**Article 133. Protection of the interests of bona fide third parties with regard to invalid civil transactions**

1. In cases where a civil transaction is invalid but the transacted property being a moveable property is not required to be registered and such property has already been transferred to a bona fide third party through another transaction, the transaction with the third party shall remain valid, except for the case specified in Article 167 of this Code.

2. In cases where a civil transaction is invalid but the transacted property is registered at a competent authority and such property has already been transferred to a bona fide third party through another transaction which is established according to that registration, such transaction shall remain valid.

In cases where the transacted property which is required to be registered has not registered at a competent authority, the transaction with the third party shall be invalid, except for cases the bona fide third party received such property through an auction or a transaction with an another party being the owner of such property pursuant to a judgment or decision of a competent authority but thereafter such person is not the owner of the property as a result of the judgment or decision being amended or annulled.

3. The owner of a property shall have no right to reclaim the property from the bona fide third party if the transaction with such party remains valid as prescribed in Clause 2 of this Article, but the owner may proceed against the party at fault to refund appropriate expenses and compensate for his/her damage.

**Article 167. The right to reclaim movable property not subject to ownership right registration from bona fide possessors**

Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemifiable contracts with persons who have no right to dispose of the property; in case of indemifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost or other cases of possession against the owners' will.

**Article 168. The right to reclaim movable property subject to ownership right registration or immovable property from bona fide possessors**

Owners may reclaim their movable property subject to ownership right registration and immovable property, except for cases prescribed in Clause 2 Article 133 of this Code.

**Article 274. Obligations**

Obligations means acts whereby one or more entities (hereinafter referred to as obligors) 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).

**Article 275. Bases for giving rise to obligations**

Obligations arise from the following bases:

1. 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 bases as provided by law.

**Article 276. Subject matter of obligations**

1. The subject matter of an obligation may be property or acts which must be performed or acts which must not be performed.

2. The subject matter of an obligation must be defined precisely.

**Section 2. Performance of obligations**

**Article 277. Places for performing obligations**

1. The place for performing an obligation shall be agreed by the parties.

2. Where the parties do not have an agreement, the place for performance of the obligation shall be:

a) The location of the immoveable property, if the subject matter of the obligation is immoveable property;

b) The place of residence or head office of the obligee, if the subject matter of the obligation is not immoveable 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 278. Time-limits for performing obligations**

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

2. The obligor must perform the obligation strictly in accordance with the relevant time-limit, unless otherwise prescribed by this Code or relevant laws.

If the obligor performs the obligation prior to the time-limit and the obligee accepts such performance, the obligation shall be deemed to have been fulfilled on time.

3. Where the parties do not have an agreement and the time-limit for the performance of a civil obligation is not identifiable prescribed in Clause 1 of this Article, a party may fulfill the obligation or demand the fulfillment of the obligation as the case may be at any time, but must give reasonable prior notice to the other party.

**Article 279. 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 fungible 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 280. 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 281. 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 282. Performance of obligations in stages

## An obligation may be performed in stages if so agreed or so provided by law or pursuant to a decision of a competent authority.

## The late performance of one stage of an obligation shall be deemed to be late performance of the obligation.

## Article 283. Performance of obligations through third parties

## With the consent of the obligee, an obligor may authorize a third person to perform an 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.

## Article 284. Conditional performance of obligations

## 1. 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 an obligation, the obligor must perform the obligation when such conditions are satisfied.

## 2. If the conditions do not occur or occur resulting from the influence of a party, Clause 2 Article 120 of this Code shall apply.

## Article 285. Performance of obligations having optional subject matters

## 1. 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 fulfill 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 286. Performance of substitutable civil obligations

## Substitutable 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 287. Performance of severable obligations

## Where more than one person jointly performs an 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 288. Performance of joint obligations

## 1. Joint 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 require 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 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 obligation, the other obligors must, nevertheless, perform jointly their respective shares of the obligation.

## Article 289. Performance of obligations for joint obligees

## 1. Civil obligation for joint obligees means an obligation whereby each joint obligee may require the obligor to perform the obligation in its entirety.

## 2. An obligor may perform its obligation with respect to any one of the joint obligees.

## 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 290. Performance of divisible obligations

## 1. Divisible 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 291. Performance of indivisible obligations

## 1. Indivisible 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. SECURITY FOR PERFORMANCE OF OBLIGATIONS

## Sub-section 1. GENERAL PROVISIONS

## Article 292. Types of security for performance of obligations

## Types of security for the performance of obligations comprise the following:

## 1. Pledge of property;

## 2. Mortgage of property;

## 3. Deposit;

## 4. Security collateral;

## 5. Escrow deposit;

## 6. Title retention;

## 7. Guarantee;

## 8. Fidelity guarantees;

## 9. Lien on property.

## Article 293. Scope of security for performance of obligations

## 1. An 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. Secured obligations may comprise current obligations, future obligations and conditional obligations.

## 3. With respect to a future obligation which is going to arise within a guaranteed time limit, it shall be the secured obligation, unless otherwise agreed.

## Article 294. Security for performance of future obligations

## 1. With respect to a future obligation, the parties may agree on the scope of the secured obligation and the deadline by which the secured obligation must be performed, unless otherwise prescribed by law.

## 2. When the future obligation arises, the parties are not required to re-establish the security for such obligation.

## Article 295. Collateral

## 1. Collateral must be under the ownership rights of the securing party, except for the cases of lien on property or title retention.

