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# 中华人民共和国民法典 PRC Civil Code

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《中华人民共和国民法典》已由中华人民共和国第十三届全国人民代表大会第三次会议于2020年5月28日通过，现予公布，自2021年1月1日起施行。

The Civil Code of the People's Republic of China, adopted at the Third Session of the 13th National People's Congress of the People's Republic of China on May 28, 2020, is hereby promulgated and shall come into force as of January 1, 2021.

中华人民共和国主席 习近平  
People's Republic of China President Xi Jinping  
2020年5月28日  
May 28, 2020

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中华人民共和国民法典

PRC Civil Code

(2020年5月28日第十三届全国人民代表大会第三次会议通过)

(Adopted at the Third Session of the 13th National People's Congress on May 28, 2020)

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## 第一编 总 则

### PART I. GENERAL PROVISIONS

#### 第一章 基本规定

##### Chapter 1 Basis for the Provisions

**第一条** 为了保护民事主体的合法权益，调整民事关系，维护社会和经济秩序，适应中国特色社会主义发展要求，弘扬社会主义核心价值观，根据宪法，制定本法。

**Article 1** This Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of civil subjects, adjust civil relations and maintain the social and economic order, so as to meet the needs of developing socialism with PRC characteristics and carrying forward socialist core values.

**第二条** 民法调整平等主体的自然人、法人和非法人组织之间的人身关系和财产关系。

**Article 2** The Civil Law shall adjust personal relationships and property relationships between natural persons, legal persons and unincorporated associations as subjects with equal status.

**第三条** 民事主体的人身权利、财产权利以及其他合法权益受法律保护，任何组织或者个人不得侵犯。

**Article 3** The personal rights, property rights and other legitimate rights and interests of civil subjects shall be protected by the law; no organization or individual may infringe upon such rights and interests.

**第四条** 民事主体在民事活动中的法律地位一律平等。

**Article 4** All civil subjects are equal as regards their legal status in civil activities.

**第五条** 民事主体从事民事活动，应当遵循自愿原则，按照自己的意思设立、变更、终止民事法律关系。

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**Article 5** All civil subjects engaging in civil activities shall observe the principle of voluntariness to establish, change or terminate civil legal relations in accordance with their own intentions.

**第六条** 民事主体从事民事活动，应当遵循公平原则，合理确定各方的权利和义务。

**Article 6** All civil subjects engaging in civil activities shall observe the principle of fairness to determine reasonably the rights and obligations of all parties concerned.

**第七条** 民事主体从事民事活动，应当遵循诚信原则，秉持诚实，恪守承诺。

**Article 7** All civil subjects engaging in civil activities shall observe the principle of good faith, adhere to honesty and fulfill their commitments.

**第八条** 民事主体从事民事活动，不得违反法律，不得违背公序良俗。

**Article 8** No civil subject engaging in civil activities may violate laws or go against the public order and good morals.

**第九条** 民事主体从事民事活动，应当有利于节约资源、保护生态环境。

**Article 9** All civil subjects engaging in civil activities shall help save resources and protect the ecological environment.

**第十条** 处理民事纠纷，应当依照法律；法律没有规定的，可以适用习惯，但是不得违背公序良俗。

**Article 10** Civil disputes shall be dealt with in accordance with the law; where no relevant provision is prescribed by the law, customs may apply, without violation of the public order and good morals.

**第十一条** 其他法律对民事关系有特别规定的，依照其规定。

**Article 11** Where special provisions on civil relations are prescribed by other laws, such provisions shall apply.

**第十二条** 中华人民共和国领域内的民事活动，适用中华人民共和国法律。法律另有

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规定的，依照其规定。

Article 12 Laws of the People's Republic of China shall apply to any civil activity within the territory of the People's Republic of China. Where the laws provide otherwise, such provisions shall prevail.

## 第二章 自 然 人

### Chapter 2 Natural Persons

#### 第一节 民事权利能力和民事行为能力

##### Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

**第十三条** 自然人从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。

**Article 13** A natural person shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

**第十四条** 自然人的民事权利能力一律平等。

**Article 14** All natural persons are equal as regards their capacity for civil rights.

**第十五条** 自然人的出生时间和死亡时间，以出生证明、死亡证明记载的时间为准；没有出生证明、死亡证明的，以户籍登记或者其他有效身份登记记载的时间为准。有其他证据足以推翻以上记载时间的，以该证据证明的时间为准。

**Article 15** The date of birth or death of a natural person shall be based on the date recorded on his or her birth certificate or death certificate. Where the birth certificate or death certificate is not available, the date recorded on the household registration or any other valid identity registration shall apply. If there is other evidence sufficient to overturn the aforesaid date, the date proved by such evidence shall prevail.

**第十六条** 涉及遗产继承、接受赠与等胎儿利益保护的，胎儿视为具有民事权利能力。但是，胎儿娩出时为死体的，其民事权利能力自始不存在。

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**Article 16** Where a fetus is involved in the protection of the interests of the fetus, such as inheritance and acceptance of gifts, the fetus shall be deemed as having the capacity for civil rights. However, if the fetus is dead at birth, its capacity for civil rights does not exist from the beginning.

**第十七条** 十八周岁以上的自然人为成年人。不满十八周岁的自然人为未成年人。

**Article 17** A natural person aged 18 or over is an adult. A natural person under the age of 18 is a minor.

**第十八条** 成年人为完全民事行为能力人，可以独立实施民事法律行为。

**Article 18** An adult has the full capacity for civil conduct, and may perform civil juristic acts independently.

十六周岁以上的未成年人，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

A minor who has reached the age of 16 and whose main source of income is his or her own labor shall be deemed as a person with full capacity for civil conduct.

**第十九条** 八周岁以上的未成年人为限制民事行为能力人，实施民事法律行为由其法定代理人代理或者经其法定代理人同意、追认；但是，可以独立实施纯获利益的民事法律行为或者与其年龄、智力相适应的民事法律行为。

**Article 19** A minor who has reached the age of eight is a person with limited capacity for civil conduct and shall be represented in the performance of civil juristic acts by his or her agent ad litem or obtain the consent or acknowledgment of his or her agent ad litem. However, such a minor may independently perform civil juristic acts which are purely to benefit the minor or the performance of which is compatible with his or her age and intelligence.

**第二十条** 不满八周岁的未成年人为无民事行为能力人，由其法定代理人代理实施民事法律行为。

**Article 20** A minor under the age of eight is a person having no capacity for civil conduct and shall be represented in the performance of civil juristic acts by his or her agent ad litem.

**第二十一条** 不能辨认自己行为的成年人为无民事行为能力人，由其法定代理人代理实施

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民事法律行为。

**Article 21** An adult who is unable to account for his or her own conduct is a person having no capacity for civil conduct and shall be represented in the performance of civil juristic acts by his or her agent ad litem.

八周岁以上的未成年人不能辨认自己行为的，适用前款规定。

The provisions of the preceding paragraph shall apply to a minor who has reached the age of eight but is unable to account for his or her own conduct.

**第二十二条** 不能完全辨认自己行为的成年人为限制民事行为能力人，实施民事法律行为由其法定代理人代理或者经其法定代理人同意、追认；但是，可以独立实施纯获利益的民事法律行为或者与其智力、精神健康状况相适应的民事法律行为。

**Article 22** An adult who is unable to fully account for his or her own conduct is a person having limited capacity for civil conduct and shall be represented in the performance of civil juristic acts by his or her agent ad litem or obtain the consent or acknowledgment of his or her agent ad litem. However, such an adult may independently perform civil juristic acts which are purely to benefit the adult or the performance of which is compatible with his or her intelligence and mental health.

**第二十三条** 无民事行为能力人、限制民事行为能力人的监护人是其法定代理人。

**Article 23** The guardian of a person without or with limited capacity for civil conduct shall be his or her agent ad litem.

**第二十四条** 不能辨认或者不能完全辨认自己行为的成年人，其利害关系人或者有关组织，可以向人民法院申请认定该成年人为无民事行为能力人或者限制民事行为能力人。

**Article 24** For an adult who is unable to account for or fully account for his or her own conduct, an interested person or an organization concerned may apply to a people's court for determination that such adult is a person without or with limited capacity for civil conduct.

被人民法院认定为无民事行为能力人或者限制民事行为能力人的，经本人、利害关系人或者有关组织申请，人民法院可以根据其智力、精神健康恢复的状况，认定该成年人恢复为限制民事行为能力人或者完全民事行为能力人。

For a person who has been determined by a people's court to be without or with limited capacity for civil conduct, the people's court may, upon his or her own application or that of an

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interested person or a relevant organization, determine him or her to be recovered to be one with limited or full capacity for civil conduct, depending on the recovery of his or her intelligence or mental health.

本条规定的有关组织包括：居民委员会、村民委员会、学校、医疗机构、妇女联合会、残疾人联合会、依法设立的老年人组织、民政部门等。

The relevant organizations mentioned in this Article shall include neighborhood committees, villagers' committees, schools, medical institutions, women's federations, disabled persons' federations, organizations established according to the law for the elderly and civil affairs departments.

**第二十五条** 自然人以户籍登记或者其他有效身份登记记载的居所为住所；经常居所与住所不一致的，经常居所视为住所。

**Article 25** The domicile of a natural person shall be his or her residence recorded in the household registration or in any other valid identity registration; if the habitual residence is not the same as the domicile, the habitual residence shall be deemed as the domicile.

## 第二节 监 护

### Section 2 Guardianship

**第二十六条** 父母对未成年子女负有抚养、教育和保护的义务。

**Article 26** Parents shall be obligated to foster, educate and protect their minor children.

成年子女对父母负有赡养、扶助和保护的义务。

Adult offspring are obligated to support, assist and protect their parents.

**第二十七条** 父母是未成年子女的监护人。

**Article 27.** Parents are guardians of their minor children.

未成年人的父母已经死亡或者没有监护能力的，由下列有监护能力的人按顺序担任监护人：

If the parents of a minor are dead or have no competence to be guardians, one of the following persons who have the competence to be guardians shall act as the guardian in the listed

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sequence:

(一) 祖父母、外祖父母;

1. Paternal or maternal grandparents; or

(二) 兄、姐;

(II) elder brothers or sisters; or

(三) 其他愿意担任监护人的个人或者组织, 但是须经未成年人住所地的居民委员会、村民委员会或者民政部门同意。

(III) other individuals or organizations which are willing to act as guardian, provided that it is approved by the neighborhood or village committee in the place of the minor's domicile or the civil affairs department.

**第二十八条** 无民事行为能力或者限制民事行为能力的成年人, 由下列有监护能力的人按顺序担任监护人:

**Article 28** One of the following persons having guardianship competence shall act in the listed sequence as the guardian for an adult without or with limited capacity for civil conduct:

(一) 配偶;

1. Spouse;

(二) 父母、子女;

(II) Parents or children;

(三) 其他近亲属;

(III) any other near relative;

(四) 其他愿意担任监护人的个人或者组织, 但是须经被监护人住所地的居民委员会、村民委员会或者民政部门同意。

(IV) other individuals or organizations which are willing to act as guardian, provided that it is approved by the neighborhood or village committee in the place of the ward's domicile or the civil affairs department.

**第二十九条** 被监护人的父母担任监护人的, 可以通过遗嘱指定监护人。

**Article 29** The parents of a ward may appoint a guardian in their wills if they are his guardians.

**第三十条** 依法具有监护资格的人之间可以协议确定监护人。协议确定监护人应当尊重被

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监护人的真实意愿。

**Article 30** Persons legally qualified for guardianship may enter into an agreement to determine a guardian. Where a guardian is to be determined by agreement, the true will of the ward shall be respected.

**第三十一条** 对监护人的确定有争议的，由被监护人住所地的居民委员会、村民委员会或者民政部门指定监护人，有关当事人对指定不服的，可以向人民法院申请指定监护人；有关当事人也可以直接向人民法院申请指定监护人。

**Article 31** In the case of a dispute over the determination of a guardian, the neighborhood or village committee in the place of the ward's domicile or the civil affairs department shall appoint a guardian; if the parties concerned do not agree with the appointment, they may apply to the people's court for appointing a guardian; the parties concerned may directly apply to the people's court for appointing a guardian.

居民委员会、村民委员会、民政部门或者人民法院应当尊重被监护人的真实意愿，按照最有利于被监护人的原则在依法具有监护资格的人中指定监护人。

The neighborhood or village committee, the civil affairs department or the people's court shall follow the principles of respecting the true will of the ward and benefiting the ward to the largest extent in appointing a guardian from persons legally qualified to be a guardian.

依据本条第一款规定指定监护人前，被监护人的人身权利、财产权利以及其他合法权益处于无人保护状态的，由被监护人住所地的居民委员会、村民委员会、法律规定的有关组织或者民政部门担任临时监护人。

Before a guardian is appointed according to Paragraph 1 of this Article, if the personal rights, property rights and other lawful rights and interests of the ward are not subject to any protection, the neighborhood or village committee in the place of the ward's domicile, the relevant organization specified by the law or the civil affairs department shall act as the guardian temporarily.

监护人被指定后，不得擅自变更；擅自变更的，不免除被指定的监护人的责任。

The guardian, once appointed, shall not be changed without authorization; unauthorized change does not exempt the designated guardian from liability.

**第三十二条** 没有依法具有监护资格的人的，监护人由民政部门担任，也可以由具备履行

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监护职责条件的被监护人住所地的居民委员会、村民委员会担任。

**Article 32** Where there is no person legally qualified to be a guardian, either the civil affairs department or the neighborhood or village committee in the place of the ward's domicile which is qualified to fulfill the guardianship responsibility may act as the guardian.

**第三十三条** 具有完全民事行为能力的成年人，可以与其近亲属、其他愿意担任监护人的个人或者组织事先协商，以书面形式确定自己的监护人，在自己丧失或者部分丧失民事行为能力时，由该监护人履行监护职责。

**Article 33** For an adult with full capacity for civil conduct, he or she may negotiate with his or her close relatives or other individuals or organizations which are willing to act as the guardian in advance and determine his or her guardian in writing; if he or she loses or partially loses the capacity for civil conduct, such guardian shall fulfill the guardianship responsibility.

**第三十四条** 监护人的职责是代理被监护人实施民事法律行为，保护被监护人的人身权利、财产权利以及其他合法权益等。

**Article 34** A guardian is in charge of representing the ward in his or her performance of civil juristic acts and protecting the ward's personal rights, property rights and other legitimate rights and interests.

监护人依法履行监护职责产生的权利，受法律保护。

The guardian's rights arising from the fulfillment of the guardianship responsibility according to the law shall be protected by the law.

监护人不履行监护职责或者侵害被监护人合法权益的，应当承担法律责任。

A guardian who fails to fulfill the guardianship responsibility or infringes upon the lawful rights and interests of the ward shall bear legal liability.

因发生突发事件等紧急情况，监护人暂时无法履行监护职责，被监护人的生活处于无人照料状态的，被监护人住所地的居民委员会、村民委员会或者民政部门应当为被监护人安排必要的临时生活照料措施。

In case of emergency such as occurrence of an emergency, etc., where the guardian is temporarily unable to perform the guardianship responsibility and the life of the ward is not cared for, the neighborhood or village committee in the place of the ward's domicile or the civil affairs department shall arrange necessary temporary living care measures for the ward.

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**第三十五条** 监护人应当按照最有利于被监护人的原则履行监护职责。监护人除为维护被监护人利益外，不得处分被监护人的财产。

Article 35 A guardian shall, according to the principle of benefiting the ward to the largest extent, fulfill the guardianship responsibility. A guardian shall not dispose of the property of his ward unless it is to safeguard the ward's interests.

未成年人的监护人履行监护职责，在作出与被监护人利益有关的决定时，应当根据被监护人的年龄和智力状况，尊重被监护人的真实意愿。

The guardian of a minor, while fulfilling the guardianship responsibility, shall respect the ward's true will when making the decision related to the ward's interests according to the ward's age and intelligence status.

成年人的监护人履行监护职责，应当最大程度地尊重被监护人的真实意愿，保障并协助被监护人实施与其智力、精神健康状况相适应的民事法律行为。对被监护人有能力独立处理的事务，监护人不得干涉。

The guardian of an adult, while fulfilling the guardianship responsibility, shall respect the ward's true will to the largest extent, and safeguard and assist the ward in performing the civil juristic acts that are compatible with the ward's intelligence and mental health, and fulfill the guardianship responsibility in this regard. The guardian shall not interfere with the affairs which the ward is able to handle independently.

**第三十六条** 监护人有下列情形之一的，人民法院根据有关个人或者组织的申请，撤销其监护人资格，安排必要的临时监护措施，并按照最有利于被监护人的原则依法指定监护人：

**Article 36** In the event that a guardian is under any of the following circumstances, the people's court may, based on the application of the individual or organization concerned, disqualify the guardian, arrange necessary measures for temporary guardianship, and appoint a guardian according to the law based on the principle of benefiting the ward to the largest extent:

(一) 实施严重损害被监护人身心健康的行为；

1. Performing acts that seriously damage the physical and mental health of the ward;

(二) 怠于履行监护职责，或者无法履行监护职责且拒绝将监护职责部分或者全部委托给他人，导致被监护人处于危困状态；

(II) Delaying in fulfilling the guardianship responsibility, or being unable to fulfill the

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guardianship responsibility and refusing to delegate part or all of the guardianship responsibility to others, which causes the ward to be in distress; and

(三) 实施严重侵害被监护人合法权益的其他行为。

(III) Performing other acts that seriously damage the lawful rights and interests of the ward.

本条规定的有关个人、组织包括：其他依法具有监护资格的人，居民委员会、村民委员会、学校、医疗机构、妇女联合会、残疾人联合会、未成年人保护组织、依法设立的老年人组织、民政部门等。

The individuals or organizations concerned as mentioned in this Article shall include other persons legally qualified to act as guardians, the neighborhood committees, village committees, schools, medical institutions, women's federations, disabled persons' federations, organizations protecting minors, organizations established according to the law for the elderly and civil affairs departments.

前款规定的个人和民政部门以外的组织未及时向人民法院申请撤销监护人资格的，民政部门应当向人民法院申请。

Where individuals and organizations other than civil affairs departments prescribed in the preceding paragraph fail to apply to the people's courts for disqualifying the guardians in time, the civil affairs departments shall file such applications with the people's courts instead.

### 第三十七条

依法负担被监护人抚养费、赡养费、扶养费的父母、子女、配偶等，被人民法院撤销监护人资格后，应当继续履行负担的义务。

**Article 37** For parents, children and spouses who bear the upbringing payment, alimony payment or maintenance payment for the ward, their obligation in regard to such payment or payment shall continue after they have been disqualified by a people's court as guardian.

