten (10) months wages at the minimum monthly wage rate provided by the State, with the remaining value belonging to the State.
3. A lost or mislaid object which is an historic or cultural relic shall belong to the State if, after one year from the date of the public announcement, the owner is still not able to be identified or no one reclaims the object. The finder shall be entitled to enjoy a monetary reward in accordance with law.

Article 242 *Creation of ownership rights with respect to stray domestic livestock*

A person capturing a stray domestic livestock must take care of it and notify the people's committee of the village, ward or town in which such person resides in order that a public announcement may be made notifying the owner to reclaim [*the stray domestic livestock*]. An owner reclaiming the stray domestic livestock must remunerate the person having captured it for feeding and taking care [*of the stray domestic livestock*] and any other expenses [*incurred*].

If no one reclaims the stray domestic livestock after six months from the date of the public announcement, it shall be under the ownership of the person having captured it. If the stray domestic livestock is one which is allowed to roam according to customary practice, this time-limit shall be one year.

During the period of feeding and taking care of the stray domestic livestock, the person having captured it shall be entitled to half of any offspring born. Such person must compensate for any damage if it intentionally causes the death of the stray domestic livestock.

Article 243 *Creation of ownership rights with respect to stray domestic poultry*

Where the domestic poultry of a person is lost and captured by another person, the person having captured the [*stray domestic*] poultry must make a public announcement notifying the owner to reclaim such poultry. An owner reclaiming the stray poultry must remunerate the person having captured it for feeding and taking care [*of the stray domestic poultry*] and any other expenses [*incurred*].

If no one reclaims the stray domestic poultry after one month from the date of the public announcement, it shall be under the ownership of the person having captured it.

During the period of feeding and taking care of the stray [*domestic poultry*], the person having captured it shall enjoy the benefits from the stray [*domestic poultry*]. Such person must compensate for any damage if it intentionally causes the death of the stray [*domestic poultry*].

Article 244 *Creation of ownership rights with respect to aquaculture stock*

Where the aquaculture stock of a person moves naturally into the field, pond or lake of another person, the stock shall be under the ownership of the person having such field, pond or lake. Where the aquaculture stock has special marks which make it possible to determine that it is not under the ownership of the person having such field, pond or lake, such person must make a public announcement notifying the owner to reclaim the stock. If no one reclaims the stock after one month from the date of the public announcement, it shall be under the ownership of the person having such field, pond or lake.

Article 245 *Creation of ownership rights due to inheritance*

An heir shall have ownership rights with respect to inherited property in accordance with Part Four of this Code.

Article 246 *Creation of ownership rights in accordance with judgement or decision of court or in accordance with decision of another authorized State body*

Ownership rights may also be created on the basis of a judgement or decision of a court or the decision of another authorized State body.

Article 247 *Creation of ownership rights resulting from limitation periods*

1. A person unlawfully but in good faith possessing, or deriving benefits from, property continuously and in an overt manner for ten (10) years with respect to moveable property, and for thirty (30) years with

respect to immovable property, shall become the owner of such property from the moment of commencement of possession, except in the case provided in clause 2 of this article.

2. A person unlawfully possessing property in the category of State owned property may not become the owner of such property, irrespective of good faith, continuous and overt possession, or length of time of possession.

SECTION 2

Termination of Ownership Rights

Article 248 *Transfer of ownership rights by owner*²⁴

Where an owner transfers its ownership rights to another person through a contract for sale and purchase, by exchange, gift or loan, or through inheritance, the ownership rights of the owner with respect to the property shall terminate from the time when the ownership rights of the transferee arise.

Article 249 *Renunciation of ownership rights*

An owner may terminate ownership rights with respect to its property by publicly declaring, or by performing certain acts evidencing, its renunciation of the right to possess, use and dispose of such property.

With respect to property the renunciation of which may harm social order or security or cause environmental pollution, the renunciation of ownership rights must comply with the law.

Article 250 *Property in respect of which other persons have created ownership rights*

When a person has, in accordance with articles 241 to 244 of this Code, lawfully created ownership rights with respect to a lost or mislaid object or stray domestic livestock, poultry or aquaculture stock, the ownership rights of the person formerly having the property shall terminate.

When the ownership rights of a possessor have been created in accordance with clause 1 of article 247 of this Code, the ownership rights of the person who formally had the property shall terminate.

Article 251 *Realization of property in order to fulfil obligations of owner*

1. Ownership rights with respect to property shall terminate when such property is realized in order to fulfil the obligations of the owner pursuant to a decision of a court or another authorized State body, unless otherwise provided by law.
2. Property which the law provides is not able to be seized may not be realized in order to fulfil the obligations of the owner.
3. The ownership rights with respect to property realized in order to fulfil the obligations of the owner shall terminate at the time when the ownership rights of the recipient of such property arise.
4. The realization of land use rights shall be carried out in accordance with the law on land.

Article 252 *Destroyed property*

When property is destroyed, the ownership rights with respect to such property shall terminate.

Article 253 *Property which is compulsorily acquired*

Where property is compulsorily acquired in accordance with a decision of the authorized State body for reasons of national defence and security or the national interest, the ownership rights of the owner shall terminate from the time when the decision of the authorized State body becomes legally effective.

Article 254 *Confiscated property*

²⁴ Phillips Fox Note: The literal translation is "The owner transfers its ownership right to other persons".

Where property of an owner is confiscated and paid into the State Budget due to the owner committing a crime or an administrative offence, the ownership rights of the owner with respect to such property shall terminate from the time when the judgment or decision of the court or the decision of the authorized State body becomes legally effective.

CHAPTER XV

Protection of Ownership

Article 255 *Measures for protecting ownership*

A lawful owner or possessor has the right to request a court or another authorized body or organization to force any person infringing its ownership rights or right to possess to return the property and to cease the infringement of its ownership rights or right to possess, and has the right to demand compensation for any damage.

The lawful owner or possessor has the right to itself protect the property under its ownership or the property currently in its lawful possession by taking measures in accordance with law.

Article 256 *Right to reclaim property*

Except in the case provided in clause 1 of article 247 of this Code, a lawful owner or possessor [*of property*] has the right to request a person unlawfully possessing, using or receiving benefits from property [*of the owner or possessor*] to return such property. If the property is currently in the possession of a bona fide possessor, articles 257 and 258 of this Code shall apply.

Article 257 *Right to reclaim moveable property ownership of which is not required to be registered from bona fide possessor*

The owner has the right to reclaim from a bona fide possessor moveable property the ownership of which is not required to be registered in the case where such possessor obtained the moveable property through a contract without consideration²⁵ to a person without the right to dispose of such property. In the case where such contract includes consideration, the owner has the right to reclaim such moveable property if it was stolen [*or*] lost or in other circumstances in which possession was obtained contrary to the wish of the owner.

Article 258 *Right to reclaim moveable property ownership of which is required to be registered or immovable property from bona fide possessor*

The owner has the right to reclaim moveable property the ownership of which is required to be registered or immovable property, except where a third person is a bona fide possessor of such property by way of an auction or by way of a transaction pursuant to a judgement or decision of an authorized State body which made such person the owner of the property but at a later date such person was not the owner of the property due to the judgement or decision being amended or rescinded.

Article 259 *Right to demand prevention or cessation of acts which unlawfully hinder exercise of lawful ownership rights and right to possess*

When exercising its ownership rights or right to possess, a lawful owner or possessor [*of property*] has the right to demand a person unlawfully hindering the exercise of its ownership rights or right to possess to cease such acts. If such person does not cease voluntarily, the lawful owner or possessor has the right to request a court or another authorized body or organization to compel such person to do so.

Article 260 *Right to demand compensation for damage*

²⁵ *Phillips Fox Note: The literal translation is "compensation".*

The lawful owner or possessor has the right to demand a person infringing its ownership rights or right to possess to compensate for any damage.

Article 261 *Protection of rights of possessor not being owner*

The rights provided in articles 255 to 260 inclusive of this Code shall also belong to a person not being the owner but having possessed property on the basis of land use rights or on the basis of an easement over adjacent immoveable property, or on the basis of other grounds as provided by law or as agreed.

CHAPTER XVI

Other Provisions Regarding Ownership Rights

Article 262 *Obligations of owners in emergency situations*

1. An emergency situation is the situation of a person having, in order to avoid danger which is directly and actually threatening the interests of the State or of a collective, or its legal interests or those of any other persons, no alternative other than to commit actions causing damage to a lesser extent than the damage that needs to be prevented.
2. In an emergency situation, the owner of property may not hinder other persons from using the property of that owner, nor hinder other persons from causing damage to such property, in order to prevent or reduce the greater danger or damage that might occur.
3. Causing damage in an emergency situation is not an act of infringement of ownership rights. The owner shall be compensated for any damage in accordance with the provisions of clause 3 of article 614 of this Code.

Article 263 *Obligations of owners to protect environment*

When using, taking care of or renouncing its property, an owner must comply with the law on protection of the environment. If it causes environmental pollution, the owner must cease the acts which caused the pollution and take measures to remedy any consequences and compensate for any damage.

Article 264 *Obligations of owners to respect and protect social order and security*

When exercising the right to possess, use or dispose of its property, an owner must respect and protect social order and security and may not abuse its ownership rights in order to cause public disorder or loss of security or to cause damage to the interests of the State or the public or the legal rights and interests of other persons.

Article 265 *Obligation to respect boundaries between immoveable property*

1. The boundaries between adjoining immoveable properties shall be determined in accordance with the agreement of the owners or in accordance with a decision of the authorized State body.

The boundaries may also be determined in accordance with customary practice or according to boundaries which have existed for thirty (30) or more years without dispute.

2. A person having land use rights may use the airspace and the sub-surface according to the vertical dimensions of the boundaries around the land in accordance with the construction master planning issued by the authorized State body and may not interfere with the use by other persons of the adjoining land.

A land user may only plant trees and perform other activities within the area covered by its land use rights and according to the defined boundaries. If the roots and branches of trees extend beyond the

boundaries, such person must clip and prune the parts of the trees beyond the boundaries, except as otherwise agreed.

3. Where the boundary is a canal, irrigation ditch, trench, gutter or path at the edge of a rice field, the land user has the obligation to respect and preserve the common boundary. The land user may not encroach on or change the boundary markers.

Article 266 *Ownership rights with respect to boundary markers separating immovable property*

1. An owner of adjoining immovable property may only erect boundary stakes and fences and build separating walls on the area covered by its land use rights. Adjoining land users may agree to the erection of boundary stakes and fences, the building of separating walls and the planting of trees on the boundary for use as boundary markers between the immovable properties, and the boundary markers shall be under the multiple ownership of such persons.

Where a boundary marker is erected on the boundary by only one party with the consent of the owner of the adjoining immovable property, such boundary marker shall be multiple ownership property and the construction expenses shall be borne by the party having erected the marker, unless otherwise agreed. If the owner of the adjoining immovable property does not give consent and has legitimate reason, the owner having erected the boundary stake or fence or built the separating wall must remove it.

With respect to trees which are common boundary markers, the parties have equal obligations to protect the trees, and the fruits from the trees shall be distributed equally, unless otherwise agreed.

2. With respect to boundary markers which are common house²⁶ walls, the owner of the adjoining immovable property may not cut out a window or air ventilating hole or drill the wall in order to install building structures, except with the consent of the owner of the adjoining property.

Where houses are separately built, but with adjoining walls, an owner may only drill and install building structures up to the space between the adjoining walls.

Article 267 *Obligation to respect building regulations*

1. When constructing a project, the owner of the project must comply with the law on construction and [must] ensure safety. It may not build beyond the height and distance provided by the law on construction or infringe the legal rights and interests of the owners of adjoining and neighbouring immovable properties.
2. Where there is a danger of an incident occurring with respect to a construction project which could adversely affect adjoining or neighbouring immovable properties, the owner of the project must immediately suspend the construction and carry out any repairs or removal as required by the owners of the adjoining or neighbouring immovable properties or by the authorized State body. If damage is caused, compensation must be made.
3. When engaged in the construction of a sanitation project, a warehouse for storing toxic chemical substances or other projects the use of which may cause environmental pollution, the owner must construct such project at an appropriate site which is a reasonable distance away from the boundaries and must ensure hygiene and security and must not adversely affect adjoining or neighbouring owners.

Article 268 *Obligation to ensure security of adjoining construction projects*

When digging a well or a pond or constructing underground structures, the owner of the project must do so at the distance away from the boundaries provided by the law on construction.

²⁶ Phillips Fox Note: This is the literal translation. It appears to be used in the broader sense of "building".

Where there is a danger that a project will threaten the safety of adjoining or neighbouring immovable properties, the owner of the project must take remedial measures immediately. If damage is caused to the owners of adjoining or neighbouring properties, compensation must be made.

Article 269 *Obligation of owners relating to draining of rainwater*

A house owner must install water drain pipes in order that the rainwater from its roof does not run onto any adjoining immovable properties.

Article 270 *Obligation of owners relating to draining of waste water*

A house owner must install underground drains or water drainage channels to discharge waste water to the prescribed location in order that the waste water does not run and spill onto any adjoining immovable properties or onto public streets or public places, causing environmental pollution.

Article 271 *Restriction on right to install doors and windows*

1. A house owner may only install entry and exit doors and windows opening onto²⁷ adjacent houses or opposite houses and common walkways in accordance with the law on construction.
2. The awnings above entry and exit doors or windows opening onto common walkways must be at least two point five (2.5) metres above the ground.

Article 272 *Right to demand repair or removal of adjoining immovable property*

Where there is a danger that a tree or a structure will collapse onto an adjoining immovable property or a public place, the owner must cut down the tree or repair or demolish the structure.

The owner of an adjoining immovable property may request the owner of the tree or the structure to cut down the tree or to demolish the structure.²⁸ If such person does not cut down the tree or demolish the structure, the owner of an adjoining immovable property may request the authorized State body to procure that the tree be cut down or the structure be demolished. The expenses for cutting down the tree or demolishing the structure shall be borne by the owner of the tree or the structure.

Article 273 *Easements over adjoining immovable property*

A house owner or a land user has the right to use in a reasonable manner adjoining immovable property under the ownership of other persons in order to meet its needs regarding access, supply and drainage of water and natural gas, electricity transmission cables, communication cables and other necessary needs, with compensation, unless otherwise agreed.

Article 274 *Creation of easements over adjoining immovable property*

1. An easement over adjoining immovable property may be created as agreed or in accordance with provisions of the law.
2. Where the easement over an adjoining immovable property has already been created for a house owner or land user, a person to which the house or land use right is transferred shall also enjoy such easement.

Article 275 *Right of passage through adjoining immovable property*

²⁷ Phillips Fox Note: The literal translation is "turning to" or "looking over".

²⁸ Phillips Fox Note: No mention is made of repair.

1. An owner of immovable property which is surrounded by immovable properties of other owners such that there is no exit has the right to request one of the owners of adjoining immovable properties to provide it with a passage to a public road. The person having been so requested has the obligation to grant such request. The person being provided with the passage must compensate the owner of the adjoining immovable property, unless otherwise agreed.

The passage shall be opened in the adjoining immovable property which is deemed to be the most convenient and reasonable, taking into consideration the special characteristics of the location, the interests of the immovable property which does not have an exit²⁹, and what will cause the least damage to the immovable property through which the passage is created.

2. The location and the length, width and height of the passage shall be agreed by the owners in order to ensure convenient passage and minimize inconvenience to the parties. If there are any disputes regarding the passage, the parties may request the authorized State body to resolve.
3. Where immovable property is divided into more than one portion for different owners or users, upon division, necessary passages must be provided, without compensation, to persons in the interior as provided in clause 2 of this article.

Article 276 *Right to install electricity transmission cables and communication cables through adjoining immovable property*

An owner of immovable property has the right to install electricity transmission cables and communication cables in a reasonable manner through the immovable property of other owners, but must ensure the safety and convenience of such owners. If damage is caused, compensation must be made.

Article 277 *Rights relating to supply and drainage of water through adjoining immovable property*

Where, due to the natural location of immovable property, the supply and drainage of water must pass through another immovable property, the owner of the immovable property through which the water flows must provide an appropriate channel for the supply and drainage of water and may not hinder or prevent the flow of water. The person using the water supply and drainage channel must minimize to the lowest possible extent any damage to the owner of the immovable property through which the water flows when installing the water channel. If damage is caused, compensation must be made. Where water flows naturally from a higher position to a lower position and causes damage to the owner of the property through which the water flows, the person using the water supply and drainage channel shall not be liable to compensate for any damage.

Article 278 *Rights relating to irrigation and water drainage in cultivation*

A person having the right to use land for cultivation has the right to request neighbouring land users to provide a reasonable and convenient water channel for irrigation and drainage. A person having been so requested has the obligation to grant such request. If the person using such water channel causes damage to neighbouring land users, compensation must be made.

Article 279 *Termination of easements over adjoining immovable property*

An easement over adjoining immovable property shall terminate in the following circumstances:

1. An adjoining immovable property and the immovable property of a person having an easement over it are merged.
2. A house owner or land user no longer requires an easement over adjoining property.

²⁹ *Phillips Fox Note: The literal translation is "which is surrounded/encircled".*

PART THREE

**CIVIL OBLIGATIONS AND
CIVIL CONTRACTS**

CHAPTER XVII

General Provisions

SECTION 1

Civil Obligations

Article 280 *Civil obligations*

Civil obligations means acts whereby one or more subjects (hereinafter referred to as *obligors*)³⁰ must transfer objects, transfer rights, pay money or provide valuable papers, perform other acts or refrain from performing certain acts in the interests of one or more other subjects (hereinafter referred to as *obligees*)³¹.

Article 281 *Bases for giving rise to civil obligations*

Civil obligations arise from the following bases:

1. Civil contracts.
2. Unilateral legal acts.
3. Unauthorized performance of acts.
4. Unlawful possession or use of or receipt of benefits from property.
5. Causing damage through unlawful acts.
6. Other acts as provided by law.

Article 282 *Subject matter of civil obligations*

1. The subject matter of a civil obligation may be property or acts which must be performed or acts which must not be performed.
2. The object of a civil obligation must be defined precisely.
3. The subject matter of a civil obligation may only be property which is able to be transacted and acts which are able to be performed and are not prohibited by law nor contrary to social morals.

SECTION 2

Performance of Civil Obligations

Article 283 *Principles for performing civil obligations*

³⁰ *Phillips Fox Note: The literal translation is "parties having obligations".*

³¹ *Phillips Fox Note: The literal translation is "parties having rights".*

A party having a civil obligation must perform such obligation honestly, in a spirit of co-operation, strictly as undertaken, and not contrary to law and social morals.

Article 284 *Places for performing civil obligations*

1. The place for performing a civil obligation shall be agreed by the parties.
2. Where the parties do not have an agreement, the place for performance of the civil obligation shall be:
 - (a) The location of the immovable property, if the subject matter of the civil obligation is immovable property;
 - (b) The place of residence or head office of the obligee, if the subject matter of the civil obligation is not immovable property.

Where the obligee changes its place of residence or head office, it must notify the obligor of the change and must bear any increase in expenses resulting from the change in residence or head office, unless otherwise agreed.

Article 285 *Time-limits³² for performing civil obligations*

1. The time-limit for performing a civil obligation shall be as agreed by the parties or as provided by law.

The obligor must perform the civil obligation strictly in accordance with the [relevant] time-limit. The obligor may only perform the civil obligation prior to the time-limit if the obligee so consents, however if the obligor performs the obligation prior to the time-limit³³ and the obligee accepts such performance, the obligation shall be deemed to have been fulfilled on time.
2. Where the parties do not have an agreement and the law does not provide the time-limit for the performance of a civil obligation, a party may fulfil the obligation or demand the fulfilment of the obligation [as the case may be] at any time, but must give reasonable prior notice to the other party.

Article 286 *Late performance of civil obligations*

1. Late performance of a civil obligation is the failure to have performed the civil obligation in whole or in part as at the expiry of the time-limit for the performance of such obligation.
2. The party being late in performance of a civil obligation must notify immediately the obligee about the failure to have performed the civil obligation in a timely manner.

Article 287 *Postponement of performance of civil obligations*

1. When it is not possible to perform a civil obligation on time, the obligor must inform immediately the obligee and may suggest postponement of performance of the civil obligation.

In the case of failure to notify the obligee, the obligor must compensate for any damage arising, unless otherwise agreed or unless it was impossible to provide notification due to objective reasons.
2. The obligor may postpone the performance of the obligation only if the obligee consents. The performance of the civil obligation in this case of postponement shall be deemed to be performance in a timely manner.

³² *Phillips Fox Note: This is the literal translation. It may be understood as either a fixed future point in time or as a period of time.*

³³ *Phillips Fox Note: The apparent meaning is that the obligor performs the civil obligation before the time-limit without the prior consent of the obligee.*

Article 288 *Late acceptance of performance of civil obligations*

1. The late acceptance of the performance of a civil obligation is where the time-limit for the fulfilment of the civil obligation has expired and the obligor has already fulfilled the civil obligation as agreed but the obligee does not accept the performance of such obligation.
2. When the subject matter of late acceptance of performance of a civil obligation is property, the obligor must take the necessary measures to take care of the property and is entitled to demand reimbursement of reasonable expenses.
3. The obligor has the right to sell property which is in danger of being damaged or of deteriorating, and shall pay the proceeds of sale of such property to the obligee after deducting necessary expenses for the preservation and sale of the property.

Article 289 *Performance of obligations to deliver objects*

1. A person having the obligation to deliver an object must take care of and preserve the object until the time of delivery.
2. Where an object to be delivered is a distinctive object, the obligor must deliver that particular object in the same condition as agreed. If the object is a generic object, it must be delivered in accordance with the quality and quantity agreed. If there is no agreement as to the quality, the object delivered must be of average quality. If the object is an integrated object, the whole integrated object must be delivered.
3. An obligor must bear all expenses related to the delivery of an object, unless otherwise agreed.

Article 290 *Performance of obligations to pay money*

1. An obligation to pay money shall be performed in full, strictly on time, at the place and by the method as agreed.
2. The obligation to pay money shall include the payment of interest on principal, unless otherwise agreed.

Article 291 *Performance of obligations to perform acts or not to perform acts*

1. Obligation to perform an act means an obligation whereby the obligor must perform that particular act.
2. Obligation not to perform an act means an obligation whereby the obligor must not perform that particular act.

Article 292 *Performance of civil obligations in stages*³⁴

A civil obligation may be performed in stages if so agreed or so provided by law.

The late performance of one stage of a civil obligation shall be deemed to be late performance of the obligation.

Article 293 *Performance of civil obligations through third parties*

With the consent of the obligee, an obligor may authorize a third person to perform a civil obligation on behalf of the obligor provided that the obligor shall be liable to the obligee if the third person fails to perform or performs incorrectly the obligation.

³⁴ *Phillips Fox Note: The literal translation is "over a period".*

Article 294 *Conditional performance of civil obligations*

Where the parties have agreed on conditions for the performance of a civil obligation or where the law provides certain conditions for the performance of a civil obligation, the obligor must³⁵ perform the obligation when such conditions are satisfied.

Article 295 *Performance of civil obligations having optional subject matters*

1. Civil obligation having an optional subject matter means an obligation the subject matter of which is one of several different items of property or acts from which the obligor may select at its discretion, except where it is agreed or provided by law that the right to select is reserved to the obligee.
2. The obligor must notify the obligee of the property or act selected in order to perform the obligation. In the case where the obligee has fixed a time-limit for performance of the obligation with a selected subject matter, the obligor must fulfil the obligation on time.
3. Where there remains only one property or one act [*to select*], the obligor must deliver that [*particular*] property or perform that [*particular*] act.

Article 296 *Performance of substitutable civil obligations*

Substitutable civil obligation means an obligation whereby if the obligor fails to perform the original obligation, it may perform a different obligation as agreed by the obligee as a substitute for the original obligation.

Article 297 *Performance of severable civil obligations*

Where more than one person jointly perform a civil obligation and each person has a clearly defined share of the obligation which is severable from that of the other person, each person must perform only its own share of the obligation.

Article 298 *Performance of joint civil obligations*

1. Joint civil obligation means an obligation which must be performed by more than one person and which the obligee may request any one of the obligors to perform in its entirety.
2. When one person has performed an obligation in its entirety, such person may demand the other joint obligors to make payment for their respective shares of the joint obligation to [*such person*].
3. Where an obligee designates one person from amongst the joint civil obligors to perform an entire obligation and later releases that person, the other obligors shall also be released from performing the obligation.
4. Where an obligee releases one of the joint obligors from its share of the joint civil obligation, the other obligors must, nevertheless, perform jointly their respective shares of the obligation.

Article 299 *Performance of civil obligations for joint obligors*

1. Civil obligation for joint obligors means an obligation whereby each joint obligee may demand the obligor to perform the civil obligation in its entirety.
2. An obligor may perform its obligation with respect to any one of the joint obligees.

³⁵ *Phillips Fox Note: Evidently, this is not meant to imply that an obligor cannot perform an obligation before the conditions are satisfied if it so wishes.*

3. Where one of the joint obligees releases the obligor from performing the share of the obligation owed to such joint obligee, the obligor must, nevertheless, perform the remaining shares of the obligation owed to the other joint obligees.

Article 300 *Performance of divisible civil obligations*

1. Divisible civil obligation means an obligation the subject matter of which is a divisible object or an act which is able to be divided into portions for the purpose of performance.
2. An obligor may perform the obligation in stages, unless otherwise agreed.

Article 301 *Performance of indivisible civil obligations hindrance*

1. Indivisible civil obligation means an obligation the subject matter of which is an indivisible object or an act which must be performed [*in its entirety*] at the one time.
2. Where several persons must perform an indivisible obligation, they must perform the obligation [*in its entirety*] at the same time.

SECTION 3

Civil Liability

Article 302 *Civil liability arising from breach of civil obligations*

1. An obligor which fails to perform or performs incorrectly an obligation has civil liability to the obligee.
2. Where an obligor is not able to perform a civil obligation due to an event of *force majeure*, it shall not have civil liability, unless otherwise agreed or otherwise provided by law.
3. An obligor shall not have civil liability if it is able to prove that failure to perform an obligation is due entirely to the fault of the obligee.

Article 303 *Civil liability for failure to perform obligations to deliver objects*

1. Where an obligor fails to deliver a distinctive object, the obligee has the right to demand the obligor to deliver that particular object. If the object no longer exists or is damaged, the obligor must pay the value of the object and compensate for any damage.
2. Where the obligor fails to perform the obligation to deliver a generic object, the obligor must pay the value of the object.
3. Where an obligor fails to perform an obligation as provided in clauses 1 and 2 of this article and causes damage to the obligee, the obligor must compensate for the damage in addition to paying the value of the object.

Article 304 *Civil liability for failure to perform obligations to perform acts or not to perform acts*

1. Where an obligor fails to perform an act which it must perform, the obligee has the right to request the obligor to perform the act, or the obligee may perform the act or assign the performance of the act to another person and to demand the obligor pay reasonable expenses incurred and compensate for any damage.
2. Where a person has an obligation not to perform an act but, nevertheless, performs such act, the obligee has the right to demand the obligor to cease performing the act, make restitution³⁶ and compensate for any damage.

Article 305 *Civil liability for late performance of civil obligations*

1. Where the performance of a civil obligation is late, the obligee has the right to extend the time-limit in order that the obligor may fulfil the obligation. If the obligation remains unfulfilled upon expiry of the extended time-limit, at the request of the obligee, the obligor must, nevertheless, perform the obligation and compensate for any damage. If the performance of the obligation is no longer necessary to the obligee, the obligee has the right to refuse to accept the performance of the obligation and demand compensation for any damage.
2. Where the payment of money by the obligor is late, it must pay interest on the late amount for the period of the delay at the basic rate announced by the State Bank at the time of payment, unless otherwise agreed or otherwise provided by law.

³⁶ *Phillips Fox Note: The literal translation is "restore to the original condition".*

Article 306 *Liability for late acceptance of performance of civil obligations*

An obligee which is late in accepting the performance of a civil obligation, and thereby causes damage to the obligor, must compensate the obligor for any damage and shall accept all risks arising from the time when acceptance fell due,³⁷ unless otherwise agreed or otherwise provided by law.

Article 307 *Liability to compensate for damage*

1. Liability to compensate for damage comprises the liability to compensate for physical damage and the liability to compensate to make up for spiritual damage.
2. The liability to compensate for physical damage is the responsibility to make up for those actual physical losses caused by the party in breach which is able to be calculated in terms of money, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income.
3. A person causing spiritual damage to another person by harming his or her life, health, honour, dignity or reputation must, in addition to ceasing the harmful acts and making a public apology and retraction, pay a sum of money to such other person to make up for the spiritual damage caused.

Article 308 *Fault in civil liability*

1. A person failing to perform or performing incorrectly a civil obligation must bear civil liability if it is at fault either intentionally or unintentionally, unless otherwise agreed or otherwise provided by law.
2. Intentionally causing damage is where a person is fully aware that its act³⁸ will cause damage to another person but, nevertheless, performs the act and, irrespective of whether or not it so wishes, allows the damage to occur.

Unintentionally causing damage is where a person does not foresee that its act is capable of causing damage, even though it knows or should know that the damage will occur, or where it does foresee that such act is capable of causing damage but believes that the damage will not occur or will be able to be prevented.