## 2. Collateral may be described generally but must be identified.

## 3. Collateral may be existing property or off-plan property.

## 4. The value of collateral may be greater, equal or smaller than the value of the secured obligation.

## Article 296. Single item of property used as security for performance of several obligations

## 1. A single item of property may be used as security for performance of several 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 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 fulfill 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 297. Effectiveness against third parties

## 1. Security shall take effect against a third party from the time of registration of such security or the secured party keeps or possess the collateral.

## 2. When the security takes effect against a third party, the secured party is entitled to reclaim the collateral and the payment prescribed in Article 308 of this Code and relevant laws.

## Article 298. Registration of security

## 1. Security shall be registered as agreed by the parties or provided by law.

## The registration shall be the condition for a secured transaction become valid only the case as prescribed by law.

## 2. A registered security shall take effect against third party from the time of registration.

## 3. The registration of security shall comply within regulations of law on registration of security.

## Article 299. Cases of realization of collateral

## 1. An obligator fails to perform or perform not as agreed an obligation when it falls due.

## 2. An obligator must perform the secured obligation before time limit due to his/her violation against the obligation as agreed or prescribed by law.

## 3. Other cases as agreed by the parties or prescribed by law.

## Article 300. Notification of realization of collateral

## 1. Before a collateral is realized, a secured party must notify the securing party and other secured parties of the realization of the collateral within a reasonable time limit.

## If the collateral at risk of being damaged resulting in diminished value or lose the entire value, a secured party may realize it immediately and notify the securing party and other secured parties of the realization of such asset.

## 2. If the secured party does not notify the realization of collateral as prescribed in Clause 1 of this Article that cause damage to the securing party and/or other secured parties, compensation must be made.

## Article 301. Giving collateral for realization

## The holder of collateral is obliged to give it to the secured party for realization in any of the cases prescribed in Article 299 of this Code.

## If the holder of collateral fails to give the asset, the secured party is entitled to request a court for settlement, unless otherwise prescribed by relevant laws.

## Article 302. Right to reclaim collateral

## The securing party may reclaim the collateral if, before the realization of the collateral, it completely performs its obligations and pay all expenses incurred for the late performance of obligations, unless otherwise prescribed by law.

## Article 303. Methods of realizing collateral

## 1. The securing party and the secured party may agree any of the following methods of realizing collateral:

## a) Put collateral up for an auction;

## b) The secured party sells collateral itself;

## c) The secured party accepts the collateral as substitutions for the performance of obligations of the securing party;

## d) Other methods.

## 2. If there is no agreement on methods of realizing collateral as prescribed in Clause 1 of this Article, the collateral shall be put up for auction, unless otherwise prescribed by law.

## Article 304. Selling collateral

## 1. The collateral shall be put up for auction as prescribed by law on property auction.

## 2. The collateral sold by the secured party must comply with the regulations on property sale in this Code and the regulations below:

## a) The payment amount derived from the realization of collateral shall comply with Article 307 of this Code;

## b) The owner of collateral and the person competent to realize the collateral, upon the completion of the sale, shall comply with procedures for transfer of ownership rights to the buyer.

## Article 305. Acceptance of the collateral as substitution for the performance of obligations of the securing party

## 1. The secured party may accept the collateral as substitution for the performance of obligations of the securing party if agreed by the parties.

## 2. If there is no agreement prescribed in Clause 1 of this Article, the secured party may only accept the collateral as substitution for the performance of obligations of the securing party with the written consent of the securing party.

## 3. Where the value of the collateral is greater than the value of the secured obligation, the secured party must pay the difference amount to the securing party; where the value of the collateral is less than the value of the secured obligations then the unpaid obligations become unsecured obligations.

## 4. The securing party is obliged to follow the procedures for transfer of ownership rights to the secured party as prescribed by law.

## Article 306. Valuation of collateral

## 1. The securing party and the secured party may agree on collateral prices or have the collateral valuated by an asset valuation organization upon the realization of the collateral.

## If there is no agreement mentioned above, the collateral shall be valuated by an asset valuation organization.

## 2. The valuation of the collateral must be objective and in conformity with market price.

## 3. The asset valuation organization must compensate for any damage to the securing party and/or the secured party during the process of valuation due to its legal violations.

## Article 307. Payment of the sum of money obtained from the realization of collateral

## 1. The sum of money obtained from the realization of the collateral after deducting from the cost of preservation, capture and realization of the collateral shall be paid in order of priority specified in Article 308 of this Code.

## 2. Where the sum of money obtained from the realization of the collateral, after deducting from the cost of preservation, seizure and realization of the collateral is greater than the value of secured obligations, the difference amount must be paid to the securing party.

## 3. Where the sum of money obtained from the realization of the collateral, after deducting from the cost of preservation, seizure and realization of the collateral is less than the value of secured obligations, part of the unpaid obligations are defined as unsecured obligations, unless the parties otherwise agree additional collateral. The secured party may request the obligor to perform the unpaid secured obligations.

## Article 308. Order of priority for payment between joint secured parties

## 1. When an asset is used to secure the performance of many obligations, payment priority order between the joint secured parties shall be determined as follows:

## a) If all types of security take effect against a third party, the order of priority for payment shall be determined according to the order of effect against the third party;

## b) If there are some types of security take effect against a third party while some types of security do not take effect against the third party, the payment of obligations with security taking effect against the third party shall be given priority;

## c) If all types of security do not take effect against a third party, the order of priority for payment shall be determined according to the order of establishment of types of security.