### 第三十八条

被监护人的父母或者子女被人民法院撤销监护人资格后，除对被监护人实施故意犯罪的外，确有悔改表现的，经其申请，人民法院可以在尊重被监护人真实意愿的前提下，视情况恢复其监护人资格，人民法院指定的监护人与被监护人的监护关系同时终止。

**Article 38** Where the parents or children of a ward show true repentance after being disqualified from guardianship by the people's court, the people's court may, on the premise of

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respecting the ward's true will, enable them to regain guardianship upon their application as the case may be, except for those who commit an intentional crime against the ward; the guardian relationship between the guardian appointed by the people's court and the ward shall be terminated simultaneously.

**第三十九条** 有下列情形之一的，监护关系终止：

**Article 39** Under any of the following circumstances, the guardian relationship shall be terminated:

(一) 被监护人取得或者恢复完全民事行为能力；

1. Where the ward gains or regains the full capacity for civil conduct;

(二) 监护人丧失监护能力；

(II) The guardian loses the competence to be a guardian;

(三) 被监护人或者监护人死亡；

(III) either the ward or the guardian dies; or

(四) 人民法院认定监护关系终止的其他情形。

(IV) Other circumstances where the people's court determines that the guardian relationship shall be terminated.

监护关系终止后，被监护人仍然需要监护的，应当依法另行确定监护人。

Where the guardian relationship is terminated and the ward still needs guardianship, another guardian shall be determined according to the law.

### 第三节 宣告失踪和宣告死亡

#### Section 3 Declarations of Missing Persons and Death

#### 第四十条

自然人下落不明满二年的，利害关系人可以向人民法院申请宣告该自然人为失踪人。

**Article 40** If a natural person's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration that the natural person is a missing person.

第四十一条 自然人下落不明的时间自其失去音讯之日起计算。战争期间下落不明的，

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下落不明的时间自战争结束之日或者有关机关确定的下落不明之日起计算。

**Article 41** The time period during which a natural person's whereabouts become unknown shall be calculated from the day when contact with the natural person is lost. If a person's whereabouts become unknown during a war, the time period during which the whereabouts are unknown shall be calculated from the day when the war ends or from the day when the person's whereabouts are determined by relevant authorities.

#### 第四十二条

失踪人的财产由其配偶、成年子女、父母或者其他愿意担任财产代管人的人代管。

**Article 42** A missing person's property shall be placed in the custody of his or her spouse, adult children, parents or other persons who are willing to serve as custodian of the property.

代管有争议，没有前款规定的人，或者前款规定的人无代管能力的，由人民法院指定的人代管。

In case of a dispute over custody, if the persons mentioned in the preceding paragraph are unavailable or are not competent to take such custody, the property shall be placed in the custody of a person appointed by the people's court.

#### 第四十三条 财产代管人应当妥善保管失踪人的财产，维护其财产权益。

**Article 43** The custodian of property shall properly manage the missing person's property and safeguard the property rights and interests of the missing person.

失踪人所欠税款、债务和应付的其他费用，由财产代管人从失踪人的财产中支付。

Any tax, debt and other due charges owed by the missing person shall be paid by the custodian out of the missing person's property.

财产代管人因故意或者重大过失造成失踪人财产损失的，应当承担赔偿责任。

Where the custodian of property causes damage to the missing person's property due to intentional misconduct or gross negligence, the custodian shall be liable for compensation.

#### 第四十四条

财产代管人不履行代管职责、侵害失踪人财产权益或者丧失代管能力的，失踪人的利害关系人可以向人民法院申请变更财产代管人。

**Article 44** Where the custodian of property fails to fulfill the duty of custody, infringes the

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missing person's property rights and interests, or loses the competence to take such custody, an interested person of the missing person may file an application with the people's court to change the custodian.

财产代管人有正当理由的，可以向人民法院申请变更财产代管人。

If the property custodian has a justified reason, he may apply to the people's court for the change of property custodian.

人民法院变更财产代管人的，变更后的财产代管人有权请求原财产代管人及时移交有关财产并报告财产代管情况。

Where a people's court changes the custodian of property, after the change the custodian is entitled to request the original custodian to hand over the relevant property and report the facts on property custody in a timely manner.

**第四十五条** 失踪人重新出现，经本人或者利害关系人申请，人民法院应当撤销失踪宣告。

**Article 45** In the event that a missing person reappears, the people's court shall, upon the application of the person himself or an interested person, revoke the missing-person declaration.

失踪人重新出现，有权请求财产代管人及时移交有关财产并报告财产代管情况。

In the event that a missing person reappears, he or she is entitled to request the custodian to return the relevant property and report the facts on property custody in a timely manner.

#### **第四十六条**

自然人有下列情形之一的，利害关系人可以向人民法院申请宣告该自然人死亡：

**Article 46** Under any of the following circumstances, an interested person may apply to the people's court for a declaration that a natural person is dead:

(一) 下落不明满四年；

1. the natural person's whereabouts have been unknown for four years; or

(二) 因意外事件，下落不明满二年。

(II) the natural person's whereabouts have been unknown for two years due to an accident.

因意外事件下落不明，经有关机关证明该自然人不可能生存的，申请宣告死亡不受二年时间的限制。

If a person's whereabouts become unknown due to an accident and it is impossible for such person to survive as proved by relevant authorities, the application for declaration of death is not

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subject to the aforesaid provisions of two years.

#### 第四十七条

对同一自然人，有的利害关系人申请宣告死亡，有的利害关系人申请宣告失踪，符合本法规定的宣告死亡条件的，人民法院应当宣告死亡。

**Article 47** For the same natural person, if some interested persons apply for the declaration of death while others apply for the declaration of such natural person as missing, the people's court shall declare the death of the person provided that the conditions for declaring the death specified herein are met.

#### 第四十八条

被宣告死亡的人，人民法院宣告死亡的判决作出之日视为其死亡的日期；因意外事件下落不明宣告死亡的，意外事件发生之日视为其死亡的日期。

**Article 48** For a person who is declared dead, the date when the people's court renders the judgment to declare the person's death shall be deemed as the date of death of the person; if the person is declared dead due to its unknown whereabouts caused by an accident, the date when the accident occurs shall be deemed as the date of death of the person.

#### 第四十九条

自然人被宣告死亡但是并未死亡的，不影响该自然人在被宣告死亡期间实施的民事法律行为的效力。

**Article 49** If a natural person is declared dead but is not dead, the validity of the civil juristic acts performed by him or her during the period of declared death shall not be affected.

#### 第五十条

被宣告死亡的人重新出现，经本人或者利害关系人申请，人民法院应当撤销死亡宣告。

**Article 50** In the event that a person who has been declared dead reappears, the people's court shall revoke the death declaration upon application of the person or that of an interested person.

第五十一条 被宣告死亡的人的婚姻关系，自死亡宣告之日起消除。死亡宣告被撤销的，婚姻关系自撤销死亡宣告之日起自行恢复。但是，其配偶再婚或者向婚姻登记机关

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书面声明不愿意恢复的除外。

**Article 51** The marital relationship of a person who is declared dead shall cease to exist from the date of death declaration. If the death declaration is revoked, the marital relationship shall automatically resume from the date of revoking the death declaration. However, there shall be an exception where the spouse has remarried or has declared in writing to the marriage registration office that he/she does not wish to reinstate the marriage.

### 第五十二条

被宣告死亡的人在宣告死亡期间，其子女被他人依法收养的，在死亡宣告被撤销后，不得以未经本人同意为由主张收养行为无效。

**Article 52** Where a person's child is adopted by another person according to the law during the period when he or she is being declared dead, he or she shall not claim for invalidation of the adoption behavior on the ground that he or she does not agree with the adoption after the death declaration is revoked.

### 第五十三条

被撤销死亡宣告的人有权请求依照本法第六编取得其财产的民事主体返还财产；无法返还的，应当给予适当补偿。

**Article 53** A person shall have the right to request the return of his property by a civil subject who has obtained his property in accordance with Part VI of this Law, if the death declaration is revoked; if such return is impossible, appropriate compensation shall be given.

利害关系人隐瞒真实情况，致使他人被宣告死亡而取得其财产的，除应当返还财产外，还应当对由此造成的损失承担赔偿责任。

If an interested person conceals facts and causes another person to be declared dead, thus obtaining such person's property, the interested person shall, apart from returning the property, be liable for compensation for the losses caused thereby.

## 第四节 个体工商户和农村承包经营户

### Section 4 Individual Businesses and Leaseholding Farm Households

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第五十四条 自然人从事工商业经营，经依法登记，为个体工商户。个体工商户可以起字号。

Article 54 Individual businesses refer to natural persons registered according to the law to engage in industrial or commercial operation. Individual businessmen may adopt a shop name.

### 第五十五条

农村集体经济组织的成员，依法取得农村土地承包经营权，从事家庭承包经营的，为农村承包经营户。

Article 55 Leaseholding farm households refer to members of a rural collective economic organization who have obtained the lease holding right of the rural contracted land according to the law and engage in household contractual management.

### 第五十六条

个体工商户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担；无法区分的，以家庭财产承担。

Article 56 The debts of an individual business shall be borne by the individual's property if the business is operated by an individual or by the family's property if the business is operated by a family. If it is impossible to distinguish whether the individual business is operated by an individual or by a family, the debts of such individual business shall be borne by the family's property.

农村承包经营户的债务，以从事农村土地承包经营的农户财产承担；事实上由农户部分成员经营的，以该部分成员的财产承担。

The debts of a leaseholding farm household shall be borne by the property of the household that engages in the contractual management of rural land or by the property of partial members of a household who actually engage in the contractual management of rural land.

## 第三章 法 人

### Chapter 3 Legal Persons

#### 第一节 一般规定

#### SECTION 1 GENERAL PROVISIONS

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### 第五十七条

法人是具有民事权利能力和民事行为能力，依法独立享有民事权利和承担民事义务的组织。

**Article 57** A legal person is an organization that has capacity for civil rights and capacity for civil conduct, and independently enjoys civil rights and assumes civil obligations in accordance with the law.

### 第五十八条 法人应当依法成立。

**Article 58** A legal person shall be established in accordance with the law.

法人应当有自己的名称、组织机构、住所、财产或者经费。法人成立的具体条件和程序，依照法律、行政法规的规定。

A legal person shall have its own name, organizational structure, premises and property or funds. Specific conditions and procedures for establishing a legal person shall be subject to provisions stipulated by the laws and administrative regulations.

设立法人，法律、行政法规规定须经有关机关批准的，依照其规定。

Where the establishment of a legal person shall be approved by the relevant authorities according to the provisions of laws and administrative regulations, such provisions shall apply.

### 第五十九条

法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。

**Article 59** A legal person's capacity for civil rights and capacity for civil conduct arise when the legal person is established and cease to exist when the legal person terminates.

### 第六十条 法人以其全部财产独立承担民事责任。

**Article 60** A legal person shall independently assume civil liability with all of its property.

### 第六十一条

依照法律或者法人章程的规定，代表法人从事民事活动的负责人，为法人的法定代表人。

**Article 61** In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in performing civil activities shall be its legal representative.

法定代表人以法人名义从事的民事活动，其法律后果由法人承受。

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Where the legal representative of a legal person engages in civil activities in the name of the legal person, the legal consequences incurred shall be undertaken by the legal person.

法人章程或者法人权力机构对法定代表人代表权的限制，不得对抗善意相对人。

The restriction on the legal representative's right of representation imposed by a legal person's articles of association or its authoritative body shall not challenge any bona fide other party.

**第六十二条** 法定代表人因执行职务造成他人损害的，由法人承担民事责任。

**Article 62** Where the legal representative of a legal person causes any damage to others while performing duties, the legal person shall assume the corresponding civil liability.

法人承担民事责任后，依照法律或者法人章程的规定，可以向有过错的法定代表人追偿。

The legal person, after assuming civil liability, has the right to claim the repayment from the legal representative at fault in accordance with the law or its articles of association.

**第六十三条** 法人以其主要办事机构所在地为住所。依法需要办理法人登记的，应当将主要办事机构所在地登记为住所。

**Article 63** A legal person's domicile shall be the place where its principal place of business is located. Where a legal person needs to be registered according to the law, it shall register the place where its principal place of business is located as its domicile.

**第六十四条** 法人存续期间登记事项发生变化的，应当依法向登记机关申请变更登记。

**Article 64** Where any registered particular of a legal person changes during its existence, an application for change of registration shall be filed with the registration authority in accordance with the law.

**第六十五条** 法人的实际情况与登记的事项不一致的，不得对抗善意相对人。

**Article 65** The actual situations of a legal person that are inconsistent with the registered particulars shall not challenge any bona fide other party.

**第六十六条** 登记机关应当依法及时公示法人登记的有关信息。

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**Article 66** A registration authority shall publish the relevant information registered by a legal person in a timely manner according to the law.

**第六十七条** 法人合并的，其权利和义务由合并后的法人享有和承担。

**Article 67** When a legal person is merged, its rights and obligations are enjoyed and assumed by the legal person that results from the merger.

法人分立的，其权利和义务由分立后的法人享有连带债权，承担连带债务，但是债权人和债务人另有约定的除外。

Where a legal person is divided, its rights and obligations are enjoyed and assumed by the legal persons after the division jointly and severally, unless otherwise agreed by the creditor and the debtor.

**第六十八条** 有下列原因之一并依法完成清算、注销登记的，法人终止：

**Article 68** A legal person that has been liquidated or deregistered according to the law due to any of the following reasons shall be terminated:

（一）法人解散；

1. The legal person is dissolved;

（二）法人被宣告破产；

(II) The legal person is declared bankrupt; or

（三）法律规定的其他原因。

(III) other reasons stipulated by the law.

法人终止，法律、行政法规规定须经有关机关批准的，依照其规定。

Where the termination of a legal person shall be approved by the relevant authorities according to the provisions of the laws and administrative regulations, such provisions shall apply.

**第六十九条** 有下列情形之一的，法人解散：

**Article 69** A legal person shall be dissolved under any of the following circumstances:

（一）法人章程规定的存续期间届满或者法人章程规定的其他解散事由出现；

1. The existence period specified in the legal person's articles of association expires, or other causes of dissolution specified in the legal person's articles of association arise;

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- (二) 法人的权力机构决议解散;
- (II) The legal person's authority body makes a resolution for the dissolution;
- (三) 因法人合并或者分立需要解散;
- (III) The legal person is dissolved due to merger or division;
- (四) 法人依法被吊销营业执照、登记证书, 被责令关闭或者被撤销;
- (IV) The legal person's business license or registration certificate is revoked according to the law, or the legal person is ordered to close down or is canceled; or
- (五) 法律规定的其他情形。
- (V) other circumstances stipulated by the law arise.

### 第七十条

法人解散的, 除合并或者分立的情形外, 清算义务人应当及时组成清算组进行清算。

**Article 70** Where a legal person dissolves, the liquidation obligors shall, except for being merged or split up, form a liquidation group in time to liquidate the legal person.

法人的董事、理事等执行机构或者决策机构的成员为清算义务人。法律、行政法规另有规定的, 依照其规定。

Members of a legal person's executive body or decision-making body, such as directors and council members, are the liquidation obligors. Where the laws and administrative regulations stipulate otherwise, such provisions shall prevail.

清算义务人未及时履行清算义务, 造成损害的, 应当承担民事责任; 主管机关或者利害关系人可以申请人民法院指定有关人员组成清算组进行清算。

Where the liquidation obligors cause any damage due to their failure to fulfill their liquidation obligations in a timely manner, they shall bear civil liability; the competent authority or an interested person may petition the people's court to appoint persons concerned to establish a liquidation group to liquidate the legal person.

### 第七十一条

法人的清算程序和清算组职权, 依照有关法律的规定; 没有规定的, 参照适用公司法律的有关规定。

**Article 71** The liquidation procedures and the functions and powers of the liquidation group of a legal person shall be subject to provisions of the relevant laws; if no provisions are available, the

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relevant provisions of the applicable company laws shall apply mutatis mutandis.

**第七十二条** 清算期间法人存续，但是不得从事与清算无关的活动。

**Article 72** In the course of liquidation, a legal person shall continue in existence, but shall not conduct any activity irrelevant to the liquidation.

法人清算后的剩余财产，按照法人章程的规定或者法人权力机构的决议处理。法律另有规定的，依照其规定。

The residual property after the legal person is liquidated shall be dealt with in accordance with provisions of the legal person's articles of association or the resolution made by the legal person's authority body. Where the laws provide otherwise, such provisions shall prevail.

清算结束并完成法人注销登记时，法人终止；依法不需要办理法人登记的，清算结束时，法人终止。

The legal person shall terminate when the liquidation is accomplished and such legal person is deregistered; if a legal person does not need to be registered according to the law, it shall terminate once the liquidation is accomplished.

**第七十三条** 法人被宣告破产的，依法进行破产清算并完成法人注销登记时，法人终止。

**Article 73** A legal person that is declared bankrupt shall terminate when its bankruptcy liquidation is accomplished and it is deregistered according to the law.

#### **第七十四条**

法人可以依法设立分支机构。法律、行政法规规定分支机构应当登记的，依照其规定。

**Article 74** A legal person may establish its branches according to the law. Where the branches shall be registered in accordance with the provisions of laws and administrative regulations, such provisions shall apply.

分支机构以自己的名义从事民事活动，产生的民事责任由法人承担；也可以先以该分支机构管理的财产承担，不足以承担的，由法人承担。

Where a branch engages in civil activities in its own name, the civil liability caused thereby shall be assumed by the legal person; it is also possible that the property managed by the branch bears the civil liability, and the legal person bears the remaining of it.

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## 第七十五条

设立人为设立法人从事的民事活动，其法律后果由法人承受；法人未成立的，其法律后果由设立人承受，设立人为二人以上的，享有连带债权，承担连带债务。

**Article 75** For civil activities conducted by the founder for the purpose of establishing a legal person, the legal consequences incurred shall be undertaken by the legal person. If the founder fails to establish the legal person, the legal consequences incurred shall be undertaken by the founder; if two or more persons serve as the founder, they shall enjoy creditors' rights and assume debts jointly and severally.

设立人为设立法人以自己的名义从事民事活动产生的民事责任，第三人有权选择请求法人或者设立人承担。

Where a founder engages in the business of civil movable property under its own name for the purpose of establishing a legal person, a third party has the right to request the legal person or the founder to bear the civil liability arising therefrom.

## 第二节 营利法人

### Section 2 PROFIT CORPORATION

**第七十六条** 以取得利润并分配给股东等出资人为目的成立的法人，为营利法人。

**Article 76** A legal person established for the purpose of seeking profits and distributing the same to its shareholders and other investors is a profit-making legal person.