SECTION 4

Transfer of Right to Demand and Transfer of Civil Obligations

Article 309 *Transfer of right to demand*

1. A party having the right to demand the performance of a civil obligation may transfer such right to demand to a subrogatee [*of the obligee*] as agreed, except in the following cases:
 - (a) The right is the right to demand support or the right to demand compensation for any damage resulting from harm to life, health, honour, dignity or reputation;
 - (b) The obligee and the obligor agree that the right to demand may not be transferred;
 - (c) Other cases as provided by law.

³⁷ *Phillips Fox Note: The literal translation is "the time of late acceptance".*

³⁸ *Phillips Fox Note: There is no mention of omissions.*

2. Where a person having a right to demand transfers such right to a subrogee, the subrogee [*of the obligee*] shall become the person having the right to demand.

A person transferring a right must notify the obligor in writing of the transfer of the right to demand. The transfer of the right does not require the consent of the obligor, unless otherwise agreed or otherwise provided by law.

Article 310 *Formalities for transfer of right to demand*

1. The transfer of a right to demand may be made in writing or verbally.
2. Where the law provides that the transfer of the right to demand must be made in writing, notarized, certified [*and/or*] registered or that an application must be made for permission, such provisions must be complied with.

Article 311 *Obligation to provide information and documents*

1. A person transferring a right to demand must provide the necessary information and the relevant documents to the subrogee [*of the obligee*].
2. A person transferring a right to demand and breaching the provisions in clause 1 of this article, thereby causing damage, must compensate for such damage.

Article 312 *No liability after transfer of right to demand*

A person transferring a right to demand shall not be liable for the capability of the obligor to perform the obligation, unless otherwise agreed.

Article 313 *Transfer of right to demand performance of secured civil obligations*

Where a right to demand the performance of a secured civil obligation is transferred, the transfer of the right to demand shall include the security.

Article 314 *Right to refuse of obligors*

1. Where the obligor is not notified of the transfer of the right to demand or where the subrogee [*of the obligee*] does not prove the authenticity of the transfer of the right to demand, the obligor has the right to refuse to perform the obligation with respect to the subrogee [*of the obligee*].
2. Where the obligor is not notified of the transfer of the right to demand and has already fulfilled the obligation with respect to the person having transferred the right to demand, the subrogee [*of the obligee*] may not demand the obligor to perform the obligation with respect to that subrogee.

Article 315 *Transfer of civil obligations*

1. An obligor may transfer a civil obligation to a subrogee [*of the obligor*] with the consent of the obligee, except where the obligation is personal to the obligor or where the law provides that the obligation may not be transferred.
2. Upon a transfer of the obligation, the subrogee [*of the obligor*] shall become the obligor.

Article 316 *Formalities for transfer of civil obligations*

1. A transfer of an obligation may be made in writing or verbally.
2. Where the law provides that the transfer of an obligation must be made in writing, notarized, certified [and/or] registered or that an application must be made for permission, such provisions must be complied with.

Article 317 *Transfer of secured civil obligations*

Where a secured civil obligation is transferred, the security shall terminate³⁹, unless otherwise agreed.

SECTION 5

Security for Performance of Civil Obligations

I. General Provisions

Article 318 *Types of security⁴⁰ for performance of civil obligations*

1. Types of security for the performance of civil obligations comprise the following:
 - (a) Pledge of property;
 - (b) Mortgage of property;
 - (c) Performance bond;
 - (d) Security deposit;
 - (dd) Escrow deposit;
 - (e) Guarantee;
 - (g) Fidelity guarantees.⁴¹
2. Where the parties have agreed on or the law requires security [to be provided], the obligor must provide such security.⁴²

Article 319 *Scope of security for performance of civil obligations*

1. A civil obligation may be fully or partly secured, as agreed or as provided by law. If there is no agreement on or if the law does not provide, the scope of the security, the obligation, including the obligation to pay interest and to compensate for any damage, shall be deemed to be fully secured.
2. The parties may agree on types of security in order to secure the performance of all types of civil obligations, comprising current obligations, future obligations and conditional obligations.

³⁹ *Phillips Fox Note: The consent of the obligee is required to any transfer, so the obligee may require other security.*

⁴⁰ *Phillips Fox Note: The literal translation is "measures to secure".*

⁴¹ *Phillips Fox Note: An alternative translation is "reputation-based collateral".*

⁴² *Phillips Fox Note: The literal translation is "implement such security measures".*

Article 320 *Objects used as security for performance of civil obligations*

1. Objects to be used as security for the performance of a civil obligation must be under the ownership rights of the securing party and be capable of being transacted.
2. Objects used as security for the performance of a civil obligation may be either objects currently existing or objects to be formed in the future. Objects to be formed in the future means moveable and immoveable property under the ownership rights of the securing party after the time when the obligation is created or the security transaction is entered into.

Article 321 *Money and valuable papers used as security for performance of civil obligations*

Money, bonds, shares, promissory notes and other valuable papers may be used as security for the performance of a civil obligation.

Article 322 *Property rights used as security for performance of civil obligations*

1. Property rights under the ownership of a securing party, comprising rights arising from copyright and industrial property, rights in respect of crop seeds, rights to recover debts, rights to receive sums insured in respect of objects, property rights in respect of capital portions contributed to an enterprise, property rights arising from contracts, and all other property rights under the ownership of the securing party, may be used as security for the performance of a civil obligation.
2. Land use rights may be used as security for the performance of civil obligations in accordance with the provisions of this Code and the law on land.
3. Rights to exploit natural resources may be used as security for the performance of civil obligations in accordance with the provisions of this Code and the law on natural resources.

Article 323 *Registration of security transactions*

1. Security transaction means a civil transaction agreed by the parties or provided by law regarding application of a type of security provided in clause 1 of article 318 of this Code.
2. Registration of security transactions shall be carried out in accordance with the law on registration of security transactions. Registration shall be a condition for effectiveness of the security transaction only when the law so provides.
3. A security transaction which is registered in accordance with law shall be legally effective with respect to third parties as from the time of registration.

Article 324 *Single item of property used as security for performance of several civil obligations*

1. A single item of property may be used as security for performance of several civil obligations if, at the time of establishment of the security transaction, the value of such property is greater than the total aggregate value of the secured obligations, unless otherwise agreed or otherwise provided by law.
2. Where a single item of property is used as security for performance of several civil obligations, the securing party must notify the later secured party that the security property is being used as security for performance of other obligations. The provision of security on each occasion must be made in writing.

3. Where the security property must be realized in order to satisfy one obligation which has fallen due, the other obligations which have not yet fallen due shall also be deemed due and all secured parties shall be entitled to take part in the realization. The secured party which provided notice of realization of the property shall be responsible for realizing the property, unless otherwise agreed by the secured parties.

If the parties wish to continue to fulfil the obligations which have not yet fallen due, they may agree that the securing party will use other property as security for performance of the obligation which has fallen due.

Article 325 *Order of priority for payment*

The order of priority for payment upon realization of a security property shall be determined as follows:

1. Where security transactions are registered, the order of priority for payment upon realization of a security property shall be determined according to the order in which the security transactions were registered.
2. When a single item of property is used as security for performance of several civil obligations and there are security transaction[s] which are registered and security transaction[s] which are not registered, the registered security transaction[s] shall have priority for payment.
3. When a single item of property is used as security for performance of several civil obligations and none of the security transactions are registered, the order of priority for payment shall be determined according to the order in which the security transactions were established.

II. Pledges of Property

Article 326 *Pledges of property*

Pledge of property means the delivery by one party (hereinafter referred to as the *pledgor*) of property under its ownership to another party (hereinafter referred to as the *pledgee*) as security for the performance of a civil obligation.

Article 327 *Formalities for pledges of property*

A pledge of property must be made in writing, either in a separate document or stated within a principal contract.

Article 328 *Effectiveness of pledges of property*

A pledge of property shall be effective as from the time of delivery of the property to the obligee.

Article 329 *Duration of pledges of property*

The duration of a pledge of property shall be as agreed by the parties. If there is no agreement, the duration of the pledge shall be calculated up until termination of the obligation secured by the pledge.

Article 330 *Obligations of pledgors*

A pledgor has the following obligations:

1. To deliver the pledged property to the pledgee as agreed.
2. To notify the pledgee of any third person rights with respect to the pledged property. In the case of failure to provide such notice, the obligee shall have the right to cancel the contract of pledge of property and demand compensation for damage or [*the right to*] maintain the contract and agree on the rights of the third person with respect to the pledged property.
3. To pay the pledgee reasonable expenses for taking care of and preserving the pledged property, unless otherwise agreed.

Article 331 *Rights of pledgors*

A pledgor has the following rights:

1. To demand the pledgee to suspend use of the pledged property in cases provided in clause 3 of article 333 of this Code if the pledged property is in danger of losing its value or depreciating in value as a result of such use.
2. To sell the pledged property if the pledgee agrees.
3. To substitute the pledged property with other property if so agreed.
4. To demand the pledgee holding the pledged property to return the pledged property after the obligation secured by the pledge has been fulfilled.
5. To demand the pledgee to compensate for any damage caused to the pledged property.

Article 332 *Obligations of pledgees*

A pledgee has the following obligations:

1. To take care of and preserve the pledged property. If the pledgee loses or damages the pledged property, the pledgee must compensate the pledgor for the damage.
2. Not to sell, exchange, give, lease or lend the pledged property and not to use it as security for the performance of another obligation.
3. Not to exploit, nor to enjoy the benefits or income derived from, the pledged property without the consent of the pledgor.
4. To return the pledged property upon fulfilment of the secured obligation or where the pledge is substituted with another security.

Article 333 *Rights of pledgees*

A pledgee has the following rights:

1. To demand a person unlawfully possessing or using the pledged property to return the property.⁴³
2. To demand the realization of the pledged property in accordance with the methods as agreed or as provided by law in order to satisfy the obligation.
3. To exploit, and to enjoy the benefits and income derived from, the pledged property if so agreed.
4. Upon returning the pledged property to the pledgor, to be reimbursed for reasonable expenses incurred in taking care of the pledged property.

Article 334 *Pledge of several items of property*

In the case of a pledge of several items of property as security for the performance of a single civil obligation, each item of property shall be determined to be security for the performance of the entire obligation. The parties may agree that each item of property will be security for the performance of a portion of the obligation.

Article 335 *Cancellation of pledges of property*

A pledge of property may be cancelled with the consent of the pledgee.

Article 336 *Realization of pledged property*

If a pledgor fails to perform or performs not as agreed a civil obligation when it falls due, the pledged property may be realized in accordance with the agreed methods, or auctioned in accordance with law, in order to satisfy the obligation. The pledgee shall have priority to payment from the proceeds of sale of the pledged property.

Article 337 *Realization of pledged property when several items of property pledged*

When the pledged property consists of several items, the pledgee may select one specific item of property to be realized, unless otherwise agreed. The pledgee may only realize the necessary number of items of property corresponding to the value of the secured obligation; if the pledgee realizes more than the necessary number of items of property and thereby causes damage to the pledgor, the pledgee must compensate the pledgor for such damage.

Article 338 *Payment of proceeds of sale of pledged property*

The proceeds of sale of pledged property shall be paid to settle the obligation of the pledgor after deduction of the expenses of preservation and sale of the property and other necessary expenses relating to realization of the pledged property. Where the pledged obligation is a loan, the pledgee shall be paid according to the following order: principal, interest, fines, and compensation for damage (if any). If the proceeds exceed the amount payable, the remaining amount of the proceeds shall be paid to the pledgor; and if the proceeds are less than the amount payable, the pledgor must pay the shortfall.

Article 339 *Termination of pledges of property*

A pledge of property shall terminate in the following cases:

1. The civil obligation secured by the pledge has terminated.

⁴³ *Phillips Fox Note: It is not clear to whom the pledgee may demand the property be returned.*

2. The pledge has been cancelled or substituted with another security.
3. The pledged property has been realized.
4. As agreed by the parties.

Article 340 *Return of pledged property*

Where a pledge of property is terminated in accordance with clause 1 or clause 2 of article 339 of this Code, the pledged property and documents evidencing the ownership rights [*with respect to the property*] shall be returned to the pledgor. Any benefits and income derived from the pledged property shall also be returned to the pledgor, unless otherwise agreed.

Article 341 *Pledges of property at pawn shops*

A pledge of property at a pawn shop shall be performed in accordance with articles 326 to 340 inclusive of this Code and other legal instruments relating to the operation of pawn shops.

III. Mortgages of Property

Article 342 *Mortgages of property*

1. Mortgage of property means the use by one party (hereinafter referred to as the *mortgagor*) of property under the ownership of the obligor as security for the performance of a civil obligation to the other party (hereinafter referred to as the *mortgagee*) without transferring such property to the mortgagee.

Where entire immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property.

Where a portion of immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed by the parties.

Mortgaged property may also be property to be formed in the future.

2. Mortgaged immovable property shall be held by the mortgagor. The parties may agree to deliver the mortgaged property to a third person to hold.
3. Mortgage of land use rights shall be implemented in accordance with articles 715 to 721 inclusive of this Code and in accordance with other relevant laws.

Article 343 *Formalities for mortgages of property*

A property mortgage must be made in writing, either in a separate document or stated within a principal contract; and if so required by law, the written document must be notarized, certified [*and/or*] registered.

Article 344 *Duration of mortgages*

The duration of a property mortgage shall be as agreed by the parties. If there is no agreement, the duration of the mortgage shall be calculated up until termination of the obligation secured by the mortgage.

Article 345 *Mortgages of leased property*

Property currently being leased may also be mortgaged. Any benefits and income derived from the lease shall form part of the mortgaged property if so agreed or so provided by law.

Article 346 *Mortgages of insured property*

1. Where mortgaged property is insured, the insured sum shall also form part of the mortgaged property.
2. The mortgagee must notify the insurer that the insured property is being mortgaged. The insurer shall pay the insured sum directly to the mortgagee upon occurrence of an insured event. If the mortgagee failed to notify the insurer that the insured property was mortgaged, the insurer shall pay the insured sum in accordance with the insurance contract and the mortgagor shall be obliged to make payment to the mortgagee.

Article 347 *Mortgage of several items of property as security for performance of single civil obligation*

In the case of a mortgage of several items of property as security for the performance of a single civil obligation, each item of property shall be determined to be security for the performance of the entire obligation. The parties may agree that each item of property will be security for the performance of a portion of the obligation.

Article 348 *Obligations of mortgagors of property*

A mortgagor of property has the following obligations:

1. To take care of and preserve the mortgaged property.
2. If the mortgaged property is in danger of losing its value or depreciating in value due to its exploitation, to take necessary remedial measures, including ceasing the exploitation of the mortgaged property.
3. To notify the mortgagee of any third person rights with respect to the mortgaged property. In the case of failure to provide such notice, the mortgagee shall have the right to cancel the contract of mortgage of property and demand compensation for damage or *[the right to]* maintain the contract and agree on the rights of the third person with respect to the mortgaged property.
4. Not to sell, exchange or give the mortgaged property, except in the cases provided in clauses 3 and 4 of article 349 of this Code.

Article 349 *Rights of mortgagors of property*

A mortgagor of property has the following rights:

1. To exploit, and to enjoy the benefits and income derived from, the property, except where the benefits and income also form part of the mortgaged property as agreed.
2. To invest in order to increase the value of the mortgaged property.
3. To sell or replace mortgaged property being goods rotating during the production and business process.

In the case of a sale of mortgaged property being goods rotating during the production and business process, the right to demand that the purchaser pay money, the proceeds received or the assets formed from the proceeds received shall form the mortgaged property in substitution for the property which was sold.

4. To sell, exchange or give mortgaged property not being goods rotating during the production and business process, if the mortgagee agrees.
5. To lease or lend the mortgaged property provided that notice must be provided to the lessee and the borrower that the property is being mortgaged and that the mortgagee must also be notified that such notice has been provided.
6. To recover the mortgaged property held by a third person when the obligation secured by the mortgage is terminated or is substituted by other security.

Article 350 *Obligations of mortgagees of property*

A mortgagee of property has the following obligations:

1. Where the parties agree that the mortgagee will hold the documents relating to the mortgaged property, to return to the mortgagor such documents upon termination of the mortgage.
2. To request the competent State body for registration of security transactions to remove the registration in the cases provided in articles 355, 356 and 357 of this Code.

Article 351 *Rights of mortgagees of property*

A mortgagee of property has the following rights:

1. To require the lessor or the borrower of mortgaged property in the case provided in clause 5 of article 349 of this Code to terminate use of the mortgaged property if such use causes loss of value or depreciation in value.
2. To examine and inspect directly the mortgaged property provided that such examination and inspection does not hinder or cause difficulty to the use and exploitation of the mortgaged property.
3. To require the mortgagor to provide information on the current status of the mortgaged property.
4. To require the mortgagor to apply necessary measures to preserve the property and the value of the property if there is a danger that use and exploitation of the mortgaged property will cause loss of value or depreciation in value of the property.
5. To require the mortgagor or a third person holding the mortgaged property to deliver it to the mortgagee for realization if, upon expiry of the term for fulfilment of the obligation, the obligor has failed to perform or performed incorrectly the obligation.
6. To supervise and inspect the process of formation of property in the case of a receipt of a mortgage of property to be formed in the future.
7. To demand realization of the mortgaged property in accordance with article 355 or clause 3 of article 324 of this Code, and to enjoy priority right to payment.

Article 352 *Obligations of third parties holding mortgaged property*

A third person holding mortgaged property has the following obligations:

1. To take care of and preserve the mortgaged property, and to compensate for any damage if the third person loses the mortgaged property or causes the mortgaged property to lose its value or depreciate in value.
2. If the property is in danger of losing its value or depreciating in value due to its exploitation in the case provided in clause 1 of article 353 of this Code, to cease such exploitation.
3. To return the mortgaged property to the mortgagee or mortgagor as agreed.

Article 353 *Rights of third parties holding mortgaged property*

A third person holding mortgaged property has the following rights:

1. To exploit, and to enjoy the benefits and income derived from, the property if so agreed.

2. To receive remuneration and be reimbursed for expenses incurred in taking care of and preserving the mortgaged property, unless otherwise agreed.

Article 354 *Substitution and repair of mortgaged property*

1. A mortgagor may only substitute mortgaged property with the consent of the mortgagee, unless otherwise agreed and except in the case provided in clause 3 of article 349 of this Code.
2. When a warehouse is mortgaged, the mortgagor may substitute goods in the warehouse but must ensure the value of the goods in the warehouse remains the value agreed.
3. Where mortgaged property is damaged [*or deteriorates*], the mortgagor must repair the mortgaged property within a reasonable time, or substitute the mortgaged property with another property of equivalent value, unless otherwise agreed.

Article 355 *Realization of mortgaged property*

If an obligor fails to perform or performs incorrectly a civil obligation when it falls due, the mortgaged property shall be realized in accordance with articles 336 and 338 of this Code.

Article 356 *Cancellation of mortgages of property*

A mortgage of property may be cancelled with the consent of the mortgagee, unless otherwise provided by law.

Article 357 *Termination of property mortgages*

A mortgage of property shall terminate in any of the following cases:

1. The obligation which is secured by the mortgage has terminated.
2. The mortgage of the property has been cancelled or substituted with another security.
3. The mortgaged property has been realized.
4. As agreed by the parties.

IV. Performance Bonds

Article 358 *Performance bonds*

1. Performance bond means a sum of money, precious metals, gemstones or other valuable objects (hereinafter referred to as *performance bond property*) delivered by one party to another party for a period of time as security for the entering into or performance of a civil contract.

A performance bond must be recorded in writing.

2. Upon a civil contract being entered into or performed, any performance bond property shall be returned to the party which delivered the bond, or deducted from the amount of an obligation to pay money. If the party which delivered the bond refuses to enter into or perform the civil contract, the performance bond property shall belong to the recipient of the bond. If the recipient of the bond refuses to enter into or perform the civil contract, it must return the performance bond property and

pay an amount equivalent to the value of the performance bond property to the party which delivered the bond, unless otherwise agreed.

V. Security Deposits

Article 359 Security deposits

1. Security deposit means a sum of money, precious metals, gemstones or other valuable objects (hereinafter referred to as *security deposit property*) delivered by a lessee of moveable property to the lessor for a period of time as security for the return of the leased property.
2. Where the leased property is returned, the lessee is entitled to recover the security deposit property after [*any outstanding*] rent is deducted therefrom. If the lessee does not return the leased property, the lessor is entitled to reclaim the leased property. If the leased property is no longer able to be returned, the security deposit property shall belong to the lessor.

VI. Escrow Deposits

Article 360 Escrow deposits

1. Escrow deposit means a sum of money, precious metals, gemstones or other valuable papers deposited by an obligor into an escrow account at a bank as security for the performance of an obligation.
2. Where an obligor fails to perform or performs incorrectly an obligation, the obligee is entitled to be paid, and compensated for any damage that the obligor causes, by the bank where the account is held, after bank service charges are deducted.
3. The procedures for making deposits and making payments shall be as provided by the law on banking.

VII. Guarantees

Article 361 Guarantees

Guarantee means an undertaking made by a third person (hereinafter referred to as the *guarantor*) to an obligee (hereinafter referred to as the *beneficiary*) to perform an obligation on behalf of an obligor (hereinafter referred to as the *principal*) if the obligation falls due and the principal fails to perform or performs incorrectly the obligation. The parties may agree that the guarantor shall only be obliged to perform the obligation if the principal is incapable of performing it.

Article 362 Formalities for guarantees

A guarantee must be made in writing, either in a separate document or stated within a principal contract; and if so required by law, the written guarantee must be notarized or certified.

Article 363 Scope of guarantees

A guarantor may guarantee⁴⁴ an obligation in whole or in part on behalf of a principal.

⁴⁴ Phillips Fox Note: The literal translation is "undertake to guarantee".

A guaranteed obligation includes interest on the principal, penalties and compensation for any damage, unless otherwise agreed.

Article 364 *Remuneration*

The guarantor shall be entitled to receive remuneration if so agreed by the guarantor with the principal.

Article 365 *Joint guarantors*

When more than one person guarantee an obligation, those persons must perform jointly the guarantee, except where it is agreed or provided by law that the guarantee comprises separate portions. The obligee may demand any of the joint guarantors to perform the obligation in its entirety.

Where one of the joint guarantors has performed the entire obligation on behalf of the principal, the guarantor may demand the other guarantors to perform their respective portions of the obligation with respect to that guarantor.

Article 366 *Relationship between guarantors and beneficiaries*

1. A beneficiary may not demand a guarantor to perform an obligation on behalf of the principal until the obligation falls due.
2. Where a beneficiary is able to offset an obligation with a principal, a guarantor does not have to perform the guaranteed obligation.

Article 367 *Right to demand of guarantors*

Where a guarantor has fully performed a [guaranteed] obligation, the guarantor may demand the principal to indemnify⁴⁵ the guarantor to the extent of the guarantee, unless otherwise agreed.

Article 368 *Discharge from guaranteed obligations*

1. Where a beneficiary discharges a guarantor from an obligation, the principal remains liable to perform the obligation with respect to the beneficiary, except where it is agreed or provided by law that the guaranteed obligation must be performed jointly.
2. Where one person from amongst the joint guarantors is discharged from the performance of its portion of the guaranteed obligation, the other joint guarantors must, nevertheless, perform their [portion of the] guaranteed obligation.

Article 369 *Realization of property of guarantor*

If a guarantor fails to perform or performs incorrectly the obligation on behalf of the principal when it falls due, the guarantor must provide property under its ownership in order to pay the beneficiary.

Article 370 *Cancellation of guarantees*

A guarantee may be cancelled with the consent of the beneficiary, unless otherwise provided by law.

⁴⁵ Phillips Fox Note: The literal translation is "perform its obligation with respect to".

Article 371 *Termination of guarantees*

A guarantee shall terminate in the following cases:

1. The obligation secured by the guarantee terminates.
2. The guarantee is cancelled or is substituted by another security.
3. The guarantor has satisfied the guaranteed obligation.
4. As agreed by the parties.

VIII. Fidelity Guarantees

Article 372 *Fidelity guarantees provided by socio-political organizations*

A socio-political organization at the grassroots level may provide a fidelity guarantee in order that poor individuals and households are able to borrow sums from banks or other credit institutions for purposes of production, business or provision of services in accordance with the regulations of the Government.

Article 373 *Formalities for fidelity guarantees*

A loan guaranteed by a fidelity guarantee must be made in writing, specifying the loan amount, the purpose of loan, the term of loan, the interest rate, and the rights, obligations and responsibilities of the borrower, the lending bank or credit institution and the guarantor organization.

SECTION 6

Termination of Civil Obligations

Article 374 *Bases for termination of civil obligations*

A civil obligation shall terminate in the following cases:

1. The obligation is fulfilled.
2. The parties so agree.
3. The obligee waives performance of the obligation.
4. The obligation is substituted by another civil obligation.
5. The obligation is offset.
6. The obligee and the obligor merge.
7. The limitation period for a release from the civil obligation has expired.
8. The obligor being an individual dies, or the obligor being a legal entity or other subject is wound up, and the obligation must be performed by that particular individual, legal entity or other subject.

9. The obligee being an individual dies and the right to demand does not form part of the bequeathed estate, or the obligee being a legal entity or other subject is wound up and the right to demand is not able to be transferred to another legal entity or other subject.
10. A distinctive object which is the subject matter of the civil obligation no longer exists and is substituted by another civil obligation.
11. Other cases as provided by law.

Article 375 *Fulfilment of civil obligations*

The civil obligation shall be deemed to have been fulfilled when the obligor has performed the obligation in its entirety, or has performed a portion of the obligation and the obligee waives any further performance.

Article 376 *Fulfilment of civil obligations where obligees are late in accepting subject matter of obligations*

1. When an obligee is late in accepting the subject matter of an obligation which is an object, the obligor must take care of and preserve the object, or deposit it at a place of bailment, and must notify the obligee immediately. The party which is late in accepting must bear all risks and expenses related to bailment.

The obligation to deliver an object shall be fulfilled at the moment when the object is deposited for bailment in the quantity, quality and other conditions as agreed by the parties.

2. Where the subject matter of an obligation is money or valuable papers and the obligee is late in accepting such subject matter, the obligor may deposit such subject matter at a place of bailment and must notify the obligee immediately. The obligation shall be deemed to have been fulfilled from the moment when the subject matter is deposited for bailment.

Article 377 *Termination of civil obligations by agreement*

Parties may agree to terminate a civil obligation at any time but must not cause damage to the interests of the State or the public or the legal rights or interests of other persons.

Article 378 *Termination of civil obligations due to waiver*

1. A civil obligation shall terminate when the obligee waives the obligation of the obligor, unless otherwise provided by law.
2. When a secured civil obligation is waived, the security arrangement shall also terminate.

Article 379 *Termination of civil obligations by substitution*

1. Where parties agree to substitute an original civil obligation with another civil obligation, the original civil obligation shall terminate.
2. A civil obligation shall also terminate if the obligee has accepted another property or the performance of another act as a substitute for the property or act previously agreed.
3. Where a civil obligation is an obligation to support others or to compensate for any damage due to harm to life, health, honour, dignity or reputation, or another personal obligation which is not able to be transferred to other persons, such obligation may not be substituted with another obligation.

Article 380 *Termination of civil obligations where obligations are offset*

1. Where parties have reciprocal obligations with respect to generic properties, when both obligations fall due, the parties shall not be required to perform their obligations to each other, and the obligations shall be deemed to have terminated, unless otherwise provided by law.
2. Where the values of properties or acts are not equivalent, the parties shall settle with each other the difference in value.
3. Objects having monetary value may be used to offset an obligation to pay money.

Article 381 *Cases where civil obligations may not be offset*

A civil obligation may not be offset in the following cases:

1. The civil obligation is in dispute.
2. The obligation is to compensate for harm to life, health, dignity, honour or reputation.
3. The obligation is to support others.
4. Other obligations as provided by law.

Article 382 *Termination of civil obligations upon merger of obligor and obligee*

A civil obligation of an obligor shall terminate when the obligor becomes the obligee with respect to that particular obligation.

Article 383 *Termination of civil obligations due to expiry of duration of waiver of civil obligation*

Upon expiry of the duration of waiver of a civil obligation, the obligation shall terminate.

Article 384 *Termination of civil obligations when obligor being individual dies or when obligor being legal entity or other subject is wound up*

Where parties have agreed or the law provides that an obligation must be performed by a particular obligor, when such individual dies or such legal entity or other subject is wound up, the obligation shall terminate.

Article 385 *Termination of civil obligations when obligee being individual dies or when obligee being legal entity or other subject is wound up*

Where parties have agreed or the law provides that an obligation is to be performed only for a particular obligee, when such individual dies or such legal entity or other subject is wound up, the obligation shall terminate.

Article 386 *Termination of civil obligations when distinctive objects no longer exist*

An obligation to deliver a distinctive object shall terminate when such distinctive object no longer exists.

Parties may agree on the substitution of such object with another object or on compensation for any damage.

Article 387 *Termination of civil obligations in cases of bankruptcy*

In cases of bankruptcy, civil obligations shall terminate in accordance with the law on bankruptcy.

SECTION 7

Civil Contracts

I. Entering into Civil Contracts

Article 388 *Definition⁴⁶ of civil contract*

Civil contract means an agreement between parties in relation to the establishment, modification or termination of civil rights and obligations.

Article 389 *Principles of entering into civil contracts*

A civil contract must be entered into in accordance with the following principles:

1. Freedom of contract⁴⁷ provided that it⁴⁸ is consistent with law and social morals.
2. Voluntariness, equality, goodwill, co-operation, honesty and good faith.