## 2. The order of priority for payment prescribed in Clause 1 of this Article may be changed as agreed by the parties. The subrogating party of the right to priority of payment shall only be given priority within the secured extent of the subrogated party.

## Sub-section 2. PLEDGE OF PROPERTY

## Article 309. Pledge 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 an obligation.

## Article 310. Effectiveness of pledge of property

## 1. Agreement on pledge of property shall take effect from the time of concluding, unless otherwise agreed or prescribed by law.

## 2. Pledge of property shall take effect against third party from the time at which the pledgee keeps the pledged property.

## If an immovable property is the subject of pledge as prescribed in law, the pledge on immovable property shall take effect against third party from the time of registration.

## Article 311. Obligations of pledgors

## 1. Deliver the pledged property to the pledgee as agreed.

## 2. 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. Pay the pledgee reasonable expenses for taking care of and preserving the pledged property, unless otherwise agreed.

## Article 312. Rights of pledgors

## 1. Require the pledgee to suspend use of the pledged property in cases provided in Clause 3 of Article 314 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. Require the pledgee to hold the pledged property to return the pledged property and related documents after the obligation secured by the pledge has been fulfilled.

## 3. Require the pledgee to compensate for any damage caused to the pledged property.

## 4. Sell, substitute, exchange, or give the pledged property to other property if so agreed by the pledgee or prescribed by law.

## Article 313. Obligations of pledgees

## 1. 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. Do not sell, exchange, give or use the pledged property as security for the performance of another obligation.

## 3. Do not lease, lend, exploit the yield or income derived from, the pledged property, unless otherwise agreed.

## 4. Return the pledged property and related documents upon fulfillment of the secured obligation or where the pledge is substituted with another security.

## Article 314. Rights of pledgees

## 1. Require a person unlawfully possessing or using the pledged property to return the property.

## 2. Demand the realization of the pledged property in accordance with the methods as agreed or as provided by law.

## 3. Lease, lend, exploit, and to enjoy the yield and income derived from, the pledged property if so agreed.

## 4. Receive reimbursement of reasonable expenses incurred in taking care of the pledged property upon returning the pledged property to the pledgor.

## Article 315. Termination of pledges on property

## A pledge of property shall terminate in any of the following cases:

## 1. The obligation secured by the pledge has terminated;

## 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 316. Return of pledged property

## Where a pledge of property is terminated in accordance with Clause 1 or Clause 2 of Article 315 of this Code or as agreed by parties, the pledged property and documents evidencing the ownership rights with respect to the property shall be returned to the pledgor. Any yield and income derived from the pledged property shall also be returned to the pledgor, unless otherwise agreed.

## Sub-section 3. MORTGAGES ON PROPERTY

## Article 317. Mortgage 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 an obligation to the other party (hereinafter referred to as the mortgagee) without transferring such property to the mortgagee.

## 2. The mortgaged property shall be held by the mortgagor. The parties may agree to deliver the mortgaged property to a third person to hold.

## Article 318. Mortgaged property

## 1. Where entire immoveable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed.

## 2. Where a portion of immoveable 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.

## 3. With respect to mortgage on land use rights that property on land is owned by the mortgagor, such property shall also part of the mortgaged property, unless otherwise agreed.

## 4. Where mortgaged property is insured, 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 319. Effectiveness of mortgage of property

## 1. Agreement on mortgage of property shall take effect from the time of concluding, unless otherwise agreed or prescribed by law.

## 2. The mortgage of property shall take effect against third party from the time of registration.

## Article 320. Obligations of mortgagor

## 1. Transfer documents related to the mortgaged property, unless otherwise agreed or prescribed by law.

## 2. Take care of and preserve the mortgaged property.

## 3. 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.

## 4. When the mortgaged property is damaged, the mortgagor is obligated to, within a reasonable period, repair or substitute another property with equivalent value, unless otherwise agreed.

## 5. Provide information about the actual condition of the mortgaged property to for the mortgagee.

## 6. Deliver the mortgaged property to the mortgagee for realization in one of the cases prescribed in Article 299 of this Code.

## 7. Notify the mortgagee of any third person rights with respect to the mortgaged property (if any). 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.

## 8. Do not sell, exchange or give the mortgaged property, except in the cases provided in Clauses 4 and 5 of Article 321 of this Code.

## Article 321. Rights of mortgagor

## 1. Exploit, and to enjoy the yield and income derived from, the property, except where the yield and income also form part of the mortgaged property as agreed.

## 2. Invest in order to increase the value of the mortgaged property.

## 3. Recover the mortgaged property and related documents held by a third person when the obligation secured by the mortgage is terminated or is substituted by other security.

## 4. 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 require the purchaser to 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.

## 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.

## 5. Sell, exchange or give mortgaged property not being goods rotating during the production and business process with the consent of the mortgagee or as prescribed by law.

## 6. 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.

## Article 322. Obligations of mortgagees

## 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. Follow procedures for realization of mortgaged property in accordance with regulations of law.