营利法人包括有限责任公司、股份有限公司和其他企业法人等。

Profit-making legal persons shall include limited liability companies, joint stock limited companies and other enterprise legal persons.

**第七十七条** 营利法人经依法登记成立。

**Article 77** A profit-making legal person is incorporated upon registration according to the law.

**第七十八条** 依法设立的营利法人，由登记机关发给营利法人营业执照。营业执照签发日期为营利法人的成立日期。

**Article 78** For a profit-making legal person established according to the law, the registration

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authority shall issue the business license for a profit-making legal person. The issue date of the business license shall be the date when the profit-making legal person is established.

**第七十九条** 设立营利法人应当依法制定法人章程。

**Article 79** To establish a profit-making legal person, the legal person's articles of association shall be developed in accordance with the law.

**第八十条** 营利法人应当设权力机构。

**Article 80** A profit-making legal person shall establish its authoritative body.

权力机构行使修改法人章程，选举或者更换执行机构、监督机构成员，以及法人章程规定的其他职权。

The authority body is responsible for exercising its functions and powers in modifying the articles of association of the legal person and electing or changing members of the executive body and supervision body, and other functions and powers set forth in the articles of association of the legal person.

**第八十一条** 营利法人应当设执行机构。

**Article 81** A profit-making legal person shall establish its execution body.

执行机构行使召集权力机构会议，决定法人的经营计划和投资方案，决定法人内部管理机构设置，以及法人章程规定的其他职权。

The executive body is responsible for exercising its functions and powers in convening the meeting of the authority body, determining the legal person's business plans and investment programs, setting up of the legal person's internal management organizations, and other functions and powers set out in the articles of association of the legal person.

执行机构为董事会或者执行董事的，董事长、执行董事或者经理按照法人章程的规定担任法定代表人；未设董事会或者执行董事的，法人章程规定的主要负责人为其执行机构和法定代表人。

If a profit-making legal person's execution body is its board of directors or executive director, the chairman of the board of directors, executive director or manager shall act as the legal representative in accordance with the articles of association of the legal person; if the legal person has not set up the board of directors or executive director, the main responsible person as

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stipulated in the articles of association of the legal person shall be its execution body and legal representative.

### 第八十二条

营利法人设监事会或者监事等监督机构的，监督机构依法行使检查法人财务，监督执行机构成员、高级管理人员执行法人职务的行为，以及法人章程规定的其他职权。

**Article 82** If a profit-making legal person has set up a supervision body such as board of supervisors or supervisor, the supervision body shall legally exercise its functions and powers in inspecting the legal person's financial affairs and supervising the performance of duties in the legal person by members of the execution body and senior officers, and other functions and powers prescribed by the legal person's articles of association.

### 第八十三条

营利法人的出资人不得滥用出资人权利损害法人或者其他出资人的利益；滥用出资人权利造成法人或者其他出资人损失的，应当依法承担民事责任。

**Article 83** No investor of a profit-making legal person may damage the interests of the legal person or other investors by abusing the investor's rights; any investor who causes any loss to the legal person or other investors by abusing the investor's rights shall bear the civil liability according to the law.

营利法人的出资人不得滥用法人独立地位和出资人有限责任损害法人债权人的利益；滥用法人独立地位和出资人有限责任，逃避债务，严重损害法人债权人的利益的，应当对法人债务承担连带责任。

No investor of a profit-making legal person may damage the interests of any creditor of the legal person by abusing the independent status as a legal person or the limited liability of the investor. Any investor of a profit-making legal person who avoids debts and seriously damages the interests of any creditor of the legal person by abusing the independent status as a legal person or the limited liability of the investor shall be jointly liable for the debts of the legal person.

### 第八十四条

营利法人的控股出资人、实际控制人、董事、监事、高级管理人员不得利用其关联关系损害

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法人的利益；利用关联关系造成法人损失的，应当承担赔偿责任。

**Article 84** The controlling investor, actual controller, directors, supervisors and senior officers of a profit-making legal person shall not damage the interests of the legal person by making use of its affiliated relations; if they cause any loss to the legal person by making use of the affiliated relations, they shall be liable for compensation.

第八十五条 营利法人的权力机构、执行机构作出决议的会议召集程序、表决方式违反法律、行政法规、法人章程，或者决议内容违反法人章程的，营利法人的出资人可以请求人民法院撤销该决议。但是，营利法人依据该决议与善意相对人形成的民事法律关系不受影响。

**Article 85** If any procedure for convening a meeting or voting method adopted by a profit-making legal person's authoritative body or executive body through a resolution is in violation of laws, administrative regulations or the articles of association of the legal person, or any content of the resolution made is in violation of the articles of association of the legal person, the investor of the profit-making legal person may request the people's court to cancel the resolution. However, the civil legal relationship formed between the profit-making legal person and the bona fide other party according to the resolution shall not be affected.

### 第八十六条

营利法人从事经营活动，应当遵守商业道德，维护交易安全，接受政府和社会的监督，承担社会责任。

**Article 86** To conduct business activities, a profit-making legal person shall comply with commercial ethics, maintain the safety of transactions, accept the supervision by the government and the public, and assume social responsibilities.

## 第三节 非营利法人

### Section 3 Non-profit Legal Persons

### 第八十七条

为公益目的或者其他非营利目的成立，不向出资人、设立人或者会员分配所取得利润的法人

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，为非营利法人。

**Article 87** A legal person that is established for public welfare or other non-profit purposes and does not distribute profits to its investors, founders or members is a non-profit legal person.

非营利法人包括事业单位、社会团体、基金会、社会服务机构等。

Non-profit legal persons include public institutions, social groups, foundations, and social service agencies.

### 第八十八条

具备法人条件，为适应经济社会发展需要，提供公益服务设立的事业单位，经依法登记成立，取得事业单位法人资格；依法不需要办理法人登记的，从成立之日起，具有事业单位法人资格。

**Article 88** A public institution which meets the requirements for a legal person and is established in order to meet the needs of economic and social development and provide public welfare services acquires the status of public institution as a legal person after it is registered according to the law for its establishment; a public institution which does not need to be registered as a legal person according to the law shall have the status of public institution as a legal person on the day when it is established.

### 第八十九条

事业单位法人设理事会的，除法律另有规定外，理事会为其决策机构。事业单位法人的法定代表人依照法律、行政法规或者法人章程的规定产生。

**Article 89** Where a public institution as a legal person has established a council, the council shall be its decision-making body, unless otherwise provided by law. The legal representative of a public institution as a legal person is selected according to laws, administrative regulations or the articles of association of the legal person.

### 第九十条

具备法人条件，基于会员共同意愿，为公益目的或者会员共同利益等非营利目的设立的社会团体，经依法登记成立，取得社会团体法人资格；依法不需要办理法人登记的，从成立之日起，具有社会团体法人资格。

**Article 90** A social organization which meets the requirements for a legal person and is

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established based on the common will of its members for public welfare or common interests of its members and other non-profit purposes acquires the status of social organization as a legal person after it is registered according to the law for its establishment; a social organization which does not need to be registered as a legal person according to the law shall have the status of social organization as a legal person on the day when it is established.

**第九十一条** 设立社会团体法人应当依法制定法人章程。

**Article 91** To establish a social organization as a legal person, the legal person's articles of association shall be developed in accordance with the law.

社会团体法人应当设会员大会或者会员代表大会等权力机构。

A social organization as a legal person shall establish its authority body such as membership assembly or membership representative congress.

社会团体法人应当设理事会等执行机构。理事长或者会长等负责人按照法人章程的规定担任法定代表人。

A social organization as a legal person shall establish its execution body such as council. The responsible person such as the general director or the president shall act as the legal representative in accordance with the articles of association of the legal person.

**第九十二条**

具备法人条件，为公益目的以捐助财产设立的基金会、社会服务机构等，经依法登记成立，取得捐助法人资格。

**Article 92** A foundation or social service organization which meets the requirements for a legal person and is established with donated property for public welfare purposes acquires the status of a legal person of donation after it is registered according to the law for its establishment.

依法设立的宗教活动场所，具备法人条件的，可以申请法人登记，取得捐助法人资格。法律、行政法规对宗教活动场所所有规定的，依照其规定。

A venue for religious activities which is established according to the law and meets the requirements for a legal person may apply for registration as a legal person and acquire the status of a legal person of donation. Where there are provisions stipulated by laws and administrative regulations on religious activity venues, such provisions shall apply.

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**第九十三条** 设立捐助法人应当依法制定法人章程。

**Article 93** To establish a legal person of donation, the legal person's articles of association shall be developed in accordance with the law.

捐助法人应当设理事会、民主管理组织等决策机构，并设执行机构。理事长等负责人按照法人章程的规定担任法定代表人。

A consortium legal person shall establish its decision-making body such as council or democratic management organization, as well as executive body. The responsible person such as the general director shall act as the legal representative in accordance with the legal person's articles of association.

捐助法人应当设监事会等监督机构。

A legal person of donation shall establish its supervision body such as board of supervisors.

#### **第九十四条**

捐助人有权向捐助法人查询捐助财产的使用、管理情况，并提出意见和建议，捐助法人应当及时、如实答复。

**Article 94** Donators are entitled to turn to the legal person of donation for inquiries about the use and management of the donated property, and give their opinions and proposals. The legal person of donation shall timely and truthfully reply to such inquiries.

捐助法人的决策机构、执行机构或者法定代表人作出决定的程序违反法律、行政法规、法人章程，或者决定内容违反法人章程的，捐助人等利害关系人或者主管机关可以请求人民法院撤销该决定。但是，捐助法人依据该决定与善意相对人形成的民事法律关系不受影响。

Where the procedures adopted by the decision-making body, execution body or legal representative of a consortium legal person to make a decision violate any laws, administrative regulations or the legal person's articles of association, or the content of such decision violates the legal person's articles of association, interested persons such as the donors or the competent authority may apply to the people's court for revocation of such decision. However, the civil legal relationship formed between the legal person of donation and the counterpart in good faith according to the decision shall not be affected.

#### **第九十五条**

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为公益目的成立的非营利法人终止时，不得向出资人、设立人或者会员分配剩余财产。剩余财产应当按照法人章程的规定或者权力机构的决议用于公益目的；无法按照法人章程的规定或者权力机构的决议处理的，由主管机关主持转给宗旨相同或者相近的法人，并向社会公告。

**Article 95** When a non-profit legal person established for public welfare purposes terminates, it shall not distribute its residual property to its investors, founders or members. The remaining properties shall be used for public welfare purposes in accordance with the provisions of the Articles of Association of the legal persons or the resolutions of the authorities; if it is impossible to dispose of such properties in accordance with the Articles of Association of the legal persons or the resolutions of the authorities, the competent authorities shall guide the transfer of such properties to legal persons with the same or similar purposes, which shall be announced to the public.

#### 第四节 特别法人

#### Section 4 Special Legal Person

##### 第九十六条

本节规定的机关法人、农村集体经济组织法人、城镇农村的合作经济组织法人、基层群众性自治组织法人，为特别法人。

**Article 96** Special legal persons refer to official organs, rural collective economic organizations, urban and rural cooperative economic organizations and grass-roots self-governing mass organizations as legal persons as prescribed in this Section.

##### 第九十七条

有独立经费的机关和承担行政职能的法定机构从成立之日起，具有机关法人资格，可以从事为履行职能所需要的民事活动。

**Article 97** An independently funded official organ or a statutory body with administrative functions acquires the status of an official organ as a legal person on the day when it is established and is allowed to conduct civil activities necessary for the performance of its functions.

##### 第九十八条

机关法人被撤销的，法人终止，其民事权利和义务由继任的机关法人享有和承担；没有继任

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的机关法人的，由作出撤销决定的机关法人享有和承担。

**Article 98** Where an official organ as a legal person is cancelled, the legal person shall terminate and its civil rights and obligations shall be enjoyed and assumed by another legal-person official organ as its successor; if there is no legal-person official organ as its successor, such rights and obligations shall be enjoyed and assumed by another official organ as a legal person which makes the decision to cancel the original official organ as a legal person.

**第九十九条** 农村集体经济组织依法取得法人资格。

**Article 99** A rural collective economic organization shall obtain the status of a legal person according to the law.

法律、行政法规对农村集体经济组织有规定的，依照其规定。

Where there are provisions stipulated by the laws and administrative regulations on rural collective economic organizations, such provisions shall apply.

**第一百条** 城镇农村的合作经济组织依法取得法人资格。

**Article 100** An urban or rural cooperative economic organization shall obtain the status of a legal person according to the law.

法律、行政法规对城镇农村的合作经济组织有规定的，依照其规定。

Where there are provisions stipulated by the laws and administrative regulations on urban or rural cooperative economic organizations, such provisions shall apply.

**第一百零一条**

居民委员会、村民委员会具有基层群众性自治组织法人资格，可以从事为履行职能所需要的民事活动。

**Article 101** A neighborhood committee or village committee has the status of a grass-roots self-governing mass organization as a legal person and is allowed to conduct civil activities necessary for the performance of its functions.

未设立村集体经济组织的，村民委员会可以依法代行村集体经济组织的职能。

Where no village collective economic organization is established, a villagers committee may perform the functions of the village collective economic organization according to the law.

#### 第四章 非法人组织

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## Chapter 4 Unincorporated Associations

### 第一百零二条

非法人组织是不具有法人资格，但是能够依法以自己的名义从事民事活动的组织。

**Article 102** An unincorporated association is an association that is not qualified as a legal person but is able to engage in civil activities in its own name according to the law.

非法人组织包括个人独资企业、合伙企业、不具有法人资格的专业服务机构等。

Unincorporated associations include sole proprietorship enterprises, partnership enterprises, professional service organizations not qualified as a legal person and so on.

**第一百零三条** 非法人组织应当依照法律的规定登记。

**Article 103** An unincorporated association shall be registered as prescribed by the law.

设立非法人组织，法律、行政法规规定须经有关机关批准的，依照其规定。

Where the establishment of an unincorporated association shall be approved by the relevant authorities according to provisions of the laws and administrative regulations, such provisions shall apply.

**第一百零四条** 非法人组织的财产不足以清偿债务的，其出资人或者设立人承担无限责任。法律另有规定的，依照其规定。

**Article 104** Where the property of an unincorporated association is not sufficient to pay off its debts, its investors or founders shall assume unlimited liability. Where the laws provide otherwise, such provisions shall prevail.

**第一百零五条** 非法人组织可以确定一人或者数人代表该组织从事民事活动。

**Article 105** An unincorporated association may choose one or more persons to engage in civil activities on its behalf.

**第一百零六条** 有下列情形之一的，非法人组织解散：

**Article 106** An unincorporated association shall be dissolved under any of the following circumstances:

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(一) 章程规定的存续期间届满或者章程规定的其他解散事由出现;

1. the existence period specified in the articles of association expires, or other causes of dissolution specified in the articles of association arise;

(二) 出资人或者设立人决定解散;

(II) Its investors or founders decide to dissolve it; or

(三) 法律规定的其他情形。

(III) other circumstances stipulated by the law arise.

**第一百零七条** 非法人组织解散的, 应当依法进行清算。

**Article 107** Where an unincorporated association is to be dissolved, it shall carry out liquidation according to the law.

**第一百零八条** 非法人组织除适用本章规定外, 参照适用本编第三章第一节的有关规定。

**Article 108** In addition to the provisions of this Chapter, the relevant provisions prescribed in Section 1 of Chapter III of this Part shall apply mutatis mutandis to unincorporated associations.

## 第五章 民事权利

### CHAPTER 5 CIVIL RIGHTS

**第一百零九条** 自然人的人身自由、人格尊严受法律保护。

**Article 109** The personal freedom and human dignity of a natural person shall be protected by the law.

#### 第一百一十条

自然人享有生命权、身体权、健康权、姓名权、肖像权、名誉权、荣誉权、隐私权、婚姻自主权等权利。

**Article 110** A natural person enjoys the rights to life, body, health, personal name, portrait, reputation, honor, privacy, and marry by choice, and other rights.

法人、非法人组织享有名称权、名誉权和荣誉权。

A legal person or an unincorporated association shall enjoy the rights to naming rights,

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reputation and honor.

**第一百一十一条**

自然人的个人信息受法律保护。任何组织或者个人需要获取他人个人信息的，应当依法取得并确保信息安全，不得非法收集、使用、加工、传输他人个人信息，不得非法买卖、提供或者公开他人个人信息。

**Article 111** The personal information of a natural person shall be protected by the law. Any organization or individual shall legally obtain the personal information of others when necessary and ensure the safety of such personal information, and shall not illegally collect, use, process or transmit the personal information of others, or illegally buy or sell, provide or make public the personal information of others.

**第一百一十二条** 自然人因婚姻家庭关系等产生的人身权利受法律保护。

**Article 112** Personal rights of a natural person that arise from marriage and family relations shall be protected by the law.

**第一百一十三条** 民事主体的财产权利受法律平等保护。

**Article 113** The property rights of civil subjects shall receive equal protection under the law.

**第一百一十四条** 民事主体依法享有物权。

**Article 114** A civil subject enjoys real rights in accordance with the law.

物权是权利人依法对特定的物享有直接支配和排他的权利，包括所有权、用益物权和担保物权。

Real right refers to the exclusive right of the right holder to directly control a specific property, including ownership, usufruct and Security Right.

**第一百一十五条** 物包括不动产和动产。法律规定权利作为物权客体的，依照其规定。

**Article 115** Property shall include real property and movable property. Where rights are deemed as the objects of real rights by provisions of the law, such provisions shall apply.

**第一百一十六条** 物权的种类和内容，由法律规定。

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**Article 116** The categories of real rights and their contents shall be prescribed by law.

**第一百一十七条**

为了公共利益的需要，依照法律规定的权限和程序征收、征用不动产或者动产的，应当给予公平、合理的补偿。

**Article 117** Where real property or movable property is expropriated or requisitioned for public interest in accordance with the authority and procedures stipulated by the law, fair and reasonable compensation shall be paid.

**第一百一十八条** 民事主体依法享有债权。

**Article 118** A civil subject enjoys creditors' rights in accordance with the law.

债权是因合同、侵权行为、无因管理、不当得利以及法律的其他规定，权利人请求特定义务人为或者不为一定行为的权利。

The creditor's right refers to the right possessed by a right holder to require a specific obligor to perform or not to perform certain obligations arising from contracts, torts, negotiorum gestio and unjust enrichment, and other provisions of the law.

**第一百一十九条** 依法成立的合同，对当事人具有法律约束力。

**Article 119** A contract entered into in accordance with the law is legally binding on the parties concerned.

**第一百二十条** 民事权益受到侵害的，被侵权人有权请求侵权人承担侵权责任。

**Article 120** In the case of any infringement of civil rights and interests, the infringed is entitled to request the infringer to assume the liability for such infringement.