Article 390 *Offers to enter into civil contracts*

1. Offer to enter into a contract means a clear expression by the offeror of its intention to enter into a contract and to be bound by such offer made to another specific party.
2. Where an offer to enter into a contract has specified the time for reply and the offeror enters into a contract with a third person during the time-limit for reply by the offeree, if the offeror fails to enter into the contract with the offeree and the offeree suffers damage, the offeror must compensate the offeree for such damage.

Article 391 *Time-limit within which offer to enter into contract remains effective*

1. The time-limit within which an offer to enter into a contract remains effective shall be determined as follows:
 - (a) Where an offeror has specified such time-limit;
 - (b) Where an offeror has not specified the time-limit, the offer to enter into the contract is effective as from the time the offeree receives the offer.
2. The following cases shall be deemed to be receipt of an offer to enter into a contract:
 - (a) The offer is delivered to the place of residence if the offeree is an individual, or the offer is delivered to the head office if the offeree is a legal entity;
 - (b) The offer is placed into the official information system of the offeree;

⁴⁶ Phillips Fox Note: The literal translation is "concept".

⁴⁷ Phillips Fox Note: The literal translation is "freedom to enter into contracts".

⁴⁸ Phillips Fox Note: Here, "it" appears to refer to both the exercise of the right to enter into a contract and the contract itself.

(c) When the offeree knows about the offer to enter into a contract by way of other means.

Article 392 *Modification or withdrawal of offers to enter into contracts*

1. An offeror may modify or withdraw an offer to enter into a contract in the following cases:
 - (a) If the offeree receives notice of modification or withdrawal of the offer prior to or at the same time as receipt of the offer;
 - (b) The offeror clearly specified the circumstances in which the offer could be modified or withdrawn and such circumstances have in fact arisen.
2. When the offeror modifies the contents of the offer, that offer shall be deemed to be a new offer.

Article 393 *Rescission of offers to enter into contracts*

If the offeror exercises the right to rescind the offer to enter into a contract on the ground that such right was specified in the offer, the offeror must notify the offeree and such notice shall only be effective if the offeree receives the notice prior to the offeree providing its acceptance of the offer to enter into the contract.

Article 394 *Termination of offers to enter into contracts*

An offer to enter into a civil contract shall terminate in the following cases:

1. The offeree replies that the offer is not accepted.
2. The time-limit for acceptance has expired.
3. When notice of modification or withdrawal of the offer becomes effective.
4. When notice of rescission of the offer becomes effective.
5. As agreed by the offeror and the offeree within the time-limit within which the offer to enter into a contract remains effective.

Article 395 *Amendment of offer proposed by offeree*

When an offeree accepts the offer to enter into a contract but specifies conditions or amendments to the offer, the offeree shall be deemed to have made a new offer.

Article 396 *Acceptance of offers to enter into contracts*

Acceptance of an offer to enter into a contract means a reply by the offeree to the offeror accepting the entire contents of the offer.

Article 397 *Time-limits for acceptance of offers to enter into civil contracts*

1. Where an offeror has specified a time-limit for reply, a reply accepting shall only be effective if it is made within that time-limit. If the offeror receives an acceptance after the time-limit has expired, such acceptance shall be deemed to be a new offer from the party which is late in replying.

If a notice of acceptance of an offer to enter into a contract arrives late for objective reasons which the offeror knows or should know, such notice shall still be effective, unless the offeror immediately replies that it does not agree with such acceptance by the offeree.

2. Where the parties communicate directly, including conversations by telephone or other means of communication, the offeree must reply immediately as to whether or not it will accept, except where there is an agreement on the time-limit for reply.

Article 398 *Cases where offeror dies or loses capacity for civil acts*

Where the offeror dies or loses capacity for civil acts after the offeree has replied accepting the offer, the offer to enter into a contract shall still be valid.

Article 399 *Cases where offeree dies or loses capacity for civil acts*

Where the offeree dies or loses capacity for civil acts after having replied accepting the offer, the reply accepting the offer to enter into a contract shall still be valid.

Article 400 *Withdrawal of notice of acceptance to enter into contract*

The offeree may withdraw notice of acceptance to enter into a contract if such notice arrives prior to or at the same time as the offeror receives the reply accepting the offer to enter into a contract.

Article 401 *Formalities for civil contracts*

1. Civil contracts may be entered into orally, in writing or by specific acts, where the law does not provide that such type of contract must be entered into in a specified form.
2. Where the law provides that a contract must be made in writing, notarized, certified [*and/or*] registered or that an application must be made for permission, such provisions must be complied with.

A contract shall not be invalid for failure to comply with formalities, unless otherwise provided by law.

Article 402 *Contents of civil contracts*

Depending on the type of contract, the parties may agree on the following contents:

1. Subject matter of the contract which is property to be delivered or which is an act to be performed or not performed.
2. Quantity and quality.
3. Price and method of payment.
4. Time-limit, place and method of performing the contract.
5. Rights and obligations of the parties.
6. Liability for breach of contract.
7. Penalties for breach of contract.

8. Other contents.

Article 403 *Places for entering into civil contracts*

The place where a civil contract is entered into shall be as agreed by the parties; if there is no agreement, such place shall be the residence of the individual, or the head office of the legal entity, having made the offer to enter into the contract.

Article 404 *Time when civil contracts are entered into*

1. A civil contract is entered into at the time when the offeror receives the reply accepting to enter into the contract.
2. A civil contract shall also be deemed to be entered into when the time-limit for reply has expired and the offeree remains silent provided that the parties have agreed that silence shall constitute an acceptance.
3. The time when an oral contract is entered into is the time when the parties have reached agreement on the contents of the contract.
4. The time when a written contract is entered into shall be the time when the last party signs the contract.

Article 405 *Effectiveness of civil contracts*

A contract legally entered into shall take effect from the time when it is entered into, unless otherwise agreed or otherwise provided by law.

Article 406 *Principal types of contracts*

Contracts comprise the following principal types:

1. A bilateral contract is a contract whereby each party has an obligation to the other.
2. A unilateral contract is a contract whereby only one party has an obligation.
3. A principal contract is a contract the effectiveness of which does not depend on another contract.
4. An ancillary contract is a contract the effectiveness of which depends on a principal contract.
5. A contract for the benefit of a third person is a contract whereby contracting parties must perform obligations for the benefit of a third person and the third person enjoys benefits from such performance.
6. A conditional contract is a contract the performance of which depends on the occurrence, modification or termination of a specified event.

Article 407 *Standard form contracts*

1. Standard form contract means a contract containing terms and conditions which are prepared by a party based on a standard form requiring the other party to reply within a reasonable period of time. If the offeree accepts, it shall be deemed to have accepted the entire contract provided by the offeror.

2. Where a standard form contract contains terms and conditions which are unclear⁴⁹, such terms and conditions shall be interpreted in a manner favouring the offeree⁵⁰.
3. Where a standard form contract contains provisions exempting the party providing such standard form contract from liability, [or] increasing the liability of or waiving legitimate interests of the other party, such provisions shall be ineffective, unless otherwise agreed.

Article 408 *Appendices to contracts*

1. Appendices providing details on certain terms and conditions of a contract may be attached to the contract. The appendices shall have the same effectiveness as the contract. The contents of the appendices shall not contradict the contents of the contract.
2. If the terms and conditions of the appendices contradict the terms and conditions of the contract, such terms and conditions [of the appendices] shall be ineffective, unless otherwise agreed. If the parties agree that the terms and conditions of the appendices contradict the terms and conditions of the contract, the terms and conditions of the contract which are contradicted shall be deemed to have been amended.

Article 409 *Interpretation of civil contracts*

1. Where a contract contains terms and conditions which are unclear, the interpretation of such terms and conditions shall be based not only on the wording of the contract but also on the mutual intentions of the parties.
2. Where a term of a contract may be interpreted in different ways, it shall be interpreted in the way which, when effective, will best benefit the parties.
3. Where the wording of a contract may be interpreted in different ways, such wording shall be interpreted in the way most appropriate to the nature of the contract.
4. Where a contract contains a term or wording which is difficult to understand, such term or wording shall be interpreted in accordance with the customary practice of the place where the contract was entered into.
5. Where a contract lacks a number of terms, such terms may be added [to the contract] in accordance with the customary practice for that particular type of contract at the place where the contract was entered into.
6. The terms of a contract must be interpreted in relation to each other so that the meanings of the terms conform with the entire content of the contract.
7. Where there is a conflict between the mutual intentions⁵¹ of the parties and the wording used in the contract, the mutual intentions of the parties shall be used in order to interpret the contract.
8. Where the party in a powerful position inserts into the contract contents which are disadvantageous to the party in a weak position, the contract shall be interpreted in a manner favouring the party in a weak position.

⁴⁹ *Phillips Fox Note: No mention is made of failure to include terms and conditions.*

⁵⁰ *Phillips Fox Note: The literal translation is "the party providing the standard form contract shall bear the adverse consequences thereof".*

⁵¹ *Phillips Fox Note: The literal translation is "mutual will".*

Article 410 *Invalid civil contracts*

1. The provisions on invalid civil transactions in articles 127 to 138 inclusive of this Code shall also govern invalid contracts.
2. Invalidity of a principal contract shall terminate an ancillary contract, unless the parties agree that the ancillary contract replaces the principal contract. This provision shall not apply with respect to security for the performance of civil obligations.
3. Invalidity of an ancillary contract shall not terminate the principal contract, unless the parties agree that the ancillary contract is an inseparable part of the principal contract.

Article 411 *Invalidity of civil contracts due to impossibility of performing subject matter*

1. If, immediately as from the time a contract is signed, it is impossible to perform the subject matter of the contract for objective reasons, the contract shall be invalid.
2. If, when entering into a contract, one party knew or should have known that it was impossible to perform the subject matter of the contract for objective reasons but failed to notify the other party which entered into the contract, the first party must compensate the other party for damage, unless the other party knew or should have known that it was impossible to perform the subject matter of the contract.
3. The provision in clause 2 of this article shall also apply to a contract containing one or more parts with subject matter which is impossible to perform, but the remaining parts of the contract shall remain valid.

II. Performance of Civil Contracts

Article 412 *Principles for performance of civil contracts*

The performance of a civil contract must comply with the following principles:

1. Proper performance of the contract in compliance with the agreed subject matter, quality, quantity, type, time-limit, method and other matters;
2. Performance in good faith, in the spirit of co-operation, for the best benefit of the parties and in mutual trust;
3. No infringement of the interests of the State or the public or the legal rights or interests of other persons.

Article 413 *Performance of unilateral contracts*

With respect to a unilateral contract, the obligor must perform the obligation strictly as agreed. The obligor may only perform the obligation prior to or after the time-limit with the consent of the obligee.

Article 414 *Performance of bilateral contracts*

1. With respect to a bilateral contract, where the parties have agreed on a time-limit for the performance of an obligation, each party must perform its obligation when the obligation falls due. One party may

not postpone performance by reason of the other party not having performed the obligations owed to the first party, except in the cases provided in articles 415 and 417 of this Code.

2. Where the parties have no agreement on which party will perform its obligation first, the parties must perform their obligations concurrently; where obligations are not able to be performed concurrently, the obligation the performance of which will take longer shall be performed first.

Article 415 *Right to postpone performance of civil obligations in bilateral contracts*

1. The party which is required to perform its obligation first has the right to postpone the performance of such obligation, if the property of the other party has substantially decreased in value such that its obligation is not able to be performed as undertaken, until the other party is able to perform its obligation or has a guarantor.
2. The party which is required to perform its obligation last has the right to postpone the performance of such obligation when it falls due if the party which was required to perform its obligation first failed to do so when such obligation fell due.

Article 416 *Retaining property in bilateral contracts*

1. Retaining property means the obligee (hereinafter referred to as the *retaining party*) currently lawfully holding property being the subject matter of a bilateral contract shall be permitted to [*continue to*] retain the property when the obligor fails to perform the obligation or performs the obligation not as agreed.
2. The retaining party has the following rights and obligations:
 - (a) To retain the entire property or part of the property in the circumstances provided in clause 1 of this article;
 - (b) To receive benefits derived from the retained property and to use them to offset the obligation;
 - (c) To take care of and keep the retained property;
 - (d) To require the party which owns the property which is being retained to pay expenses necessary for taking care of and keeping such property.
3. The right to retain property shall terminate in the following circumstances:
 - (a) As agreed by the parties;
 - (b) The party retaining the property breaches the obligation to take care of and keep the retained property;
 - (c) The party which owns the property which is being retained fulfils the obligation.

Article 417 *Obligations not able to be performed due to fault of obligee*

With respect to a bilateral contract, when one party is not able to perform its obligations due to the fault of the other party, the first party has the right to demand the other party to continue to perform its obligation with respect to the first party or has the right to cancel the contract and demand compensation for damage.

Article 418 *Failure to perform obligations not due to fault of parties*

With respect to a bilateral contract, when one party is not able to perform its obligations but there is no fault of any party, the party not being able to perform does not have the right to demand the other party to perform its obligation with respect to the party [*not being able to perform*]. When one party has performed a part of its obligations, such party has the right to demand the other party to perform its corresponding obligation with respect to the party [*having performed a part of its obligations*].

Article 419 *Performance of contracts for benefit of third parties*

Where a contract is performed for the benefit of a third person, the third person has the right to demand personally the obligor to perform the obligations with respect to such third person. If there is a dispute between the parties [*to the contract*] as to the performance of the contract, the third person does not have the right to demand performance until the dispute is resolved.

An obligee also has the right to demand the obligor perform a contract for the benefit of a third person.

Article 420 *Right to waive of third persons*

Where a third person waives its [*right to*] benefits prior to the performance of an obligation by an obligor, the obligor shall not be required to perform the obligation but must notify the obligee, the contract shall be deemed to be cancelled, and each party shall return anything it has received from the other party. If a third person waives its [*right to*] benefits after the obligor has performed the obligation, the obligation shall be deemed to have been fulfilled and the obligee must perform its undertakings with respect to the obligor.

Article 421 *No amendment or cancellation of contracts for benefit of third persons*

Where a third person has agreed to receive a benefit, the parties to the contract may not amend or cancel the contract, even where the contract is yet to be performed, except with the consent of the third person.

Article 422 *Performance of contracts containing provisions on penalties for breach*

1. Penalty for breach means an agreement between the parties in a contract, whereby a party breaching an obligation must pay a sum of money to the party having its rights breached.
2. The amount of a penalty for breach shall be as agreed by the parties.
3. The parties may agree that a party breaching an obligation must pay only a penalty for breach without having to compensate for damage, or must pay both a penalty for breach and compensation for damage. If there is no prior agreement on the amount of compensation for damage, compensation must be made for all damage.

Where the parties do not have an agreement on compensation for damage, the party breaching an obligation shall be required to pay only the penalty for breach.

III. Amendment and Termination of Civil Contracts

Article 423 *Amendment of civil contracts*

1. Parties may agree to amend a contract and deal with any consequences resulting from such amendment, unless otherwise provided by law.

2. Where a contract must be made in writing, notarized, certified [*and/or*] registered or permitted, any amendment of the contract must also comply with such formalities.

Article 424 *Termination of civil contracts*

A civil contract shall terminate in the following cases:

1. The contract has been completed.
2. The parties so agree.
3. Where a contract is only able to be performed by the particular individual, legal entity or other subject having entered into the contract⁵², and that particular individual dies, or that legal entity or other subject ceases to exist.
4. The contract is cancelled or unilaterally terminated.
5. The contract is not able to be performed because the subject matter of the contract no longer exists. In such case, the parties may agree to substitute the subject matter of the contract with another subject matter or to compensate for any damage.
6. Others circumstances as provided by law.

Article 425 *Cancellation of civil contracts*

1. A party has the right to cancel a contract and shall not be liable to compensate for damage where the parties agree or the law provides that a breach of contract by the other party gives rise to cancellation.
2. A party cancelling a contract must notify the other party immediately of the cancellation [*and*] must compensate if the failure to notify causes damage.
3. Where a contract is cancelled, it shall be [*deemed to have been*] ineffective as from the time when it was entered into and each party must return the assets it has received from the other party. If restitution is not able to be made in kind, it must be paid in money.
4. A party at fault in relation to the cancellation of a contract must compensate for any damage.

Article 426 *Unilateral termination of performance of contracts*

1. A party has the right to terminate unilaterally the performance of a contract if so agreed by the parties or so provided by law.
2. A party terminating unilaterally the performance of a contract must notify the other party immediately of its termination of the contract [*and*] must compensate if the failure to notify causes damage.
3. Where the performance of a contract is terminated unilaterally, it shall terminate from the time when the other party is notified of the termination. [*In such case,*] the parties do not have to continue to perform their obligations. A party which has already performed its obligation may demand the other party to make payment.

⁵² *Phillips Fox Note: The literal translation is "An individual having entered into a contract dies, a legal entity or other subject is terminated and the contract must be performed by that particular individual, legal entity or subject".*

4. The party at fault in the case of unilateral termination of a contract must compensate for any damage.

Article 427 *Limitation period for initiating legal action with respect to civil contracts*

The limitation period for initiating legal action to request a court to resolve a dispute relating to a civil contract is two years from the date on which the lawful rights and interests of the individual, legal entity or other subject were infringed.

CHAPTER XVIII

Common Civil Contracts

SECTION 1

Contracts for Sale and Purchase of Property

I. General Provisions on Contracts for Sale and Purchase of Property

Article 428 *Contracts for sale and purchase of property*

Contract for sale and purchase means an agreement between parties whereby a seller has the obligation to deliver property to the purchaser and receive monetary payment, and a purchaser has the obligation to accept the property and pay the seller.

Article 429 *Subject matter of contracts for sale and purchase*

1. The subject matter of a contract for sale and purchase shall be property which is capable of being transacted.
2. Where the subject matter of a contract for sale and purchase is an object, such object must be clearly identified.
3. Where the subject matter of a contract for sale and purchase is a property right, documents or other evidence must be produced to prove that such rights are under the ownership of the seller.

Article 430 *Quality of objects for sale and purchase*

1. The quality of an object for sale and purchase shall be as agreed by the parties.
2. Where the quality of an object has been proclaimed or is provided by the authorized State body, the quality of the object shall conform to the proclaimed standard or the stipulations of the authorized State body.
3. Where parties have not agreed on or the law does not provide for quality, the quality of an object for sale and purchase shall conform with the use purpose and average quality of an object of the same type.

Article 431 *Price and method of payment*

1. Price shall be as agreed by the parties or as determined by a third person at the request of the parties.

Where parties have agreed that payment shall be made according to the market price, the price shall be determined at the time and place of payment.

With respect to property in a civil transaction for which the State has provided a price range, the parties shall agree on a price within such price range.

2. Parties may agree on the application of a mechanism to reflect fluctuations in price.

3. The agreement on price may be a specific price or a method for calculating the price, but if neither agreement is clear, the price of the property shall be determined on the basis of the market price at the location and time of entering into the contract.
4. The method of payment shall be as agreed by the parties.

Article 432 *Time-limits for performance of contracts for sale and purchase*

1. The time-limit for performance of a contract for sale and purchase shall be as agreed by the parties. The seller must deliver the property to the purchaser at the agreed time. The seller may only deliver the property prior to the time-limit with the consent of the purchaser.
2. Where the parties have not agreed on a time-limit for delivery of the property, the purchaser has the right to demand, at any time, the seller to deliver the property and the seller also has the right to demand, at any time, the purchaser to accept the property, but the parties must give reasonable prior notice to each other.
3. Where the parties have no agreement on the time-limit for payment, the purchaser must pay immediately upon receipt of the property.

Article 433 *Place for delivery of property*

The place for delivery of the property shall be as agreed by the parties. If there is no agreement, clause 2 of article 284 of this Code shall apply.

Article 434 *Method of delivery of property*

Property shall be delivered by the method as agreed by the parties. If there is no agreement on the method for delivery of the property, the property shall be delivered at one time directly to the purchaser.

Article 435 *Liability in respect of delivery of objects in incorrect quantities*

1. Where a seller delivers objects in a quantity which is more than that agreed, the purchaser has the right to accept or not to accept the excess. If it accepts the excess, payment shall be made in accordance with the agreement on the excess.
2. Where a seller delivers objects in a quantity which is less than that agreed, the purchaser has one of the following rights:
 - (a) To accept the amount delivered and demand compensation for damage;
 - (b) To accept the amount delivered and set a time-limit for the seller to deliver the amount outstanding;
 - (c) To cancel the contract and demand compensation for damage.

Article 436 *Liability in respect of delivery of incomplete integrated objects*

1. Where an integrated object is delivered incomplete, thereby rendering the object unusable, the purchaser has one of the following rights:

- (a) To accept [*the object*] and demand the seller to deliver the remaining parts, demand compensation for damage, and postpone payment in respect of the parts received until the missing parts are delivered;
 - (b) To cancel the contract and demand compensation for damage.
2. Where a purchaser has paid for, but not yet accepted, the delivery of an incomplete integrated object, the purchaser shall be paid interest on the amount pre-paid at the basic interest rate provided by the State Bank and may demand the seller to compensate for damage due to the delivery of the incomplete integrated object from the time when the contract is required to be performed to the time when the complete integrated object is delivered.

Article 437 *Liability in respect of delivery of objects of incorrect type*

Where an object delivered is of an incorrect type, the purchaser has one of the following rights:

1. To accept the object and pay the agreed price.
2. To demand delivery of an object of the correct type and compensation for damage.
3. To cancel the contract and demand compensation for damage.

Article 438 *Obligation to make payment*

1. A purchaser must pay the full price at the agreed place and time. If there is no agreement, the purchaser must pay the full price at the time and location of delivery of the property.
2. A purchaser must pay interest from the date of late payment in accordance with clause 2 of article 305 of this Code, except where otherwise agreed or otherwise provided by law.

Article 439 *Time when ownership rights are transferred*

1. Ownership rights with respect to property for sale and purchase pass to the purchaser from the time when the property is delivered, unless otherwise agreed by the parties or otherwise provided by law.
2. Where the law requires that ownership rights with respect to property which is the subject matter of a contract for sale and purchase must be registered, such rights shall pass to the purchaser upon completion of the procedures for registration of the ownership rights with respect to such property.
3. Where property is sold and purchased but not yet delivered, any benefits and income derived from the property shall belong to the seller.

Article 440 *Time for passing of⁵³ risk*

1. A seller has⁵⁴ the risk with respect to property for sale and purchase until the property is delivered to the purchaser, and the purchaser has the risk with respect to property for sale and purchase from the time of acceptance of the property, unless otherwise agreed.

⁵³ *Phillips Fox Note: The literal translation is "bearing".*

⁵⁴ *Phillips Fox Note: The literal translation is "bears".*

2. Where the law requires that ownership rights with respect to property which is the subject matter of a contract for sale and purchase must be registered, the seller has the risk until the completion of the registration procedures and the purchaser has the risk from the completion of the registration procedures, even where the purchaser has not yet accepted the property, unless otherwise agreed.

Article 441 *Transport costs and costs related to transfer of ownership rights*

Where the parties have not agreed on and the law does not provide transport costs and costs related to transfer of ownership rights, the seller shall be liable for the costs of transportation to the place of delivery of the property and the costs related to the transfer of the ownership rights.

Article 442 *Obligation to provide information and instructions for use*

A seller has the obligation to provide a purchaser with necessary information on the property for sale and purchase and instructions on the use of the property. If the seller fails to perform this obligation, the purchaser has the right to demand the seller to perform [*such obligation*] and, if the seller still fails to perform [*such obligation*], the purchaser has the right to cancel the contract and demand compensation for damage.

Article 443 *Assurances⁵⁵ as to ownership rights of purchasers with respect to purchased property*

1. A seller has the obligation to assure that the ownership rights with respect to the property sold to a purchaser are not disputed by a third person.
2. Where [*ownership rights with respect to*] property are disputed by a third person, the seller must support the purchaser in protecting the interests of the purchaser. If a third person has the ownership rights with respect to all or part of the property for sale and purchase, the purchaser has the right to cancel the contract and demand the seller to compensate for damage.
3. Where a purchaser knows or should know that property for sale and purchase is under the ownership of a third person but, nevertheless, purchases [*the property*], [*the purchaser*] must return the property to the owner and does not have the right to demand compensation for damage.

Article 444 *Assurances as to quality of objects for sale and purchase*

1. A seller must assure the utility value or the characteristics of the object for sale and purchase. If, after having purchased an object, a purchaser discovers defects which cause the object to lose its value or diminish its utility value, the purchaser must notify [*the seller*] immediately of such defects and has the right to demand the seller to repair or replace the defective object with another object, to reduce its price and to compensate for damage, unless otherwise agreed.
2. A seller must assure that an object for sale corresponds to descriptions on any package, to any trademarks or to any samples selected by the purchaser.
3. A seller shall not be liable for any defect of an object in the following cases:
 - (a) Where the purchaser knew or should have known of the defect at the time of purchase;
 - (b) Where the object was sold at an auction or a second-hand shop;

⁵⁵ *Phillips Fox Note: An alternative translation is "guarantees". The translation "assurances" has been chosen in this context to make a distinction from "guarantees" referred to in articles 361 to 373.*

(c) Where the purchaser was at fault for causing the defect.

Article 445 *Warranty obligations*

If agreed by parties or provided by law, a seller has the obligation to provide a warranty for the object for sale and purchase for a [certain] period, hereinafter referred to as the *warranty period*.

The warranty period shall be calculated from the time when the purchaser has the obligation to accept the object.

Article 446 *Right to claim on warranty*

If a purchaser discovers a defect in a purchased⁵⁶ object during the warranty period, it has the right to demand the seller to repair the object free of charge, or reduce its price or replace it with another object, or it has the right to return the object in exchange for a refund.

Article 447 *Repairs of objects during warranty periods*

1. A seller must repair a [defective] object and assure that it satisfies the quality standards or characteristics as undertaken.
2. A seller shall pay the costs for repairing a [defective] object and for transporting it from the place of residence or head office of the purchaser to the place of repair and *vice versa*.
3. A purchaser has the right to demand the seller to complete the repairs within a time-limit agreed by the parties or within a reasonable time. If the seller is not able to make or complete the repairs within such time, the purchaser has the right to demand a price reduction or replacement of the defective object with another object, or it has the right to return the object in exchange for a refund.

Article 448 *Compensation for damage during warranty periods*

1. In addition to demanding the performance of warranty obligations, a purchaser has the right to demand the seller to compensate for damage caused during the warranty period due to technical defects of the object.
2. A seller shall not be liable to compensate for damage if it is able to prove that the damage was caused due to the fault of the purchaser. The seller shall be entitled to a reduction in the amount of compensation for the damage where the purchaser has failed to take [all] necessary measures available to it to mitigate⁵⁷ the damage.

Article 449 *Sale and purchase of property rights*

1. Where property rights are sold and purchased, a seller must deliver the relevant documents and complete the procedures for transferring the ownership rights to the purchaser and the purchaser must pay the seller.
2. Where property rights are the right to demand payment of a debt and the seller has guaranteed the ability to pay of the debtor, the seller must be jointly liable for payment if the debt falls due and the debtor fails to pay.

⁵⁶ *Phillips Fox Note: The literal translation is "sold and purchased".*

⁵⁷ *Phillips Fox Note: The literal translation is "to prevent and limit".*

3. The time when ownership rights with respect to property rights⁵⁸ are transferred is the time when a purchaser receives documents evidencing the ownership rights with respect to the property rights, or the time when the transfer of the ownership rights is registered if so provided by law.

II. Contracts for Sale and Purchase of Houses

Article 450 *Formalities for contracts for sale and purchase of residential houses*

A contract for sale and purchase of a residential house must be in writing and notarized or certified, unless otherwise provided by law.

Article 451 *Obligations of sellers of residential houses*

A seller of a residential house has the following obligations:

1. To notify the purchaser of restrictions on the ownership rights⁵⁹ with respect to the residential house for sale and purchase, if any.
2. To take care of the residential house during the period prior to delivery to the purchaser.
3. To deliver the residential house to the purchaser in the same condition as provided in the contract, together with the documents relating to the house.
4. To comply strictly with the procedures for the purchase and sale of residential houses as provided by law.

Article 452 *Rights of sellers of residential houses*

A seller of a residential house has the following rights:

1. To demand the purchaser to accept the house strictly at the time agreed.
2. To demand the purchaser to make timely payment strictly in the manner agreed.
3. To demand the purchaser to complete the procedures for the purchase and sale of the residential house within the agreed time-limit.
4. Not to deliver the house until the agreed payment is received in full.

Article 453 *Obligations of purchasers of residential houses*

A purchaser of a residential house has the following obligations:

1. To pay the full price for the house strictly within the time-limit and by the method as agreed. If there is no agreement on the time-limit and place⁶⁰ of payment, the purchaser must make payment at the time when the seller hands over the house at the place where the house is located.
2. To accept the house and the documents relating to the house strictly at the agreed time.
3. Where a leased house is purchased, to assure the rights and interests of the lessee as agreed in the lease contract for the remainder of the term of the contract.

⁵⁸ *Phillips Fox Note: These rights are distinguished from ownership rights with respect to property.*

⁵⁹ *Phillips Fox Note: An alternative translation is "title".*

⁶⁰ *Phillips Fox Note: No mention is made of "method" of payment.*

Article 454 *Rights of purchasers of residential houses*

A purchaser of a residential house has the following rights:

1. To receive the house in the same condition as agreed, together with the documents relating to the house.
2. To demand the seller to complete the procedures for the purchase and sale of residential houses within the agreed time-limit.
3. To demand the seller to hand over the house strictly within the time-limit. If the seller fails to hand over or is late in handing over the house, the seller must compensate for damage.