## Article 323. Rights of mortgagees

## 1. 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.

## 2. Require the mortgagor to provide information on the current status of the mortgaged property.

## 3. 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.

## 4. Conduct the registration of mortgage as prescribed by law.

## 5. 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 fulfillment of the obligation, the obligor has failed to perform or performed incorrectly the obligation.

## 6. Hold documents related to mortgaged property as agreed by parties, unless otherwise prescribed by law

## 7. Follow procedures for realization of mortgaged property as prescribed in Article 299 of this Code.

## Article 324. Rights and obligations of third parties holding mortgaged property

## 1. A third person holding mortgaged property has the following rights:

## a) Exploit the property if so agreed;

## b) Receive remuneration and be reimbursed for expenses incurred in taking care of and preserving the mortgaged property, unless otherwise agreed.

## 2. A third person holding mortgaged property has the following obligations:

## a) 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;

## b) Cease the exploitation of the property if it is in danger of losing its value or depreciating in value;

## c) Return the mortgaged property to the mortgagee or mortgagor as agreed or prescribed by law.

## Article 325. Mortgage on land use rights without mortgage of property on land

## 1. With respect to mortgage on land use rights without mortgage property on that land but the land user is also the owner of the property on land; such property shall also part of the realized property, unless otherwise agreed.

## 2. With respect to mortgage on land use rights that the land user is not also the owner of the property on land, such owner may keep using such land within his/her rights and obligations during the realization of the land use rights. The rights and obligations of the mortgagor in relation with the owner of the property on land shall be transferred to the transferee of the land use rights, unless otherwise agreed.

## Article 326. Mortgage of property on land without mortgage on land use rights

## 1. With respect to mortgage of property on land without mortgage on land use rights but the owner of the property on land is also the land user, such land use rights shall also part of the realized property, unless otherwise agreed.

## 2. With respect to mortgage of property on land without mortgage on land use rights that the owner of the property on land is not also the land user, the transferee of property on land may keep using such property within the transferred rights and obligations from the owner of the property on land during the realization of the land use rights, unless otherwise agreed.

## Article 327. 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.

**Sub-section 4. DEPOSIT, SECURITY COLLATERAL, ESCROW DEPOSIT**

**Article 328. Deposit**

1. Deposit is an act whereby one party (hereinafter referred to as the depositor) transfers to another party (hereinafter referred to as the depositary) a sum of money or precious metals, gemstones or other valuable things (hereinafter referred to as the deposited property) for a period of time as security for the entering into or performance of a contract.

2. Upon a contract being entered into or performed, any deposited property shall be returned to the depositor, or deducted from the amount of an obligation to pay money. If the depositor refuses to enter into or perform the contract, the deposited property shall belong to the depositary. If the depositary refuses to enter into or perform the contract, it must return the deposited property and pay an amount equivalent to the value of the deposited property to the depositor, unless otherwise agreed.

**Article 329. Security collateral**

1. Security collateral is an act whereby a lessee of a movable property transfers a sum of money or precious metals, gems or other valuable things (hereinafter referred to as security collateral property) to the lessor for a specified time limit to secure the return of the leased property.

2. In cases where the leased property is returned, the lessee shall be entitled to reclaim the security collateral property after pay the rental; if the lessee does not return the leased property, the lessor shall be entitled to reclaim the leased property; if the leased property is no longer available for the return, the security collateral property shall belong to the lessor.

**Article 330. Escrow deposit**

1. Escrow deposit is an act whereby an obligor deposits a sum of money, precious metals, gems or valuable papers into an escrow account at a credit institution to secure the performance of an obligation.

2. In cases where the obligor has failed to perform or has improperly performed an obligation, the obligee shall be entitled to receive payment and compensation for damage caused by the obligor from the bank where the escrow deposit is affected, after deducting the bank service charges.

3. The procedures for making deposits and making payments shall be as provided by the law.

**Sub-section 5. TITLE RETENTION**

**Article 331. Title retention**

1. In a sale contract, the ownership of property of the seller may remain until the buyer pays the purchase price in full.

2. Title retention must be made in a separate document or included in the sale contract.

3. The title retention shall take effect against third party from the time of registration.

**Article 332. Right to reclaim property**

If the buyer fails to fulfill the payment obligation for the seller as agreed, the seller is entitled to reclaim the property. The seller shall refund the paid amount by the buyer deducted from the depreciated value due to use. Where the buyer lost or damaged property, the seller has the right to claim damages.

**Article 333. Rights and obligations of the buyer**

1. Using the property and enjoying the yield and income derived therefrom within the effective term of title retention.

2. Facing the risks of the property within the effective term of the title retention, unless otherwise agreed.

**Article 334. Termination of title retention**

The title retention shall terminate in any of the following cases:

1. Payment obligation fulfilled completely by the buyer;

2. The seller receives the property under title retention back;

3. As agreed by the parties.

**Sub-section 6. GUARANTEES**

**Article 335. Guarantees**

1. Guarantee means an undertaking made by a third person (hereinafter referred to as the guarantor) to an obligee (hereinafter referred to as the creditor) to perform an obligation on behalf of an obligor (hereinafter referred to as the principal debtor) if the obligation falls due and the principal fails to perform or performs incorrectly the obligation.

2. The parties may agree that the guarantor shall only be obliged to perform the obligation if the principal debtor is incapable of performing it.