**第一百二十一条**

没有法定的或者约定的义务，为避免他人利益受损失而进行管理的人，有权请求受益人偿还由此支出的必要费用。

**Article 121** A person, who manages affairs for the purpose of preventing the loss of another person's interests without a statutory or contractual obligation, has the right to request the beneficiary to reimburse the necessary expenses incurred.

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## 第一百二十二条

因他人没有法律根据，取得不当利益，受损失的人有权请求其返还不当利益。

**Article 122** A person who gains unjust enrichment without any legal basis, resulting in loss to another person, shall return the unjust enrichment to the person who suffers the loss upon the request thereof.

## 第一百二十三条 民事主体依法享有知识产权。

**Article 123** A civil subject enjoys intellectual property rights in accordance with the law.

知识产权是权利人依法就下列客体享有的专有的权利：

Intellectual property is a proprietary right enjoyed by a holder in accordance with law in respect of the following objects:

（一）作品；

1. Works;

（二）发明、实用新型、外观设计；

(II) inventions, utility models and designs;

（三）商标；

(III) Trademarks;

（四）地理标志；

(IV) geographical indications;

（五）商业秘密；

(V) Trade secrets;

（六）集成电路布图设计；

(VI) layout designs of integrated circuits;

（七）植物新品种；

(VII) new varieties of plants; and

（八）法律规定的其他客体。

(VIII) other objects specified by the law.

## 第一百二十四条 自然人依法享有继承权。

**Article 124** A natural person enjoys the right to inheritance in accordance with the law.

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自然人合法的私有财产，可以依法继承。

A natural person's legal private property may be inherited in accordance with the law.

**第一百二十五条** 民事主体依法享有股权和其他投资性权利。

**Article 125** A civil subject enjoys stock rights and other investment rights in accordance with the law.

**第一百二十六条** 民事主体享有法律规定的其他民事权利和利益。

**Article 126** A civil subject enjoys other civil rights and interests specified by the law.

**第一百二十七条** 法律对数据、网络虚拟财产的保护有规定的，依照其规定。

**Article 127** Where the law contains provisions in respect of the protection of data and network virtual property, such provisions shall apply.

**第一百二十八条**

法律对未成年人、老年人、残疾人、妇女、消费者等的民事权利保护有特别规定的，依照其规定。

**Article 128** Where certain laws have special provisions to protect the civil rights of minors, the elderly, the disabled, women and consumers, such provisions shall apply.

**第一百二十九条**

民事权利可以依据民事法律行为、事实行为、法律规定的事件或者法律规定的其他方式取得。

**Article 129** Civil rights may be acquired on the basis of civil juristic acts, de facto acts, acts prescribed by law or other means provided by law.

**第一百三十条** 民事主体按照自己的意愿依法行使民事权利，不受干涉。

**Article 130** Civil subjects shall, at their own will, exercise civil rights in accordance with the law without interference.

**第一百三十一条** 民事主体行使权利时，应当履行法律规定的和当事人约定的义务。

**Article 131** When civil subjects exercise their rights, they shall fulfill their obligations as

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required by the law and as agreed with the parties concerned.

### 第一百三十二条

民事主体不得滥用民事权利损害国家利益、社会公共利益或者他人合法权益。

**Article 132** No civil subject may damage the national interests, public interests or the legitimate rights and interests of others by abuse of civil rights.

## 第六章 民事法律行为

### Chapter 6 Civil Juristic Acts

#### 第一节 一般规定

#### SECTION 1 GENERAL PROVISIONS

### 第一百三十三条

民事法律行为是民事主体通过意思表示设立、变更、终止民事法律关系的行为。

**Article 133** A civil juristic act shall be the act of a civil subject to establish, change or terminate a civil juristic relationship through expression of intent.

### 第一百三十四条

民事法律行为可以基于双方或者多方的意思表示一致成立，也可以基于单方的意思表示成立。

**Article 134** A civil juristic act may be instituted either based on the unanimous expression of intent made by two or more parties, or based on the expression of intent made by one party.

法人、非法人组织依照法律或者章程规定的议事方式和表决程序作出决议的，该决议行为成立。

A resolution of a legal person or an unincorporated association shall be instituted if it is made according to the discussion methods and voting procedures stipulated by the law or by its articles of association.

### 第一百三十五条

民事法律行为可以采用书面形式、口头形式或者其他形式；法律、行政法规规定或者当事人

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约定采用特定形式的，应当采用特定形式。

**Article 135** A civil juristic act may be in written, oral or other forms. If the law or administrative regulation stipulates or the parties concerned agree that a particular form shall be adopted, such form shall be adopted.

### 第一百三十六条

民事法律行为自成立时生效，但是法律另有规定或者当事人另有约定的除外。

**Article 136** A civil juristic act shall become effective once it is instituted, unless otherwise stipulated by the law or agreed between the parties concerned.

行为人非依法律规定或者未经对方同意，不得擅自变更或者解除民事法律行为。

An actor may not arbitrarily alter or rescind his or her civil juristic act, except in accordance with the law or with the other party's consent.

## 第二节 意思表示

### SECTION 2 indications of intent

**第一百三十七条** 以对话方式作出的意思表示，相对人知道其内容时生效。

**Article 137** An expression of intent made verbally shall become effective at the time when the other party learns of its contents.

以非对话方式作出的意思表示，到达相对人时生效。以非对话方式作出的采用数据电文形式的意思表示，相对人指定特定系统接收数据电文的，该数据电文进入该特定系统时生效；未指定特定系统的，相对人知道或者应当知道该数据电文进入其系统时生效。当事人对采用数据电文形式的意思表示的生效时间另有约定的，按照其约定。

An expression of intent made in a form other than dialogue becomes effective when it reaches the other party. If an expression of intent is made in the form of a data message other than verbal communication, and the other party has designated a specific system to receive the data message, the data message shall become effective at the time when it enters the specific system designated; if no specific system is designated, the data message shall become effective at the time when the other party knows or should have known that the data message has entered the system. Where the parties concerned have otherwise agreed as to the time when the

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expression of intent made in the form of data messages becomes effective, such agreement shall apply.

第一百三十八条 无相对人的意思表示，表示完成时生效。法律另有规定的，依照其规定。

**Article 138** An expression of intent that is not made to a specific party shall become effective immediately once it is made. Where the laws provide otherwise, such provisions shall prevail.

第一百三十九条 以公告方式作出的意思表示，公告发布时生效。

**Article 139** An expression of intent made in the form of an announcement shall become effective once it is announced.

第一百四十条 行为人可以明示或者默示作出意思表示。

**Article 140** An actor may make an expression of intent explicitly or impliedly.

沉默只有在有法律规定、当事人约定或者符合当事人之间的交易习惯时，才可以视为意思表示。

The implication shall be deemed an expression of intent only when it is stipulated by the law or agreed by the parties concerned, or conforms to the trade usage.

第一百四十一条

行为人可以撤回意思表示。撤回意思表示的通知应当在意思表示到达相对人前或者与意思表示同时到达相对人。

**Article 141** An actor may withdraw its expression of intent. The notice to withdraw the expression of intent shall reach the other parties before or at the same time when the expression of intent reaches the other parties.

第一百四十二条

有相对人的意思表示的解释，应当按照所使用的词句，结合相关条款、行为的性质和目的、习惯以及诚信原则，确定意思表示的含义。

**Article 142** The meaning of an expression of intent that is made to a certain party shall be interpreted according to the literal meaning of words used and in combination with the relevant

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articles, nature and purpose of the act, usual practices, and the principle of good faith.

无相对人的意思表示的解释，不能完全拘泥于所使用的词句，而应当结合相关条款、行为的性质和目的、习惯以及诚信原则，确定行为人的真实意思。

In the interpretation of an expression of intent that is made not to a specific party, the real intention of an actor shall be sought rather than the literal meaning of words used and also by considering the relevant articles, nature and purpose of the act, usual practices, and the principle of good faith.

### 第三节 民事法律行为的效力

#### Section 3 Validity of Civil Juristic Acts

**第一百四十三条** 具备下列条件的民事法律行为有效：

**Article 143** A valid civil juristic act shall meet the following requirements:

（一）行为人具有相应的民事行为能力；

(I) the actor has relevant capacity for civil conduct; and

（二）意思表示真实；

(II) The intention expressed is genuine; and

（三）不违反法律、行政法规的强制性规定，不违背公序良俗。

(III) Such act does not violate the mandatory provisions of laws and administrative regulations or the public order and good morals.

**第一百四十四条** 无民事行为能力人实施的民事法律行为无效。

**Article 144** The civil juristic acts performed by a person who has no capacity for civil conduct shall be null and void.

**第一百四十五条**

限制民事行为能力人实施的纯获利益的民事法律行为或者与其年龄、智力、精神健康状况相适应的民事法律行为有效；实施的其他民事法律行为经法定代理人同意或者追认后有效。

**Article 145** A civil juristic act performed by a person who has limited capacity for civil conduct shall be valid provided such act relates to the pure acquisition of benefits or is made

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according to his or her age, intelligence and mental health; other civil juristic acts performed by such person may become valid upon consent or acknowledgment of his or her agent ad litem.

相对人可以催告法定代理人自收到通知之日起三十日内予以追认。法定代理人未作表示的，视为拒绝追认。民事法律行为被追认前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

The other party may urge the agent ad litem to make acknowledgment within 30 days upon receipt of the notice. Where the legal representative does not respond, subsequent confirmation shall be deemed to have been refused. Before the acknowledgment of the civil juristic act, the bona fide other party has the right to revoke it. The revocation shall be made by giving a notice.

**第一百四十六条** 行为人与相对人以虚假的意思表示实施的民事法律行为无效。

**Article 146** The civil juristic acts by persons of civil conduct and counterparties under false expression of intent are invalid.

以虚假的意思表示隐藏的民事法律行为的效力，依照有关法律规定处理。

For the validity of a civil juristic act concealed by giving a false expression of intent, the relevant provisions of the law shall apply.

**第一百四十七条**

基于重大误解实施的民事法律行为，行为人有权请求人民法院或者仲裁机构予以撤销。

**Article 147** For a civil juristic act that is performed based on a substantial misunderstanding, the actor has the right to request a people's court or an arbitral institution to revoke such act.

**第一百四十八条**

一方以欺诈手段，使对方在违背真实意思的情况下实施的民事法律行为，受欺诈方有权请求人民法院或者仲裁机构予以撤销。

**Article 148** For a civil juristic act that is performed by a party against his or her real intention as a result of fraud committed by another party, the party has the right to request a people's court or an arbitral institution to revoke such act.

**第一百四十九条**

第三人实施欺诈行为，使一方在违背真实意思的情况下实施的民事法律行为，对方知道或者

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应当知道该欺诈行为的，受欺诈方有权请求人民法院或者仲裁机构予以撤销。

**Article 149** In the event that a civil juristic act is performed by a party against his or her real intention as a result of fraud committed by the third party, the party may request a people's court or an arbitral institution to revoke such act only under the circumstance that the other party knows or might know about the fraud.

### 第一百五十条

一方或者第三人以胁迫手段，使对方在违背真实意思的情况下实施的民事法律行为，受胁迫方有权请求人民法院或者仲裁机构予以撤销。

**Article 150** For a civil juristic act that is performed by a party against his or her real intention as a result of coercion by another party or a third party, the party coerced has the right to request a people's court or an arbitral institution to revoke such act.

### 第一百五十一条

一方利用对方处于危困状态、缺乏判断能力等情形，致使民事法律行为成立时显失公平的，受损害方有权请求人民法院或者仲裁机构予以撤销。

**Article 151** Where a civil juristic act is obviously unfair when instituted by a party making use of another party's dangerous or unfavorable position or lack of judgment, the aggrieved party has the right to request a people's court or an arbitral institution to revoke such act.

**第一百五十二条** 有下列情形之一的，撤销权消灭：

**Article 152** The right to revoke a contract shall extinguish under any of the following circumstances:

（一）当事人自知道或者应当知道撤销事由之日起一年内、重大误解的当事人自知道或者应当知道撤销事由之日起九十日内没有行使撤销权；

1. the party concerned or the party concerned with gross misunderstanding does not exercise his or her right of revocation within one year or 90 days from the date when he or she knows or should have known the cause for revocation;

（二）当事人受胁迫，自胁迫行为终止之日起一年内没有行使撤销权；

(II) the party coerced does not exercise his or her right of revocation within one year from the date when the coercion ceases;

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(三) 当事人知道撤销事由后明确表示或者以自己的行为表明放弃撤销权。

(III) the party concerned waives his or her right of revocation by an explicit statement or by his or her own act after he or she knows the cause for revocation.

当事人自民事法律行为发生之日起五年内没有行使撤销权的，撤销权消灭。

Where the party concerned does not exercise the right of revocation within five years from the date when the civil juristic act is performed, the right of revocation shall be extinguished.

**第一百五十三条** 违反法律、行政法规的强制性规定的民事法律行为无效。但是，该强制性规定不导致该民事法律行为无效的除外。

**Article 153** A civil juristic act that violates the mandatory provisions of laws and administrative regulations shall be null and void. Except where the mandatory provision does not render the civil juristic act null and void.

违背公序良俗的民事法律行为无效。

Civil juristic acts that violate public order and good morals are null and void.

**第一百五十四条** 行为人与相对人恶意串通，损害他人合法权益的民事法律行为无效。

**Article 154** Where an actor colludes with another party to perform a civil juristic act that damages others' legitimate rights and interests, such act shall be null and void.

**第一百五十五条** 无效的或者被撤销的民事法律行为自始没有法律约束力。

**Article 155** A civil juristic act that is null and void or revoked shall not be legally binding from the very beginning.

**第一百五十六条** 民事法律行为部分无效，不影响其他部分效力的，其他部分仍然有效。

**Article 156** If part of a civil juristic act is null and void and it does not affect the validity of other parts, such other parts shall remain valid.

**第一百五十七条** 民事法律行为无效、被撤销或者确定不发生效力后，行为人因该行为取得的财产，应当予以返还；不能返还或者没有必要返还的，应当折价补偿。有过错的一方应当赔偿对方由此所受到的损失；各方都有过错的，应当各自承担相应的责任。法律另有规定的，依照其规定。

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Article 157 When a civil juristic act becomes null and void, or has been revoked or has been determined as having no binding force, the actor who acquired property as a result of such act shall return the same; if it is impossible or unnecessary to return such property, compensation shall be paid at an estimated price. The party at fault shall compensate the other party for the loss it suffers as a result of the act; if both parties are at fault, they shall bear the corresponding responsibilities respectively. Where the laws provide otherwise, such provisions shall prevail.

#### 第四节 民事法律行为的附条件和附期限

#### Section 4 Civil Juristic Acts with Conditions and Time Limits

##### 第一百五十八条

民事法律行为可以附条件，但是根据其性质不得附条件的除外。附生效条件的民事法律行为，自条件成就时生效。附解除条件的民事法律行为，自条件成就时失效。

**Article 158** A civil juristic act may be subject to conditions, except that conditions are not allowed to be imposed according to the nature of the civil juristic act. If a civil juristic act is subject to a condition on its entry into effect, it becomes effective upon fulfillment of the condition. The civil juristic acts with termination conditions shall terminate when the conditions are met.

##### 第一百五十九条

附条件的民事法律行为，当事人为自己的利益不正当地阻止条件成就的，视为条件已经成就；不正当地促成条件成就的，视为条件不成就。

**Article 159** For a conditional civil juristic act, if a party concerned prevents the fulfillment of a condition by improper means for the sake of its own interests, the condition shall be deemed to have been fulfilled; where a party concerned hastens the fulfillment of a condition by improper means, the condition shall be deemed not to have been fulfilled.

##### 第一百六十条

民事法律行为可以附期限，但是根据其性质不得附期限的除外。附生效期限的民事法律行为，自期限届至时生效。附终止期限的民事法律行为，自期限届满时失效。

**Article 160** A civil juristic act may be subject to a time limit, except that the time limit is not

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allowed to be imposed according to the nature of the civil juristic act. If a civil juristic act is subject to a time limit in effect, it becomes effective upon expiration of the time limit. If a civil juristic act is subject to a time limit for termination, it ceases to be effective upon expiration of the time limit.

## 第七章 代 理

### CHAPTER 7 AGENCY

#### 第一节 一 般 规 定

#### SECTION 1 GENERAL PROVISIONS

**第一百六十一条** 民事主体可以通过代理人实施民事法律行为。

**Article 161** A civil subject may perform civil juristic acts through agents.

依照法律规定、当事人约定或者民事法律行为的性质，应当由本人亲自实施的民事法律行为，不得代理。

Civil juristic acts that shall be performed by the principal himself or herself pursuant to legal provisions or an agreement between the parties or the nature of such civil juristic acts, shall not be performed through an agent.

#### **第一百六十二条**

代理人在代理权限内，以被代理人名义实施的民事法律行为，对被代理人发生效力。

**Article 162** Civil juristic acts that are performed by an agent in the name of the principal within the scope of the power of agency shall have binding force on the principal.

**第一百六十三条** 代理包括委托代理和法定代理。

**Article 163** Agency shall include entrusted agency and statutory agency. (Related articles: two articles of laws and regulations)

委托代理人按照被代理人的委托行使代理权。法定代理人依照法律的规定行使代理权。

An entrusted agent shall exercise the power of agency as entrusted by the principal. The statutory agent shall exercise the power of agency in accordance with the provisions of the law.

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### 第一百六十四条

代理人不履行或者不完全履行职责，造成被代理人损害的，应当承担民事责任。

**Article 164** Where an agent fails to perform or does not fully perform his or her duties, thereby causing damage to the principal, the agent shall undertake civil liability.

代理人和相对人恶意串通，损害被代理人合法权益的，代理人和相对人应当承担连带责任。

If an agent and the other party commit malicious collusion, thereby harming the principal's legitimate rights and interests, the agent and the other party shall be held jointly liable.

## 第二节 委托代理

### Section 2 Delegation

### 第一百六十五条

委托代理授权采用书面形式的，授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期限，并由被代理人签名或者盖章。

**Article 165** Where a civil juristic act is entrusted to an agent in written form, the power of attorney shall clearly state the agent's name, the entrusted matters and the scope and duration of the power of agency, and be signed or sealed by the principal.

### 第一百六十六条

数人为同一代理事项的代理人的，应当共同行使代理权，但是当事人另有约定的除外。

**Article 166** Where a matter is entrusted to several agents, all of such agents shall exercise the power of agency jointly, unless otherwise agreed by the parties concerned.