Article 455 *Purchases of houses for other purposes*

Unless otherwise provided by law, the provisions of articles 450 to 454 inclusive of this Code shall also apply to the purchase of houses which are used for purposes other than residency.

III. Particular Provisions Relating to Sale and Purchase of Property

Article 456 *Auctions*

Property may be sold at an auction as required by the owner or as provided by law.

A sale by auction of multiple ownership property must have the consent of all owners, unless otherwise agreed or otherwise provided by law.

Article 457 *Announcements of auctions*

1. An auctioneer must make a public announcement at the place of auction and in the mass media as to the time, place, quantity, quality and the list of properties to be auctioned no less than seven days prior to the date of the auction in respect of moveable property, and no less than thirty (30) days in respect of immoveable property.
2. Persons to which the auctioned property relates must be informed of the auction in order that they may take part in fixing the reserve price.

Article 458 *Conduct of auctions*

1. At an auction, the auctioneer shall announce the reserve selling price.
2. The person which makes the highest bid, being at least equal to the reserve selling price, shall be the person which purchases the auctioned property and shall be deemed to have accepted to enter into the contract.
3. A sale by auction shall be recorded in writing, signed by the purchaser, the seller and two witnesses.
4. The time-limit for delivery of auctioned property and the time and method of payment shall be in accordance with the law on auctions.
5. The auctioneer shall not be liable for the value and quality of the auctioned property.
6. Where the highest bid is lower than the reserve selling price, the auction shall be deemed to have been unsuccessful.

The Government shall issue regulations on organization of and procedures for auctions.

Article 459 *Auctions of immoveable property*

1. An auction of immoveable property shall be conducted at the place where the immoveable property is located or at a place determined by the auctioneer.

2. After the announcement of an auction of immoveable property, persons wishing to bid must register to bid and lodge an advance cash deposit. The list of registered bidders shall be announced publicly at the place of the auction.
3. If the auctioned property is purchased, the advance deposit shall be deducted from the purchase price. If the successful bidder⁶¹ refuses to purchase, the advance deposit shall be forfeited.
4. The auctioneer must refund the advance deposit to persons which had registered to bid but were not successful in purchasing the auctioned property.
5. The purchase and sale of auctioned immoveable property shall be recorded in writing and notarized [or] certified, and must be registered if so provided by law.

Article 460 *Purchases after trial use*

1. Parties may agree on the trial use of purchased property⁶² by the purchaser for a period, hereinafter referred to as the *trial use period*. During the trial use period, the purchaser may inform the seller whether or not the purchaser wishes to make the purchase. If the purchaser fails to inform the seller prior to the expiry of the trial use period, the purchaser shall be deemed to have accepted the purchase on the terms agreed prior to the property being received for trial use.
2. During the trial use period, property shall remain under the ownership of the seller. The seller has all risks with respect to the property, unless otherwise agreed. During the trial use period, the seller may not sell, give, lease, exchange, mortgage or pledge the property until the purchaser informs the seller whether or not it wishes to make the purchase.
3. Where a prospective purchaser⁶³ informs [*the seller*] that it does not wish to make the purchase, the prospective purchaser must return the property to the seller and must compensate the seller if the prospective purchaser loses or damages the trial property. The prospective purchaser shall not be liable for normal wear and tear caused by the trial use and shall not have to return any benefits derived from the trial use.

Article 461 *Purchases by deferred payment or payment in instalments*

1. Parties may agree that the purchaser may purchase by deferred payment or payment in instalments of the purchase price within a time-limit after delivery of the purchased property. The seller has the right to retain ownership of the property sold until the purchaser has paid the purchase price in full, unless otherwise agreed.
2. Contracts for purchase by deferred payment or payment in instalments shall be made in writing. The purchaser may use the property purchased by deferred payment or payment in instalments and has the risk during the period of use, unless otherwise agreed.

Article 462 *Buy-back of property sold*

1. A seller and purchaser [*of property*] may agree that the seller has the right to buy-back the property within a period of time following the sale,⁶⁴ hereinafter referred to as the *buy-back period*.

The buy-back period for property shall be as agreed by the parties but shall not exceed one year in respect of moveable property, and five years in respect of immoveable property, from the time of delivery of the property. During this period, the seller may buy back the property at any time provided that reasonable prior notice is given to the purchaser. The buy-back price shall be the market price at the time when and place where the buy-back occurs, unless otherwise agreed.

⁶¹ Phillips Fox Note: The literal translation is "purchaser".

⁶² Phillips Fox Note: The literal translation is "purchased object".

⁶³ Phillips Fox Note: The literal translation is "trial user".

⁶⁴ Phillips Fox Note: The literal translation is "after a time-limit".

2. During the buy-back period, a purchaser may not sell, exchange, give, lease, mortgage or pledge the property, and shall have all risks with respect to the property.

SECTION 2

Contracts for Exchange of Property

Article 463 *Contracts for exchange of property*

1. Contract for the exchange of property means an agreement between parties whereby they deliver property, and transfer the ownership rights thereto, to each other.
2. A contract for the exchange of property must be made in writing, and [*must be*] notarized, certified or registered if so provided by law.
3. Where one party exchanges with another party property which it does not own or [*property*] in respect of which it has no authorization from the owner, the other party may cancel the contract and demand compensation for damage.
4. Each party shall be deemed to be the seller of the property delivered to the other party and the purchaser of the property delivered to it. The provisions on contracts for sale and purchase in articles 428 to 437 inclusive and articles 439 to 448 inclusive of this Code shall also apply to contracts for the exchange of property.

Article 464 *Settlement of differences in value*

Where exchanged property differs in value, the parties must settle that difference between themselves, unless otherwise agreed or otherwise provided by law.

SECTION 3

Contracts for Gifts of Property

Article 465 *Contracts for gifts of property*

Contract for a gift of property means an agreement between parties whereby the giver delivers its property and transfers its ownership rights to the recipient without requiring compensation and the recipient agrees to accept the gift.

Article 466 *Gifts of moveable property*

A contract for a gift of moveable property shall take effect when the recipient accepts the property. Where the law requires the ownership rights with respect to [*such*] moveable property to be registered, the contract shall take effect from the time of registration.

Article 467 *Gifts of immovable property*

1. A gift of immovable property must be recorded in writing and notarized [*or*] certified, and must be registered if the law on immovable property requires registration of ownership.
2. A contract for a gift of immovable property shall take effect from the time of registration. In the case of immovable property for which no registration of ownership rights is required, the gift contract shall take effect from the time when the property is delivered.

Article 468 *Liability in respect of intentional gift of property not under one's ownership*

Where a giver intentionally gives property which is not under its ownership and the recipient does not know or is not able to know, such giver must reimburse the recipient for expenses incurred by the recipient in increasing the value of the property at such time as it is reclaimed by the owner.

Article 469 *Disclosure of defects in gifts*

A giver has the obligation to notify the recipient of any defects in a gift. If the giver knows about defects in a gift but fails to provide notice thereof, the giver must be liable to compensate for damage caused to the recipient; but if the giver does not know about defects in a gift, [*the giver*] shall not be liable to compensate for damage.

Article 470 *Conditional gifts of property*⁶⁵

1. A giver may demand a recipient to perform one or several civil obligations prior to or after the giving of a gift. The conditions for giving a gift must not contravene the law or social morals.
2. Where a recipient performs an obligation required to be performed as a condition to the giving of a gift and the giver fails to deliver the gift⁶⁶, the giver must pay for the obligation already performed by the recipient.
3. Where a recipient fails to perform an obligation required to be performed after the giving of a gift, the giver may reclaim the gift and demand compensation for damage.

SECTION 4

Contracts for Loan of Property

Article 471 *Contracts for loan of property*

Contract for the loan of property means an agreement between parties whereby a lender delivers property to a borrower. When the loan falls due, the borrower must repay the lender property of the same type in accordance with the correct quantity and quality, and must pay interest if so agreed or so provided by law.

Article 472 *Ownership rights with respect to property lent*

A borrower shall become the owner of borrowed property from the time of delivery of the property.

Article 473 *Obligations of lenders*

A lender has the following obligations:

1. To deliver the property to the borrower in full, strictly in accordance with the quality and quantity, and at the time and place, agreed.
2. Where the lender knows that the property is not of the agreed quality but fails to notify the borrower, to compensate the borrower for any damage, unless the borrower accepts the property with knowledge [*that the property is not of the agreed quality*].
3. Not to demand the borrower return the property prior to the due date, except in the cases provided in article 478 of this Code.

Article 474 *Obligations of borrowers to repay loans*

1. Where the property lent is a sum of money, the borrower must repay [*the lender*] the loan in full when due. If the property is an object, the borrower must deliver [*to the lender*] an object of the same type, quantity and quality, unless otherwise agreed.
2. Where a borrower is not able to deliver an object, it may, with the consent of the lender, repay the value of the borrowed object, in cash, as at the time and place of delivery.

⁶⁵ *Phillips Fox Note: In common law, this is not really a gift, as consideration is being provided.*

⁶⁶ *Phillips Fox Note: The literal translation is "property".*

3. The place for repayment of a loan shall be the place of residence or head office of the lender, unless otherwise agreed.
4. If a borrower fails to repay [*all or any instalment of*] an interest-free loan, in whole or in part, when payment falls due, the borrower must, if the parties so agree, pay interest on the overdue amount from the due date until the date on which payment is made, at the basic interest rate announced by the State Bank as at the date on which payment is made.
5. If a borrower fails to repay, in whole or in part, a loan with interest, the borrower must pay interest on the principal and overdue interest at the basic rate announced by the State Bank as at the date on which payment is made.

Article 475 *Use of borrowed property*

Parties may agree that borrowed property may only be used for the agreed purpose of the loan. The lender may check the use of the property and may demand its early return if, despite warning, the borrower continues to use the property contrary to the agreed purpose.

Article 476 *Interest rates*

1. The rate of interest for a loan shall be as agreed by the parties but may not exceed one hundred and fifty (150) per cent of the basic interest rate announced by the State Bank for the corresponding types of loans.
2. Where parties agree that interest will be payable but fail to specify the interest rate, or where there is a dispute as to the interest rate, the interest rate for the duration of the loan shall be the basic interest rate announced by the State Bank as at the date on which repayment is made.

Article 477 *Performance of contracts for loans without fixed term*

1. With respect to a contract for an interest-free loan without a fixed term, the lender may reclaim the property, and the borrower may repay the debt, at any time provided that each party gives reasonable prior notice to the other party, unless otherwise agreed.
2. With respect to a contract for a loan with interest without a fixed term, the lender may reclaim the property at any time, subject to giving reasonable prior notice to the borrower, and shall be paid interest until the time when the property is returned. The borrower may also return the property at any time, subject to giving reasonable prior notice to the lender, in which case the borrower shall pay interest only up to the date on which repayment is made.

Article 478 *Performance of contracts for fixed term loans*

1. With respect to a contract for a fixed term interest-free loan, the borrower may return the property at any time, subject to giving reasonable prior notice to the lender. The lender may reclaim the property prior to the due date, subject to the consent of the borrower.
2. With respect to a contract for a fixed term loan with interest, the borrower may return the property prior to the due date, but must pay interest for the entire term, unless otherwise agreed.

Article 479 *"Họ, hội, biểu, phường"⁶⁷*

1. "Họ, hội, biểu, phường" (hereinafter referred to as "*ho*") means a form of transaction regarding property in accordance with customary practice on the basis of an agreement reached by a group of people who assemble together and jointly determine the number of people, the term, the amount of money or other property, the form of contribution and payment of "*ho*", and the rights and obligations of the members [*of the group*].

⁶⁷ *Phillips Fox Note: The Vietnamese term "họ, hội, biểu, phường" is a form of transaction by groups, assemblies, gatherings of people and guilds. This longstanding form of transaction in Vietnam has no English language equivalent. "Ho" means both the form of transaction and the money received as a result of such transaction.*

2. "Ho" is aimed at mutual assistance of citizens and shall be implemented in accordance with law.
3. It shall be strictly prohibited to organize "ho" in the form of lending at high interest rates.

SECTION 5

Contracts for Lease of Property

I. General Provisions on Contracts for Lease of Property

Article 480 *Contracts for lease of property*

Contract for lease of property means an agreement between parties whereby a lessor delivers property to a lessee for use during a fixed term and the lessee is required to pay rent.

Article 481 *Rent*

Rent for a lease of property shall be as agreed by the parties.

Where the law prescribes a range of rent, the parties may only agree on a rent within such range.

Article 482 *Lease term*

1. The term of a lease shall be as agreed by the parties. If there is no agreement, the term of the lease shall be determined according to the purpose of the lease.
2. Where parties have not agreed on the term of a lease or where the term of a lease is not able to be determined according to the purpose of the lease, the lease shall terminate when the lessee has achieved the purpose of the lease.

Article 483 *Sub-leases*

A lessee may sub-lease leased property with the consent of the lessor.⁶⁸

Article 484 *Delivery of leased property*

1. A lessor must deliver property to the lessee strictly in accordance with the agreed quantity, quality, type and condition and at the agreed place and time, and [*must*] provide information necessary for use of the property.
2. Where a lessor is late in delivering property, the lessee may extend the time for the delivery of the property or may cancel the contract and demand compensation for damage. If the leased property is not of the quality agreed, the lessee has the right to demand the lessor to repair the property or reduce the rent, or to cancel the contract and demand compensation for damage.

Article 485 *Obligation to assure utility value of leased property*

1. A lessor must assure that leased property is in the condition agreed and is suitable for the purpose of the lease contract for the entire term of the lease. The lessor must repair any damage to or defect in the leased property, with the exception of minor damage which the lessee must repair in accordance with customary practice.⁶⁹
2. Where the utility value of leased property decreases otherwise than due to the fault of the lessor, the lessee has the right to demand the lessor:
 - (a) To repair the property;

⁶⁸ *Phillips Fox Note: Curiously, there is no "unless otherwise provided by law" at the end of this article. Various entities are prohibited by law from sub-leasing.*

⁶⁹ *Phillips Fox Note: It is unclear which customary practice is referred to here.*

- (b) To reduce the rent;
 - (c) To replace the property or, if the leased property is beyond repair and the purpose of the lease is not able to be achieved as a result or if the property has defects which the lessee did not know of, the lessee may terminate unilaterally the performance of the contract and demand compensation for damage.
3. Where a lessee demands repair⁷⁰ but the lessor fails to repair in time or at all,⁷¹ provided that [*the lessee*] informs the lessor, the lessee has the right to repair personally the leased property and has the right to demand the lessor reimburse the costs of repair.

Article 486 *Obligation to assure right of lessees to use property*

1. A lessor must assure the right of a lessee to uninterfered use of the property.
2. In the event of a dispute as to the ownership rights with respect to leased property, which interferes with use of that property by the lessee, the lessee has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

Article 487 *Obligation to take care of leased property*

1. A lessee shall take care of leased property as if it were its own and shall carry out minor repairs and maintenance. If the lessee causes any loss of or damage to the property, it must compensate the lessor.

The lessee shall not be liable for normal wear and tear due to the use of the leased property.

2. A lessee may, with the consent of the lessor, carry out repairs and improvements to leased property which increase its value and may demand reimbursement from the lessor for reasonable costs incurred.

Article 488 *Obligation to use leased property strictly in accordance with utility and purpose*

1. A lessee must use leased property strictly in accordance with its utility and the agreed purpose.
2. Where a lessee fails to use leased property strictly in accordance with its utility and purpose, the lessor has the right to terminate unilaterally the performance of the contract and to demand compensation for damage.

Article 489 *Payment of rent*

1. A lessee must pay rent in full and on time as agreed. If there is no agreement on the time for payment of rent, the time shall be determined in accordance with the customary practice at the place of payment. If it is not possible to determine the time of payment in accordance with such customary practice, the lessee must make payment when the lessee returns the leased property.
2. Where the parties have agreed on payment of rent in instalments, if the lessee fails to make payment for three consecutive instalments, the lessor has the right to terminate unilaterally the performance of the lease contract,⁷² unless otherwise agreed or otherwise provided by law.

Article 490 *Return of leased property*

1. A lessee must return leased property in the same condition in which it was received, normal wear and tear excepted, or in the condition agreed. If the value of the leased property has decreased in

⁷⁰ Phillips Fox Note: The literal translation is "Where the lessor has been given notice".

⁷¹ Phillips Fox Note: No mention is made of timely but inadequate repair.

⁷² Phillips Fox Note: No mention is made of any right to [demand] unpaid rent.

comparison with its condition at the time it was received, the lessor has the right to demand compensation for any damage, normal wear and tear excepted.

2. Where leased property is moveable property, the place for returning the leased property shall be the place of residence or head office of the lessor, unless otherwise agreed.
3. Where leased property is livestock, the lessee must return both the leased livestock and any offspring born during the term of the lease, unless otherwise agreed. The lessor must reimburse the lessee for expenses incurred in caring for the offspring.
4. Where a lessee is late in returning leased property, the lessor has the right to demand the lessee to return the leased property and to pay rent for the period of delay and the lessee must compensate for damage. The lessee must pay a penalty for the late return of the leased property if so agreed.
5. The lessee must bear the risk in relation to the leased property during the period of delay.

Article 491 *Termination of leases*

A lease shall terminate in the following cases:

1. The term of the lease has expired.
2. The parties agree on early termination. If the lessor wishes to terminate a lease without a fixed term and there is no agreed notice period, the lessor must give reasonable prior notice.
3. The contract is cancelled or the performance of the contract is terminated unilaterally.
4. The leased property ceases to exist.

II. Contracts for Lease of Houses

Article 492 *Formalities for contracts for lease of residential houses*

A contract for lease of a residential house must be made in writing and, if the term of the lease is six or more months, the contract must be notarized or certified and must be registered, except where otherwise provided by law.

Article 493 *Obligations of lessors of residential houses*

A lessor of a residential house has the following obligations:

1. To deliver the house to the lessee strictly in accordance with the contract.
2. To ensure the uninterfered use of the house by the lessee during the term of the lease.
3. To take care of and repair the house periodically or as agreed. If the lessor fails to take care of and repair the house, thereby causing damage to the lessee, the lessor must compensate.

Article 494 *Rights of lessors of residential houses*

A lessor of a residential house has the following rights:

1. To receive the rent in full and strictly on time as agreed.
2. To terminate unilaterally the performance of the contract for lease of the residential house in accordance with clauses 1 and 3 of article 498 of this Code.
3. To improve and upgrade the leased house with the consent of the lessee, but without interfering with the use of the house by the lessee.

4. To recover the leased house upon expiry of the lease term. If the contract specifies a lease term, the lessor may recover the house provided that it gives the lessee six months prior notice.⁷³

Article 495 *Obligations of lessees of residential houses*

A lessee of a residential house has the following obligations:

1. To use the house strictly for the agreed purpose.
2. To pay the rent in full and strictly on time as agreed.
3. To take care of the house and repair any damage caused by the lessee.⁷⁴
4. To observe any communal rules.
5. To return the house to the lessor strictly as agreed.

Article 496 *Rights of lessees of residential houses*

A lessee of a residential house has the following rights:

1. To take possession of the leased house strictly as agreed.
2. To exchange the leased house with another lessee,⁷⁵ subject to the written consent of the lessor.
3. To sub-lease the leased house, subject to the written consent of the lessor.
4. Where the ownership of the house changes, to continue to lease the house on the terms agreed with the previous lessor.
5. To request the lessor to repair the house being leased if it is damaged.
6. To terminate unilaterally performance of the contract for lease in accordance with clauses 2 and 3 of article 498 of this Code.

Article 497 *Rights and obligations of persons belonging to lessees named in leases of residential houses*⁷⁶

Persons belonging to a lessee named in a contract for lease of a residential house have equal rights and obligations with respect to the lessor and must perform jointly the obligations of the lessee with respect to the lessor.

Article 498 *Unilateral termination of performance of contracts for lease of residential houses*

1. A lessor has the right to terminate unilaterally the performance of a contract for lease if the lessee commits the following acts:
 - (a) Failure to pay rent for three or more consecutive months without a legitimate reason;
 - (b) Failure to use the house strictly in accordance with the purpose of the lease;
 - (c) Intentional causing of serious damage to the house;

⁷³ *Phillips Fox Note: Presumably, this means at least six months prior notice.*

⁷⁴ *Phillips Fox Note: There is no mention of damage caused by invitees.*

⁷⁵ *Phillips Fox Note: This is the literal translation. It is understood to mean 'assign the lease to another lessee'.*

⁷⁶ *Phillips Fox Note: This article appears to be directed at lessees being entities rather than individuals.*

- (d) Repair, exchange or sub-lease of all or part of the leased house without the written consent of the lessor;
 - (dd) Repeated disturbance of public order and serious interference with the normal living activities of persons in the vicinity;
 - (e) Causing of serious impact on environmental hygiene.
2. A lessee has the right to terminate unilaterally the performance of a contract for lease if the lessor commits any of the following acts:
 - (a) Failure to repair the house when its condition has deteriorated seriously;
 - (b) Unreasonable increase of rent;
 - (c) The right to use the house is restricted in the interests of a third person.
 3. A party which terminates unilaterally the performance of a contract for lease must give notice one month in advance to the other party, unless otherwise agreed.

Article 499 *Termination of contracts for leases of residential houses*

A contract for lease of a residential house shall terminate in the following cases:

1. The lease term has expired. If the contract does not specify the term of lease, the contract shall terminate six months after the date on which the lessor informs the lessee of the intention of the lessor to recover the house.
2. The leased house ceases to exist.
3. The lessee dies and there is no co-habitant living in the house.
4. The leased house has to be demolished due to serious damage which renders the house likely to collapse or due to the implementation of construction master plans of the State.

Article 500 *Leases of houses for other purposes*

Except as otherwise provided by law, articles 492 to 499 inclusive of this Code shall also apply to a lease of a house used for purposes other than residency.

III. Contracts for "Thue Khoan"⁷⁷ of Property

Article 501 *Contracts for "thue khoan" of property*

Contract for "thue khoan" of property means an agreement between parties whereby a "thue khoan" lessor delivers the property to a "thue khoan" lessee for the exploitation of its utility and for the enjoyment of the benefits and income derived from such property, and the lessee has the obligation to pay rent.

Article 502 *Subject matters of contracts for "thue khoan" of property*

The subject matter of a contract for "thue khoan" may be land, forest, [and] water surfaces which have not been exploited,⁷⁸ livestock, production and business facilities, and other means of production together with the equipment required to exploit the utility of such property and to enjoy the benefits and income derived therefrom, unless otherwise provided by law.

⁷⁷ Phillips Fox Note: This is a form of lease having no English language equivalent. "Thuê khoán" may be used as a noun or a verb.

⁷⁸ Phillips Fox Note: It is not clear whether "which have not been exploited" qualifies only water surfaces or also land and forests.

Article 503 *Terms of "thue khoan"*

The term of a "thue khoan" shall be as agreed by parties according to the production or business cycle appropriate to the nature of the subject matter of the "thue khoan".

Article 504 *Rent in respect of "thue khoan"*

Rent in respect of a "thue khoan" shall be as agreed by the parties. If a "thue khoan" is awarded by tender, the rent in respect of such "thue khoan" shall be determined in the bidding process.

Article 505 *Delivery of "thue khoan" property*

Upon delivery of "thue khoan" property, parties must record their assessment of the condition and value of the property.

If the parties are not able to determine⁷⁹ the value, a third person shall be invited to determine the value. Such determination shall be made in writing.

Article 506 *Payment of "thue khoan" rent and method of payment*

1. "Thue khoan" rent may be paid in kind or money, or by performance of acts.
2. A "thue khoan" lessee must pay "thue khoan" rent in full even where the lessee does not exploit the utility of the "thue khoan" property.
3. When entering into a contract for "thue khoan", parties may agree on conditions for a reduction in rent. If at least one third of the benefits or income is lost due to an event of *force majeure*, a "thue khoan" lessee may demand a reduction of or exemption from rent, unless otherwise agreed.
4. Where a "thue khoan" lessee must pay in kind according to the season or cycle in the exploitation of the utility of the "thue khoan" property, payment must be made at the end of such season or cycle, unless otherwise agreed.
5. Where a "thue khoan" lessee is required to perform an act, the "thue khoan" lessee must perform that particular act.

Article 507 *Exploitation of "thue khoan" property*

A "thue khoan" lessee must exploit "thue khoan" property strictly in accordance with the agreed purpose and [must] inform the "thue khoan" lessor periodically of its condition and its exploitation. If the "thue khoan" lessor demands or requires information at any other time, the "thue khoan" lessee must provide such information promptly. If the "thue khoan" lessee does not exploit the "thue khoan" property strictly in accordance with the agreed purpose, the "thue khoan" lessor has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

Article 508 *Taking care, maintenance and disposal of "thue khoan" property*

1. During the period of exploitation of the "thue khoan" property, the "thue khoan" lessee must take care of and preserve the "thue khoan" property and any related equipment at its own expense, unless otherwise agreed. If the "thue khoan" lessee loses or damages the "thue khoan" property or causes any loss or reduction in its value, the "thue khoan" lessee must compensate for damage. The "thue khoan" lessee shall not be liable for normal wear and tear due to the use of the "thue khoan" property.
2. A "thue khoan" lessee may replace or improve "thue khoan" property if [the parties] so agree, but⁸⁰ must preserve its value.

⁷⁹ Phillips Fox Note: This is the literal translation, not "agree".

⁸⁰ Phillips Fox Note: The literal translation is "and".

A "thue khoan" lessor must reimburse a "thue khoan" lessee for the reasonable expenses incurred in replacing or improving the "thue khoan" property as agreed.

3. A "thue khoan" lessee may not sub-lease "thue khoan" property without the consent of the "thue khoan" lessor.

Article 509 *Enjoyment of benefits and liability for damage with respect to "thue khoan" livestock*

During the term of a "thue khoan" of livestock, the "thue khoan" lessee shall be entitled to enjoy half of the number of offspring born and shall be liable for half of any damage of the "thue khoan" livestock caused by an event of *force majeure*, unless otherwise agreed.

Article 510 *Unilateral termination of performance of contracts for "thue khoan"*

1. Where a party terminates unilaterally the performance of a [*"thue khoan"*] contract, that party must give reasonable prior notice to the other party. If the "thue khoan" is based on a season or cycle of exploitation, the period of prior notice must conform to such season or cycle.
2. Where a "thue khoan" lessee breaches an obligation and the exploitation of the "thue khoan" property is the sole means of livelihood of the lessee and continuation of the "thue khoan" would not seriously affect the interests of the "thue khoan" lessor, the "thue khoan" lessor may not terminate unilaterally the performance of the contract. In such case, the "thue khoan" lessee must undertake to the "thue khoan" lessor not to commit further breaches of the contract.

Article 511 *Return of "thue khoan" property*

Upon termination of a "thue khoan" contract, the "thue khoan" lessee must return the "thue khoan" property in a condition which takes into account the agreed depreciation. If the "thue khoan" lessee has caused any reduction in the value of the "thue khoan" property, the "thue khoan" lessee must compensate for damage.

SECTION 6

Contracts for Borrowing Property

Article 512 *Contracts for borrowing property*

Contract for borrowing property means an agreement between parties whereby a lender delivers property to a borrower for use free of charge for a period of time and the borrower returns the property at the end of the period of time or when the purpose of the borrowing has been achieved.

Article 513 *Subject matter of contracts for borrowing property*

Any non-consumable object may be the subject matter of a contract for borrowing property.

Article 514 *Obligations of borrowers of property*

A borrower of property has the following obligations:

1. To take care of and preserve the borrowed property as if it were its own property and not to change the condition thereof at the volition of the borrower. The borrower must repair any normal damage to the property.
2. Not to on-lend the property to any other person without the consent of the lender.
3. To return the borrowed property on the due date. If there is no agreement on the time for returning the property, the borrower must return the property immediately after the purpose of the borrowing has been achieved.
4. To compensate for damage where the borrower causes damage to or loss of the borrowed property.

Article 515 *Rights of borrowers of property*

A borrower of property has the following rights:

1. To use the borrowed property strictly in accordance with its utility and agreed purpose.
2. To demand the lender to reimburse reasonable expenses incurred in carrying out repairs or improvements to the borrowed property which increase its value if so agreed.
3. Not to bear liability for normal wear and tear of the borrowed property.

Article 516 *Obligations of lenders of property*

A lender of property has the following obligations:

1. To provide necessary information on the use of the property and its defects, if any.
2. To reimburse the borrower for expenses⁸¹ incurred in carrying out repairs or improvements to the borrowed property which increase its value if so agreed.
3. Where the lender knows but fails to notify the borrower of a defect in the property which results in damage to the borrower, to compensate the borrower for such damage, except where the borrower knows or should know of such defect.

Article 517 *Rights of lenders of property*

A lender of property has the following rights:

1. If there is no agreement on the borrowing period, to reclaim the property immediately after the borrower has achieved its purpose. If the lender suddenly and urgently needs to use the borrowed property, the lender may reclaim it upon giving reasonable prior notice to the borrower, even if the borrower has not yet achieved its purpose.
2. To reclaim the property where the borrower fails to use it strictly in accordance with the agreed purpose, utility, or method or where the borrower on-lends the property without the consent of the lender.
3. To demand compensation for damage to the property caused by the borrower.