**Article 336. Scope of guarantees**

1. A guarantor may guarantee an obligation in whole or in part on behalf of a principal debtor.

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

3. The parties may agree on using security as property to secure the performance of guaranteed obligation.

4. If the obligation to guarantee is an obligation arising in the future, the scope of guarantee is exclusive of any obligations arising after the guarantor being natural person dies or the guarantor being juridical person ceases to exist.

**Article 337. Remuneration**

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

**Article 338. 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 require 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 debtor, the guarantor may require the other guarantors to perform their respective portions of the obligation with respect to that guarantor.

**Article 339. Relationship between guarantors and creditors**

1. If the principal fails to perform or performs incorrectly the obligation, the creditor is entitled to request the guarantor to fulfill the guaranteed obligation , unless contracting parties has agreed that the guarantor only be required to perform the obligation on behalf of the principal debtor in case of the failure to perform obligation by the principal debtor.

2. A creditor may not require a guarantor to perform an obligation on behalf of the principal debtor until the obligation falls due.

3. Where a guarantor is able to offset an obligation with a principal debtor, a guarantor does not have to perform the guaranteed obligation.

**Article 340. Rights to require of guarantors**

Each guarantor may require the principal debtor to indemnify the guarantor to the extent of the guarantee, unless otherwise agreed.

**Article 341. Discharge from guaranteed obligations**

1. Where the guarantor must perform the guaranteed obligation but the creditor discharges the guarantor from an obligation, the principal debtor is discharged from performance of the obligation with respect to the creditor, except where it is agreed or provided by law.

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.

3. Where one person from amongst the joint creditors discharge the guarantor from the performance of its portion of the guaranteed obligation, the guarantor must, nevertheless, perform their portion of the guaranteed obligation with respect to remaining joint creditors.

**Article 342. Civil liability of guarantor**

1. If the principal debtor fails to perform or perform incorrectly the obligation, the guarantor is obligated to perform such obligation.

2. If the guarantor performs incorrectly the guaranteed obligation, the creditor is entitled to request the guarantor to pay the value of the breached obligation and compensate for any damage.

**Article 343. Termination of guarantees**

A guarantee shall terminate in any of 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.

**Sub-section 7. FIDELITY GUARANTEES**

**Article 344. 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 law.

**Article 345. Formalities and contents of fidelity guarantees**

A loan guaranteed by a fidelity guarantee must be made in writing with certification of a socio-political organization in terms of conditions and circumstances of the borrower.

The agreement on fidelity guarantee must specify 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.

**Sub-section 8. LIEN ON PROPERTY**

**Article 346. Lien on property**

Lien on property means that the obligee (hereinafter referred to as the lienor) who is legally possessing the property being an object of a bilateral contract is entitled to retain the property when the obligor fails to perform the obligations or has performed the obligations not strictly as agreed upon.

**Article 347. Establishment of lien on property**

1. Lien on property shall arise from the due time for performance of obligation that the obligor failed to perform or perform incorrectly the obligation.

2. Lien on property shall take effect against third party from the time of possession of the possessor.

**Article 348. Rights of lienors**

1. Request the obligor to fulfill completely the obligations arising from a bilateral contract.

2. Require the obligor to pay expenses necessary for taking care of and keeping such property.

3. Exploit the property to obtain yield and income therefrom with the consent of the obligor.

The value of benefits from the exploitation of the property shall be offset against the value of the obligation of the obligor.

**Article 349. Obligations of lienors**

1. Take care and preserve the property

2. Do not change the status of the property.

3. Do not transfer or use the property without the consent of the obligor.

4. Return the property upon the complete performance of the obligation.

5. Compensate for lost or damaged property.

**Article 350. Termination of lien on property**

A lien on property shall terminate in any of the following cases:

1. The lienor actually no longer retains the property;

2. Contracting parties shall agree on another security instead of retain on property;

3. upon the complete performance of the obligation;

4. The property ceases to exist;

5. As agreed by the parties.

**Section 4. CIVIL LIABILITY**

**Article 351. 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.

Breach of obligations means that the obligor fails to perform the obligations on time, perform the obligations incompletely or incorrectly.

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 352. Responsibility for continuing performing obligations**

When an obligor perform its obligations improperly, the obligee is entitled to request the obligor to continue perform such obligations.

**Article 353. 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 354. 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.

**Article 355. 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 fulfillment 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 may hand over the property to a bailee must or take the necessary measures to take care of the property and is entitled to demand reimbursement of reasonable expenses. If the property is kept by a bailee, the obligor must notify the obligee.

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 356. 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 require 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.

2. Where an obligor fails to deliver a fungible object, the obligee has the right to require the obligor to deliver another fungible object. If there is no fungible 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 any damage.

**Article 357. Liability for late performance of the obligation to pay**

1. Where the obligor makes late payment, then it must pay interest on the unpaid amount corresponding to the late period.

2. Interest arising from late payments shall be determined by agreement of the parties, but may not exceed the interest rate specified in paragraph 1 of Article 468 of this Code; if there no agreement mentioned above, the Clause 2 of Article 468 of this Code shall apply.

**Article 358. 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 require 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 require the obligor to cease performing the act, make restitution and compensate for any damage.

**Article 359. 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, unless otherwise agreed or otherwise provided by law.

**Article 360. Liability for compensation due to breach of obligations**

With respect to damage caused by breach of an obligation, the obligor must compensate for the whole damage, unless otherwise agreed or prescribed by law.