### 第一百六十七条

代理人知道或者应当知道代理事项违法仍然实施代理行为，或者被代理人知道或者应当知道代理人的代理行为违法未作反对表示的，被代理人和代理人应当承担连带责任。

**Article 167** If an agent knows or should have known that the matters entrusted are illegal but still exercises the agency power, or if a principal knows or should have known that his or her agent's

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acts are illegal but fails to raise an objection, the principal and the agent shall be held jointly liable.

### 第一百六十八条

代理人不得以被代理人的名义与自己实施民事法律行为，但是被代理人同意或者追认的除外。

**Article 168** An agent shall not perform a civil juristic act in the name of the principal with himself or herself, unless otherwise with the consent or acknowledgment of the principal.

代理人不得以被代理人的名义与自己同时代理的其他人实施民事法律行为，但是被代理的双方同意或者追认的除外。

An agent shall not perform a civil juristic act in the name of the principal with any other party who entrusts such agent simultaneously, unless otherwise with the consent or acknowledgment of both principals.

**第一百六十九条** 代理人需要转委托第三人代理的，应当取得被代理人的同意或者追认。

**Article 169** Where an agent needs to transfer its agency to a third party, he or she shall seek the consent or acknowledgment from the principal.

转委托代理经被代理人同意或者追认的，被代理人可以就代理事务直接指示转委托的第三人，代理人仅就第三人的选任以及对第三人的指示承担责任。

With the consent or acknowledgment of the principal regarding the transfer of agency, the principal may directly instruct the third party to whom the agency has been transferred the matters entrusted, and the agent shall only bear the liability for the selection of the third party and the instructions to the third party.

转委托代理未经被代理人同意或者追认的，代理人应当对转委托的第三人的行为承担责任；但是，在紧急情况下代理人为了维护被代理人的利益需要转委托第三人代理的除外。

Without the consent or acknowledgment of the principal regarding the transfer of agency, the agent shall bear the liability for the acts of the third party to whom the agency has been transferred, except where it is necessary for the agent to transfer the agency to a third party in an emergency in order to safeguard the interests of the principal.

### 第一百七十条

执行法人或者非法人组织工作任务的人员，就其职权范围内的事项，以法人或者非法人组织

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的名义实施的民事法律行为，对法人或者非法人组织发生效力。

**Article 170** Civil juristic acts that are performed by a person who performs work tasks for a legal person or an unincorporated association on matters within his or her scope of functions and powers in the name of the legal person or the unincorporated association shall have binding force on such legal person or unincorporated association.

法人或者非法人组织对执行其工作任务的人员职权范围的限制，不得对抗善意相对人。

Any restrictions imposed by the legal person or unincorporated association on the scope of functions and powers of the person performing work tasks for the legal person or unincorporated association shall not be a valid defense against any bona fide other party.

### 第一百七十一条

行为人没有代理权、超越代理权或者代理权终止后，仍然实施代理行为，未经被代理人追认的，对被代理人不发生效力。

**Article 171** Any acts of agency continually performed by an actor without the power of agency, beyond the scope of his or her power of agency or after his or her power of agency has expired shall not be binding on the principal without the acknowledgement of such principal.

相对人可以催告被代理人自收到通知之日起三十日内予以追认。被代理人未作表示的，视为拒绝追认。行为人实施的行为被追认前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

The counterparties may urge the principals to confirm the conducts within 30 days of the date of receipt of the notice. Where the principal does not respond, subsequent confirmation shall be deemed to have been refused. Before the acknowledgment of the acts performed by an actor, the bona fide other party has the right of revocation. The revocation shall be made by giving a notice.

行为人实施的行为未被追认的，善意相对人有权请求行为人履行债务或者就其受到的损害请求行为人赔偿。但是，赔偿的范围不得超过被代理人追认时相对人所能获得的利益。

Where the principal refuses to acknowledge such acts performed by an actor, the bona fide other party has the right to request the actor to perform obligations or pay compensation for any injury incurred. However, the scope of compensation shall not exceed the benefits obtained by

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the other party at the time of ratification by the principal.

相对人知道或者应当知道行为人无权代理的，相对人和行为人按照各自的过错承担责任。

Where the other party knows or should have known that the actor has no power of agency, the other party and the actor shall respectively bear the liability according to their own faults.

### 第一百七十二条

行为人没有代理权、超越代理权或者代理权终止后，仍然实施代理行为，相对人有理由相信行为人有代理权的，代理行为有效。

**Article 172** For any acts of agency continually performed by an actor without the power of agency, beyond the scope of his or her power of agency or after his or her power of agency has expired, such acts of agency shall be valid if the other party has reasons to believe that the actor has the power of agency.

## 第三节 代理终止

### Section 3 — Termination of Agency

**第一百七十三条** 有下列情形之一的，委托代理终止：

**Article 173** An entrusted agency shall be terminated under any of the following circumstances:

（一）代理期限届满或者代理事务完成；

1. when the period of agency expires or when the tasks entrusted are completed;

（二）被代理人取消委托或者代理人辞去委托；

(II) when the principal dissolves the entrustment or the agent declines the entrustment;

（三）代理人丧失民事行为能力；

(III) when the principal loses his or her capacity for civil conduct;

（四）代理人或者被代理人死亡；

(IV) Where the agent or the principal dies; or

（五）作为代理人或者被代理人的法人、非法人组织终止。

(V) a legal person or an unincorporated association acting as the principal or an agent is terminated.

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#### 第一百七十四条

被代理人死亡后，有下列情形之一的，委托代理人实施的代理行为有效：

**Article 174** The acts of agency performed by an entrusted agent after the principal dies shall be valid under any of the following circumstances:

（一）代理人不知道且不应当知道被代理人死亡；

1. the agent does not know and should not have known that the principal has died;

（二）被代理人的继承人予以承认；

(II) Where the successors of the principal acknowledge such acts;

（三）授权中明确代理权在代理事务完成时终止；

(III) The power of attorney explicitly states that the power of agency shall terminate upon completion of the matters entrusted; or

（四）被代理人死亡前已经实施，为了被代理人的继承人的利益继续代理。

(IV) Where such acts have been performed before the principal dies and continue for the sake of the principal's successors.

作为被代理人的法人、非法人组织终止的，参照适用前款规定。

Where a legal person or an unincorporated association acting as the principal is terminated, the provisions of the preceding paragraph shall apply *mutatis mutandis*.

#### 第一百七十五条 有下列情形之一的，法定代理终止：

**Article 175** The statutory agency shall be terminated under any of the following circumstances:

（一）被代理人取得或者恢复完全民事行为能力；

1. the principal obtains or recovers the full capacity for civil conduct;

（二）代理人丧失民事行为能力；

(II) when the principal loses his or her capacity for civil conduct;

（三）代理人或者被代理人死亡；

(III) Where the agent or the principal dies; or

（四）法律规定的其他情形。

(IV) other circumstances stipulated by the law arise.

### 第八章 民事责任

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## Chapter 8 Civil Liabilities

### 第一百七十六条

民事主体依照法律规定或者按照当事人约定，履行民事义务，承担民事责任。

**Article 176** A civil subject shall fulfill his or her civil obligations and bear civil liability in accordance with provisions of the law or agreements reached between the parties concerned.

### 第一百七十七条

二人以上依法承担按份责任，能够确定责任大小的，各自承担相应的责任；难以确定责任大小的，平均承担责任。

**Article 177** Where two or more persons share civil liability according to the law, they shall bear the corresponding civil liability respectively if their respective liability can be determined; or evenly undertake civil liability if it is difficult to determine their respective liability.

### 第一百七十八条

二人以上依法承担连带责任的，权利人有权请求部分或者全部连带责任人承担责任。

**Article 178** Where two or more persons are jointly held liable according to the law, the obligee is entitled to request part or all of the persons jointly held liable to bear the relevant liability.

连带责任人的责任份额根据各自责任大小确定；难以确定责任大小的，平均承担责任。实际承担责任超过自己责任份额的连带责任人，有权向其他连带责任人追偿。

The share of liability of persons jointly held liable shall be determined based on the liability borne respectively; and they shall evenly undertake the liability if it is difficult to determine the liability borne respectively. Where liability actually borne by a person jointly held liable exceeds his or her share of liability, he or she is entitled to claim compensation from other persons jointly held liable.

连带责任，由法律规定或者当事人约定。

The joint and several liability shall be provided by law or agreed by the parties.

### 第一百七十九条 承担民事责任的方式主要有：

**Article 179** The methods of bearing civil liability mainly include:

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- (一) 停止侵害;  
1. cessation of infringements;  
(二) 排除妨碍;  
(II) Removal of obstacles;  
(三) 消除危险;  
(III) elimination of dangers;  
(四) 返还财产;  
(IV) return of property;  
(五) 恢复原状;  
(V) restoration to the original condition;  
(六) 修理、重作、更换;  
(VI) repair, reworking or replacement;  
(七) 继续履行;  
(VII) Continuous performance;  
(八) 赔偿损失;  
(VIII) compensation for losses;  
(九) 支付违约金;  
(IX) payment of damages for breach of contract;  
(十) 消除影响、恢复名誉;  
(X) elimination of ill effects and rehabilitation of reputation; and  
(十一) 赔礼道歉。  
(XI) extension of an apology.

法律规定惩罚性赔偿的，依照其规定。

Where the law contains provisions on punitive compensation, such provisions shall apply.  
本条规定的承担民事责任的方式，可以单独适用，也可以合并适用。

The ways of bearing civil liability set forth in this Article may be applied exclusively or concurrently.

### 第一百八十条

因不可抗力不能履行民事义务的，不承担民事责任。法律另有规定的，依照其规定。

**Article 180** If civil obligations fail to be performed due to force majeure, no civil liability shall

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be borne. Where the laws provide otherwise, such provisions shall prevail.

不可抗力是不能预见、不能避免且不能克服的客观情况。

Force majeure is unforeseeable, unavoidable and insurmountable objective events.

**第一百八十一条** 因正当防卫造成损害的，不承担民事责任。

**Article 181** A person who causes harm in exercising a justifiable defense shall not bear civil liability.

正当防卫超过必要的限度，造成不应有的损害的，正当防卫人应当承担适当的民事责任。

If such justifiable defense exceeds the limits of necessity and undue harm is caused, the person exercising such justifiable defense shall bear civil liability on a reasonable basis.

**第一百八十二条** 因紧急避险造成损害的，由引起险情发生的人承担民事责任。

**Article 182** If an injury is caused by an action taken to avoid an imminent danger, the person who gave rise to such danger shall bear civil liability.

危险由自然原因引起的，紧急避险人不承担民事责任，可以给予适当补偿。

If the danger arose from natural causes, the person acting to avoid such danger shall not bear civil liability, and may pay reasonable compensation.

紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

If the action taken to avoid such danger is improper or exceeds the limit of necessity and undue harm is caused, the person acting to avoid such danger shall bear civil liability on a reasonable basis.

**第一百八十三条**

因保护他人民事权益使自己受到损害的，由侵权人承担民事责任，受益人可以给予适当补偿。没有侵权人、侵权人逃逸或者无力承担民事责任，受害人请求补偿的，受益人应当给予适当补偿。

**Article 183** Where a person acts in order to protect any other's civil rights and interests, thereby harming himself or herself, the infringer shall bear civil liability and the beneficiary may pay reasonable compensation. Where there is no infringer, or the infringer has fled or is unable to bear

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civil liability, the beneficiary shall pay appropriate compensation if the infringed claims compensation.

**第一百八十四条** 因自愿实施紧急救助行为造成受助人损害的，救助人不承担民事责任。

**Article 184** A person who causes harm to any recipient in volunteering to provide emergency relief shall not bear civil liability.) >

### **第一百八十五条**

侵害英雄烈士等的姓名、肖像、名誉、荣誉，损害社会公共利益的，应当承担民事责任。

**Article 185** Any party that damages the public interests by infringing upon the name, portrait, reputation or honor of a hero or a martyr shall bear civil liability.

### **第一百八十六条**

因当事人一方的违约行为，损害对方人身权益、财产权益的，受损害方有权选择请求其承担违约责任或者侵权责任。

**Article 186** Where a party concerned breaches an agreement, thus causing harm to the other party's personal or property rights and interests, the aggrieved party has the right to request such party to assume the liability for the breach or for the infringement.

### **第一百八十七条**

民事主体因同一行为应当承担民事责任、行政责任和刑事责任的，承担行政责任或者刑事责任不影响承担民事责任；民事主体的财产不足以支付的，优先用于承担民事责任。

**Article 187** Where a civil subject shall bear civil liability, administrative liability and criminal liability simultaneously for a single act, the administrative liability or criminal liability borne does not affect the civil liability to be borne; where the civil subject's property is insufficient to cover the payment, the property shall be used in the first place for civil liability purposes.

## 第九章 诉讼时效

### Chapter 9 Limitation of Actions

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### 第一百八十八条

向人民法院请求保护民事权利的诉讼时效期间为三年。法律另有规定的，依照其规定。

**Article 188** The limitation of action regarding applications to a people's court for protection of civil rights shall be three years. Where the laws provide otherwise, such provisions shall prevail.

诉讼时效期间自权利人知道或者应当知道权利受到损害以及义务人之日起计算。法律另有规定的，依照其规定。但是，自权利受到损害之日起超过二十年的，人民法院不予保护，有特殊情况的，人民法院可以根据权利人的申请决定延长。

A limitation of action shall run from the date when an obligee knows or should have known that his or her rights have been infringed and who the obligor is. Where the laws provide otherwise, such provisions shall prevail. However, the people's court shall not protect his or her rights if 20 years have passed since the infringement. Under special circumstances, the people's court may decide to extend the limitation of action upon application filed by the obligee.

### 第一百八十九条

当事人约定同一债务分期履行的，诉讼时效期间自最后一期履行期限届满之日起计算。

**Article 189** Where the parties concerned have agreed that the same obligation will be performed in installments, the limitation of action shall run from the date when the time limit for payment of the last installment expires.

### 第一百九十条

无民事行为能力人或者限制民事行为能力人对其法定代理人的请求权的诉讼时效期间，自该法定代理终止之日起计算。

**Article 190** The limitation of action for the right of claim between a person who has no or limited capacity for civil conduct and his or her agent ad litem shall run from the date when the statutory agency is terminated.

### 第一百九十一条

未成年人遭受性侵害的损害赔偿请求权的诉讼时效期间，自受害人年满十八周岁之日起计算。

**Article 191** The limitation of action for the right of claim for compensation for damage of a minor who suffers from sexual assault shall run from the date when the victim reaches the age of 18.

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**第一百九十二条** 诉讼时效期间届满的，义务人可以提出不履行义务的抗辩。

**Article 192** When the limitation of action expires, an obligor may raise a plea of not fulfilling his or her obligations.

诉讼时效期间届满后，义务人同意履行的，不得以诉讼时效期间届满为由抗辩；义务人已经自愿履行的，不得请求返还。

If the obligor agrees to fulfill his or her obligations after the expiration of the limitation of action, he or she shall not raise a plea on the ground of the expiration of the limitation of action; if the obligor has fulfilled his or her obligations voluntarily, no request for return may be made.

**第一百九十三条** 人民法院不得主动适用诉讼时效的规定。

**Article 193** A people's court shall not apply the provisions on the limitation of action actively.

#### **第一百九十四条**

在诉讼时效期间的最后六个月内，因下列障碍，不能行使请求权的，诉讼时效中止：

**Article 194** A limitation of action shall be suspended during the last six months of the limitation if the right of claim cannot be exercised because of the following obstacles:

（一）不可抗力；

1. Force majeure;

（二）无民事行为能力人或者限制民事行为能力人没有法定代理人，或者法定代理人死亡、丧失民事行为能力、丧失代理权；

(II) the person who has no or limited capacity for civil conduct has no statutory agent, or his or her statutory agent dies or loses the capacity for civil conduct or the power of agency;

（三）继承开始后未确定继承人或者遗产管理人；

(III) neither a successor nor a legacy caretaker has been determined after the commencement of succession;

（四）权利人被义务人或者其他控制；

(IV) the obligee is controlled by the obligor or other persons; and

（五）其他导致权利人不能行使请求权的障碍。

(V) Other obstacles that result in the failure of the obligee to exercise the right of claim.

自中止时效的原因消除之日起满六个月，诉讼时效期间届满。

A limitation of action shall expire after six months from the date on which the causes of

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suspension of the limitation are eliminated.

### 第一百九十五条

有下列情形之一的，诉讼时效中断，从中断、有关程序终结时起，诉讼时效期间重新计算：

**Article 195** A limitation of action shall be interrupted under any of the following circumstances, and it shall recommence from the time when the interruption or the relevant procedure is terminated:

（一）权利人向义务人提出履行请求；

1. the obligee claims for the fulfillment of obligations by the obligor;

（二）义务人同意履行义务；

(II) the obligor agrees to fulfill the obligations;

（三）权利人提起诉讼或者申请仲裁；

(III) The obligee files a lawsuit or applies for arbitration; or

（四）与提起诉讼或者申请仲裁具有同等效力的其他情形。

(IV) Other circumstances which have the same effect as filing a lawsuit or applying for arbitration arise.

**第一百九十六条** 下列请求权不适用诉讼时效的规定：

**Article 196** The limitation of action shall not apply to the following rights of claim:

（一）请求停止侵害、排除妨碍、消除危险；

1. a claim for ceasing infringements, removing obstacles and eliminating dangers;

（二）不动产物权和登记的动产物权的权利人请求返还财产；

(II) a claim of the obligee with real property rights or registered movable property rights for returning his property;

（三）请求支付抚养费、赡养费或者扶养费；

(III) a claim for the payment of child support, alimony or maintenance; and

（四）依法不适用诉讼时效的其他请求权。

(IV) other rights of claim that shall not be subject to a limitation of action in accordance with the law.

### 第一百九十七条

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诉讼时效的期间、计算方法以及中止、中断的事由由法律规定，当事人约定无效。

**Article 197** The periods, calculation methods, and the reasons for a suspension or interruption in respect of the limitation of actions shall be prescribed by the law and those agreed by and between the parties concerned shall be null and void.

当事人对诉讼时效利益的预先放弃无效。

A party's prior waiver of the benefit of the limitation of action shall be null and void.

### 第一百九十八条

法律对仲裁时效有规定的，依照其规定；没有规定的，适用诉讼时效的规定。

**Article 198** Where the law contains provisions on the limitation of arbitration, such provisions shall prevail; where there is no provision on the limitation of arbitration in the law, the provisions on the limitation of action shall apply.