SECTION 7

Contracts for Services

Article 518 *Contracts for services*

Contract for services means an agreement between parties whereby a service provider performs an act for a client⁸² which pays a fee for that act.

Article 519 *Subject matter of contracts for services*

The subject matter of a contract for services must be an act which is capable of being performed, which is not prohibited by law and which does not contravene social morals.

Article 520 *Obligations of clients*

A client has the following obligations:

⁸¹ *Phillips Fox Note: Evidently, the expenses must be "reasonable", as per article 515.2.*

⁸² *Phillips Fox Note: The literal translation is "service hirer".*

1. To supply the service provider with the information, documentation and facilities necessary for the performance of the act if so agreed or required for the performance of the act.
2. To pay a fee to the service provider as agreed.

Article 521 *Rights of clients*

A client has the following rights:

1. To demand the service provider to perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Where a service provider commits a serious breach of its obligations, the client may terminate unilaterally performance of the contract and demand compensation for damage.

Article 522 *Obligations of service providers*

A service provider has the following obligations:

1. To perform the act strictly in accordance with the agreement on quality, quantity, time, location and other matters.
2. Not to assign the act to another person for performance on its behalf without the consent of the client.
3. To take care of, and to return to the client after completion of the act, the documents and facilities provided to it.
4. To notify the client promptly of any inadequacy in the information or documents and any failure of the facilities to satisfy the quality required for the completion of the act.
5. To keep confidential any information of which it has had knowledge during the period of providing the service as agreed or as provided by law.
6. If the service provider causes any loss of or damage to the documents or facilities supplied or discloses confidential information, to compensate the client for damage.

Article 523 *Rights of service providers*

A service provider has the following rights:

1. To demand the client provide information, documents and facilities.
2. To amend the terms of service in the interests of the client without necessarily asking for the opinion of the client where waiting for *[such opinion]* would cause damage to the client provided that the service provider promptly informs the client thereof.
3. To demand the client pay the fee.

Article 524 *Payment of fees*

1. A client must pay the agreed fee for services.
2. If, upon entering a contract, there is no agreement on the service fee rate or on the method for fixing the fee for services and there are no other instructions on fees, the service fee rate shall be fixed on the basis of market fees for services of the same type at the time when and place where the contract was entered into.
3. A client must pay the fee for services at the place where the service is provided and at the time of its completion, unless otherwise agreed.

3. Where the services provided fail to meet the terms of the agreement or the act is not completed in time, the client has the right to reduce the fee for services and demand compensation for damage.

Article 525 *Unilateral termination of performance of contracts for services*

1. Where the continued provision of services does not benefit the client, the client has the right to terminate unilaterally the performance of the contract but must provide reasonable prior notice to the service provider, in which case the client must pay a fee according to the portion of services already provided and [must] compensate for damage.
2. Where the client fails to perform its obligations or performs its obligations not as agreed, the service provider has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

Article 526 *Continuation of contracts for services*

If, after the expiry of the [agreed] period [for the provision] of services, the act has not been completed and the service provider continues its performance and the client is aware of this but does not object, the performance of the contract for services shall automatically be deemed to continue in accordance with the agreed terms until the act is completed.

SECTION 8

Transport Contracts

I. Contracts for Transport of Passengers

Article 527 *Contracts for transport of passengers*

Contract for transport of passengers means an agreement between parties whereby a carrier transports passengers and luggage to an agreed⁸³ destination and the passengers must pay transport fares.

Article 528 *Formalities for contracts for transport of passengers*

1. A contract for transport of passengers may be made in writing or orally.
2. A ticket is evidence of the entry into a contract for transport of passengers by the parties.

Article 529 *Obligations of carriers*

A carrier has the following obligations:

1. To carry the passengers safely from the place of departure to the agreed destination on time, in a civilized and courteous manner, by the means agreed and on the agreed route; to ensure that there are sufficient seats for the passengers and that the transport capacity of the carrier is not exceeded.
2. To purchase civil liability insurance for the passengers, as provided by law.
3. To ensure that the departure time is adhered to as notified or agreed.
4. To carry and return the luggage to the passenger or person entitled to receive the luggage in accordance with the agreed destination, time and route.
5. To refund the transport fare to any passenger as agreed. If the law contains [relevant] provisions, to comply with those provisions.

Article 530 *Rights of carriers*

⁸³ *Phillips Fox Note: The literal translation includes "specified".*

A carrier has the following rights:

1. To demand the passengers to pay in full the passenger transport fares and fares for the transport of personal luggage in excess of the prescribed limit.
2. To refuse to carry a passenger in the following cases:
 - (a) Where the passenger fails to follow the regulations of the carrier, where the acts of the passenger disturb public order, obstruct the work of the carrier, or pose a threat to life, health or property of other persons, or where a passenger commits other acts which make it impossible to ensure safety during the journey. In this case, the passenger shall not receive a refund of the passenger transport fare, and must pay a fine if so provided by the transport regulations;
 - (b) Where the health of the passenger is such that it is obvious to the carrier that the transport [of *such person*] will endanger the passenger or other persons during the journey;
 - (c) In order to prevent the spread of contagious diseases.

Article 531 *Obligations of passengers*

A passenger has the following obligations:

1. To pay in full the passenger transport fare and fares for the transport of luggage in excess of the prescribed limit, and to take care of his or her hand-luggage.
2. To be present at the place of departure at the agreed time.
3. To respect and comply strictly with the regulations of the carrier and all other regulations ensuring traffic safety.

Article 532 *Rights of passengers*

A passenger has the following rights:

1. To request to be transported by the agreed means of transport, in the class commensurate with the value of the ticket and in accordance with the agreed route.
2. To be exempt from transport fares for check-in luggage and hand-luggage within the limits as agreed or as provided by law.
3. To demand reimbursement of expenses incurred or compensation for any damage if the carrier is at fault in failing to transport according to the agreed time schedule and destination.
4. To receive a refund of all or part of the transport fare in the cases provided in clauses 2(b) and (c) of article 530 of this Code and in other cases as agreed or as provided by law.
5. To receive the luggage at the agreed destination in accordance with the agreed time and route.
6. To request temporary interruption of the journey for the duration and in accordance with the procedures provided by law.

Article 533 *Liability to compensate for damage*

1. In case of loss of life or damage to the health or luggage of a passenger, the carrier must compensate for any damage in accordance with law.
2. Unless otherwise provided by law, a carrier shall not be liable to compensate for loss of life or damage to the health and luggage of a passenger [*in the case*] where such loss or damage is entirely due to the fault of the passenger.

3. A passenger which breaches the agreed terms for transport or the transport regulations, thereby causing damage to the carrier or a third person, must compensate.

Article 534 *Unilateral termination of contracts for transport of passengers*

1. A carrier has the right to terminate unilaterally the performance of a contract in the cases provided in clause 2 of article 530 of this Code.
2. A passenger has the right to terminate unilaterally the performance of a contract where the carrier breaches the obligations provided in clauses 1, 3 and 4 of article 529 of this Code.

II. Contracts for Transport of Property

Article 535 *Contracts for transport of property*

Contract for transport of property means an agreement between parties whereby a carrier has the obligation to transport property to an agreed destination and to deliver it to the authorized recipient, and the customer⁸⁴ has the obligation to pay the freight charges.

Article 536 *Formalities for contracts for transport of property*

1. A contract for transport of property may be entered into orally or in writing.
2. A bill of lading or equivalent source document of transport shall be evidence of the entering into of a contract by the parties.

Article 537 *Delivery of property to carriers*

1. A customer has the obligation to deliver property to a carrier at the agreed time and place and pack the property in accordance with the agreed specifications. The customer must bear the costs of loading the property onto and unloading the property from the means of transport, unless otherwise agreed.
2. Where a customer is late in delivering property to the agreed place,⁸⁵ the customer must reimburse the carrier for the costs associated with the delay and pay the freight charges for transporting the property to the place agreed in the contract, or must pay a penalty for breach of the contract. If the carrier is late in accepting the property at the agreed place, it shall be liable for the costs incurred due to such late acceptance.

Article 538 *Freight charges*

1. The rate of freight charges shall be as agreed by the parties. If the law regulates freight charges, charges shall apply as regulated.
2. A customer must pay freight charges in full after the property is loaded onto the means of transport, unless otherwise agreed.

Article 539 *Obligations of carriers*

A carrier has the following obligations:

1. To transport⁸⁶ [the property] in its entirety and safely to the agreed destination at the [agreed] time.
2. To deliver the property to the person entitled to receive it.

⁸⁴ Phillips Fox Note: The literal translation is "transport hirer".

⁸⁵ Phillips Fox Note: The literal translation is "Where a customer delivers property not in accordance with the agreed time and place".

⁸⁶ Phillips Fox Note: The literal translation is "guarantee to transport".

3. To bear all costs related to the transport of the property, unless otherwise agreed.
4. To purchase civil liability insurance as required by law.
5. To compensate the customer for damage where the loss of or damage to the property is caused by the fault of the carrier, unless otherwise agreed or otherwise provided by law.

Article 540 *Rights of carriers*

A carrier has the following rights:

1. To check the authenticity of the property and the bill of lading or equivalent source document of transport.
2. To refuse to transport property which is different from that agreed in the contract.
3. To demand the full and timely payment of the freight charges by the customer.
4. To refuse to transport property if the carrier knows or should know that the transacting of such property is prohibited or the property is of a dangerous or toxic nature.
5. To demand the customer to compensate for any damage.

Article 541 *Obligations of customers*

A customer has the following obligations:

1. To pay in full the freight charges to the carrier, at the time and by the method of payment as agreed.
2. To take care of the property during transport if so agreed. Where the customer takes care of the property and it is lost or damaged, the customer shall not be entitled to compensation.

Article 542 *Rights of customers*

A customer has the following rights:

1. To demand the carrier transport the property to the agreed destination at the agreed time.
2. To receive directly the property which has been transported, or appoint a third person to receive it.
3. To demand the carrier compensate for damage.

Article 543 *Delivery of property to recipients*

1. A recipient of property may be the customer or a third person appointed by the customer to receive the property.
2. A carrier must deliver the property to a recipient in full, at the time and place and by the method as agreed.
3. Where property has been delivered to the point of delivery on time but there is no recipient of the property, the carrier may deposit such property at a place of bailment and must notify immediately the customer or the recipient of the property. The customer or recipient of the property must bear the reasonable expenses incurred in relation to the bailment of the property.

The obligation to deliver property shall be completed upon bailment of the property in compliance with the agreed terms and when the customer or the recipient of the property has been notified about the bailment.

Article 544 *Obligations of recipients of property*

A recipient of property has the following obligations:

1. To produce to the carrier the bill of lading or other equivalent source document of transport, and to receive the property at the agreed time and place.
2. To bear the costs for loading and unloading the transported property, unless otherwise agreed or otherwise provided by law.
3. To reimburse [*the carrier*] for reasonable costs incurred due to late acceptance of the property.
4. To notify the customer of the acceptance of the property and [*provide*] other necessary information required by the customer. If the recipient fails to do so, it shall not be entitled to demand the customer to protect the rights and interests related to the delivered property of the recipient.

Article 545 *Rights of recipients of property*

A recipient of property has the following rights:

1. To verify the quantity and quality of the delivered property.
2. To accept the delivered property.
3. To demand the carrier reimburse reasonable costs incurred due to any delay by the carrier in delivering the property.⁸⁷
4. To personally demand, or to notify the customer to demand, the carrier compensate for loss of or damage to the property.

Article 546 *Liability to compensate for damage*

1. Where a carrier is responsible for the loss of or damage to property, the carrier must compensate the customer for damage, except in the case provided in clause 2 of article 541 of this Code.
2. A customer must compensate a carrier and any third parties for damage caused by the transport of dangerous or toxic property which is not safely packaged or the safety of which is not otherwise ensured.
3. A carrier shall not be liable to compensate for damage in the event of *force majeure* causing loss or deterioration of or damage to the property during transport, unless otherwise agreed or otherwise provided by law.

SECTION 9

Processing Contracts

Article 547 *Processing contracts*

Processing contract means an agreement between parties whereby a processor carries out work to create products at the request of a supplier, and the supplier receives the products and pays fees.

Article 548 *Subject matter of processing contracts*

The subject matter of a processing contract shall be items which are specified by samples, the standard of which is agreed by the parties or provided by law.

Article 549 *Obligations of suppliers*

A supplier has the following obligations:

⁸⁷ *Phillips Fox Note: The literal translation is "due to waiting to accept the property".*

1. To supply raw materials to the processor strictly in accordance with the agreed quantity, quality, time and place, unless otherwise agreed by the parties; and to provide necessary documents relating to the processing.
2. To provide the processor with instructions as to how to perform the contract.
3. To pay agreed fees.

Article 550 *Rights of suppliers*

A supplier has the following rights:

1. To accept the processed products in accordance with the agreed quantity, quality, manner, time and place.
2. To terminate unilaterally performance of the contract and demand compensation for damage if the processor commits a serious breach of the contract.
3. Where the products are not of the agreed quality and the supplier accepts the products but requests repairs, but the processor is not able to perform the repairs within the agreed time, the supplier has the right to cancel the contract and demand compensation for damage.

Article 551 *Obligations of processors*

A processor has the following obligations:

1. To take care of the raw materials supplied by the supplier.
2. To notify the supplier to replace any raw materials supplied which are not of the agreed quality; to refuse to perform the processing if the use of the raw materials may create products which pose a danger to society. If the processor fails to notify or to refuse to perform, it shall be liable for the products processed.
3. To deliver the products to the supplier strictly in accordance with the agreed quantity, quality, method, time and place.
4. To keep confidential all information relating to the processing and the products.
5. To be liable for the quality of the products, unless the lack of quality is due to the raw materials supplied by the supplier or due to the unreasonable instructions of the supplier.
6. To return any leftover raw materials to the supplier after completing performance of the contract.

Article 552 *Rights of processors*

A processor has the following rights:

1. To demand the supplier deliver the raw materials strictly in accordance with the agreed quality, quantity, time and place.
2. To refuse [*to comply with*] unreasonable instructions of the supplier where the processor is of the view that [*compliance with*] such instructions could decrease the quality of the products provided that the processor immediately informs the supplier.
3. To demand the supplier make payment of the fees in full, at the time and by the method as agreed.

Article 553 *Liability for risk*

Unless otherwise agreed, the owner of the raw materials has the risk with respect to such materials and the products processed therefrom until the products are delivered to the supplier.

If the supplier is late in accepting the products, it has the risk during the period of delayed acceptance, including where the products are processed from the raw materials of the processor, unless otherwise agreed.

If the processor delays delivery of the products and the delay damages the processed property, the processor must compensate for damage suffered by the supplier.

Article 554 *Delivery and acceptance of processed products*

A processor must deliver, and the supplier must accept, products at the agreed time and place.

Article 555 *Late delivery and acceptance of processed products*

1. Where the processor is late in delivering processed products, the supplier may extend the time of delivery. If, upon expiry of such extension, the processor still has not delivered the products, the supplier has the right to terminate unilaterally the performance of the contract and demand compensation for damage.
2. Where the supplier is late in accepting the products, the processor may deposit the products at a place of bailment and must notify the supplier immediately. The obligation to deliver the products shall be fulfilled when the agreed terms are satisfied and the supplier has been notified. The supplier must bear all costs incurred for bailment.

Article 556 *Unilateral termination of performance of processing contracts*

1. Unless otherwise agreed or otherwise provided by law, each party has the right to terminate unilaterally the performance of a processing contract if continued performance would not benefit that party but must give reasonable prior notice to the other party. If the supplier terminates unilaterally the performance of the contract, the supplier must pay fees for the work already performed. If the processor terminates unilaterally the performance of the contract, it shall not be paid fees, unless otherwise agreed.
2. A party which unilaterally terminates the performance of a contract and thereby causes damage to the other party, must compensate.

Article 557 *Payment of fees*

1. Unless otherwise agreed, the supplier must pay fees in full at the time of accepting the products.
2. If there is no agreement on the rate of fees, the applicable rate shall be the average rate charged for the production of products of the same type at the place of processing at the time of payment.
3. If the products fail to meet the [agreed] quality due to the raw materials supplied or the unreasonable instructions provided by the supplier, the supplier does not have the right to reduce the fees.

Article 558 *Dealing with leftover raw materials*⁸⁸

Unless otherwise agreed, the processor must return leftover raw materials to the supplier upon termination of the processing contract.

SECTION 10

Contracts for Bailment of Property

Article 559 *Contracts for bailment of property*

⁸⁸ Phillips Fox Note: The literal translation is "Liquidation of raw materials".

Contract for bailment of property means an agreement between parties whereby a bailee accepts the property of a bailor for safekeeping, for return to the bailor upon expiry of the duration of the contract, and the bailor must pay a fee to the bailee, except where the bailment is free of charge.

Article 560 *Obligations of bailors of property*

A bailor of property has the following obligations:

1. Upon delivery of the property, to inform the bailee of the condition of the property and the appropriate safekeeping measures; if [*the bailor*] fails to inform [*the bailee*], and the property is destroyed or damaged as a result of inappropriate safekeeping, the bailor must be liable itself [*for such destruction of or damage to the bailed property*] and must compensate for [*other*] damage caused.
2. To pay the bailment fees in full, at the time and by the method as agreed.

Article 561 *Rights of bailors of property*

A bailor of property has the following rights:

1. If the bailment contract does not specify a duration, to reclaim the property at any time subject to giving reasonable prior notice to the bailee.
2. To demand compensation for loss of or damage to the bailed property caused by the bailee, except in the case of an event of *force majeure*.

Article 562 *Obligations of bailees of property*

A bailee of property has the following obligations:

1. To take care of the property as agreed and return it to the bailor in the same condition in which the bailee received it.
2. To change the method for safekeeping of the property only where such change is necessary for better safekeeping of such property and provided that the bailor is notified immediately of the change.
3. If, due to its nature, the bailed property is in danger of being damaged or destroyed, to notify promptly the bailor in writing and request the bailor to advise, within a certain period of time, a solution. If the bailor fails to reply within such period of time, the bailee has the right to take all necessary measures to take care of the property and to demand the bailee reimburse the costs incurred.
4. If the bailee causes any loss of or damage to the bailed property, to compensate for damage, except in the case of an event of *force majeure*.

Article 563 *Rights of bailees of property*

A bailee of property has the following rights:

1. To demand the bailor pay the agreed [*bailment*] fees.
2. Where the bailment is free of charge, to demand the bailor pay the reasonable costs of taking care of the property.
3. Where the bailment is for an indefinite period of time, to request, at any time, that the bailor take back the property subject to giving reasonable prior notice to the bailor.
4. Where the bailed property is in danger of being damaged or destroyed, to sell the property in the interests of the bailor, inform the bailor thereof and pay the proceeds of the sale to the bailor after deduction of reasonable expenses incurred for the sale of the property.

Article 564 *Return of bailed property*

1. A bailee must return the same property that was received, including any benefits derived therefrom, unless otherwise agreed.

The bailed property shall be returned [to the bailor] at the place where it was delivered. If the bailor wishes to have the property returned at another place, the bailor must bear the transport costs to such place, unless otherwise agreed.

2. A bailee must return property at the agreed time and only has the right to request the bailor take back the property prior to such time for a legitimate reason.

Article 565 *Late taking back of bailed property*

If a bailee is late in returning the property, the bailee may not demand the bailor pay bailment fees and costs for taking care of the property incurred from the agreed time for return of the property [to the time it is actually returned] and bears the risk with respect to the property during such period.

Where a bailor is late in taking back property, the bailor must pay all costs for taking care of the property and the bailment fees to the bailee during the period for which the bailor is late.

Article 566 *Payment of bailment fees*

1. A bailor must pay bailment fees in full when taking back the bailed property, unless otherwise agreed.
2. Where the parties have no agreement on the rate of bailment fees, the applicable rate shall be the average rate of bailment fees at the time when and place where the bailment fee is paid.
3. Notwithstanding that the bailor takes back the property prior to the agreed time, the bailor must pay the bailment fees in full and must pay the necessary costs which the bailee incurs due to the return of the property by the bailee prior to the agreed time, unless otherwise agreed.
4. Where a bailee requests a bailor to take back the property prior to the agreed time, the bailee shall not [be entitled to] be paid bailment fees and must compensate for any damage to the bailor, unless otherwise agreed.

SECTION 11

Insurance Contracts

Article 567 *Insurance contracts*

Insurance contract means an agreement between parties whereby a purchaser of insurance must pay insurance premiums and an insurer must pay insurance benefits to the insured if an insured event occurs.

Article 568 *Types of insurance contracts*

Insurance contracts comprise contracts of personal insurance, contracts of property insurance, and contracts of civil liability insurance.

Article 569 *Subjects of insurance*

The subject of insurance may be persons, property, civil liabilities, and other subjects as provided by law.

Article 570 *Formalities for insurance contracts*

An insurance contract must be made in writing. An application for insurance signed by the purchaser of insurance shall form an inseparable part of the insurance contract. An insurance certificate or insurance policy shall be evidence of the entering into of an insurance contract.

Article 571 *Insured events*

An insured event shall be an objective event as agreed by the parties or as provided by law upon occurrence of which the insurer must pay the insurance benefits to the insured, except in the case provided in clause 2 of article 346 of this Code.

Article 572 *Insurance premiums*

1. Insurance premium means an amount of money which the purchaser of insurance must pay to the insurer.

The time-limits for the payment of insurance premiums shall be as agreed or as provided by law. Insurance premiums may be paid once or in instalments.

2. Where a purchaser of insurance is late in paying an insurance premium instalment, the insurer shall set a time-limit for the purchaser of insurance to make payment. If the purchaser of insurance fails to pay the insurance premium within such time-limit, the contract shall terminate.

Article 573 *Obligations of purchasers of insurance to provide information*

1. When entering into an insurance contract, a purchaser of insurance must provide all information relating to the subject matter of the insurance as requested by the insurer, except for information which the insurer already knows or should know.
2. Where a purchaser of insurance intentionally provides false information in order to enter into the insurance contract for the purpose of enjoying the insurance coverage, the insurer has the right to terminate unilaterally the performance of the contract and collect insurance premiums up to the time of termination of the contract.

Article 574 *Obligation to prevent damage*

1. An insured has the obligation to abide by the terms provided in the [*insurance*] contract and by the relevant legal regulations and take measures to avoid damage.⁸⁹
2. Where the insured fails to⁹⁰ take the measures to avoid damage provided in the contract, the insurer has the right to set a time-limit for the insured to implement such measures. If the insured fails to take such measures within such time, the insurer has the right to terminate unilaterally the performance of the contract or to not pay the insurance benefits if an insured event occurs as a result of the failure to take such measures.

Article 575 *Obligations of purchaser of insurance, insured and insurer upon occurrence of insured event*

1. Upon occurrence of an insured event, the purchaser of insurance or the insured must notify the insurer immediately and take all necessary measures possible within its capacity to avoid and minimize any damage.
2. An insurer must pay the necessary and reasonable expenses which third parties have incurred to avoid and minimize the [*actual*] damage.

Article 576 *Payment of insurance benefits*

1. An insurer must pay insurance benefits to an insured within the agreed time-limit. If there is no agreement on the time-limit, the insurer must pay the insurance benefits within fifteen (15) days of receiving complete and proper documentation regarding the claim for payment of the insurance benefits.

⁸⁹ *Phillips Fox Note: No standard is specified.*

⁹⁰ *Phillips Fox Note: The literal translation is "has the fault of".*

2. Where the insurer is late in paying insurance benefits, the insurer must also pay interest on the amount overdue for the period it is overdue, at the basic interest rate provided by the State Bank at the time of payment of the insurance benefits.
3. Where an insured intentionally allows damage to occur, the insurer shall not be required to pay insurance benefits. If damage occurs due to⁹¹ the inadvertence of the insured, the insurer shall not be required to pay that part of the insurance benefits which corresponds to the extent of the fault of the insured.

Article 577 *Transfers of claims for indemnity*

1. Where a third person is at fault for causing damage to the insured, and the insurer has paid insurance benefits to the insured, the insurer has the right to demand the third person indemnify the insurer for the insurance benefits already paid. The insured has the obligation to provide the insurer with all necessary information, documentation and evidence of which the insured has knowledge in order to enable the insurer to exercise its right to demand the third person [*to indemnify*].
2. Where an insured has received monetary compensation for damage from a third person which is less than the amount payable by the insurer, the insurer is only required to pay the difference between the [*total*] insurance benefits [*otherwise payable*] and the amount paid by the third person, unless otherwise agreed. If the insured has received insurance benefits but the insurance benefits are less than the damage caused by the third person, the insured has the right to demand the third person indemnify [*the insured*] for the difference between the insurance benefits and the monetary compensation for the damage.

An insurer has the right to demand the third person indemnify fully [*the insurer*] for the amount it has paid to the insured.

Article 578 *Life insurance*⁹²

In the case of life insurance, an insurer must pay insurance benefits to the insured or the authorized representative of the insured upon occurrence of an insured event. If the insured dies, the insurance benefits shall be paid to the heir of the insured.

Article 579 *Property insurance*

1. An insurer must compensate for any damage caused to insured property in accordance with the terms as agreed or as provided by law.
2. Where the ownership rights with respect to insured property are transferred to another person, the new owner shall substitute automatically the former owner in the insurance contract upon transfer of the ownership rights. The former owner which purchased the insurance must notify the new owner that the property is insured and inform the insurer promptly of the transfer of the ownership rights.

Article 580 *Civil liability insurance*

1. In the case of third party⁹³ civil liability insurance which is agreed or provided by law, the insurer must, at the demand of the purchaser of insurance, compensate the purchaser of insurance [*for money the purchaser of insurance has paid to a third person*], or make direct payment to a third person, in respect of damage the purchaser of insurance has caused to the third person, subject to the total insurance benefits as agreed or as provided by law.
2. Where the purchaser of insurance has already compensated the third person for damage, the purchaser of insurance has the right to demand the insurer indemnify the amount the purchaser of

⁹¹ *Phillips Fox Note: The degree of fault required is not clear, however, the latter part of this sentence contemplates less than total fault.*

⁹² *Phillips Fox Note: The Vietnamese term used here is different from the Vietnamese term for "life insurance" as defined in the Law on Insurance Business dated 9 December 2000.*

⁹³ *Phillips Fox Note: The literal translation is "third person".*

insurance has already paid to the third person, which shall not exceed the insurance benefits as agreed by the parties or as provided by law.

SECTION 12

Authorization Contracts

Article 581 *Authorization contracts*

Authorization contract means an agreement between parties whereby an attorney has the obligation to perform an act in the name of a principal. The principal shall only be required to pay remuneration if so agreed or so provided by law.

Article 582 *Duration of authorization*

The duration of the authorization shall be as agreed by the parties or as provided by law. If there is no agreement and the duration is not provided by law, the authorization contract shall be effective for one year from the date on which the authorization is made.

Article 583 *Sub-authorization*

An attorney may only sub-authorize its authorization to a third person with the consent of the principal or if so provided by law. The formalities of the sub-authorization contract must conform with the formalities of the original authorization contract.

A sub-authorization shall not exceed the scope of the original authorization.

Article 584 *Obligations of attorneys*

An attorney has the following obligations:

1. To perform the act in accordance with the authorization and inform the principal of such performance.
2. To notify any third parties involved in the performance of the authorized act of the duration and scope of the authorization and of any amendments of or additions to such scope.
3. To take care of and preserve documents and facilities provided for the performance of the authorized act.
4. To keep all information⁹⁴ confidential which the attorney comes to know during the performance of the authorized act.
5. To return to the principal any property received and benefits derived during the performance of the authorized act as agreed or as provided by law.
6. To compensate for damage caused by a breach of any of the obligations provided in clauses 1, 2, 3, 4 and 5 of this article.

Article 585 *Rights of attorneys*

An attorney has the following rights:

1. To demand the principal provide the information, documentation and facilities necessary for performance of the authorized act.
2. To receive remuneration and be reimbursed for reasonable expenses incurred in the performance of the authorized act.

⁹⁴ *Phillips Fox Note: Presumably this information is limited to information relating to the performance of the authorized act.*

Article 586 *Obligations of principals*

A principal has the following obligations:

1. To provide the information, documentation and facilities necessary for the attorney to perform the [authorized] act.
2. To be liable for undertakings given by the attorney within the scope of the authorization.
3. To reimburse the attorney for reasonable expenses incurred by the attorney in the performance of the authorized act and pay any agreed remuneration to the attorney.

Article 587 *Rights of principals*

A principal has the following rights:

1. To demand the attorney report fully on the performance of the authorized act.
2. To demand the attorney return any property and benefits derived from the performance of the authorized act, unless otherwise agreed.
3. If the attorney breaches any of the obligations provided in article 584 of this Code, to be compensated for damage.

Article 588 *Unilateral termination of performance of authorization contracts*

1. Where an authorization involves payment of remuneration, the principal has the right, at any time, to terminate unilaterally the performance of the contract but must remunerate the attorney in proportion to the acts performed and compensate for damage. If the authorization does not involve payment of remuneration, the principal has the right, at any time, to terminate the performance of the contract, subject to giving reasonable prior notice to the attorney.

A principal must notify [any] third person⁹⁵ in writing of the termination of the performance of the contract by the principal. If the principal fails to do so, any contract with [any such] third person shall remain in effect, unless such third person knows or should know of the termination of the performance of the contract.