**Article 361. Damage caused by breach of obligations**

1. Damage caused by breach of obligations comprises physical damage and spiritual damage.

2. The physical damage means those actual physical losses, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income.

3. Spiritual damage means losses related to life, health, honor, dignity or reputation and other personal benefits of an entity.

**Article 362. The obligation to prevent or limit damage**

The obligee must adopt the necessary and reasonable measures to prevent or limit its damage.

**Article 363. Compensation for damages in case of the aggrieved party at fault**

Where the breach of the obligations and damage incurred due to part of the fault of the aggrieved party, the violating party only be required to pay damages corresponding to its degree of fault.

**Article 364. Fault in civil liability**

Fault in civil liability includes intentional fault and unintentional fault.

Intentional fault means that a person is fully aware that its act 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.

Unintentional means that 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 5. TRANSFER OF RIGHT TO DEMAND AND TRANSFER OF CIVIL OBLIGATIONS**

**Article 365. 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, honor, dignity or reputation;

b) The obligee and the obligor agree that the right to demand may not be transferred;

2. Where a person having a right to demand transfers such right to a subrogatee, the subrogatee of the obligee shall become the person having the right to demand. The transfer of right to demand does not require the consent of the obligor.

A person transferring a right must notify the obligor in writing of the transfer of the right to demand, unless otherwise agreed. If the person transferring the right fails to notify the obligor thereby the obligor incurs expenses, the person transferring the right must pay for those expenses.

**Article 366. 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 subrogatee 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 367. 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 368. 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 369. Right to refuse of obligors**

1. Where the obligor is not notified of the transfer of the right to demand or where the subrogatee 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 subrogatee 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 subrogatee of the obligee may not demand the obligor to perform the obligation with respect to that subrogatee.

**Article 370. Transfer of civil obligations**

1. An obligor may transfer a civil obligation to a subrogatee 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 subrogatee of the obligor shall become the obligor.

**Article 371. Transfer of secured civil obligations**

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

**Section 6. TERMINATION OF CIVIL OBLIGATIONS**

**Section 372. Termination of civil obligations**

A civil obligation shall terminate in any of 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 a natural person dies, or the obligor being a juridical person ceases to exist, and the obligation must be performed by that particular natural person or juridical person;

9. The obligee being a natural person dies and the right to demand does not form part of the bequeathed estate, or the obligee being a juridical person ceases to exist and the right to demand is not able to be transferred to another juridical person;

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 373. Fulfillment of civil obligations**

The civil obligation shall be deemed to be 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 374. Fulfillment of civil obligations where obligees are late in accepting subject matter of obligations**

When an obligee is late in accepting the subject matter of an obligation which is an object, the obligation to deliver an object shall be fulfilled at the moment when the object is deposited for bailment as prescribed in Clause 2 Article 355 of this Code.

**Article 375. 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 376. 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 377. 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, honor, 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 378. Termination of civil obligations where obligations are offset**

1. Where parties have reciprocal obligations with respect to fungible objects, 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 379. 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, honor or reputation;

3. The obligation is to support others;

4. Other obligations as provided by law.

**Article 380. 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 381. 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 382. Termination of civil obligations when obligor being natural person dies or when obligor being juridical person ceases to exist**

Where parties have agreed or the law provides that an obligation must be performed by a particular obligor, when such natural person dies or such juridical person ceases to exist, the obligation shall terminate.

**Article 383. 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 384. 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. CONTRACTS**

**Sub-section 1. ENTERING INTO CIVIL CONTRACTS**

**Article 385. Definition of civil contract**

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

**Article 429. Limitation period for initiating legal action with respect to contracts**

The limitation period for initiating legal action to request a court to resolve a dispute relating to a contract is three years from the date on which the party entitled to request knows or should know that their lawful rights and interests are infringed.

**Article 4. Principles of dispute settlement by arbitration**

1. Arbitrators must respect the parties’ agreement if such agreement neither breaches prohibitions nor contravenes social ethics.

2. Arbitrators must be independent, objective and impartial and shall observe law.

3. Disputing parties are equal in their rights and obligations. The arbitration council shall create conditions for disputing parties to exercise their rights and fulfill their obligations.

4. Dispute settlement by arbitration shall be conducted in private, unless otherwise agreed by the parties.

5. Arbitral awards are final.

**Article 10. Language**

1. For disputes involving no foreign element, the language to be used in arbitral proceedings is Vietnamese, except disputes to which at least one party is a foreign-invested enterprise. When a disputing party cannot use Vietnamese, it may use an interpreter.

2. For disputes involving foreign elements or disputes to which at least one party is a foreign-invested enterprise, the parties shall reach agreement on the language to be used in arbitral proceedings. If they have no such agreement, the arbitration council shall decide on the language to be used in arbitral proceedings.

**Article 11. Venues for dispute settlement by arbitration**

1. The parties may reach agreement on venues for dispute settlement. If no agreement is made, the arbitration council shall decide on such venue. A venue for dispute settlement may be within or outside the Vietnamese territory.

2. Unless otherwise agreed by the parties, the arbitration council may hold a meeting at a venue regarded as appropriate for its members to exchange opinions, for taking witnesses' statements, consulting experts or for assessing goods, assets or other documents.

**Article 30. Petitions and enclosed documents**

1. When a dispute is settled at an arbitration center, the plaintiff shall file a petition with the arbitration center. When a dispute is settled by ad hoc arbitration, the plaintiff shall make a petition and send it to the defendant.