第一百九十九条 法律规定或者当事人约定的撤销权、解除权等权利的存续期间，除法律另有规定外，自权利人知道或者应当知道权利产生之日起计算，不适用有关诉讼时效中止、中断和延长的规定。存续期间届满，撤销权、解除权等权利消灭。

**Article 199** Unless otherwise prescribed by law, the duration of such rights as the right of revocation and the right of dissolution stipulated by the law or agreed by the parties concerned shall run from the date when a right holder knows or should have known that such right is created. The provisions on the suspension, interruption and extension of the limitation of actions shall no longer apply to the above duration. At the expiration of the term, the right of revocation, termination and other rights shall be extinguished.

## 第十章 期间计算

### Chapter 10 Interperiod Calculation

**第二百条** 民法所称的期间按照公历年、月、日、小时计算。

**Article 200** For the purpose of the Civil Law, a time period shall be calculated by the Gregorian calendar in years, months, days and hours.

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**第二百零一条** 按照年、月、日计算期间的，开始的当日不计入，自下一日开始计算。

**Article 201** When a time period is calculated in years, months and days, the day on which the period begins shall not be counted as within the period; calculation shall begin from the next day.

按照小时计算期间的，自法律规定或者当事人约定的时间开始计算。

When a time period is calculated in hours, calculation of such period shall begin from the time stipulated by the law or agreed by the parties concerned.

### **第二百零二条**

按照年、月计算期间的，到期月的对应日为期间的最后一日；没有对应日的，月末日为期间的最后一日。

**Article 202** When a time period is calculated in years and months, the same day of the last month as the day on which the period begins shall be taken as the last day of the time period; where there is no such same day, the end of the last month shall be taken as the last day of the time period.

### **第二百零三条**

期间的最后一日是法定休假日的，以法定休假日结束的次日为期间的最后一日。

**Article 203** If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

期间的最后一日的截止时间为二十四时；有业务时间的，停止业务活动的时间为截止时间。

The last day of a time period shall end at 24: 00. If business hours are applicable, the last day shall end at closing time.

### **第二百零四条**

期间的计算方法依照本法的规定，但是法律另有规定或者当事人另有约定的除外。

**Article 204** The calculation of a time period shall conform to the provisions of this Law, unless otherwise stipulated by the law or agreed by the parties concerned.

## **第二编 物 权**

### **Part II Material Rights**

#### **第一分编 通 则**

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## Subpart I General Principles

### 第一章 一般规定

#### CHAPTER 1 GENERAL PROVISIONS

**第二百零五条** 本编调整因物的归属和利用产生的民事关系。

**Article 205** This Part deals with the civil relations arising from the attribution and utilization of property.

#### 第二百零六条

国家坚持和完善公有制为主体、多种所有制经济共同发展，按劳分配为主体、多种分配方式并存，社会主义市场经济体制等社会主义基本经济制度。

**Article 206** The State upholds and improves the socialist basic economic system, under which public ownership is dominant and diverse forms of ownership develop side by side, and distribution according to work remains the dominant form and a variety of other modes of distribution coexist.

国家巩固和发展公有制经济，鼓励、支持和引导非公有制经济的发展。

The State consolidates and develops the public economy, and encourages, supports and guides the development of the non-public economy.

国家实行社会主义市场经济，保障一切市场主体的平等法律地位和发展权利。

The State implements a socialist market economy, and protects equal legal status and development rights of all market entities.

#### 第二百零七条

国家、集体、私人的物权和其他权利人的物权受法律平等保护，任何组织或者个人不得侵犯。

**Article 207** The real rights of the State, collective real rights, private real rights and the real rights of other rights holders shall be protected equally by the law and shall not be infringed by any organisation or individual.

#### 第二百零八条

不动产物权的设立、变更、转让和消灭，应当依照法律规定登记。动产物权的设立和转让，

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应当依照法律规定交付。

Article 208 The creation, alteration, alienation or termination of the real right of a real property shall be subject to registration in accordance with the law. The creation or alienation of the real right of a movable property shall be delivered in accordance with the law.

## 第二章 物权的设立、变更、转让和消灭

### Chapter 2 Creation, Alteration, Alienation and Termination of Real Right

#### 第一节 不动产登记

#### Section 1 Registration of Real Property

##### 第二百零九条

不动产物权的设立、变更、转让和消灭，经依法登记，发生法律效力；未经登记，不发生法律效力，但是法律另有规定的除外。

Article 209 Creation, variation, transfer and extinguishment of real right of real property shall take effect upon registration pursuant to the law; and shall not take effect without registration, unless otherwise stipulated by the law.

依法属于国家所有的自然资源，所有权可以不登记。

Registration is not required for natural resources which belong to the State pursuant to the law.

第二百一十条 不动产登记，由不动产所在地的登记机构办理。

Article 210 The registration of real property shall be handled by the registration organ of the place where the real property is located.

国家对不动产实行统一登记制度。统一登记的范围、登记机构和登记办法，由法律、行政法规规定。

The State implements a unified registration system for real property. The scope, authority and measures for uniform registration shall be specified by the relevant laws and administrative regulations.

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## 第二百一十一条

当事人申请登记，应当根据不同登记事项提供权属证明和不动产界址、面积等必要材料。

**Article 211** In light of the different registration items, an applicant shall, when applying for registration, provide such necessary materials as the ownership certificate of the real property and the location and area of the real property, etc.

## 第二百一十二条 登记机构应当履行下列职责：

**Article 212** The registrar shall perform the following duties:

(一) 查验申请人提供的权属证明和其他必要材料；

1. Examining the ownership certificate and other necessary materials as provided by the applicant;

(二) 就有关登记事项询问申请人；

(II) to inquire the applicant about the registration items concerned;

(三) 如实、及时登记有关事项；

(III) Registering the relevant matters in a faithful and timely manner;

(四) 法律、行政法规规定的其他职责。

(IV) other duties stipulated by laws and administrative regulations.

申请登记的不动产的有关情况需要进一步证明的，登记机构可以要求申请人补充材料，必要时可以实地查看。

Where further proof is required for the relevant information of the real property under application for registration, the registration authority may require the applicant to provide supplementary materials, and may conduct onsite inspection where necessary.

## 第二百一十三条 登记机构不得有下列行为：

**Article 213** No registration organ may commit any of the acts as follows:

(一) 要求对不动产进行评估；

1. to ask for an evaluation of the real property;

(二) 以年检等名义进行重复登记；

(II) Repeated registration in the name of annual inspection;

(三) 超出登记职责范围的其他行为。

(III) Other acts beyond the scope of registration duties.

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第二百一十四条 不动产物权的设立、变更、转让和消灭，依照法律规定应当登记的，自记载于不动产登记簿时发生效力。

Article 214 As regards the creation, alteration, alienation or termination of the real right of a real property, it shall go into effect since the day when it is recorded in the register of real property in case the registration thereof is required by law.

第二百一十五条 当事人之间订立有关设立、变更、转让和消灭不动产物权的合同，除法律另有规定或者当事人另有约定外，自合同成立时生效；未办理物权登记的，不影响合同效力。

Article 215 Where a contract is concluded by the related parties concerning the creation, alteration, alienation or termination of the real right of a real property, the contract shall come into force upon the conclusion of the contract, unless it is otherwise prescribed by any law; and the validity of the contract is not affected, whether the real right has been registered or not.

**第二百一十六条** 不动产登记簿是物权归属和内容的根据。

Article 216 The register of real property shall be the basis of ownership and contents of real right.

不动产登记簿由登记机构管理。

The real property register shall be under the management of the registration institution.

**第二百一十七条**

不动产权属证书是权利人享有该不动产物权的证明。不动产权属证书记载的事项，应当与不动产登记簿一致；记载不一致的，除有证据证明不动产登记簿确有错误外，以不动产登记簿为准。

Article 217 A real property title deed is the proof of the right holder's entitlement to the real property rights. The items recorded in the certificate of real property ownership shall conform to those recorded in the register of real property; except where there is evidence showing that there is definite error in the register of real property, those recorded in the register of real property shall be taken as the standard.

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## 第二百一十八条

权利人、利害关系人可以申请查询、复制不动产登记资料，登记机构应当提供。

Article 218 A rights holder or a stakeholder may apply for enquiry or replication of real property registration materials, and the registration authorities shall provide the materials.

## 第二百一十九条 利害关系人不得公开、非法使用权利人的不动产登记资料。

Article 219 The interested party shall not make public or illegally use the real property registration materials of the right holder.

第二百二十条 权利人、利害关系人认为不动产登记簿记载的事项错误的，可以申请更正登记。不动产登记簿记载的权利人书面同意更正或者有证据证明登记确有错误的，登记机构应当予以更正。

Article 220 A rights holder or a stakeholder who is of the opinion that there is an error in the records of the register of real property may apply for correction of registration. Where the rights holder recorded in the real property register agrees to make correction in writing or there is evidence to prove that the registration contains an error, the registration authority shall make the correction.

不动产登记簿记载的权利人不同意更正的，利害关系人可以申请异议登记。登记机构予以异议登记，申请人自异议登记之日起十五日内不提起诉讼的，异议登记失效。异议登记不当，造成权利人损害的，权利人可以向申请人请求损害赔偿。

Where the right holder recorded in the real property register does not agree to the correction, the interested party may apply for dissidence registration. Where the registration authority grants dissent registration but the applicant does not file a lawsuit within 15 days from the date of dissent registration, the dissent registration shall become void. Where the objection registration is improper and causes the rights holder to suffer damages, the rights holder may seek compensation for damages from the applicant.

第二百二十一条 当事人签订买卖房屋的协议或者签订其他不动产物权的协议，为保障将来实现物权，按照约定可以向登记机构申请预告登记。预告登记后，未经预告登记的权利人同意，处分该不动产的，不发生物权效力。

Article 221 Where the related parties have concluded an agreement on the purchase and sale of houses or an agreement on the real right of any other real property, they may apply to the registration

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organ for advance notice registration so as to ensure the realization of the real right in the future. Without the consent of the right holder in the advance-announcement registration, any disposal of the real property after the advance-announcement registration shall be invalid.

预告登记后，债权消灭或者自能够进行不动产登记之日起九十日内未申请登记的，预告登记失效。

Following pre-registration, where the creditor's rights are extinguished or an application for registration is not made within 90 days from the date on which real property registration can be made, the pre-registration shall become void.

**第二百二十二条** 当事人提供虚假材料申请登记，造成他人损害的，应当承担赔偿责任。

**Article 222** Where a party concerned provides false materials in an application for registration and causes others to suffer damages, the party concerned shall bear compensation liability.

因登记错误，造成他人损害的，登记机构应当承担赔偿责任。登记机构赔偿后，可以向造成登记错误的人追偿。

In case any registration organ causes damages to any other person by virtue of any mistake in registration, it shall assume the liability for compensation. The registration authority may, after making compensation, seek recourse against the person responsible for the error in registration.

### **第二百二十三条**

不动产登记费按件收取，不得按照不动产的面积、体积或者价款的比例收取。

**Article 223** Real property registration fees shall be charged per unit, and may not be charged on the basis of the size, volume or price of the real property.

## 第二节 动产交付

### Section 2 Production and Delivery

**第二百二十四条** 动产物权的设立和转让，自交付时发生效力，但是法律另有规定的除外。

**Article 224** Unless it is otherwise prescribed by any law, the creation or alienation of the real

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right of a movable property shall come into force upon delivery.

### 第二百二十五条

船舶、航空器和机动车等的物权的设立、变更、转让和消灭，未经登记，不得对抗善意第三人。

**Article 225** The creation, alteration, alienation or termination of the real right of any vessel, aircraft or motor vehicle and so on may not challenge any bona fide third party if it is not registered.

第二百二十六条 动产物权设立和转让前，权利人已经占有该动产的，物权自民事法律行为生效时发生效力。

**Article 226** In case a right holder has possessed the movable property prior to the establishment or alienation of the real right of a movable property, the real right shall come into effect upon the effectiveness of the civil juristic act.

### 第二百二十七条

动产物权设立和转让前，第三人占有该动产的，负有交付义务的人可以通过转让请求第三人返还原物的权利代替交付。

**Article 227** Where a third party has taken possession of a movable property prior to the creation and transfer of real right of the movable property, the party under an obligation to make delivery may substitute delivery by transferring the right to require the third party to return the original property.

第二百二十八条 动产物权转让时，当事人又约定由出让人继续占有该动产的，物权自该约定生效时发生效力。

**Article 228** In case both parties agree to let the transferor continuously possess the movable property when the real rights of a movable property are transferred, the real rights shall go into effect upon the effectiveness of the agreement.

## 第三节 其他规定

### Section 3 Miscellaneous Provisions

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### 第二百二十九条

因人民法院、仲裁机构的法律文书或者人民政府的征收决定等，导致物权设立、变更、转让或者消灭的，自法律文书或者征收决定等生效时发生效力。

**Article 229** In case the creation, alteration, alienation or termination of a real right is resulted from a legal document of the people's court or an arbitration institution or a requisition decision of the people's government, etc, the real right shall come into effect upon the effectiveness of the legal document or the requisition decision.

**第二百三十条** 因继承取得物权的，自继承开始时发生效力。

**Article 230** Where real rights are acquired through succession, the real rights take effect upon the commencement of succession.

### 第二百三十一条

因合法建造、拆除房屋等事实行为设立或者消灭物权的，自事实行为成就时发生效力。

**Article 231** Where real rights are created or terminated as a result of such factual events as the legal construction or demolition of houses, the real rights take effect upon the accomplishment of the factual event.

**第二百三十二条** 处分依照本节规定享有的不动产物权，依照法律规定需要办理登记的，未经登记，不发生物权效力。

**Article 232** In case the real right of a real property enjoyed according to the provisions of this Section is disposed and registration is required according to law, the real right shall have no effect if it is not registered.

## 第三章 物权的保护

### Chapter 3 Protection of Real Right

**第二百三十三条** 物权受到侵害的，权利人可以通过和解、调解、仲裁、诉讼等途径解决。

**Article 233** Where real right are infringed, the rights holder may resolve the matter through settlement, mediation, arbitration, litigation, etc.

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**第二百三十四条** 因物权的归属、内容发生争议的，利害关系人可以请求确认权利。

**Article 234** Where there is a dispute over the ownership and contents of real right, an interested party may request for a confirmation of rights.

**第二百三十五条** 无权占有不动产或者动产的，权利人可以请求返还原物。

**Article 235** Where a person has no right to possess real property or movable property, the rights holder may request for the return of the original item.

**第二百三十六条** 妨害物权或者可能妨害物权的，权利人可以请求排除妨害或者消除危险。

**Article 236** Where real rights are under obstruction or may be obstructed, the right holder may request the removal of the impediment or the elimination of the danger.

**第二百三十七条** 造成不动产或者动产毁损的，权利人可以依法请求修理、重作、更换或者恢复原状。

**Article 237** Where damage is caused to the real property or the movable property, the rights holder may request for repair, redo, replacement or restoration of the original conditions pursuant to the law.

**第二百三十八条**

侵害物权，造成权利人损害的，权利人可以依法请求损害赔偿，也可以依法请求承担其他民事责任。

**Article 238** In case the infringement upon a real right causes damages to the right holder, the right holder may require the compensation for the damages or the assumption of any other civil liability in accordance with the law.

**第二百三十九条**

本章规定的物权保护方式，可以单独适用，也可以根据权利被侵害的情形合并适用。

**Article 239** The ways for protecting real right as prescribed in the present Law may apply either independently or jointly in light of the specific situation of an injury of real right.

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## Subdivision II. Powers

### 第四章 一般规定

#### CHAPTER 4 GENERAL PROVISIONS

##### 第二百四十条

所有权人对自己的不动产或者动产，依法享有占有、使用、收益和处分的权利。

Article 240 An owner of a real property or movable property shall have the right to possess, use, benefit and dispose of the real property or movable property pursuant to the law.

##### 第二百四十一条

所有权人有权在自己的不动产或者动产上设立用益物权和担保物权。用益物权人、担保物权人行使权利，不得损害所有权人的权益。

Article 241 An owner shall have the right to create usufructuary rights and Security Right over its own real property or movable property. When exercising the right, the holder of usufructuary right or Security Right may not infringe upon the rights and interests of the owner.

第二百四十二条 法律规定专属于国家所有的不动产和动产，任何组织或者个人不能取得所有权。

Article 242 No organization or individual may acquire the ownership of any real property or movable property that, as provided for by law, is exclusively owned by the State.

##### 第二百四十三条

为了公共利益的需要，依照法律规定的权限和程序可以征收集体所有的土地和组织、个人的房屋以及其他不动产。

Article 243 Collectively-owned land and housing properties and other real property of organisations and individuals may be requisitioned pursuant to the authority and procedures stipulated by the law for public interest needs.

征收集体所有的土地，应当依法及时足额支付土地补偿费、安置补助费以及农村村民住宅、其他地上附着物和青苗等的补偿费用，并安排被征地农民的社会保障费用，保

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障被征地农民的生活，维护被征地农民的合法权益。

When requisitioning land owned collectively, it is required to, in accordance with law and in a timely manner and in full amount, pay land compensation fees, resettlement subsidies and compensations for rural residential houses and other above-ground fixtures as well as young crops, arrange for social security fees for the farmers with land requisitioned, guarantee their livelihood and safeguard their legitimate rights and interests.

征收组织、个人的房屋以及其他不动产，应当依法给予征收补偿，维护被征收人的合法权益；征收个人住宅的，还应当保障被征收人的居住条件。

If any houses or other real property of organizations and individuals are to be expropriated, compensation for expropriation shall be made to protect the lawful rights and interests of the expropriated; and if residential houses of individuals are to be expropriated, the housing conditions of the expropriated shall be guaranteed.

任何组织或者个人不得贪污、挪用、私分、截留、拖欠征收补偿费等费用。

No organization or individual may embezzle, misappropriate, privately divide, detain or delay the payment of compensation fees for requisition and other fees.

第二百四十四条 国家对耕地实行特殊保护，严格限制农用地转为建设用地，控制建设用地总量。不得违反法律规定的权限和程序征收集体所有的土地。

Article 244 The State shall implement special protection for arable land, strictly restrict conversion of agricultural land to development land use, and control the total quantity of development land use. No one may requisition any land owned collectively with violation of the statutory power limit and procedures.

### **第二百四十五条**

因抢险救灾、疫情防控等紧急需要，依照法律规定的权限和程序可以征用组织、个人的不动产或者动产。被征用的不动产或者动产使用后，应当返还被征用人。组织、个人的不动产或者动产被征用或者征用后毁损、灭失的，应当给予补偿。

Article 245 For meeting urgent needs of emergency, disaster relief and epidemic prevention and control, the real property or movable property of organizations and individuals may be expropriated in accordance with the authority and procedures prescribed by law. The requisitioned real property or movable property shall, after its use, be returned to the persons affected by the requisition. Where the

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real property or movable property of an organisation or individual is requisitioned or where it is damaged or lost after requisition, compensation shall be made.