2. Where an authorization does not involve payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract, subject to giving reasonable prior notice to the principal. If the authorization involves payment of remuneration, the attorney has the right, at any time, to terminate unilaterally the performance of the contract and must compensate for any damage caused to the principal.

Article 589 *Termination of authorization contracts*

An authorization contract shall terminate in the following circumstances:

1. The authorization contract expires.
2. The authorized act has been completed.
3. The principal or the attorney terminates unilaterally the performance of the contract in accordance with article 588 of this Code.
4. The principal or attorney has died; or has been declared by a court to have lost the capacity for civil acts, that the capacity for civil acts is restricted, to be missing or dead.

⁹⁵ *Phillips Fox Note: Presumably, this means "any third person involved in the performance of the authorized act".*

SECTION 13

Promises of Rewards and Prize Competitions

Article 590 *Promises of rewards*

1. A person having made a public promise of a reward must pay that reward to a person having performed the act requested by the promissor.
2. An act for which a reward is promised must be specific and capable of being performed and [*must*] not be prohibited by law nor contravene social morals.

Article 591 *Withdrawal of promises of rewards*

A promissor may withdraw its promise of a reward at any time prior to the commencement of the performance of the act. A withdrawal of a promise of reward must be made in the same manner and by the same media in which the promise of reward was announced.

Article 592 *Payment of rewards*

1. Where a person performs an act for which a reward is promised, that person shall be given the reward upon completion of the act.
2. Where several persons perform an act for which a reward is promised, concurrently but independently, the person having first completed the act shall be given the reward.
3. Where more than one person complete, at the same time, an act for which a reward is promised, the reward shall be distributed in equal shares amongst such persons.
4. Where more than one person co-operate with each other to perform, at the request of the promissor, an act for which a reward is promised, each person shall receive a share of the reward in proportion to its contribution.

Article 593 *Prize competitions*

1. A person organizing a cultural, artistic, sports, scientific, technical or other competition which is lawful and does not contravene social morals must announce publicly the terms of participation, the scale of marks, the prizes and the value of each prize.
2. Any alteration of the terms of participation must be announced⁹⁶ in the manner in which the competition was announced, within a reasonable period of time prior to the competition being conducted.
3. A winner of a prize has the right to demand the organizer of a competition give a prize of the value announced.

CHAPTER XIX

Performance of Acts⁹⁷ Without⁹⁸ Authorization

Article 594 *Performance of acts without authorization*

Performance of acts without authorization means the voluntary performance of acts by a person being under no obligation to perform the act, solely for the benefit⁹⁹ of a beneficiary, without the knowledge of the beneficiary, or with its knowledge but without the beneficiary raising any objection.

⁹⁶ Phillips Fox Note: The literal translation is "made".

⁹⁷ Phillips Fox Note: The literal translation is "work". An alternative translation is "tasks".

⁹⁸ Phillips Fox Note: This is the literal translation. In certain circumstances, it may be understood to mean "not requiring".

Article 595 *Obligation to perform acts without authorization*

1. A person performing an act without authorization has the obligation to do so in accordance with its capabilities and conditions.
2. A person performing an act without authorization must do so as if such person were performing such act for its own benefit. If such person knows or is able to guess the wishes of the beneficiary, such person must perform the act in accordance with such wishes.
3. A person performing an act without authorization must, if requested, notify the beneficiary of the progress and results of the performance, unless the beneficiary already knows such information or the person performing the act without authorization does not know the place of residence of the beneficiary.
4. If a beneficiary dies, the person performing an act without authorization must continue to perform the act until the heir or representative of the beneficiary takes over¹⁰⁰ [the act].¹⁰¹
5. Where a person performing an act without authorization has legitimate reasons for not being able to continue performance, such person must notify the beneficiary, or the representative or close relatives of the beneficiary, or may ask another person to perform the act on its behalf.

Article 596 *Obligation of beneficiary to pay for acts performed without authorization*

1. A beneficiary of an act performed without authorization must accept the results of the act when it is handed over to the beneficiary by the person having performed the act and [must] reimburse that person for reasonable expenses incurred in performing such act, even where the performance has failed to achieve the results desired by the beneficiary.
2. If a person has performed an act properly for the benefit of a beneficiary, the beneficiary must remunerate the person having performed the act, unless the person having performed the act refuses to accept the remuneration.

Article 597 *Obligation to compensate for damage*

1. If a person performing an act without authorization intentionally causes damage [to the beneficiary] while performing the act, such person must compensate for such damage.
2. If a person performing an act without authorization unintentionally causes damage [to the beneficiary] while performing the act, the compensation by such person may be reduced on the basis of the circumstances in which the act was performed.

Article 598 *Termination of performance of acts without authorization*

The performance of acts without authorization shall terminate in the following cases:

1. The beneficiary so requests.
2. The beneficiary, or its heir or representative, takes over the acts.
3. The person performing the acts without authorization becomes not able to continue performance in accordance with paragraph 5 of article 595 of this Code.
4. The person performing the acts without authorization dies.

⁹⁹ *Phillips Fox Note: It is unclear whether this must be determined objectively.*

¹⁰⁰ *Phillips Fox Note: It is unclear whether this means "performs" or "accepts the results of".*

¹⁰¹ *Phillips Fox Note: No specific reference is made to cases where an act is performed for the benefit of a beneficiary personally.*

CHAPTER XX

Obligations to Return [*Property*] Due to Unlawful Possession or Use of Property or Deriving of Benefits from Property

Article 599 *Obligation to return [property]*

1. A person possessing or using property of another unlawfully must return the property to its lawful owner or possessor. If the lawful owner or possessor of such property is not able to be found, the person possessing or using property of another unlawfully must deliver the property to the authorized State body, except in the case provided in clause 1 of article 247 of this Code.
2. A person deriving benefits from property unlawfully, thereby causing damage to another, must give such benefits to such other person, except in the case provided in clause 1 of article 247 of this Code.

Article 600 *Property to be returned*

1. A person possessing or using property unlawfully must return the whole of such property.
2. Where the property to be returned is a distinctive object, that particular object must be returned and, if such distinctive object is lost or damaged, monetary compensation must be paid, unless otherwise agreed.
3. If the property to be returned is a generic object which has been lost or damaged, an object of the same type must be returned or monetary compensation [*must*] be paid, unless otherwise agreed.
4. A person deriving benefits from property unlawfully must return, either in kind or in money, the benefits derived from the property to any person having suffered loss of such benefits.

Article 601 *Obligation to return benefits and income*

1. A person possessing or using property, or a person deriving benefits from property, unlawfully and not in good faith, must return any benefits and income derived from the property during the time of unlawful possession or use of, or deriving benefits from, the property.
2. A person possessing or using property, or a person deriving benefits from property, unlawfully but in good faith, must return any benefits and income derived from the property from the time when it knew or should have known that the possession or use of, or deriving benefits from, the property was unlawful, except in the case provided in clause 1 of article 247 of this Code.

Article 602 *Right to demand third person to return property*

Where a person unlawfully possessing or using property transfers the property to a third person, the third person must return the property if so demanded by the lawful owner or [*lawful*] possessor of the property, unless this Code contains some other provision. If money or compensation has been paid for such property, the third person has the right to demand the party having transferred the property to the third person to compensate for damage.

Article 603 *Obligation to pay*

Upon taking back property, an owner, lawful possessor or aggrieved person must reimburse the person having taken possession of or used the property, or having derived benefits from the property, unlawfully but in good faith, for the necessary expenses such person has incurred for taking care of the property and increasing its value.

CHAPTER XXI

Liability for Compensation for Non-Contractual Damages¹⁰²

SECTION 1

General Provisions

Article 604 *Grounds giving rise to liability to compensate for damage*

1. A person intentionally or unintentionally harming the life, health, honour, dignity, reputation, property, or other legal rights or interests of an individual, or harming the honour, reputation, or property of a legal entity or other subject, thereby causing damage, must compensate [*for such damage*].
2. Where the law provides that a person causing damage must compensate for such damage even if [*that person*] was not at fault, such provision shall be applied.

Article 605 *Principles of compensation for damage*

1. Damage must be compensated in full and promptly. Unless otherwise provided by law, parties may agree on the amount of compensation; on the form of compensation, which may be money, in kind or the performance of an act; on one-off payment or payment in instalments; and on the method of compensation.
2. The compensation payable by a person having caused damage may be reduced if such damage was caused unintentionally and is very large in comparison to the short-term and long-term financial positions of such person.
3. If the amount of compensation [*determined*] becomes unrealistic, the aggrieved person, or the person having caused damage, has the right to request a court or another authorized State body to change the amount of compensation.

Article 606 *Capacity of individuals for liability to compensate for damage*

1. A person of eighteen (18) or more years of age who causes damage shall be personally liable to compensate.
2. Where a minor under fifteen (15) years of age causes damage, his or her parents, if any, must compensate for the total damage. If the parents have insufficient property to compensate and the minor who has caused the damage has property of his or her own, such property shall be used to satisfy the outstanding amount of compensation, except in the cases provided in article 621 of this Code.

Where a person who is between fifteen (15) and eighteen (18) years of age causes damage, such person must compensate by recourse to his or her own property. If such person has insufficient property to compensate, the parents of such person must satisfy the outstanding amount by recourse to their own property.

3. Where a minor, or a person who has lost the capacity for civil acts, causes damage but there is a guardian, such guardian shall use the property of the ward to compensate. If the ward has no or insufficient property to compensate, the guardian must do so by recourse to the property of the guardian. If the guardian is able to prove that he or she was not at fault with respect to guardianship,¹⁰³ the guardian shall not be required to use its property to compensate.

¹⁰² *Phillips Fox Note: This is similar to the common law of torts or the civil law of delicts.*

¹⁰³ *Phillips Fox Note: This appears to mean that the guardian has not contributed to the cause of the damage due to inadequate guardianship.*

Article 607 *Limitation period for initiating legal action claiming compensation for damage*

The limitation period for initiating legal action claiming compensation for damage shall be two years from the date on which the legal rights or interests of an individual, legal entity or other subject were infringed.

SECTION 2

Assessment of Damage

Article 608 *Damage caused by infringement¹⁰⁴ of property*

In the event of an infringement of property, the compensatable damage shall comprise:

1. Property which was lost.
2. Property which was destroyed or damaged.
3. Interests associated with the use and exploitation of the property.
4. Reasonable costs for the prevention, mitigation and remedy of the damage.

Article 609 *Damage caused by harm¹⁰⁵ to health*

1. Damage caused by harm to health shall comprise:
 - (a) Reasonable costs for treating, nursing and rehabilitating health, and functional losses and impairment of the aggrieved person;
 - (b) Loss of or reduction in the actual income of the aggrieved person. If the actual income of the aggrieved person is irregular and is not able to be determined, the average income level for the type of work performed by the aggrieved person shall be applied;
 - (c) Reasonable costs and actual income losses of the carers of the aggrieved person during the period of treatment. If the aggrieved person loses his or her ability to work and requires a permanent carer, the damage shall also include reasonable costs for taking care of the aggrieved person.
2. A person causing harm to the health of another person must pay the items provided in clause 1 of this article together with an amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed thirty (30) months wages at the minimum monthly wage rate provided by the State.

Article 610 *Damage caused by harm¹⁰⁶ to life*

1. Damage caused by harm to life shall comprise:
 - (a) Reasonable costs for treating, nursing and caring for the aggrieved person prior to the death of the aggrieved person;
 - (b) Reasonable funeral costs;
 - (c) Support for the dependants of the aggrieved person.

¹⁰⁴ *Phillips Fox Note: This is the closest translation.*

¹⁰⁵ *Phillips Fox Note: The literal translation is "infringement".*

¹⁰⁶ *Phillips Fox Note: The literal translation is "infringement".*

2. A person causing death to¹⁰⁷ another person must pay compensation for damage as provided in clause 1 of this article together with an amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who were directly reared by the deceased or to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed sixty (60) months wages at the minimum monthly wage rate provided by the State.

Article 611 *Damage caused by harm to honour, dignity or reputation*

1. Damage caused by harm to the honour, dignity or reputation of an individual or harm to the honour or reputation of a legal entity or another subject shall comprise:
 - (a) Reasonable costs for mitigating and remedying the damage;
 - (b) Loss of or reduction in actual income.
2. A person causing harm to the honour, dignity or reputation of another person must pay compensation for damage as provided in clause 1 of this article together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, [the maximum sum] shall not exceed ten (10) months wages at the minimum monthly wage rate provided by the State.

Article 612 *Period of entitlement to compensation for damage caused by harm to health or resulting from loss of life*

1. Where an aggrieved person loses totally the ability to work, the aggrieved person shall receive compensation until the time of his or her death.
2. Where the aggrieved person dies, his or her dependants shall be entitled to receive support for the following durations:
 - (a) A child of the deceased, whether living or conceived prior to his or her death, shall be entitled to compensation until the age of eighteen (18) years, except a child between fifteen (15) and eighteen (18) years of age who is employed and earns sufficient income to look after himself or herself;
 - (b) An adult who is not able to work shall be entitled to receive support until his or her death.

SECTION 3

Compensation for Damage in Number of Specific Cases

Article 613 *Compensation for damage¹⁰⁸ by persons exceeding limits of reasonable self-defence*

1. A person causing damage while acting in reasonable self-defence shall not be liable to compensate any aggrieved person.
2. A person causing damage while not acting in reasonable self-defence must compensate any aggrieved person.

Article 614 *Compensation for damage by persons exceeding requirements of emergency situation*

1. A person causing damage while acting [within the requirements of] an emergency situation shall not be liable to compensate any aggrieved person.

¹⁰⁷ Phillips Fox Note: The literal translation is "infringing on the life of".

¹⁰⁸ Phillips Fox Note: Damage, in this context, means to person or property.

2. A person causing damage as a result of exceeding the requirements of an emergency situation must compensate any aggrieved person for that part of the damage which resulted from exceeding the requirements of an emergency situation.
3. A person creating an emergency situation which leads to damage being caused must compensate any aggrieved person.

Article 615 *Compensation for damage caused by persons using stimulants*

1. A person who, due to the consumption of alcohol or the use of other stimulants, becomes incapable of being aware of or controlling his or her acts, thereby causing damage to another person, must compensate such person.
2. A person who intentionally causes another person to take alcohol or stimulants, thereby causing such person to become incapable of being aware of or controlling his or her acts, must compensate any person aggrieved thereby.

Article 616 *Compensation for damage caused jointly by several persons*

Where several persons jointly cause damage, they must jointly compensate any aggrieved person.¹⁰⁹ Liability for compensation of each person having jointly caused the damage shall be determined in proportion to the degree of fault of each person. If the degree of fault is not able to be determined, the persons causing damage must compensate in equal shares.

Article 617 *Compensation for damage where aggrieved person is at fault*

If an aggrieved person is at fault¹¹⁰ for causing the damage, the person having caused the damage shall only be liable for a share of the damage in proportion to the degree to which [*such person*] is at fault for causing such damage. If the aggrieved person is totally at fault for causing the damage, the person causing the damage shall not be liable to compensate.

Article 618 *Compensation for damage caused by persons belonging to legal entity*¹¹¹

A legal entity must compensate for any damage caused by any person belonging to the legal entity during the performance of duties assigned by it [*to such person*]. If a legal entity has compensated for any damage, it has the right to demand the person at fault for causing the damage to reimburse it an amount of money in accordance with law.

Article 619 *Compensation for damage caused by officials and civil servants*

The body or organization administering an official or civil servant must compensate for any damage caused by such official or civil servant during the performance of his or her public duties.

The body or organization administering an official or civil servant has the responsibility to demand the official or civil servant reimburse it an amount of money in accordance with law if such official or civil servant was at fault during the performance of his or her public duties.

Article 620 *Compensation for damage caused by authorized persons of bodies performing legal proceedings*¹¹²

A body performing legal proceedings must compensate for damage caused by any authorized person of such body during the process of the conduct of legal proceedings.

¹⁰⁹ Phillips Fox Note: It is apparent from the following article that such person must be a third person.

¹¹⁰ Phillips Fox Note: The literal translation is "also at fault".

¹¹¹ Phillips Fox Note: The literal translation is "persons of a legal entity". This may include persons other than employees.

¹¹² Phillips Fox Note: This is the literal translation.

If the authorized person was at fault during the performance of his or her duties, the body performing legal proceedings has the responsibility to demand such person reimburse it an amount of money in accordance with law.

Article 621 *Compensation for damage caused by persons under fifteen years of age or persons having lost capacity for civil acts and under direct supervision of school, hospital or other organization*

1. Where a person under fifteen (15) years of age causes damage during school hours, the school must compensate for the damage.
2. If a person who has lost his or her capacity for civil acts causes damage to another person while under the direct supervision of a hospital or other organization, such hospital or other organization must compensate for the damage.
3. If, in the cases provided in clauses 1 and 2 of this article, the school, hospital or other organization proves that it was not at fault with respect to supervision, the parents or guardian of the person under fifteen (15) years of age or of the person who has lost his or her capacity for civil acts must compensate.

Article 622 *Compensation for damage caused by workers and trainees*

An individual, legal entity or other subject must compensate for any damage caused by any worker or trainee belonging to it during the performance by the employee or trainee of his or her assigned duties. The individual, legal entity or other subject has the right to demand such worker or trainee reimburse it an amount of money in accordance with law.

Article 623 *Compensation for damage caused by sources of extreme danger*

1. Sources of extreme danger comprise motorized means of transport, power transmission systems, operating industrial plants, weapons, explosives, inflammable substances, toxic substances, radioactive substances, dangerous animals and other sources of extreme danger as provided by law.

An owner of a source of extreme danger must comply strictly with the regulations on taking care of, preserving, transporting and using sources of extreme danger in accordance with law.

2. An owner of a source of extreme danger must compensate for damage caused by such source. If the owner has transferred possession or use of the source of extreme danger to another person, such other person must compensate *[for the damage]*, unless otherwise agreed.
3. An owner, or person to which an owner has transferred the possession or use, of a source of extreme danger must compensate for damage caused by such source, even where such owner or person is not at fault, except in either of the following cases:
 - (a) The aggrieved person is entirely at fault for intentionally causing the damage;
 - (b) The damage occurred due to an event of *force majeure* or in an emergency situation, unless otherwise provided by law.
4. Where a source of extreme danger is taken into possession or used unlawfully, the person possessing or using *[it]* unlawfully must compensate for damage.

Where an owner, or a person to which an owner has transferred possession or use, of a source of extreme danger is at fault by allowing the unlawful possession or use of the source of extreme danger, the owner, or the person to which the owner has transferred possession or use, of the source of extreme danger *[as the case may be]* must compensate jointly for the damage.

Article 624 *Compensation for damage caused by environmental pollution*

An individual, legal entity or other subject polluting the environment, thereby causing damage, must compensate in accordance with the law, including when the person polluting the environment was not at fault.

Article 625 *Compensation for damage caused by livestock*

1. An owner of livestock must compensate for damage caused to another person by such livestock. If the aggrieved person is entirely at fault in causing the livestock to cause the damage, the owner shall not be liable to compensate.
2. Where a third person is entirely at fault in causing livestock to cause damage to another person, the third person must compensate for the damage. If both the third person and the owner are at fault, both of them must compensate jointly for the damage.
3. Where livestock which is possessed or used unlawfully causes damage, the unlawful possessor or user must compensate *[for the damage]*.
4. Where livestock which is allowed to roam according to customary practice causes damage, its owner must compensate according to customary practice provided that such compensation does not contravene the law or social morals.

Article 626 *Compensation for damage caused by trees*

An owner *[of a tree]* must compensate for damage caused by all or part of the tree falling, unless the damage is caused entirely due to the fault of the aggrieved person or by an event of *force majeure*.

Article 627 *Compensation for damage caused by houses and other construction works [or buildings]*

An owner of a house or construction works *[or building]*, or a person to which the owner has assigned the management or use thereof, must compensate for damage if either of them allows such house or construction works *[or building]* to collapse, be damaged or partially collapse, thereby causing damage to another person, unless the damage is entirely due to the fault of the aggrieved person or caused by an event of *force majeure*.

Article 628 *Compensation for damage caused by infringement of corpses*

1. An individual, legal entity or other subject causing damage to a corpse must compensate.
2. Damage caused by infringement of a corpse shall include reasonable costs for mitigating and remedying the damage.
3. A person causing damage to a corpse must pay an amount of money as provided in clause 2 of this article together with another amount of money as compensation for mental suffering of the closest relatives in the first line of succession to the deceased. If there are no such relatives, this sum shall be paid to the persons who directly reared the deceased. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed thirty (30) months wages at the minimum monthly wage rate provided by the State.

Article 629 *Compensation for damage caused by infringement of graves*

An individual, legal entity or other subject causing damage to the grave of another must compensate. Damage caused by infringement of a grave shall include reasonable costs for mitigating and remedying the damage.

Article 630 *Compensation for damage caused by infringement of consumer interests*

An individual, legal entity or other subject carrying out production or business and failing to ensure the quality of goods, thereby causing damage to consumers, must compensate *[for such damage]*.

PART FOUR

INHERITANCE

CHAPTER XXII

General Provisions

Article 631 *Rights of inheritance of individuals*

An individual may make a will to dispose of his or her estate¹¹³, may leave his or her property to an heir in accordance with law, or may inherit an estate [*left to him or her*] under a will or in accordance with law.

Article 632 *Equality of individuals with respect to rights of inheritance*

All individuals are equal with respect to rights to bequeath their property to others and to inherit estates under wills or in accordance with law.

Article 633 *Time and place of commencing inheritance*

1. The time of commencement of an inheritance shall be the time when the deceased¹¹⁴ dies. Where a court declares that a person is dead, the time of commencement of the inheritance shall be the date provided in paragraph 2 of article 81 of this Code.
2. The place of commencement of the inheritance shall be the last place of residence of the owner of the estate. If the last place of residence is not able to be determined, the place of commencement of the inheritance shall be the place at which all or most of the estate is located.

Article 634 *Estates*

An estate comprises property which the deceased owned and property which the deceased jointly owned with other persons.

Article 635 *Heirs*

If an heir is an individual, such person must be alive at the time of commencement of the inheritance or, if such person is born and alive after the commencement of inheritance, [*musf*] have been conceived prior to the time when the deceased dies. Where an heir under a will is a body or organization, it must be in existence at the time of commencement of the inheritance.

Article 636 *Time when rights and obligations of heirs arise*

From the time of commencement of an inheritance, the heirs have the property rights and obligations left by the deceased.

Article 637 *Performance of property obligations left by deceased*

1. A person entitled to an inheritance has the responsibility to perform the property obligations within the scope of the estate left by the deceased.
2. Where an estate has not yet been divided, the property obligations left by the deceased shall be performed by the administrator of the estate as agreed by the heirs.
3. Where an estate has already been divided, each heir shall perform those property obligations left by the deceased corresponding to, but not exceeding, that part of the estate that the heir has inherited, unless otherwise agreed.

¹¹³ *Phillips Fox Note: The literal translation is "property".*

¹¹⁴ *Phillips Fox Note: The literal translation is "person having the estate".*

4. Where the State or a body or organization inherits an estate under a will, it must perform the property obligations left by the deceased in like manner as an individual heir.

Article 638 *Administrators of estates*

1. Administrator of an estate means the person who is appointed in the will or by agreement of the heirs.
2. Where a will fails to appoint, and the heirs have not yet appointed, an administrator, [any] person currently possessing, using or managing [property within] the estate at the time of the commencement of the inheritance shall continue its administration until the heirs have appointed an administrator.
3. Where an heir has not yet been determined and there is not yet an administrator of the estate, the estate shall be administered by the authorized State body.

Article 639 *Obligations of administrators of estates*

1. An administrator of an estate as provided in clauses 1 and 3 of article 638 of this Code has the following obligations:
 - (a) To make a list of [the property within] the estate and collect any property belonging to the estate of the deceased which is possessed by others, unless otherwise provided by law;
 - (b) To take care of the estate and not sell, exchange, give, pledge, mortgage or otherwise dispose of property [within the estate] without the written consent of the heirs;
 - (c) To notify the heirs of the estate;
 - (d) To compensate for any damage if the administrator breaches any of its obligations, thereby causing damage;
 - (dd) To deliver back¹¹⁵ the estate at the request of the heirs.
2. A person possessing, using or managing [property within] an estate as provided in clause 2 of article 638 of this Code has the following obligations:
 - (a) To take care of the estate and not sell, exchange, give, pledge, mortgage or otherwise dispose of property [within the estate];
 - (b) To notify the heirs of the estate;
 - (c) To compensate for damage if such person breaches any of its obligations, thereby causing damage;
 - (d) To deliver back the estate as agreed with the deceased in a contract or at the request of the heirs.

Article 640 *Rights of administrators of estates*

1. An administrator of an estate as provided in clauses 1 and 3 of article 638 of this Code has the following rights:
 - (a) To represent the heirs in dealings with any third parties in relation to the estate of inheritance;
 - (b) To be remunerated as agreed with the heirs.

¹¹⁵ Phillips Fox Note: This is the literal translation. An alternative translation is "to return".

2. A person possessing, using or managing [*property within*] an estate as provided in clause 2 of article 638 of this Code has the following rights:
 - (a) To continue to use the estate as agreed with the deceased in a contract or with the consent of the heirs;
 - (b) To be remunerated as agreed with the heirs.

Article 641 *Inheritance by persons entitled to inherit each other's estate but dead at same time*¹¹⁶

Where persons who are entitled to inherit each other's estate die at the same time or are deemed to have died at the same time because it is impossible to determine who of them died first (hereinafter referred to as *simultaneous death*), they do not have the right to inherit each other's estate and the estate of each of the deceased shall be inherited by their respective heirs, except in the case of inheritance pursuant to article 677 of this Code.

Article 642 *Disclaimer of inheritance*

1. An heir may disclaim an inheritance, unless such disclaimer is for the purpose of avoiding the performance of its property obligations to other persons.
2. A disclaimer of an inheritance must be made in writing. A person disclaiming must notify the other heirs, the person authorized to distribute the estate and a notary body or the people's committee of the commune, ward or township where the inheritance of the estate commences of the disclaimer of the estate.
3. The time-limit for disclaiming an estate shall be six months from the date on which the inheritance commences. If upon expiry of this time-limit there has been no disclaimer, the inheritance shall be deemed to have been accepted.

Article 643 *Persons not entitled to inherit*

1. The following persons are not entitled to inherit:
 - (a) Persons convicted of having intentionally caused the death of or harmed the health of the deceased, of having seriously mistreated or tortured the deceased, or of having harmed the honour or dignity of the deceased;
 - (b) Persons having seriously breached their duty to support the deceased;
 - (c) Persons convicted of having intentionally caused the death of another heir in order to obtain all or part of the entitlement of such other heir to the estate;
 - (d) Persons deceiving, coercing or obstructing the deceased with respect to the making of the will, or forging, altering or destroying the will in order to obtain all or part of the estate contrary to the wishes of the deceased.
2. Persons provided in clause 1 of this article may, nevertheless, inherit the estate if the deceased was aware of [*such*] acts but, nevertheless, allowed them to inherit the estate under the will.

Article 644 *Estates*¹¹⁷ *which no one inherits belong to State*

Where there is no heir under a will and at law, or where there is an heir but such heir is not entitled to inherit the estate or disclaims the inheritance of the estate, the residual estate for which there is no heir shall, after fulfilment of property obligations, belong to the State.

¹¹⁶ *Phillips Fox Note: It is unclear precisely what "at the same time" means. Query what happens if one person survives the other by one day?*

¹¹⁷ *Phillips Fox Note: The literal translation is "property".*

Article 645 *Limitation periods for initiating legal action with respect to inheritance*

The limitation period for initiating legal action with respect to a claim of an heir for distribution of an estate, for a declaration of right of inheritance of the requester or to disallow the claim to inheritance of another shall be ten (10) years from the time of commencement of the inheritance.

The limitation period for initiating legal action with respect to a claim for an heir to fulfil property obligations of the deceased shall be three years from the time of commencement of the inheritance.

CHAPTER XXIII

Inheritance Under Wills

Article 646 *Wills*

Will means an expression of the wishes of an individual, made in order to bequeath¹¹⁸ his or her property to others after his or her death.

Article 647 *Testators*

An adult may make a will, unless he or she suffers from a mental or other illness rendering him or her incapable of being aware of or controlling his or her acts.

A person who is between fifteen (15) and eighteen (18) years of age may make a will with the consent of his or her parents or guardian.

Article 648 *Rights of testators*

A testator has the following rights:

1. To appoint heirs or to deprive an heir of the right to inherit the estate.
2. To determine those parts of the estate which each heir is entitled to.
3. To reserve part of the estate as a gift or for worship purposes.
4. To designate heirs to perform obligations.
5. To appoint a custodian of the will, an administrator of the estate, and a distributor of the estate.

Article 649 *Formalities for wills*

A will must be made in writing. If it is not able to be made in writing, it may be made orally.

A person belonging to an ethnic minority group has the right to make a will in his or her own written or spoken language.

¹¹⁸ *Phillips Fox Note: The literal translation is "pass".*

Article 650 *Written wills*

Written wills comprise:

1. Unwitnessed written wills.
2. Witnessed written wills.
3. Written wills which are notarized.
4. Written wills which are certified.

Article 651 *Oral wills*

1. Where a person is likely to die due to illness or any other reason and it is not possible for him or her to make a written will, such person may make an oral will.
2. If the testator is alive and is of sound mind three months after he or she has made an oral will, such will shall automatically become invalid.