2. A petition contains:

a/ Date of its making;

b/ Names and addresses of the parties; names and addresses of witnesses, if any;

c/ Summary of the circumstances of the dispute:

d/ Grounds and evidence for initiating the lawsuit, if any:

e/ Specific requirements of the plaintiff and the value of the dispute:

f/ Name and address of the person whom the plaintiff selects as arbitrator or requests to be designated as arbitrator.

3. Enclosed with the petition shall be the arbitration agreement and the originals or copies of relevant documents.

**Article 33. Statute of limitations for initiating a lawsuit for dispute settlement by arbitration**

Unless otherwise provided by discrete laws, the statute of limitations according to arbitral procedures is 2 years from the time of infringement of lawful rights and interests.

**Article 35. Self-defense statements and the sending thereof**

1. A self-defense statement contains:

a/ Date of making;

b/ Name and address of the defendant;

c/ Grounds and evidence, if any. for self-defense;

d/ Name and address of the person whom the defendant selects as arbitrator or requests for designation as arbitrator.

2. For a dispute to be settled at an arbitration center, unless otherwise agreed by the parties or provided by the arbitration center's rules of proceedings, within 30 days after receiving a petition and enclosed documents, the defendant shall send to the arbitration center a self-defense statement. At the request of one party or all parties, this time limit may be extended by the arbitration center based on the particular circumstances of the case.

3. For a dispute to be settled by ad hoc arbitration, unless otherwise agreed by the parties, within 30 days after receiving the plaintiff's petition and enclosed documents, the defendant shall send to the plaintiff and arbitrator the self-defense statement and name and address of the person whom the defendant selects as arbitrator.

4. When the defendant assumes that the dispute falls beyond the jurisdiction of arbitration, or there is no arbitration agreement, or the arbitration agreement is invalid or unrealizable, the defendant shall clearly indicate such in the self-defense statement.

5. If the defendant fails to submit the self-defense statement under Clauses 2 and 3 of this Article, the dispute settlement will still proceed.

**Article 36. Defendants' counter-claims**

1. The defendant may counter-claim the plaintiff on matters related to their dispute.

2. The defendant's counter-claim shall be sent to the arbitration center. When a dispute is settled by ad hoc arbitration, such counter-claim shall be sent to the arbitration council and plaintiff. The counter-claim shall be submitted simultaneously with a self-defense statement.

3. Within 30 days after receiving a counter claim, the plaintiff shall send the self-defense statement to the arbitration center. When a dispute is settled by ad hoc arbitration, the plaintiff shall send the self-defense statement to the arbitration council and defendant.

4. The arbitration council that settles the plaintiff's petition shall settle a counter-claim according to the order and procedures for settling plaintiffs' petitions under this Law.

**Article 37. Withdrawal of petitions or counter-claims; modification and supplemen­tation of petitions, counter-claims or self-defense statements**

1. Before the arbitration council makes an arbitral award, the parties may withdraw their petition or counter-claim.

2. In the course of arbitral proceedings, the parties may modify and supplement their petition, counter-claim or self-defense statement. The arbitration council has the right to reject such modification and supplementation if seeing that it may be abused to obstruct or delay the making of an arbitral award or falls beyond the scope of the arbitration agreement applicable to the dispute.

**Article 39. Composition of an arbitration council**

1. An arbitration council may be composed of one or more arbitrators as agreed by the parties.

2. When the parties fail to reach agreement on the number of arbitrators, an arbitration council shall be composed of three arbitrators.

**Article 40. Formation of an arbitration council at an arbitration center**

Unless otherwise agreed by the parties or provided by the arbitration center's rules of proceedings, the formation of an arbitration council is specified as follows:

1. Within 30 days after receiving a petition and request for selecting an arbitrator sent by the arbitration center, the defendant shall select an arbitrator and notify such to the arbitration center or request the arbitration center's chairman to designate an arbitrator; otherwise, within 7 days after the expiration of the time limit specified in this Clause, the arbitration center's chairman shall designate an arbitrator for the defendant;

2. For a dispute involving many defendants, within 30 days after receiving a petition sent by the arbitration center, the defendants shall agree to select an arbitrator or to request designation of an arbitrator. If the defendants cannot select an arbitrator, within 7 days after the expiration of the time limit specified in this Clause, the arbitration center's chairman shall designate an arbitrator for the defendants;

3. Within 15 days after being selected by the parties or designated by the arbitration center's chairman, the arbitrators shall elect another arbitrator as the chairman of the arbitration council. Past this time limit, if this election cannot take place, within 7 days the arbitration center's chairman shall designate the chairman of the arbitration council:

4. When the parties agree that their dispute shall be settled by a sole arbitrator but fail to select such arbitrator within 30 days after the defendant receives a petition, the arbitration center's chairman shall, at the request of one party or all parties and within 15 days after receiving such request, designate a sole arbitrator.