## 第五章 国家所有权和集体所有权、私人所有权

### Chapter 5 State Ownership, Collective Ownership, Private Ownership

**第二百四十六条** 法律规定属于国家所有的财产，属于国家所有即全民所有。

**Article 246** Property owned by the State as provided by law shall belong to the State, that is, to the whole people.

国有财产由国务院代表国家行使所有权。法律另有规定的，依照其规定。

The State Council shall exercise the ownership of state-owned property on behalf of the State. Where the laws provide otherwise, such provisions shall prevail.

**第二百四十七条** 矿藏、水流、海域属于国家所有。

**Article 247** Mineral deposits, waters and sea areas shall be in the ownership of the state.

**第二百四十八条** 无居民海岛属于国家所有，国务院代表国家行使无居民海岛所有权。

**Article 248** Uninhabited sea islands shall belong to the State and the State Council shall exercise the ownership of Uninhabited sea islands on behalf of the State.

**第二百四十九条**

城市的土地，属于国家所有。法律规定属于国家所有的农村和城市郊区的土地，属于国家所有。

**Article 249** Urban lands shall be in the ownership of the state. Land in the rural areas and suburban areas legally owned by the State is owned by the State.

**第二百五十条**

森林、山岭、草原、荒地、滩涂等自然资源，属于国家所有，但是法律规定属于集体所有的除外。

**Article 250** Natural resources such as forests, mountains, grasslands, wastelands and tidal flats

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are owned by the State, except for those owned collectively by law.

**第二百五十一条** 法律规定属于国家所有的野生动植物资源，属于国家所有。

**Article 251** As regards the wild animal and plant resources that shall be owned by the state as provisioned by law, they shall be in the ownership of the state.

**第二百五十二条** 无线电频谱资源属于国家所有。

**Article 252** Radio frequency spectrum resources shall be owned by the State.

**第二百五十三条** 法律规定属于国家所有的文物，属于国家所有。

**Article 253** Cultural relics owned by the State as provided by law shall belong to the State.

**第二百五十四条** 国防资产属于国家所有。

**Article 254** Defense assets are owned by the State.

铁路、公路、电力设施、电信设施和油气管道等基础设施，依照法律规定为国家所有的，属于国家所有。

Infrastructures such as railways, highways, electric power facilities, telecommunication facilities, and petrol and gas pipelines legally owned by the State are owned by the State.

**第二百五十五条**

国家机关对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定处分的权利。

**Article 255** State agencies shall have the right to possess, use and dispose of real property and movable property under their direct control pursuant to the laws and the relevant provisions of the State Council.

**第二百五十六条**

国家举办的事业单位对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定收益、处分的权利。

**Article 256** Institutions established by the State shall have the right to possess, use and, pursuant to the laws and the relevant provisions of the State Council, benefit and dispose of real

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property and movable property under their direct control.

### 第二百五十七条

国家出资的企业，由国务院、地方人民政府依照法律、行政法规规定分别代表国家履行出资人职责，享有出资人权益。

**Article 257** The State Council and the local people's governments shall, in accordance with the relevant laws and administrative regulations, perform the contributor's duties and enjoy the rights and interests on behalf of the State for state-invested enterprises.

### 第二百五十八条

国家所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

**Article 258** Property owned by the State shall be protected by law and shall not be occupied, looted, privately divided, withheld or damaged by any organization or individual.

### 第二百五十九条

履行国有财产管理、监督职责的机构及其工作人员，应当依法加强对国有财产的管理、监督，促进国有财产保值增值，防止国有财产损失；滥用职权，玩忽职守，造成国有财产损失的，应当依法承担法律责任。

**Article 259** Institutions and their personnel in charge of administration and supervision of State-owned assets shall strengthen administration and supervision of State-owned assets pursuant to the law, promote value preservation and value-add of State-owned assets and prevent losses of State-owned assets; legal liability shall be borne pursuant to the law for abuse of official powers and dereliction of duties which cause losses of State-owned assets.

违反国有财产管理规定，在企业改制、合并分立、关联交易等过程中，低价转让、合谋私分、擅自担保或者以其他方式造成国有财产损失的，应当依法承担法律责任。

Whoever, in violation of the provisions on the administration of state-owned property, causes any loss to state-owned property in the process of enterprise restructuring, merger, division or related-party transaction by conducting a transfer at a low price, conspiring to divide up privately, providing a guarantee without authorization or in any other manner shall bear legal liability in accordance with the law.

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第二百六十条 集体所有的不动产和动产包括：

Article 260 Collectively-owned real property and movable property include:

(一) 法律规定属于集体所有的土地和森林、山岭、草原、荒地、滩涂；

1. land, forests, mountains, grasslands, unreclaimed land and beaches owned by collectives as provided for by law;

(二) 集体所有的建筑物、生产设施、农田水利设施；

(II) Buildings, production facilities, and irrigation and water conservancy facilities that are owned collectively;

(三) 集体所有的教育、科学、文化、卫生、体育等设施；

(III) Collectively-owned facilities for education, science, culture, public health and sports;

(四) 集体所有的其他不动产和动产。

(IV) Other collectively-owned real property and movable property.

**第二百六十一条** 农民集体所有的不动产和动产，属于本集体成员集体所有。

Article 261 Real property and movable property collectively-owned by farmers shall be collectively-owned by members of the collective.

下列事项应当依照法定程序经本集体成员决定：

Members of a collective shall decide on the following matters according to statutory procedures:

(一) 土地承包方案以及将土地发包给本集体以外的组织或者个人承包；

1. The land contracting plan and whether to contract land out to organizations or individuals that are not part of the collective concerned;

(二) 个别土地承包经营权人之间承包地的调整；

(II) The adjustment of contracted land among the rights holders of the contracted management of land;

(三) 土地补偿费等费用的使用、分配办法；

(III) the methods for using and distributing land compensation fees and other expenses;

(四) 集体出资的企业的所有权变动等事项；

(IV) The alteration of ownership or any other related issue of an enterprise invested by the collective;

(五) 法律规定的其他事项。

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(V) other matters as stipulated by law.

### 第二百六十二条

对于集体所有的土地和森林、山岭、草原、荒地、滩涂等，依照下列规定行使所有权：

**Article 262** With regard to any land, forest, mountain, grassland, wasteland or tidal flat under collective ownership, the ownership thereof shall be exercised according to the following provisions:

(一) 属于村农民集体所有的，由村集体经济组织或者村民委员会依法代表集体行使所有权；

1. Where owned by a rural collective of a village, the village collective economic organization or the villagers committee shall exercise the ownership on behalf of the collective according to law;

(二) 分别属于村内两个以上农民集体所有的，由村内各该集体经济组织或者村民小组依法代表集体行使所有权；

(II) Where owned by two or more rural collectives, all the collective economic organizations or villagers groups of the village shall exercise the ownership on behalf of the collective according to law; and

(三) 属于乡镇农民集体所有的，由乡镇集体经济组织代表集体行使所有权。

(III) Where owned by a rural collective of a town, the collective economic organization of the town shall exercise the ownership on behalf of the collective.

### 第二百六十三条

城镇集体所有的不动产和动产，依照法律、行政法规的规定由本集体享有占有、使用、收益和处分的权利。

**Article 263** As regards any real property or movable property owned by an urban collective, the urban collective is entitled to possess, use, seek profits from and dispose of it pursuant to the laws and administrative regulations.

### 第二百六十四条

农村集体经济组织或者村民委员会、村民小组应当依照法律、行政法规以及章程、村规民约向本集体成员公布集体财产的状况。集体成员有权查阅、复制相关资料。

**Article 264** The rural collective economic organization, villagers' committee or villagers' group

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shall, in accordance with the relevant laws, administrative regulations, articles of association and village regulations and villagers' pledges, publicize the situation of the properties owned by a collective to the members of the collective. Group members shall have the right to access and make copies of such materials.

### **第二百六十五条**

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破坏。

**Article 265** Property owned by a collective is protected by law. It is prohibited for any organisation or individual to occupy, fraudulently seize, privately divide or damage such property.

农村集体经济组织、村民委员会或者其负责人作出的决定侵害集体成员合法权益的，受侵害的集体成员可以请求人民法院予以撤销。

Where the legitimate rights and interests of any member of the collective are infringed upon by any decision made by a rural collective economic organization, villagers' committee or the principle thereof, such member may request the people's court to revoke the decision.

**第二百六十六条** 私人对其合法的收入、房屋、生活用品、生产工具、原材料等不动产和动产享有所有权。

**Article 266** An individual has the right to own his legal income, premise, articles for daily use, tools for production, raw materials and other real property and movable property.

**第二百六十七条** 私人的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏。

**Article 267** An individual's legal properties shall be protected by law, any organization or individual may not encroach, plunder or destroy them.

**第二百六十八条** 国家、集体和私人依法可以出资设立有限责任公司、股份有限公司或者其他企业。国家、集体和私人所有的不动产或者动产投到企业的，由出资人按照约定或者出资比例享有资产收益、重大决策以及选择经营管理者等权利并履行义务。

**Article 268** The State, any collective or individual may invest to establish a limited liability company, a joint stock limited company or any other enterprise in accordance with the law. Where the State, a collective or an individual invests the real property or movable property owned by it in an enterprise, the contributor shall, in accordance with the agreement or on the basis of his

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proportion of investment, enjoy such rights as return on assets, major decisions and selection of operators and managers and perform his obligations.

### 第二百六十九条

营利法人对其不动产和动产依照法律、行政法规以及章程享有占有、使用、收益和处分的权利。

Article 269 A profit-making legal person has the right to possess, utilize, profit from and dispose of its real property and movable property in accordance with the laws, administrative regulations and its articles of association.

营利法人以外的法人，对其不动产和动产的权利，适用有关法律、行政法规以及章程的规定。

The provisions of the relevant laws, administrative regulations and articles of association shall apply to rights over real property and movable property of legal persons other than profit-making legal persons.

### 第二百七十条 社会团体法人、捐助法人依法所有的不动产和动产，受法律保护。

Article 270 The real property and movable property lawfully owned by social organizations as legal persons or legal persons of donation shall be protected by law.

## 第六章 业主的建筑物区分所有权

### Chapter 6 Owner's Partitioned Ownership of Building

### 第二百七十一条

业主对建筑物内的住宅、经营性用房等专有部分享有所有权，对专有部分以外的共有部分享有共有和共同管理的权利。

**Article 271** An owner is entitled to the ownership of the private areas including residential premises or premises used for business purposes within a building, and to the common ownership and management over the common areas other than the private areas.

### 第二百七十二条

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业主对其建筑物专有部分享有占有、使用、收益和处分的权利。业主行使权利不得危及建筑物的安全，不得损害其他业主的合法权益。

**Article 272** An owner is entitled to possess, use, seek profits from and dispose of the exclusive parts of the building. No owner may endanger the safety of the building or infringe upon the legitimate rights and interests of any other owner when exercising his rights.

### 第二百七十三条

业主对建筑物专有部分以外的共有部分，享有权利，承担义务；不得以放弃权利为由不履行义务。

**Article 273** An owner enjoys the rights and assumes the obligations over the common parts other than the exclusive parts of the building, and may not refuse to perform the obligations on the ground of waiving the rights.

业主转让建筑物内的住宅、经营性用房，其对共有部分享有的共有和共同管理的权利一并转让。

In case an owner transfers his residential house or house used for business purposes within the building, the common ownership and management right enjoyed by him/her over the common parts shall be transferred at the same time.

第二百七十四条 建筑区划内的道路，属于业主共有，但是属于城镇公共道路的除外。建筑区划内的绿地，属于业主共有，但是属于城镇公共绿地或者明示属于个人的除外。建筑区划内的其他公共场所、公用设施和物业服务用房，属于业主共有。

**Article 274** The roads within the building's premises shall be co-owned by the owners, with the exception of public roads owned by the urban township. Green space within the building's premises shall be co-owned by the owners, with the exception of public green space owned by the urban townships or individuals where it is expressly stated. Other public premises, common facilities and premises used for estate services within the building's premises shall be co-owned by the owners.

### 第二百七十五条

建筑区划内，规划用于停放汽车的车位、车库的归属，由当事人通过出售、附赠或者出租等方式约定。

**Article 275** The ownership of the parking spaces and garages within the building area planned

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as vehicle parking spaces shall be agreed upon by the related parties in the manners of selling, gifting or leasing, etc.

占用业主共有的道路或者其他场地用于停放汽车的车位，属于业主共有。

The parking places, which occupy the roads or other places commonly owned by all owners, shall be in the common ownership of all the owners.

**第二百七十六条** 建筑区划内，规划用于停放汽车的车位、车库应当首先满足业主的需要。

**Article 276** Parking spaces and garages within the building area planned as vehicle parking spaces shall first be used to meet the needs of the owners.

### **第二百七十七条**

业主可以设立业主大会，选举业主委员会。业主大会、业主委员会成立的具体条件和程序，依照法律、法规的规定。

**Article 277** Owners may establish an owners' group and elect an owners' committee. The specific conditions and procedures for the establishment of the assembly of property owners and the committee of property owners shall be subject to the provisions of laws and regulations.

地方人民政府有关部门、居民委员会应当对设立业主大会和选举业主委员会给予指导和协助。

The relevant departments of the local People's Government and residents' committees shall provide guidance and assistance for establishment of owners' groups and election of owners' committees.

### **第二百七十八条** 下列事项由业主共同决定：

**Article 278** The following matters should be decided jointly by the property owners:

（一）制定和修改业主大会议事规则；

1. Formulating and modifying the rules of the owners' congress;

（二）制定和修改管理规约；

(II) The formulation and revision of the management regulations;

（三）选举业主委员会或者更换业主委员会成员；

(III) The election or replacement of members of the committee of property owners;

（四）选聘和解聘物业服务企业或者其他管理人；

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(IV) Selecting and dismissing the realty service enterprise or any other manager;

(五) 使用建筑物及其附属设施的维修资金;

(V) Using maintenance funds for buildings and auxiliary facilities; and

(六) 筹集建筑物及其附属设施的维修资金;

(VI) To raise funds for maintaining buildings and auxiliary facilities;

(七) 改建、重建建筑物及其附属设施;

(VII) The renovation or reconstruction of buildings and attached facilities; and

(八) 改变共有部分的用途或者利用共有部分从事经营活动;

(VIII) Changing the use of common parts or conducting operational activities by using common parts;

(九) 有关共有和共同管理权利的其他重大事项。

(IX) Other important matters related to common ownership and joint management rights.

业主共同决定事项，应当由专有部分面积占比三分之二以上的业主且人数占比三分之二以上的业主参与表决。决定前款第六项至第八项规定的事项，应当经参与表决专有部分面积四分之三以上的业主且参与表决人数四分之三以上的业主同意。决定前款其他事项，应当经参与表决专有部分面积过半数的业主且参与表决人数过半数的业主同意。

Issues to be jointly decided by the owners shall be voted by the owners whose area of occupied areas constitutes two-thirds or more of the total number of owners who constitute two-thirds or more of the total number of owners. A decision on a matter stipulated in item (6) to item (8) of the preceding paragraph shall require the consent of three-fourths or more of the owners who voted on the matter and three-fourths or more of the owners who voted on the matter. A decision on any other matter stipulated in the preceding paragraph shall require the consent of more than half of the owners who have voted for more than half of the exclusive areas and more than half of the owners who voted for such matter.

## 第二百七十九条

业主不得违反法律、法规以及管理规约，将住宅改变为经营性用房。业主将住宅改变为经营性用房的，除遵守法律、法规以及管理规约外，应当经有利害关系的业主一致同意。

**Article 279** Any owner may not alter a residential house into a house used for business purposes by violating any law, regulation or management stipulation. An owner shall, when changing a residential house into a house used for business purposes, obtain the unanimous consent

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of the interested owners, in addition to observing the laws, regulations and management stipulations.

**第二百八十条** 业主大会或者业主委员会的决定，对业主具有法律约束力。

**Article 280** Decisions of the assembly of property owners and the committee of property owners are legally binding on property owners.

业主大会或者业主委员会作出的决定侵害业主合法权益的，受侵害的业主可以请求人民法院予以撤销。

Where a decision of the assembly of property owners or the committee of property owners harms the legitimate rights and interests of a property owner, said property owner may request that the people's court nullify the decision.

**第二百八十一条**

建筑物及其附属设施的维修资金，属于业主共有。经业主共同决定，可以用于电梯、屋顶、外墙、无障碍设施等共有部分的维修、更新和改造。建筑物及其附属设施的维修资金的筹集、使用情况应当定期公布。

**Article 281** Funds for maintaining a building and the affiliated facilities thereof shall be commonly owned by the owners of the building. The funds may, upon the codetermination of the owners, be used for the maintenance, renewal and reconstruction of elevators, roofs, exterior walls, barrier-free facilities and other common parts. Raising and use of maintenance and repair funds for buildings and auxiliary facilities shall be announced on a regular basis.

紧急情况下需要维修建筑物及其附属设施的，业主大会或者业主委员会可以依法申请使用建筑物及其附属设施的维修资金。

Where there is a need to repair a building and its auxiliary facilities under emergency circumstances, the owners' group or the owners' committee may apply for use of the repair and maintenance fund for the building and its auxiliary facilities pursuant to the law.

**第二百八十二条**

建设单位、物业服务企业或者其他管理人等利用业主的共有部分产生的收入，在扣除合理成本之后，属于业主共有。

**Article 282** Income derived by a developer, estate services enterprise or any other manager from utilising the common area of the owners shall, upon deduction of reasonable costs, belong to

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the owners.

### 第二百八十三条

建筑物及其附属设施的费用分摊、收益分配等事项，有约定的，按照约定；没有约定或者约定不明确的，按照业主专有部分面积所占比例确定。

**Article 283** The apportionment of expenses and distribution of gains in respect of a building and its auxiliary facilities shall be determined pursuant to the agreement where available; where no agreement exists or the agreement is ambiguous, the apportionment of expenses and distribution of gains shall be determined pursuant to the ratio of the area occupied exclusively by the owners.

### 第二百八十四条

业主可以自行管理建筑物及其附属设施，也可以委托物业服务企业或者其他管理人管理。

**Article 284** The owners of a building may manage the building and affiliated facilities thereof by themselves or they may entrust a realty service enterprise or any other manager to conduct the management.

对建设单位聘请的物业服务企业或者其他管理人，业主有权依法更换。

As regards the realty service enterprise or any other manager hired by the construction entity, the owners are entitled to alter it in accordance with law.