Article 652 *Lawful wills*

1. A will must satisfy the following requirements in order to be lawful:
 - (a) The testator was of sound mind when he or she made the will; and he or she was not deceived, threatened or coerced [*into making the will*];
 - (b) The contents of the will are not contrary to law or social morals and the will complies with legal formalities.
2. A will made by a person between fifteen (15) and eighteen (18) years of age must be made in writing and with the consent of the parents or guardian of such person.
3. A will made by a person who is incapacitated or illiterate must be made in writing by a witness and [*must be*] notarized or certified.
4. A written will which is not notarized or certified shall be deemed lawful only if it satisfies the requirements provided in clause 1 of this article.
5. An oral will shall be deemed lawful only if the testator orally expressed his or her last wishes before at least two witnesses who immediately thereafter recorded those wishes in writing and signed or fingerprinted the document. Such will must be notarized or certified within five days of the date on which the testator orally expressed his or her last wishes.

Article 653 *Contents of written wills*

1. A will must specify clearly the following:
 - (a) The date on which the will is made;
 - (b) The full name and place of residence of the testator;
 - (c) The full names of the persons and the bodies or organizations entitled to inherit the estate, or the specific conditions to be satisfied in order for individuals, bodies or organizations to be entitled to inherit the estate;
 - (d) The estate to be bequeathed and its location;
 - (dd) The designation of persons to perform obligations and the details of the obligations.

2. A will may not be written using abbreviations or other symbols. If a will consists of several pages, each page must be numbered and bear the signature or fingerprint of the testator.

Article 654 *Witnesses to making of will*

Any person may act as a witness to the making of a will, except the following persons:

1. Persons who are heirs of the testator under the will or at law.
2. Persons with property rights or obligations which relate to the will.
3. Persons under eighteen (18) years of age and persons who do not have the capacity for civil acts.

Article 655 *Unwitnessed written wills*

A testator must write¹¹⁹ a will by his or her own hand and [*must*] sign it.

The drawing up of a written will without witnesses must comply with article 653 of this Code.

Article 656 *Witnessed written wills*

Where a testator is not able to write a will by his or her own hand, the testator may request another person to write the will, but there must be at least two witnesses. The testator must sign or fingerprint the will in the presence of the witnesses; the witnesses shall acknowledge the signature or fingerprint of the testator and sign the will.

The will must be made in compliance with articles 653 and 654 of this Code.

Article 657 *Wills which are notarized or certified*

A testator may request that the will be notarized or certified.

Article 658 *Procedures for preparation of wills at notary office or people's committee of commune, ward or township*

The preparation of a will at a notary office or the people's committee of the commune, ward or township must comply with the following procedures:

1. The testator shall declare the contents of his or her will to a notary public officer or a member of the people's committee of the commune, ward or township who has the authority to certify it. The notary public officer or the person having the authority to certify must record the wishes stated by the testator. The testator shall sign or fingerprint the will after acknowledging that it has been recorded accurately and that it expresses faithfully the intentions of the testator. Thereafter, the notary public officer or the member of the people's committee of the commune, ward or township shall sign the will.
2. Where the testator is not able to read or hear the will or not able to sign or fingerprint it, there must be a witness who must acknowledge the will by signing it before a notary public officer or a member of the people's committee of the commune, ward or township who has the authority to certify it. The notary public officer shall notarize [*the will*], or the member of the people's committee of the commune, ward or township who has the authority to certify the will shall certify it, in the presence of the testator and the witnesses.

Article 659 *Persons not permitted to notarize or certify wills*

A notary public officer or a member of the people's committee of the commune, ward or township who has authority shall not be permitted to notarize or certify a will if such person is:

1. An heir of the testator under the will or at law.

¹¹⁹ *Phillips Fox Note: This is the literal translation.*

2. A person whose father, mother, wife, husband or child is an heir under the will or at law.
3. A person having property rights or obligations relating to the will.

Article 660 *Written wills valid as though notarized or certified*

A written will made by any of the following persons shall be valid as though it was notarized or certified:¹²⁰

1. A serving soldier who is not able to request a notarization or certification of his or her will provided that such will is certified by the head of his or her unit having the rank of a company commander or higher.
2. A person travelling on a seagoing vessel or aircraft provided that the will is certified by the captain of the vessel or aircraft.
3. A person undergoing medical treatment in a hospital or other medical establishment or sanatorium provided that the will is certified by the person in charge of such hospital or establishment [*or sanatorium*].
4. A person conducting surveys, explorations or research in mountainous areas, forests or offshore islands provided that the will is certified by the person in charge of the unit.
5. A Vietnamese citizen residing abroad provided that the will is certified by a Vietnamese consular or diplomatic representative mission in that country.
6. A person held in temporary detention, serving a prison sentence or administrative penalty, or at an educational or medical facility provided that the will is certified by the person in charge of such facility.

Article 661 *Wills prepared by notary public officers at places of residence [of testators]*

1. A testator may request a notary public officer to visit his or her place of residence in order to prepare a will.
2. Such will shall be prepared in accordance with the procedures for the preparation of wills at a State notary public provided in article 658 of this Code.

¹²⁰ *Phillips Fox Note: This article has been restructured in English to make the testator, rather than the will, the subject.*

Article 662 *Amendment of, addition to, replacement or revocation of wills*

1. A testator may amend, add to, replace or revoke his or her will at any time.
2. If a testator adds to his or her will, the original will and the codicil shall have equal validity. If a part of the original will and the codicil conflict with each other, the codicil shall prevail.¹²¹
3. Where a testator replaces a will with a new will, the previous will shall be [*deemed to have been*] revoked.

Article 663 *Joint wills of wives and husbands*

A wife and husband may prepare a joint will to dispose of multiple ownership property.

Article 664 *Amendment of, addition to, replacement or revocation of joint wills*

1. A wife and husband may amend, add to, replace or revoke their joint will at any time.
2. If a wife or husband wishes to amend, add to, replace or revoke a joint will, she or he must obtain the consent of the other person. If either the wife or husband has died, the other person may amend or add to only that part of the joint will which relates to her or his share of the property.

Article 665 *Custody of wills*

1. A testator may request a notary office or another person to keep custody of the will of the testator.
2. Where a will is kept in custody by a notary office, it must be taken care of and looked after in accordance with the law on notaries.
3. An individual keeping [*custody of*] a will has the following obligations:
 - (a) To keep the contents of the will confidential;
 - (b) To take care of and look after the will. If the will is lost or damaged, the person must notify immediately the testator;
 - (c) Upon the death of the testator, to deliver the will to his or her heirs or to the person authorized to announce the will. The delivery of the will must be recorded in writing and signed by the person delivering the will, and by the person receiving it, in the presence of two witnesses.

Article 666 *Loss and damage of wills*

1. If, from the commencement of the inheritance,¹²² the will is lost or damaged to the extent that it is incapable of indicating clearly the wishes of the testator and there is no evidence of the true wishes of the testator, it shall be deemed that no will exists and inheritance at law shall apply.
2. Where the will is found prior to distribution of the estate, the estate shall be distributed according to the will.

Article 667 *Legal effectiveness of wills*

1. A will shall become legally effective from the time of commencement of the inheritance.
2. All or part of a will shall be legally ineffective in any of the following cases:
 - (a) An heir under the will dies prior to or at the same time as the testator dying;

¹²¹ Phillips Fox Note: The literal translation is "only the codicil shall be legally effective".

¹²² Phillips Fox Note: This is the literal translation, however it is apparent from paragraph 2 that the relevant time is the distribution of the estate.

- (b) A body or organization named as an heir no longer exists at the time of commencement of the inheritance.

Where there are several heirs under a will and one of them dies prior to or at the same time as the death of the testator or one of the bodies or organizations named as an heir under the will no longer exists at the time of commencement of the inheritance, only that part of the will which relates to the individual, body or organization no longer existing shall be legally ineffective.

3. A will shall not be legally effective if the estate left to the heirs no longer exists at the time of commencement of the inheritance. If only part of the estate left to the heirs remains, only that part of the will which relates to such part of the estate shall be legally effective.
4. Where a will contains provisions which are unlawful but such provisions do not affect the effectiveness of the remainder of the will, only such provisions shall be legally ineffective.
5. Where a person leaves behind more than one will with respect to certain property, only the most recent of such wills shall be legally effective.

Article 668 *Legal effectiveness of joint wills of wives and husbands*

The joint will of a wife and husband shall be legally effective at the time when the surviving spouse dies or at the time of simultaneous death.

Article 669 *Heirs notwithstanding contents of wills*

Where a testator does not grant any of the following persons an inheritance, or grants any such person an inheritance which is less than two-thirds of the share that person would have received if the estate had been distributed according to law,¹²³ such person shall be entitled to a share of the estate equivalent to two-thirds of the share that he or she would have received if the estate had been distributed in accordance with law, unless such person has disclaimed his or her inheritance pursuant to article 642 or is a person who is not entitled to inherit as provided in clause 1 of article 643 of this Code:

1. Children who are minors, father, mother, wife or husband of the testator.
2. Children who are adults but who are incapable of working.

Article 670 *Estates used for worship purposes*

1. Where a testator designates part of his or her estate for worship purposes, such part of the estate shall not be distributed among the heirs and shall be delivered to the person appointed in the will to manage for worship purposes. If such appointee fails to implement strictly the will or the agreement of the heirs, the heirs have the right to appoint another person to manage for worship purposes.

Where the testator fails to appoint a person to manage that part of his or her estate which is designated for worship purposes, the heirs shall appoint a person to manage such part of the estate.

Where all heirs under a will have died, that part of the estate which is designated for worship purposes shall belong to the person managing that part of the estate for worship purposes provided that he or she is an heir at law.

2. Where the entire estate of the deceased is insufficient to satisfy all property obligations of the deceased, no part of the estate may be designated for worship purposes.

Article 671 *Testamentary gifts*

1. A testator may designate part of his or her estate as a testamentary gift to another person. The testamentary gift must be expressly stated in the will.

¹²³ *Phillips Fox Note: This appears to mean "if inheritance at law had applied".*

2. The grantee of a gift shall not be required to fulfil property obligations with respect to that part [*of the estate*] granted as a gift, unless the whole estate is insufficient to satisfy all property obligations of the grantor, in which case the part of the estate granted as a gift shall also be applied towards satisfying the remainder of the obligations of the grantor.

Article 672 *Announcement of wills*

1. Where a written will is kept by a notary office, the notary officer shall be the person announcing the will.
2. Where a testator has appointed a person to announce the will, such person shall announce the will. If the testator fails to appoint a person or has appointed a person but the appointee refuses to announce the will, the heirs shall agree on the appointment of a person to announce the will.
3. After the time of commencement of an inheritance, the person announcing the will must send copies of the will to all persons with an interest in the contents of the will.
4. A recipient of a copy of a will has the right to verify the copy against the original.
5. Where a will has been prepared in a foreign language, it must be translated into Vietnamese and notarized.

Article 673 *Interpretation of contents of wills*

Where the contents of a will are unclear and may be interpreted in different ways, the person announcing the will and the heirs must interpret jointly the contents of the will based on the true wishes of the deceased, taking into consideration the relationship of the deceased with the heirs under the will. If such persons fail to agree on the interpretation of the contents of the will, it shall be deemed that no will exists and the estate shall be distributed in accordance with the provisions on inheritance at law.

Where part of the contents of a will is not able to be interpreted but the remainder of the will is not affected, only that part which is not able to be interpreted shall not be legally effective.

CHAPTER XXIV

Inheritance at Law

Article 674 *Inheritance at law*

Inheritance at law means inheritance in accordance with the order of priority of inheritance and the conditions and procedures of inheritance provided by law.

Article 675 *Cases of inheritance at law*

1. Inheritance at law shall apply in the following cases:
 - (a) There is no will;
 - (b) The will is unlawful;
 - (c) All heirs under the will died prior to or at the same time as the testator dying, or the bodies or organizations which are entitled to inherit under the will no longer exist at the time of commencement of the inheritance;
 - (d) The persons appointed as heirs under the will do not have the right to inherit or disclaimed the right to inherit.
2. Inheritance at law shall also apply to the following law parts of an estate:
 - (a) Parts of an estate in respect of which no disposition has been made in the will;
 - (b) Parts of an estate related to an ineffective part of the will;
 - (c) Parts of an estate related to heirs under the will not having the right to inherit, having disclaimed the right to inherit, or having died prior to or at the same time as the testator dying; and parts of an estate related to bodies or organizations entitled to inherit under the will but no longer existing at the time of commencement of the inheritance.

Article 676 *Heirs at law*

1. Heirs at law are categorized in the following order of priority:
 - (a) The first level of heirs comprises: spouses, biological parents, adoptive parents, offspring and adopted children of the deceased;
 - (b) The second level of heirs comprises: grandparents and siblings of the deceased; and biological grandchildren of the deceased;
 - (c) The third level of heirs comprises: biological great-grandparents of the deceased, biological uncles and aunts of the deceased, and biological nephews and nieces of the deceased.
2. Heirs at the same level shall be entitled to equal shares of the estate.
3. Heirs at a lower level shall be entitled to inherit where there are no heirs at a higher level because such heirs have died, or because they are not entitled to inherit, have been deprived of the right to inherit or have disclaimed the right to inherit.

Article 677 *Succeeding heirs*¹²⁴

Where a child of a testator died prior to or at the same time as the testator, the grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such

¹²⁴ *Phillips Fox Note: The literal translation is "Succeeding inheritance".*

father or mother still been alive. If the grandchildren also died prior to or at the same time as the testator, the great-grandchildren of the testator shall inherit that part of the estate which their father or mother would have been entitled to inherit had such father or mother still been alive.

Article 678 *Inheritance relations between adopted children and their adoptive parents and biological parents*

An adopted child and his or her adoptive parents may inherit each other's estates and may also inherit in accordance with articles 676 and 677 of this Code.

Article 679 *Inheritance relations between stepchildren and their stepparents*

If a stepchild and his or her stepparents care for and support each other as though they were biologically related, they may inherit each other's estates and may also inherit in accordance with articles 676 and 677 of this Code.

Article 680 *Inheritance where wives and husbands have divided multiple ownership property, have applied for divorce or have remarried*

1. Where a wife and husband have divided their multiple ownership property while they are still married and one of them subsequently dies, the surviving spouse shall still be entitled to inherit the estate of the deceased.
2. Where a wife and husband have applied for but not yet obtained a legally effective divorce pursuant to a judgement or decision of a court, or they have obtained such a divorce but the judgement or decision of the court is not yet effective, and one of them dies, the surviving spouse shall, nevertheless, be entitled to inherit the estate of the deceased.
3. A person who is the wife or husband of the deceased at the time when his or her spouse dies shall be entitled to inherit the estate of the deceased even if that person subsequently remarries.

CHAPTER XXV

Settlement and Distribution of Estates

Article 681 *Meeting of heirs*

1. After being notified of the commencement of an inheritance, or after a will has been announced, the heirs may meet to agree on the following matters:
 - (a) If the testator has failed to appoint an administrator of the estate or a distributor of the estate, or has not determined the powers and obligations of such persons, the appointment of such persons and the determination of their powers and obligations, as the case may be;
 - (b) Method of distributing the estate.
2. All agreements by the heirs must be made in writing.

Article 682 *Distributors of estates*

1. A distributor of an estate may also be the administrator of the estate appointed in the will or by agreement of the heirs.
2. A distributor of an estate must distribute it strictly in accordance with the will or the agreement of the heirs at law.
3. A distributor of the estate may receive remuneration if so allowed by the testator in the will or if so agreed by the heirs.

Article 683 *Order of priority of payment*

Property obligations and expenses related to an inheritance shall be paid in the following order of priority:

1. Reasonable funeral expenses in accordance with customary practice.
2. Outstanding support payments.
3. Allowances for dependants of the deceased.
4. Wages.
5. Monetary compensation for any damage.
6. Taxes and other liabilities owed to the State.
7. Fines.
8. Other liabilities owed to other individuals, legal entities or organizations.
9. Expenses for taking care of the estate.
10. Other expenses.

Article 684 *Distribution of estates in accordance with wills*

1. An estate shall be distributed in accordance with the wishes of the testator. If the will fails to specify the share of each heir, the estate shall be divided equally between the persons named in the will, unless otherwise agreed.
2. Where a will provides for the distribution in kind of an estate, each of the heirs shall be entitled to receive his or her share in kind, plus the benefits and income derived therefrom, or must bear the depreciation in value of such share in kind up to the time when the estate is distributed. If the property [*which is the subject of a share in kind*] has been destroyed due to the fault of another person, the heir has the right to demand compensation for damage.
3. Where a will provides for the distribution of an estate according to certain proportions of the total value of the estate, such proportions shall be calculated on the basis of the value of the estate at the time of distribution.

Article 685 *Distribution of estates in accordance with law*

1. If, at the time of distribution, an heir has been conceived but not yet born, a part of the estate equal to the share of another heir at the same level of heirs shall be set aside for the unborn heir. If the heir is born alive, he or she shall inherit such part of the estate. If the heir does not survive his or her birth, the other heirs at the same level of heirs shall be entitled to his or her share.
2. The heirs have the right to demand the estate to be distributed in kind. If the estate is not able to be equally distributed in kind, the heirs may agree that the property shall be valued and may agree on which heirs shall be entitled to receive which particular items of property.¹²⁵ Failing such agreement, the assets in kind shall be sold for distribution.¹²⁶

Article 686 *Limited distribution of estates*

Where it was the wish of a testator, or where the heirs agree, that an estate is to be distributed only after a certain period of time, it shall be distributed only after such period of time has expired.

¹²⁵ Phillips Fox Note: The literal translation is "which persons shall receive the assets in kind".

¹²⁶ Phillips Fox Note: The literal translation is "persons receiving the assets in kind".

If there is a request to distribute an estate but such distribution will seriously and adversely affect the life of the remaining wife or husband and family, such spouse has the right to request a court to fix the share of the estate to which [other] heirs are entitled but not to allow distribution of the estate during a certain period of time, which shall not exceed three years from the date of commencement of inheritance; when such period fixed by the court has expired or such remaining spouse has remarried, the other heirs have the right to request the court to permit distribution of the estate.

Article 687 *Distribution of estates where new heir or where right of heir to inherit has been disallowed*

1. Where a new heir appears after an estate has been distributed, the estate shall not be re-distributed in kind but the heirs which have received [a share of] the estate must pay the new heir a sum equivalent to the share of the estate of such [new heir] at the time of distribution of the estate in proportion to the [respective] share of the estate already received [by each heir], unless otherwise agreed.
2. Where the right of an heir to inherit is disallowed after an estate has been distributed, such heir must return the inheritance or pay to the other heirs a sum equivalent to the value of the inheritance received at the time of distribution of the estate, unless otherwise agreed.

PART FIVE

**PROVISIONS ON TRANSFER OF
LAND USE RIGHTS**

CHAPTER XXVI

General Provisions

Article 688 *Basis for establishment of land use rights*

1. Land is under the ownership of the State and is administered uniformly by the Government.
2. Land use rights of individuals, legal entities, family households and other subjects are established by the allocation or lease of land by the State or by recognition by the State of the land use rights.
3. Land use rights of individuals, legal entities, family households and other subjects are also established by the transfer of land use rights by other persons in accordance with this Code and the law on land.

Article 689 *Formalities for transfer of land use rights*

1. The transfer of land use rights shall be conducted by way of contract, except in the case provided in clause 3 of this article.
2. A contract for transfer of land use rights must be made in writing, and notarized or certified in accordance with law.
3. Inheritance of land use rights shall be implemented in accordance with articles 733 to 735 inclusive of this Code.

Article 690 *Price for transfers of land use rights*

The price for transfer of land use rights shall be as agreed by the parties or as provided by law.

Article 691 *Principles for transfers of land use rights*

1. Only individuals, legal entities, family households and other subjects using land¹²⁷ and permitted by law to transfer land use rights have the right to transfer such land use rights.
2. When transferring land use rights, the parties have the right to agree on the contents of the contract for transfer of the land use rights but must comply with the provisions of this Code and the law on land.
3. A transferee of land use rights must use the land for the correct purpose and duration as stated in the certificate of land use rights and [*must*] comply with local land use zoning and planning as at the time of the transfer of the land use rights.

Article 692 *Effectiveness of transfers of land use rights*

The transfer of land use rights shall be effective upon registration of the land use rights in accordance with the law on land.

CHAPTER XXVII

Contracts for Exchange of Land Use Rights

¹²⁷ *Phillips Fox Note: This is the literal translation, not "currently using land".*

Article 693 *Contracts for exchange of land use rights*

Contract for exchange of land use rights is an agreement between parties whereby they transfer [parcels of] land and the land use rights to each other in accordance with the provisions in this Code and the law on land.

Article 694 *Contents of contracts for exchange of land use rights*

A contract for exchange of land use rights shall contain the following particulars:

1. Names and addresses of the parties.
2. Rights and obligations of the parties.
3. Category, class, area, location, symbol, boundaries and status of the [parcel of] land.
4. Time when the [parcel of] land is transferred.
5. Duration of land use of the exchanger and remaining duration of land use to which the exchangee is entitled.
6. Difference, if any, in the value of the land use rights.
7. Third party rights with respect to the exchanged [parcel of] land.
8. Liability of the parties for breach of contract.

Article 695 *Obligations of parties exchanging land use rights*

Parties exchanging land use rights have the following obligations:

1. To transfer to each other the full area of land strictly in accordance with the agreed class, category, location, symbol and status of the land.
2. To use the land for the correct purpose and duration.
3. To pay the fees for the exchange of land use rights with respect to the parcel of land received in the exchange, and to perform the obligations of a land user in accordance with this Code and the law on land.
4. If the value of the land use rights of one party to the exchange is higher [than the value of the land use rights of the other party], to settle the difference, unless otherwise agreed.

Article 696 *Rights of parties exchanging land use rights*

Parties exchanging land use rights have the following rights:

1. To demand the other party transfer the full area of land strictly in accordance with the agreed class, category, location, symbol and status of the land.
2. To demand the other party deliver to it all legal documents relating to the land use rights.
3. To be issued with a certificate of land use rights for the exchanged land.
4. To use the land for the correct purpose and duration.

Contracts for Transfer of Land Use Rights

Article 697 *Contracts for transfer of land use rights*

Contract for transfer of land use rights is an agreement between parties, whereby the transferor of the land use rights transfers the land and the land use rights to the transferee and the transferee pays money to the transferor in accordance with the provisions in this Code and the law on land.

Article 698 *Contents of contracts for transfer of land use rights*

A contract for transfer of land use rights shall contain the following particulars:

1. Names and addresses of the parties.
2. Rights and obligations of the parties.
3. Category, class, area, location, symbol, boundaries and status of the [parcel of] land.
4. Duration of land use of the transferor and remaining duration of land use to which the transferee is entitled.
5. Price of the transfer.
6. Method and time for payment.
7. Third party rights with respect to the transferred [parcel of] land.
8. Other information relating to the land use rights.
9. Liability of the parties for breach of contract.

Article 699 *Obligations of transferors of land use rights*

A transferor of land use rights has the following obligations:

1. To deliver to the transferee the full area of land strictly in accordance with the agreed class, category, location, symbol and status of the land.
2. To deliver to the transferee the documents relating to the land use rights.

Article 700 *Rights of transferors of land use rights*

A transferor of land use rights has the right to receive monetary payment for the transfer of the land use rights. If the transferee is late in paying, article 305 of this Code shall apply.

Article 701 *Obligations of transferees of land use rights*

A transferee of land use rights has the following obligations:

1. To pay the transferor of the land use rights in full, at the time and by the method of payment as agreed.
2. To register the land use rights in accordance with the law on land.
3. To ensure third party rights with respect to the transferred land.
4. To perform other obligations in accordance with the law on land.

Article 702 *Rights of transferees of land use rights*

A transferee of land use rights has the following rights:

1. To demand the transferor of the land use rights deliver to it the documents relating to the land use rights.
2. To demand the transferor of the land use rights transfer the full area of land strictly in accordance with the agreed class, category, location, symbol and status of the land.
3. To be issued with a certificate of land use rights for the transferred land.
4. To use the land for the correct purpose and duration.

CHAPTER XXIX

Contracts for Lease and Sub-Lease of Land Use Rights

SECTION 1

Contracts for Lease of Land Use Rights

Article 703 *Contracts for lease of land use rights*

Contract for lease of land use rights is an agreement between parties, whereby the lessor transfers land to the lessee for use during a [*certain*] term, and the lessee must use the land for the correct purpose, pay rent and return the land upon expiry of the term of lease in accordance with the provisions in this Code and the law on land.

Article 704 *Contents of contracts for lease of land use rights*

A contract for lease of land use rights shall contain the following particulars:

1. Names and addresses of the parties.
2. Rights and obligations of the parties.
3. Category, class, area, location, symbol, boundaries and status of the [*parcel of*] land.
4. Term of the lease.
5. Amount of rent.
6. Method and time for payment.
7. Third party rights with respect to the leased land.
8. Liability of the parties for breach of contract.
9. [*Measures*] to deal with any consequences upon expiry of the contract for lease of land use rights.

Article 705 *Obligations of lessors of land use rights*

A lessor of land use rights has the following obligations:

1. To register the lease of the land use rights.
2. To transfer to the lessee the full area of the land strictly in accordance with the agreed class, category, location, symbol and status of the land.
3. To lease the land use rights within the term allocated and leased.
4. To inspect and remind the lessee to protect and take care of the land and use it for the correct purpose.
5. To pay land use tax, unless otherwise agreed.
6. To notify the lessee of third party rights with respect to the leased land.

Article 706 *Rights of lessors of land use rights*

A lessor of land use rights has the following rights:

1. To demand full payment of the land rent from the lessee.

2. To demand the lessee of the land use rights ceases immediately any use of the land which is not for the correct purpose or any destruction or devaluation of the land. If the lessee fails to do so, the lessor may terminate unilaterally the performance of the contract and demand the lessee return the leased land and compensate for damage.
3. To demand the lessee return the land upon expiry of the term of lease.

Article 707 *Obligations of lessees of land use rights*

A lessee of land use rights has the following obligations:

1. To use the land for the correct purpose, within the agreed boundaries and for the agreed term of lease.
2. Not to destroy the land or reduce its utility value and to satisfy all other requirements as agreed in the contract for lease of the land use rights.
3. To pay the rent for the lease of the land use rights in full, at the time and place and by the method of payment as agreed. Notwithstanding that the land use fails to generate a profit, the lessee must pay land rent in full, unless otherwise agreed.
4. To comply with the regulations on environmental protection and not harm the legal rights or interests of users of neighbouring land.
5. Upon expiry of the term of the lease, to return the land in the same condition as it was received, unless otherwise agreed.

Article 708 *Rights of lessees of land use rights*

A lessee of land use rights has the following rights:

1. To demand the lessor deliver the full area of land strictly in accordance with the agreed location, symbol, class, category and status of the land.
2. To enjoy uninterfered use of the leased land for the agreed term.
3. To enjoy the benefits and income derived from the land use.
4. To terminate unilaterally the performance of the contract in accordance with article 426 of this Code.
5. In the event that an event of *force majeure* results in loss or reduction of benefits and income, to request the lessor reduce the rent or exempt the lessee from paying any rent.

Article 709 *Late payment of rent for lease of land use rights*

If the lessee is late in paying the agreed rent for the lease of the land use rights, the lessor may grant an extension. If the lessee fails to pay the rent within such extension, the lessor has the right to terminate unilaterally the performance of the contract and demand the lessee return the land. The lessor has the right to demand the lessee to pay full rent with respect to the period of time for which the land has been leased, including interest on the rent outstanding, for the period of time for which it remains outstanding, at the basic interest rate provided by the State Bank at the time when payment is made.

Article 710 *Compensation for damage caused by recovery of land*

1. If a lessor or lessee deliberately breaches the obligations of a land user resulting in the recovery of land by the State, such party must compensate the other party for any damage.
2. Where a contract for lease of land use rights is effective but the State recovers the land due to national defence or security requirements, in the national or public interest or for economic development, the contract for lease of the land use rights shall terminate prior to its full term.

Where the lessee has paid rent in advance, the lessor must refund to the lessee the prepaid rent¹²⁸ corresponding to the period for which the land has not been used. If the lessee has not yet paid rent, the lessee must only pay rent for the period for which it used the land.

A lessor shall be compensated by the State for any damage caused by recovery of the land in accordance with law and the lessee shall be compensated by the State for the loss of benefits from the land.

Article 711 *Right to continue lease of land use rights upon death of party*

1. Where the lessor of land use rights is an individual who dies, the lessee may, nevertheless, continue the lease of the land use rights until the expiry of the term of lease.
2. Where the lessee of land use rights is an individual who dies, the members of the family household of the lessee may continue the lease of the land use rights until the expiry of the term of lease but the authorized State authorities must be notified thereof.

Article 712 *Transfer of land use rights during term of lease of land use rights*

As long as the term of a lease of land use rights remains in effect, the lessor has the right to transfer the land use rights to another person, if so permitted by the authorized State body, but the lessor must notify the lessee in order for the lessee to perform the obligations of the lessee to the transferee of the land use rights.

A lessee may, nevertheless, continue the lease of the land use rights until the expiry of its term in accordance with the contract.