**Article 41. Formation of ad hoc arbitration councils**

Unless otherwise agreed by the parties, the formation of an ad hoc arbitration council is specified as follows:

1. Within 30 days after receiving the plaintiff's petition, the defendant shall select an arbitrator and notify the selection to the plaintiff. Past this lime limit, if the defendant fails to notify the plaintiff of the name of the selected arbitrator and the parties do not otherwise agree on designation of an arbitrator, the plaintiff may request a competent court to designate an arbitrator for the defendant;

2. For a dispute involving many defendants, these defendants shall agree to select an arbitrator within 30 days after receiving the plaintiff's petition and enclosed documents. Past this time limit, if the defendants cannot select an arbitrator and the parties do not otherwise agree on designation of an arbitrator, one party or all parties may request a competent court to designate an arbitrator for the defendants;

3. Within 15 days after being selected by the parties or designated by the court, the arbitrators shall elect another arbitrator as the chairman of the arbitration council. When the arbitration council's chairman cannot be elected and the parties do not otherwise agree, they may request a competent court to designate the chairman of the arbitration council;

4. When the parties agree that their dispute shall be settled by a sole arbitrator but fail to select such arbitrator within 30 days after the defendant receives a petition, if the parties do not agree to request an arbitration center to designate an arbitrator, the competent court shall, at the request of one party or all parties, designate a sole arbitrator.

5. Within 7 days after receiving the parties' request under Clause 1, 2, 3 or 4 of this Article, the president of the competent court shall assign a judge to designate an arbitrator and notify such to the parties.

**Article 191. Procedures for receiving and handling a lawsuit petition**

The court shall, through its petition receipt section, receive a lawsuit petition filed by a suer directly or by postal service and shall record it in the petition receipt register; for a petition received online, the court shall print it out and record it in the petition receipt register.

Upon receiving a lawsuit petition directly from a suer, the court shall immediately issue a written certification of the receipt to the suer. When receiving a lawsuit petition sent by postal service, within 2 working days after receiving it, the court shall send a notice of the receipt to the suer. When receiving a lawsuit petition online, the court shall immediately notify the receipt to the suer via its e-portal (if any).

Within 3 working days after receiving a lawsuit petition, the chief justice of the court shall assign a judge to consider it.

Within 5 working days after being ssigned, the judge shall consider the lawsuit petition and ssue o e of the following decisions:

a/ To request modific ion and supplementation of the petition;

b/ To accept the case according to general procedures or according to summary procedures if it is eligible for settlement according to summary procedures as prescribed in Clause 1, Article 317 of this Code;

c/ To forward the petition to a competent court and notify the suer thereof if the case falls under the jurisdiction of another court;

d/ To return the petition to the suer if such case or matter falls beyond the court’s jurisdiction.

The result of handling a petition by a judge prescribed in Clause 3 of this Article shall be recorded in the petition receipt register and notified to the suer via the e-portal of the court (if any).

**Article 192. Return of a lawsuit petition, consequences of return of a lawsuit petition**

1. A judge shall return a lawsuit petition in the following cases:

a/ The suer neither has the right to sue as prescribed in Articles 186 and 187 of this Code nor has full civil litigation act capacity;

b/ Lack of the lawsuit conditions prescribed by law.

Lack of the lawsuit conditions means the case in which the suer fails to meet one of the conditions prescribed by law when initiating a lawsuit to the court;

c/ The matter has been settled under a legally effective judgment or decision of a court or under an effective decision of a competent state agency, except cases in which the court has rejected the written request for divorce, change in child custody, change of alimony or compensation level, or change of the property or heritance manager or guardian, or the case of claiming back a property, a leased or lent property or a house or land use rights leased, lent or given for free stay in which the court has rejected the claim and the suer is allowed by law to re-initiate a lawsuit;

d/ The time limit prescribed in Clause 2, Article 195 of this Code has expired but the suer fails to hand to the court a receipt of the court fee advance, except cases in which the suer is exempted from paying or is not liable to pay a court fee advance or encounters an objective obstacle or a force majeure event;

dd/ The case falls beyond the court’s jurisdiction;

e/ The suer fails to modify or supplement his/her petition at the request of the judge as prescribed n Clause 2, Article 193 of this Code.

In case the suer’s petiion indicates a complete and correct address of the residence of the sued party or a person with related interests or obligations but such person does not stably reside in such place or regularly changes his/her residence or its head office without notifying the new address to competent agencies or persons in accordance with the law on residence, which aims to conceal the address or shirk the performance of obligations to the suer, the judge shall not return the petition and shall ascertain that the sued party or a person with related interests or obligations deliberately conceals his/her/its address, and shall accept and settle the case according to general procedures.

In case the suer’s petition does not indicate a complete or specific or correct name and address of the sued party or person with related interests or obligations and the suer fails to correct or supplement petition details at the request of the judge, the judge shall return the petition.

g/ The suer withdraws his/her petition.

When returning a lawsuit petition and accompanying documents and evidence to the suer, the judge shall issue a document clearly stating the reason for the return and concurrently send it to the same-level procuracy. The lawsuit petition and accompanying documents and evidence returned to the suer shall be copied and such copies shall be preserved at the court for use as a basis for settlement of complaints and proposals upon request.

A party may re-file a lawsuit petition in the following cases: a/ The suer has acquired full civil litigation act capacity;

b/ The request for divorce, change in child custody, change of alimony or compensation level, or change of a property or heritance manager or change of a guardian, or claim back of a property, a leased or lent property or a house or land use rights leased, lent or offered for another person’s free stay, was previously rejected by the court but can be re-filed in accordance with law;

c/ All lawsuit conditions are met;

d/ Other cases as prescribed by law.

The Supreme People’s Court shall guide the implementation of Clauses 1 and 3 of this Article.