Article 713 *Termination of contracts for lease of land use rights*

1. A contract for lease of land use rights shall terminate in the following cases:
 - (a) The lease expires without extension;
 - (b) As agreed by the parties;
 - (c) The State recovers the land;
 - (d) One of the parties terminates unilaterally the performance of the contract or cancels the contract as agreed or as provided by law;
 - (dd) The lessee of the land use rights is an individual who dies and there are no other surviving members of his or her family household or there are such members but they do not wish to continue the lease;
 - (e) The areas of leased land no longer exist as the result of a natural disaster;
 - (g) Other cases as provided by law.
2. Upon termination of a contract for lease of land use rights, the lessee must restore the land to the condition in which he or she received it, unless otherwise agreed or otherwise provided by law. Property attached to the land shall be dealt with as agreed by the parties.

SECTION 2

Contracts for Sub-Lease of Land Use Rights

Article 714 *Contracts for sub-lease of land use rights*

¹²⁸ Phillips Fox Note: The literal translation is "the remaining rent".

In cases where the law does not otherwise provide, the provisions in articles 703 to 713 inclusive of this Code shall also apply to contracts for sub-lease of land use rights.

CHAPTER XXX

Contracts for Mortgage of Land Use Rights

Article 715 *Contracts for mortgage of land use rights*

Contract for mortgage of land use rights is an agreement between parties, whereby the land user (hereinafter referred to as the *mortgagor*) uses its land use rights to secure the performance of civil obligations to the other party (hereinafter referred to as the *mortgagee*). The mortgagor is permitted to continue to use the land during the term of the mortgage.

Article 716 *Scope of mortgages of land use rights*

1. Land use rights may be mortgaged in part or in whole.
2. Where land use rights are mortgaged by a land user, any house, other constructed facility, planted forest, tree or other property of the mortgagor attached to the land shall form part of the mortgaged property only if there is an agreement to such effect.

Article 717 *Obligations of mortgagors of land use rights*

A mortgagor of land use rights has the following obligations:

1. To deliver the certificate of land use rights to the mortgagee.
2. To complete the procedures for registering the mortgage and for cancelling such registration when the contract for mortgage terminates.
3. To use the land for its correct purpose and not destroy or diminish the value of the land.
4. To repay the loan at the time and by the method as agreed in the contract.

Article 718 *Rights of mortgagors of land use rights*

A mortgagor of land use rights has the following rights:

1. To use the land during the term of the mortgage.
2. To obtain the loan in respect of which the land use rights are mortgaged by the agreed method.
3. Take the benefits and income derived, unless the benefits form part of the mortgaged property.
4. To exchange, transfer, lease or sub-let the mortgaged land use rights if the mortgagee agrees.
5. To receive back the certificate of land use rights after fulfilling the mortgage obligations.

Article 719 *Obligations of mortgagees of land use rights*

A mortgagee of land use rights has the following obligations:

1. With the mortgagor, to register the mortgage.

2. To return the certificate of land use rights when the mortgagor has fulfilled the obligations secured by the mortgage.

Article 720 *Rights of mortgagees of land use rights*

A mortgagee of land use rights has the following rights:

1. To inspect [*the use by the mortgagor of the land use rights*] and remind the mortgagor to protect and take care of the land and use it for the correct purpose.
2. Where the mortgaged land use rights are realized, to enjoy priority with respect to the repayment of debts.

Article 721 *Realization of mortgaged land use rights*

If the mortgagor fails to perform or performs incorrectly the obligations secured by the mortgage of the land use rights by the time that performance falls due, the land use rights shall be realized as agreed; if there is no agreement or if realization is not able to be implemented as agreed, the mortgagor shall have the right to institute court proceedings.

CHAPTER XXXI

Contracts for Gift¹²⁹ of Land Use Rights

Article 722 *Contracts for gift of land use rights*

Contract for gift of land use rights is an agreement between parties, whereby the giver of the land use rights transfers the land use rights to the donee without demanding compensation, and the donee agrees to receive the land use rights in accordance with the provisions in this Code and the law on land.

Article 723 *Contents of contracts for gift of land use rights*

A contract for gift of land use rights shall contain the following particulars:

1. Names and addresses of the parties.
2. Reason for the gift of the land use rights.
3. Rights and obligations of the parties.
4. Category, class, area, location, symbol, boundaries and status of the [*parcel of*] land.
5. Remaining duration of land use of the giver.
6. Third party rights with respect to the gifted [*parcel of*] land.
7. Liability of the parties for breach of contract.

Article 724 *Obligations of givers of land use rights*

A giver of land use rights has the following obligations:

1. To hand over the full area of the land strictly in accordance with the agreed class, category, location, symbol and status of the land.
2. To hand over the documents relating to the land use rights to the donee in order to register the land use rights.

Article 725 *Obligations of donees of land use rights*

A donee of land use rights has the following obligations:

1. To register the land use rights at the authorized State body in accordance with the law on land.
2. To ensure the rights of a third party in respect of the gifted land.
3. To fulfil other obligations in accordance with the law on land.

Article 726 *Rights of donees of land use rights*

A donee of land use rights has the following rights:

1. To demand the giver hand over the full area of land strictly in accordance with the agreed class, category, location, symbol and status of the land.
2. To use the gifted land for the correct purpose and duration.

¹²⁹ *Phillips Fox Note: An alternative translation is "donation".*

3. To be issued with a certificate of land use rights.

CHAPTER XXXII

Contracts for Capital Contribution Using Value of Land Use Rights

Article 727 *Contracts for capital contribution using value of land use rights*

Contract for capital contribution using the value of land use rights is an agreement between parties, whereby the land user (hereinafter referred to as the *capital contributor*) contributes its capital using the value of land use rights in order to co-operate in production and business with individuals, legal entities, family households and other subjects in accordance with the provisions in this Code and the law on land.

Article 728 *Contents of contracts for capital contribution using value of land use rights*

A contract for capital contribution using the value of land use rights shall contain the following particulars:

1. Names and addresses of the parties.
2. Rights and obligations of the parties.
3. Category, class, area, location, symbol, boundaries and status of the [*parcel of*] land.
5. Remaining duration of land use of the capital contributor.
6. Value of the land use rights contributed as capital.
7. Third party rights with respect to the land contributed as capital.
8. Liability of the parties for breach of contract.

Article 729 *Obligations of capital contributors using value of land use rights*

A capital contributor using the value of land use rights has the following obligations:

1. To hand over on time the full area of the land strictly in accordance with the class, category, location, symbol and status of the land as agreed in the contract.
2. To register the land use rights at the authorized State body in accordance with the law on land.

Article 730 *Rights of capital contributors using value of land use rights*

A capital contributor using the value of land use rights has the following rights:

1. To be entitled to receive profits at the ratio of the capital contribution using the value of land use rights.
2. To transfer and to bequeath the portion of capital contribution using the value of land use rights, unless otherwise agreed or otherwise provided by law.
3. To receive back the land use rights contributed as capital pursuant to the agreement or upon expiry of the duration of the capital contribution.
4. To cancel the contract and demand compensation for damage if the recipient of the capital contribution fails to pay a portion of profits on time or pays an incomplete portion.

Article 731 *Obligations of recipients of capital contribution using value of land use rights*

A recipient of capital contribution using the value of land use rights has the following obligations:

1. To pay a portion of profits to the capital contributor on time and by the method as agreed in the contract.
2. To ensure the rights of a third party in respect of the land contributed as capital.
3. To fulfil other obligations in accordance with the law on land.

Article 732 *Rights of recipients of capital contribution using value of land use rights*

A recipient of capital contribution using the value of land use rights has the following rights:

1. To demand that the capital contributor hand over the full area of land on time and strictly in accordance with the class, category, location, symbol and status of the land as agreed in the contract.
2. To use the land for the correct purpose and duration.
3. To be issued with a certificate of land use rights where the capital contributor is a legal entity, except where the capital contribution is pursuant to a business co-operation contract.

CHAPTER XXXIII

Inheritance of Land Use Rights

Article 733 *Inheritance of land use rights*

The inheritance of land use rights is the passing of the land use rights of a deceased to his or her heirs in accordance with this Code and the law on land.

Article 734 *Individuals entitled to bequeath land use rights*

Individuals to whom the State has allocated or leased land or who have received a transfer of land use rights have the right to bequeath such land use rights in accordance with Part Four of this Code and the law on land.

Article 735 *Inheritance of land use rights allocated by State to family households*

Where a member of a family household to whom the State has allocated land dies, the land use rights shall be inherited by heirs in accordance with Part Four of this Code and the law on land.

PART SIX

INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY TRANSFER

CHAPTER XXXIV

Copyright and Related Rights

SECTION 1

Copyright

Article 736 *Authors*

1. The person who creates a literary, artistic or scientific work (hereinafter all referred to as a *work*) is the author of such work.

If there are two or more persons who jointly create a work, such persons are the co-authors.

2. A person who creates a derivative work out of the work of another person, including a work translated from one language into another and a work which is adapted, rewritten, transformed, compiled, annotated or selected is the author of such work.

Article 737 *Objects of copyright*

Objects of copyright comprise all works created in the literary, artistic and scientific sectors, expressed in any form and by any means, irrespective of their content and value, and shall not be dependent on any procedures.¹³⁰

Article 738 *Contents of copyright*

1. Copyright comprises moral rights and economic rights¹³¹ with respect to the work.
2. Moral rights which are part of copyright comprise [*the right to*]:
 - (a) Name the work;
 - (b) Put one's name or pseudonym to the work; and have such name or pseudonym cited when the work is published [*or*] used;
 - (c) Publish the work, or authorize other persons to do so;
 - (d) Protect the integrity of the work, and not permit other persons to amend, alter or distort the work.
3. Economic rights which are part of copyright comprise [*the right to*]:
 - (a) Copy the work;
 - (b) Permit creation of derivative works;
 - (c) Distribute and import the original and copies of the work;
 - (d) Disseminate the work to the public;
 - (dd) Lease out the original or the computer program copy.

Article 739 *Time when copyright arises and [duration of] effectiveness*

1. Copyright arises as from the date on which a work is created and rendered in a definite materialized form.

¹³⁰ *Phillips Fox Note: This is the literal translation. In this context, this last phrase is understood to mean "irrespective of whether any procedural requirements have been fulfilled".*

¹³¹ *Phillips Fox Note: The literal translation is "personal rights and property rights".*

2. Moral rights which are part of copyright shall exist indefinitely, except for the right to publish [*the work*] or authorize other persons to publish the work which is regulated in the law on intellectual property.
3. Economic rights which are part of copyright shall exist for the duration provided in the law on intellectual property.

Article 740 *Owner of copyright*

1. Moral rights belong to the author.
2. Where a work has been created other than pursuant to an assigned task or pursuant to a contract¹³², economic rights belong to the author.
3. Where a work has been created pursuant to an assigned task or pursuant to a contract, economic rights belong to the body or organization which assigned the task or to the party which assigned the job pursuant to the contract, unless otherwise agreed.

Where economic rights do not belong to the author, the author shall have the right to receive remuneration [*and/or*] royalties paid by the owner of the economic rights in accordance with the law on intellectual property.

Article 741 *Distribution of rights as between co-authors*

Where a work is created by co-authors and each section created by one co-author may be separately identified for independent use, the provision in article 740 of this Code shall apply to each section of the work which is so used independently, unless the co-authors have some other agreement.

Article 742 *Transfer of copyright*

1. The moral rights provided in sub-clauses (a), (b) and (d) of clause 2 of article 738 of this Code shall not be transferable.

The moral right provided in sub-clause (c) of clause 2 of article 738 of this Code may be transferred subject to any conditions provided in the law on intellectual property.

2. Economic rights may be transferred in whole or in part pursuant to a contract, or they may be bequeathed and inherited.

Article 743 *Contract for transfer of economic rights which are part of copyright*

Any transfer of all or part of the economic rights which are part of copyright shall be implemented on the basis of a contract. A contract for the transfer of copyright must be made in writing.

¹³² *Phillips Fox Note: The literal translation is "contract assigning a job".*

SECTION 2

Rights Related to Copyright

Article 744 *Objects of rights related to copyright*

Objects of rights related to copyright (hereinafter all referred to as *related rights*) comprise the performances of performers; audio and visual fixations; broadcasts of broadcast organizations and programme-carrying signals transmitted by satellite¹³³.

Article 745 *Owners and contents of related rights*

1. Rights with respect to performances shall comprise moral rights of the performer and economic rights of the person having invested in order to conduct the performance.
2. Moral rights of the performer shall comprise the right to have his or her name mentioned upon performance or when the audio or visual fixation of the performance is published, and the right to have the integrity of the image of the performance protected.
3. Economic rights of the person having invested in order to conduct the performance shall comprise the right to carry out the following acts and to prohibit others from carrying out such acts:
 - (a) Make an audio or visual recording of the performance;
 - (b) Copy or distribute the original or copies of any audio or visual fixation of the performance;
 - (c) Broadcast or otherwise transmit the performance to the public.

Article 746 *Owners and contents of rights with respect to audio and visual fixations*

1. Rights with respect to audio and visual fixations belong to the person having invested in order to produce such audio or visual fixations.
2. Rights with respect to audio and visual fixations shall comprise the right to carry out the following acts and to prohibit others from carrying out such acts:
 - (a) Make a copy of all or a part of an audio or visual fixation;
 - (b) Distribute and import the original or copies of the audio and visual fixation;
 - (c) Lend the original or copies of the audio and visual fixation for commercial purposes.

Article 747 *Owners and contents of rights with respect to broadcasts*

1. Rights with respect to broadcasts belong to the broadcast organization.
2. Rights with respect to broadcasts shall comprise the right to carry out the following acts or to prohibit others from carrying out such acts:
 - (a) Make, or make a copy of, a recording; broadcast or re-broadcast all or a part of a program¹³⁴;

¹³³ Phillips Fox Note: The literal translation is "satellite signals carrying coded programmes".

¹³⁴ Phillips Fox Note: Literally "the broadcast".

(b) Distribute a recording, or make a copy of a recording, of a broadcast.

Article 748 *Owners and contents of rights with respect to programme-carrying signals transmitted by satellite*

1. Rights with respect to programme-carrying signals transmitted by satellite belong to the person first transmitting such programme-carrying signals transmitted by satellite.
2. Rights with respect to programme-carrying signals transmitted by satellite shall comprise the right to carry out and permit the carrying out of the following acts or to prohibit others from carrying out the following acts:
 - (a) Produce, assemble, vary, import, sell or lease equipment or systems for the purpose of decoding coded satellite signals;
 - (a) Receive, re-transmit decoded signals without the permission of the person holding rights with respect to coded satellite signals.

Article 749 *Transfer of related rights*

1. Economic rights which are part of the related rights provided in articles 745, 746, 747 and 748 of this Code may be transferred.
2. Any transfer of related rights shall be implemented on the basis of a written contract.

CHAPTER XXXV

Industrial Property Rights and Rights to Plant Varieties

Article 750 *Objects of industrial property rights and rights to plant varieties*

1. Objects of industrial property rights comprise inventions, industrial designs, layout designs of semi-conductor integrated circuits, trade secrets, marks, trade names and geographical indications.
2. Objects of rights to plant varieties are reproductive materials and plant varieties.

Article 751 *Contents of industrial property rights and rights to plant varieties*

1. Industrial property rights with respect to inventions, industrial designs and layout designs of semi-conductor integrated circuits and of rights to plant varieties comprise moral rights and economic rights provided for as follows:
 - (a) Moral rights with respect to inventions, industrial designs, layout designs of semi-conductor integrated circuits, [and] plant varieties shall belong to the person having directly created the invention, industrial design, layout design of semi-conductor integrated circuits, [or] plant variety by its own creative labour, and shall comprise the right to be named as the author in the certificate of protection issued by the State and in materials announcing or introducing such invention, industrial design, layout design of semi-conductor integrated circuits, [or] plant variety;
 - (b) Economic rights with respect to inventions, industrial designs, layout designs of semi-conductor integrated circuits, [or] plant varieties shall belong to the owner of the object, and shall comprise the right to use and the right to permit or to prohibit the use of such invention,

industrial design, layout design of semi-conductor integrated circuits, [or] plant variety by another person.

2. Industrial property rights with respect to trade secrets shall belong to the organization or individual having by lawful means the information which constitutes such trade secret and maintaining the confidentiality of such information, and shall comprise [*the right to*]:
 - (a) Exploit and use the trade secret;
 - (b) Permit [*another person to*] or prohibit another person from accessing, using or disclosing the trade secret.
3. Industrial property rights with respect to marks and trade names shall belong to the owner of such mark and trade name, and shall comprise [*the right to*]:
 - (a) Use the mark or trade name in business;
 - (b) Permit or prohibit the use by other persons of the same mark or a mark which is sufficiently similar to cause confusion with one's own mark; and prohibit the use by other persons of [*another*] trade name which causes confusion with one's own business activities.
4. Ownership of geographical indications belongs to the State. The right to use geographical indications aimed at providing instructions on the country of origin or original source of products which belong to an organization or individual satisfying the conditions shall be determined by the law on intellectual property.
5. The right to oppose unfair competition shall belong to organizations and individuals conducting business in competitive conditions.

Article 752 *Basis for establishing industrial property rights and rights to plant varieties*

1. Industrial property rights with respect to inventions, industrial designs, layout designs of semi-conductor integrated circuits, marks and geographical indications and rights to plant varieties shall be established on the basis of a decision by the competent State body when conducting registration of such objects in accordance with the law on intellectual property.
2. Industrial property rights with respect to trade names shall be established on the basis of the legal use of such trade name.
3. Industrial property rights with respect to trade secrets shall be established on the basis of [*the entity*] having by lawful means the information which constitutes the trade secret and maintaining the confidentiality of such information.
4. The right to oppose unfair competition shall be established on the basis of competitive activities in business.

Article 753 *Transfers of industrial property rights and rights to plant varieties*

1. Industrial property rights with respect to inventions, industrial designs, layout designs of semi-conductor integrated circuits, trade secrets and marks and rights to plant varieties may be transferred in whole or in part pursuant to a contract, or they may be bequeathed and inherited.
2. Rights with respect to a trade name shall only be permitted to be transferred together with the transfer of the entire business establishment and the business activities conducted under such trade name.
3. Rights with respect to geographical indications shall not be transferable.

4. With respect to a technology transfer contract which arises on the basis of registration,¹³⁵ such contract shall have legal effectiveness with respect to a third person only after it has been registered.

CHAPTER XXXVI

Technology Transfer

Article 754 *Right of technology transfer*

The following organizations and individuals shall have the right to transfer the right to use or the ownership of technology:

1. The owner of the technology.
2. Any organization or individual being permitted by the owner of the technology to transfer the use or ownership of the technology.

Article 755 *Objects of technology transfer*

1. Objects of technology transfer comprise technical know how; technical knowledge about technology in the form of technological plans, technical solutions, formulae, technical parameters, [*design*] drawings, technical plans, computer programs, and data information about the transferred technology; solutions for rationalization of production and renovation of technology, licences for special business rights and other objects as provided in the law on technology transfer.
2. In the case where the technology is an object with protected intellectual property rights, the transfer of such technology must be conducted together with the transfer of intellectual property rights in accordance with the law on intellectual property.

Article 756 *Technology not permitted to be transferred*

1. The technology does not meet the regulations of the law on occupational safety, occupational hygiene, ensuring the health of people, or on protection of the environment.
2. Other cases as provided by law.

Article 757 *Technology transfer contracts*

1. A technology transfer shall be implemented on the basis of a written contract.
2. A technology transfer contract must be registered with the competent State body in cases provided by law.
3. The amendment of, addition to, or extension or rescission of a technology transfer contract must be implemented in the form of a written contract; with respect to the technology transfer contracts provided in clause 2 of this article, the amendment of, addition to, or extension or rescission of the contract must also be registered with the competent State body.

PART SEVEN

CIVIL RELATIONS INVOLVING FOREIGN ELEMENTS

Article 758 *Civil relations involving foreign elements*

¹³⁵ *Phillips Fox Note: This is the literal translation.*

Civil relation involving a foreign element means a civil relation in which a least one of the participating parties is a foreign body, organization or individual or is a Vietnamese residing overseas, or a civil relation between participating parties being Vietnamese citizens or organizations but the basis for the establishment, modification or termination of such relation was the law of a foreign country, or such basis arose in a foreign country, or the assets involved in the relation are located in a foreign country.

Article 759 *Application of civil law of Socialist Republic of Vietnam, international treaties, foreign laws and international practice*

1. The civil law of the Socialist Republic of Vietnam shall apply to civil relations involving foreign elements, unless otherwise provided by this Code.
2. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those in this Code, such international treaty shall apply.
3. In the case where this Code, another legal instrument of the Socialist Republic of Vietnam, or an international treaty of which the Socialist Republic of Vietnam is a member provides for the application of foreign law, the law of such foreign country shall apply if its application or the consequences of its application are not inconsistent with the fundamental principles of the law of the Socialist Republic of Vietnam; if such foreign law refers back to the law of the Socialist Republic of Vietnam, the law of the Socialist Republic of Vietnam shall apply.

A foreign law may also apply where the parties so agree in a contract provided that such agreement does not conflict with this Code or any other legal instruments of the Socialist Republic of Vietnam.

4. Where civil relations involving foreign elements are not governed by this Code, any other legal instrument of the Socialist Republic of Vietnam, any international treaty of which the Socialist Republic of Vietnam is a member or any civil contract signed between the parties, international customary practices shall be applied provided that such application, or the consequence thereof, is not contrary to the basic principles of the laws of the Socialist Republic of Vietnam.

Article 760 *Bases for choice of law applicable to stateless persons and to foreigners with multiple foreign nationalities*

1. Where this Code or other legal instruments of the Socialist Republic of Vietnam provide that the law of a country of which a foreigner is a citizen is to apply¹³⁶, the law applicable to a stateless person shall be the law of the country of residence of such person or, if such person has no place of residence, the laws of the Socialist Republic of Vietnam.
2. Where this Code or other legal instruments of the Socialist Republic of Vietnam provide that the law of a country of which a foreigner is a citizen shall apply, the law applicable to a foreigner with multiple foreign nationalities shall be the law of the country of which he or she holds nationality and where he or she resided at the time when the civil relations were established. If such foreigner is not resident in any of the countries of which he or she holds nationality, the applicable law shall be the law of the country of which he or she holds nationality and with which he or she maintains the closest ties regarding civil rights and obligations.

Article 761 *Civil legal capacity of foreign individuals*

1. The civil legal capacity of foreign individuals shall be established on the basis of the law of the country of which such person holds nationality.
2. A foreign individual shall have civil legal capacity in Vietnam in the same manner as a Vietnamese citizen, unless otherwise provided by the law of the Socialist Republic of Vietnam.

¹³⁶ *Phillips Fox Note: The literal translation is "refers to the application of the law of a country of which a foreigner is a citizen".*

Article 762 *Capacity for civil acts of foreign individuals*

1. The capacity for civil acts of foreign individuals shall be determined in accordance with the law of the country of which such person is a citizen, unless otherwise provided by the law of the Socialist Republic of Vietnam.
2. Where a foreign individual establishes or performs civil transactions in Vietnam, the capacity for civil acts of the foreign individual shall be determined in accordance with the laws of the Socialist Republic of Vietnam.

Article 763 *Determination of whether person does not have, has lost or has restricted capacity for civil acts*

1. The determination of whether a person does not have capacity for civil acts, has lost such capacity or has restricted capacity for civil acts must comply with the law of the country of which such person holds nationality.
2. In the case of a foreigner residing in Vietnam, a determination of whether such person does not have, has lost or has restricted capacity for civil acts must comply with the law of the Socialist Republic of Vietnam.

Article 764 *Determination that person has disappeared or died*

1. A determination that a person has disappeared or died must comply with the law of the country of which such person held nationality at the point of time prior to the last information about such disappearance or death.
2. In the case of a foreigner residing in Vietnam, a determination of whether or not such person has disappeared or died must comply with the law of the Socialist Republic of Vietnam.

Article 765 *Civil legal capacity of foreign legal entities*

1. The civil legal capacity of a foreign legal entity shall be determined in accordance with the law of the country in which such legal entity was established, except in the case provided in clause 2 of this article.
2. Where a foreign legal entity establishes or performs civil transactions in Vietnam, the civil legal capacity of such foreign legal entity shall be determined in accordance with the laws of the Socialist Republic of Vietnam.

Article 766 *Right to own property*

1. The establishment, exercise, operation and termination of ownership rights and the contents of such rights with respect to property shall be determined in accordance with the laws of the country in which the property is located, except in the cases provided in clauses 2 and 4 of this article.
2. Ownership rights with respect to moveable property in transit shall be determined in accordance with the law of the country of destination, unless there is some other agreement.
3. The distinction between moveable and immoveable property shall be made in accordance with the laws of the country in which such property is located.
4. A determination of ownership rights to civil aircraft and ships in Vietnam must comply with the law on civil aviation and with the maritime law of the Socialist Republic of Vietnam.

Article 767 *Inheritance at law with foreign element*

1. Inheritance at law must comply with the law of the country of which the person who bequeathed the assets held nationality prior to his or her death.
2. The right to inherit immovable property must comply with the law of the country where such immovable property is located.
3. Assets being immovable property to which there is no heir shall belong to the state of the location of such immovable property.
4. Assets being moveable property to which there is no heir shall belong to the state of which the person bequeathing the assets had nationality prior to his or her death.

Article 768 *Inheritance under wills*

1. The capacity to create a will, and to alter or rescind a will, must comply with the law of the country of which the testator is a citizen.
2. The form of a will must comply with the law of the country in the place where the will is created.

Article 769 *Civil contracts*

1. The rights and obligations of parties to a [civil] contract shall be determined in accordance with the laws of the country in which the contract is performed, unless otherwise agreed.

A [civil] contract which is entered into in Vietnam and performed entirely in Vietnam must comply with the laws of the Socialist Republic of Vietnam.

Where a [civil] contract does not state the place of performance, the place of performance of the contract shall be determined in accordance with the laws of the Socialist Republic of Vietnam.

2. Contracts relating to immovable property located in Vietnam must comply with the laws of the Socialist Republic of Vietnam.

Article 770 *Form of civil contracts*

1. The form of a contract must comply with the law of the country where the contract was entered into. In the case where a contract is entered into in a foreign country and breaches the provisions on the form of a contract pursuant to the laws of that country, but is not contrary to the provisions on the form of such contract pursuant to the law of the Socialist Republic of Vietnam, the form of such contract entered into in the foreign country shall, nevertheless, be recognized in Vietnam.
2. The form of a contract relating to the formation or transfer of ownership rights to structures, residential housing or other immovable property within the territory of Vietnam must comply with the laws of the Socialist Republic of Vietnam.

Article 771 *Entering into civil contracts in absentia*

In the case of entering into a contract in absentia, the determination of the place where the contract was entered into must comply with the law of the country of residence of the individual being the party requesting the contract to be entered into, or of the country where the head office of the legal entity is located where the party requesting the contract to be entered into is a legal entity.

The point of time of entering into a contract in absentia shall be determined in accordance with the law of the country of the person requesting that the contract be entered into if such party receives an answer agreeing to the proposal of the such party that the contract be entered into.

Article 772 *Unilateral civil transactions*

In a unilateral transaction relation, the rights and obligations of the party voluntarily exercising the unilateral transaction relation shall be determined in accordance with the law of the country of residence [*of such party*] or of the country where the main activities of such party take place.

Article 773 *Compensation for non-contractual damage*

1. Compensation for non-contractual damages shall be determined in accordance with the law of the country in which the act causing damage occurred or in which the actual consequences of such act arise.
2. Compensation for any damage caused by an aircraft flying in international airspace or by a ship sailing at sea shall be determined in accordance with the law of the country of nationality of the aircraft or ship, except where otherwise provided by the law on civil aviation and the maritime law of the Socialist Republic of Vietnam.
3. Where the act causing damage occurs outside the territory of the Socialist Republic of Vietnam and both the person causing such damage and the victim of such damage are Vietnamese citizens or Vietnamese legal entities, the laws of the Socialist Republic of Vietnam shall apply.

Article 774 *Copyright with foreign element*

The copyright of a foreign individual or legal entity with respect to a work which is first published or disseminated in Vietnam, or which is created and takes a definite form in Vietnam, shall be protected in accordance with the laws of the Socialist Republic of Vietnam and with international treaties of which the Socialist Republic of Vietnam is a member.

Article 775 *Industrial property rights and rights to plant varieties with foreign element*

Industrial property rights and rights to plant varieties of a foreign individual or foreign legal entity with respect to an object of industrial property rights or an object of rights to plant varieties for which the State of Vietnam has issued a certificate of protection shall be protected in accordance with the laws of the Socialist Republic of Vietnam and with international treaties of which the Socialist Republic of Vietnam is a member.

Article 776 *Transfer of technology with foreign element*

A transfer of technology between a Vietnamese individual or Vietnamese legal entity and a foreign individual or foreign legal entity, and any transfer of technology from a foreign country into Vietnam or from Vietnam to a foreign country, must comply with this Code and with any other legal instruments of Vietnam on technology transfer and with international treaties of which Vietnam is a member or with foreign laws if such application, or the consequence thereof, is not contrary to the basic principles of the laws of the Socialist Republic of Vietnam.

Article 777 *Limitation period for initiating legal action*

The limitation period for initiating legal action in respect of any civil relation with a foreign element shall be determined in accordance with the law of the country which was applied in order to regulate the relevant civil relation with a foreign element.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 7th Session on 14 June 2005.

The Chairman of the National Assembly

NGUYEN VAN AN