### 第二百八十五条

物业服务企业或者其他管理人根据业主的委托，依照本法第三编有关物业服务合同的规定管理建筑区划内的建筑物及其附属设施，接受业主的监督，并及时答复业主对物业服务情况提出的询问。

**Article 285** The realty service enterprise or any other manager shall, upon the entrustment of the owners and pursuant to the relevant provisions of Part III of this Law on realty service contracts, manage the building and affiliated facilities thereof within the building area, accept the supervision of the owners and make timely replies to the inquiries of the owners about the realty services.

物业服务企业或者其他管理人应当执行政府依法实施的应急处置措施和其他管理措施，积极配合开展相关工作。

The estate services enterprise or manager shall implement emergency measures and other management measures implemented by the government pursuant to the law, and actively

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cooperate in the relevant tasks.

第二百八十六条 业主应当遵守法律、法规以及管理规约，相关行为应当符合节约资源、保护生态环境的要求。对于物业服务企业或者其他管理人执行政府依法实施的应急处置措施和其他管理措施，业主应当依法予以配合。

Article 286 Owners shall comply with the laws, regulations and management rules, the relevant acts shall satisfy the requirements for conservation of resources and protection of ecological environment. Where the estate services enterprise or manager implements emergency handling measures and other management measures implemented by the government pursuant to the law, the owners shall render cooperation pursuant to the law.

业主大会或者业主委员会，对任意弃置垃圾、排放污染物或者噪声、违反规定饲养动物、违章搭建、侵占通道、拒付物业费等损害他人合法权益的行为，有权依照法律、法规以及管理规约，请求行为人停止侵害、排除妨碍、消除危险、恢复原状、赔偿损失。

As regards any act infringing upon the lawful rights and interests of others, such as discarding wastes at will, discharging pollutants and noises, breeding animals in violation of the related provisions, illegally building shelters, occupying passageways or rejecting paying realty management fees, etc, the owners' congress or the owners' committee has the right, in accordance with the relevant laws, regulations or management stipulations, to request the actor to stop the infringing act, remove the impediment, eliminate the danger, restore the house to its original state or compensate for the losses.

业主或者其他行为人拒不履行相关义务的，有关当事人可以向有关行政主管部门报告或者投诉，有关行政主管部门应当依法处理。

If proprietors or other actors refuse to fulfill their obligations, the concerned parties may report or complain to the competent administrative department. The competent administrative department shall handle the case according to law.

### 第二百八十七条

业主对建设单位、物业服务企业或者其他管理人以及其他业主侵害自己合法权益的行为，有权请求其承担民事责任。

Article 287 Where a developer, an estate services enterprise or an estate manager or any other owner has committed an act which harms its legitimate rights and interests, the owner shall have the

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right to request that the developer, the estate services enterprise or the manager bears civil liability.

## 第七章 相邻关系

### Chapter 7 Adjacent Relationships

第二百八十八条 不动产的相邻权利人应当按照有利生产、方便生活、团结互助、公平合理的原则，正确处理相邻关系。

**Article 288** A neighboring right holder of a real property shall, in accordance with the principles of facilitating production and living, solidarity and mutual assistance, fairness and reasonableness, handle the neighboring relationship properly.

#### 第二百八十九条

法律、法规对处理相邻关系有规定的，依照其规定；法律、法规没有规定的，可以按照当地习惯。

**Article 289** In case there exists any provision on the disposal of neighboring relationship in any law or regulation, such provision shall apply; in the case of no such provision, the neighboring relationship shall be disposed of in light of the local customs.

第二百九十条 不动产权利人应当为相邻权利人用水、排水提供必要的便利。

**Article 290** A right holder of real property shall provide necessary convenience for the neighboring right holders in terms of the use or drainage of water.

对自然流水的利用，应当在不动产的相邻权利人之间合理分配。对自然流水的排放，应当尊重自然流向。

The utilization of natural running water shall be rationally distributed among the neighboring right holders of the real property. The natural current direction shall be respected when draining natural running water.

第二百九十一条 不动产权利人对相邻权利人因通行等必须利用其土地的，应当提供必要的便利。

**Article 291** A right holder of real property shall provide necessary convenience where a

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neighboring right holder has to use his land by virtue of passage or for any other reason.

### **第二百九十二条**

不动产权利人因建造、修缮建筑物以及铺设电线、电缆、水管、暖气和燃气管线等必须利用相邻土地、建筑物的，该土地、建筑物的权利人应当提供必要的便利。

**Article 292** Where a right holder of real property has to use a neighboring land or building by virtue of the construction or repairing of a building, or the laying of wires, cables, water pipes, heating pipelines or fuel gas pipelines, etc, necessary convenience shall be provided by the right holder of such land or building.

### **第二百九十三条**

建造建筑物，不得违反国家有关工程建设标准，不得妨碍相邻建筑物的通风、采光和日照。

**Article 293** The construction of a building may not violate the relevant engineering construction standards of the State or obstruct the ventilation, lighting or sunshine of any neighboring building.

第二百九十四条 不动产权利人不得违反国家规定弃置固体废物，排放大气污染物、水污染物、土壤污染物、噪声、光辐射、电磁辐射等有害物质。

**Article 294** No right holder of real property may discard solid waste or discharge such harmful substances as atmospheric pollutants, water pollutants, soil pollutants, noise, light radiation and electromagnetic radiation in violation of the provisions of the State.

第二百九十五条 不动产权利人挖掘土地、建造建筑物、铺设管线以及安装设备等，不得危及相邻不动产的安全。

**Article 295** An obligee of real property may not, when excavating a land, constructing a building, laying a pipeline or installing an equipment, endanger the safety of any neighboring real property.

### **第二百九十六条**

不动产权利人因用水、排水、通行、铺设管线等利用相邻不动产的，应当尽量避免对相邻的不动产权利人造成损害。

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Article 296 An obligee of real property shall, when utilizing his neighboring real property for the purpose of using water, drainage, passage or laying pipelines, try his best to avoid causing damages to the obligee of neighboring real property.

## 第八章 共 有

### Chapter 8 JOINT OWNERSHIP

第二百九十七条 不动产或者动产可以由两个以上组织、个人共有。共有包括按份共有和共同共有。

Article 297. Real property or movable property may be jointly owned by two or more organisations or individuals. Common ownership includes co-ownership by shares and joint ownership.

**第二百九十八条** 按份共有人对共有的不动产或者动产按照其份额享有所有权。

Article 298 As regards a commonly owned real property or movable property, a several co-owner shall, on the basis of his proportion, enjoy the ownership.

第二百九十九条 共同共有人对共有的不动产或者动产共同享有所有权。

Article 299 As regards a commonly owned real property or movable property, a joint owner shall, on a common basis, enjoy the ownership thereof.

### 第三百条

共有人按照约定管理共有的不动产或者动产；没有约定或者约定不明确的，各共有人都有管理的权利和义务。

Article 300 Each of the co-owners shall manage the jointly owned real property or movable property in accordance with the terms of the contract. Where there is no agreement or such agreement is unclear, each co-owner shall have the right and obligation of management.

第三百零一条 处分共有的不动产或者动产以及对共有的不动产或者动产作重大修缮、变更性质或者用途的，应当经占份额三分之二以上的按份共有人或者全体共同共有人同

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意，但是共有人之间另有约定的除外。

Article 301 As regards the disposal of a commonly owned real property or movable property, or any major repair, change of nature or use of a commonly owned real property or movable property, unless it is otherwise stipulated between the co-owners, the consent of the several co-owners holding 2/3 shares or all joint owners shall be obtained.

### 第三百零二条

共有人对共有物的管理费用以及其他负担，有约定的，按照其约定；没有约定或者约定不明确的，按份共有人按照其份额负担，共同共有人共同负担。

Article 302 As regards the management expenses or any other liabilities of a commonly owned res, in case there exists any stipulation on these, such stipulation shall apply; in the case of no or unclear stipulation, the expenses shall be assumed by the several co-owners in accordance with their respective shares or commonly assumed by all joint owners.

### 第三百零三条

共有人约定不得分割共有的不动产或者动产，以维持共有关系的，应当按照约定，但是共有人有重大理由需要分割的，可以请求分割；没有约定或者约定不明确的，按份共有人可以随时请求分割，共同共有人在共有的基础丧失或者有重大理由需要分割时可以请求分割。因分割造成其他共有人损害的，应当给予赔偿。

Article 303 Where the co-owners of a co-owned real property or movable property have agreed not to partition the property so as to maintain the relationship of co-ownership, such agreement shall apply. However, where any co-owner has certain significant reasons for partitioning the property, he may request the partition. Where there is no agreement or such agreement is unclear, a divided co-owner may request the partition at any time, and a joint co-owner may request the partition when the basis for co-ownership no longer exists or he has certain significant reasons. In case any damage is caused to any other person by division, compensation shall be made.

### 第三百零四条

共有人可以协商确定分割方式。达不成协议，共有的不动产或者动产可以分割且不会因分割减损价值的，应当对实物予以分割；难以分割或者因分割会减损价值的，应当对折价或者拍卖、变卖取得的价款予以分割。

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**Article 304** The co-owners of a commonly owned realty or chattel may decide on through negotiation the way of partition. Where no agreement is reached, the jointly owned real property or movable property may be partitioned without impairing its value, the physical object shall be partitioned; where it is difficult to partition the physical object or its value would be impaired by the partition, the proceeds from its discounting, auction or sale shall be partitioned.

共有人分割所得的不动产或者动产有瑕疵的，其他共有人应当分担损失。

Where there is any defect in the real property or movable property obtained from the partition by the co-owners, the other co-owners shall share the loss.

第三百零五条 按份共有人可以转让其享有的共有的不动产或者动产份额。其他共有人在同等条件下享有优先购买的权利。

**Article 305** A several co-owner may transfer his share of the commonly owned real property or share of the movable property. The other co-owners shall have the right of preemption under the same conditions.

### 第三百零六条

按份共有人转让其享有的共有的不动产或者动产份额的，应当将转让条件及时通知其他共有人。其他共有人应当在合理期限内行使优先购买权。

**Article 306** Where a divided co-owner transfers his share of a commonly owned real property or share of movable property, he shall promptly notify the other co-owners of the conditions for transfer. The other co-owners shall exercise pre-emptive rights within a reasonable period.

两个以上其他共有人主张行使优先购买权的，协商确定各自的购买比例；协商不成的，按照转让时各自的共有份额比例行使优先购买权。

If more than two other co-owners exercise the right of first refusal, they shall determine their respective purchase percentage through consultation; if such consultation fails, they shall exercise the right of first refusal in proportion to their respective co-ownership shares at the time of transfer.

第三百零七条 因共有的不动产或者动产产生的债权债务，在对外关系上，共有人享有连带债权、承担连带债务，但是法律另有规定或者第三人知道共有人不具有连带债权债务关系的除外；在共有人内部关系上，除共有人另有约定外，按份共有人按照份额享

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有债权、承担债务，共同共有人共同享有债权、承担债务。偿还债务超过自己应当承担份额的按份共有人，有权向其他共有人追偿。

Article 307 As regards an obligee's right or a debt generated from a co-owned real property or movable property, unless it is otherwise prescribed by any law or the third party is aware of the fact that the co-owner does not have the relationship of joint and several creditor's right or debt, a co-owner shall enjoy joint and several creditor's right or undertake joint and several debt in terms of external relationship. In terms of the internal relationship among the co-owners, unless it is otherwise stipulated by the co-owners, a divided co-owner shall enjoy the creditor's right or undertake the debt on the basis of his own share, while a joint co-owner shall enjoy the creditor's right or undertake the debt on a common basis. Where any several co-owner overpays his share of the debt, he has the right to recover the overpaid amount from the other co-owners.

第三百零八条 共有人对共有的不动产或者动产没有约定为按份共有或者共同共有，或者约定不明确的，除共有人具有家庭关系等外，视为按份共有。

Article 308 Where the co-owners of a co-owned real property or movable property have not agreed on whether the real property or movable property is under divided co-ownership or joint co-ownership, or such agreement is unclear, unless a family relationship exists between the co-owners, the real property or movable property shall be deemed as under divided co-ownership.

### 第三百零九条

按份共有人对共有的不动产或者动产享有的份额，没有约定或者约定不明确的，按照出资额确定；不能确定出资额的，视为等额享有。

Article 309 A divided co-owner's share of a commonly owned real property or movable property shall be determined according to his amount of capital contribution in the case of no or unclear agreement. Where it is impossible to determine the amount of capital contribution, each divided co-owner shall enjoy an equal share.

第三百一十条 两个以上组织、个人共同享有益物权、担保物权的，参照适用本章的有关规定。

Article 310 Where two or more organisations or individuals jointly hold a usufructuary right or Security Right, the relevant provisions of this Chapter shall apply by reference.

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## 第九章 所有权取得的特别规定

### Chapter 9 Special Provisions Regarding Acquisition of Ownership

#### 第三百一十一条

无处分权人将不动产或者动产转让给受让人的，所有权人有权追回；除法律另有规定外，符合下列情形的，受让人取得该不动产或者动产的所有权：

Article 311 Where a person without the disposal right of a real property or movable property transfers the real property or movable property to an assignee, the owner is entitled to recover the property; unless otherwise provided by law, the assignee shall obtain the ownership of the real property or movable property under any of the following circumstances:

（一）受让人受让该不动产或者动产时是善意；

1. The assignee accepts the real property or movable property in good faith;

（二）以合理的价格转让；

(II) Transfer at a reasonable price;

（三）转让的不动产或者动产依照法律规定应当登记的已经登记，不需要登记的已经交付给受让人。

(III) The transferred real property or movable property that is required by law to be registered has been registered. Those that do not require registration have been delivered to the assignee.

受让人依据前款规定取得不动产或者动产的所有权的，原所有权人有权向无处分权人请求损害赔偿。

Where the transferee has obtained ownership of the real property or movable property pursuant to the provisions of the preceding paragraph, the original owner shall have the right to claim for compensation of damages from the transferor with no right of disposal.

当事人善意取得其他物权的，参照适用前两款规定。

In case a related party obtains any other form of real right in good faith, the preceding two paragraphs shall apply as reference.

第三百一十二条 所有权人或者其他权利人有权追回遗失物。该遗失物通过转让被他人占有的，权利人有权向无处分权人请求损害赔偿，或者自知道或者应当知道受让人之

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日起二年内向受让人请求返还原物；但是，受让人通过拍卖或者向具有经营资格的经营  
者购得该遗失物的，权利人请求返还原物时应当支付受让人所付的费用。权利人向受  
让人支付所付费用后，有权向无处分权人追偿。

**Article 312** An owner or any other rights holder shall have the right to recover a lost property. In case the lost property is possessed by any other person through alienation, the right holder shall have the right to require the person unauthorized to dispose of the property to compensate for damages, or, require the assignee to return the original property within two years from the date the right holder becomes aware of or should have become aware of the assignee. However, where the assignee purchases the lost property through auction or from a qualified operator, the right holder shall, when requiring the return of the original property, pay the assignee the amount the assignee paid for purchasing the property. The claimant, after paying the expenses to the assignee, is entitled to recover them from the person without disposal rights.

第三百一十三条 善意受让人取得动产后，该动产上的原有权利消灭。但是，善意受  
让人在受让时知道或者应当知道该权利的除外。

**Article 313** After a bona fide assignee obtains the movable property, the original rights on the movable property shall be terminated. However, the exception is in cases where the bona fide assignee knew or ought to have known the right at the time of the assignment.

### 第三百一十四条

拾得遗失物，应当返还权利人。拾得人应当及时通知权利人领取，或者送交公安等有关部门。

**Article 314** A lost-and-found object shall be returned to the right holder. The person finding such object shall inform the right holder to claim it or hand it over to such related departments as the public security department in time.

### 第三百一十五条

有关部门收到遗失物，知道权利人的，应当及时通知其领取；不知道的，应当及时发布招领  
公告。

**Article 315** Upon receipt of a lost property, where the relevant authorities know the rights holder, they shall promptly notify the rights holder to collect the property; where the relevant authorities do not know, they shall promptly make a public announcement on collection of lost

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property.

第三百一十六条 拾得人在遗失物送交有关部门前，有关部门在遗失物被领取前，应当妥善保管遗失物。因故意或者重大过失致使遗失物毁损、灭失的，应当承担民事责任。

**Article 316** The person who finds the property shall, prior delivery of the property to the relevant authorities, safe keep the property with due care; and the relevant authorities shall safe keep the property with due care prior to collection by the right holder. Civil liability shall be borne where the lost property is damaged or lost as a result of wilful conduct or gross negligence.

### 第三百一十七条

权利人领取遗失物时，应当向拾得人或者有关部门支付保管遗失物等支出的必要费用。

**Article 317** The right holder of the property, when claiming a lost property, shall pay the finder or the related department the expenses incurred from the safekeeping of the property.

权利人悬赏寻找遗失物的，领取遗失物时应当按照承诺履行义务。

Where a right holder has offered a reward for finding the property, he shall fulfill his obligation of granting the reward when claiming the property.

拾得人侵占遗失物的，无权请求保管遗失物等支出的费用，也无权请求权利人按照承诺履行义务。

Where the person who finds the object misappropriates the object, he/she shall be deprived of the right to ask for paying the expenses he/she has paid for safekeeping the object or require the right holder to perform the obligation as promised.

第三百一十八条 遗失物自发布招领公告之日起一年内无人认领的，归国家所有。

**Article 318** Where a lost-and-found object fails to be claimed within one year as of the date when the claiming announcement is published, it shall be owned by the state.

第三百一十九条 拾得漂流物、发现埋藏物或者隐藏物的，参照适用拾得遗失物的有关规定。法律另有规定的，依照其规定。

**Article 319** In case a drift item, an item buried underground or a hidden item is found, the relevant provisions on the finding of a lost-and-found item shall apply by reference. Where the laws provide otherwise, such provisions shall prevail.

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**第三百二十条** 主物转让的，从物随主物转让，但是当事人另有约定的除外。

**Article 320** Unless it is otherwise stipulated by the parties concerned, the accessory res shall be alienated together with the alienation of the principal res.

**第三百二十一条** 天然孳息，由所有权人取得；既有所有权人又有用益物权人的，由用益物权人取得。当事人另有约定的，按照其约定。

**Article 321** The owner shall be entitled to natural fruits of the property. Where there are both an owner and a usufructuary right holder, the usufructuary right holder shall be entitled to the natural fruits of the property. Where the parties agree otherwise, their agreement shall prevail.

法定孳息，当事人有约定的，按照约定取得；没有约定或者约定不明确的，按照交易习惯取得。

In the event of an agreement on statutory fruits, the parties concerned shall obtain statutory fruits in accordance with the agreement. Where there is no agreement or such agreement is unclear, statutory fruits shall be obtained in light of trading practices.

**第三百二十二条** 因加工、附合、混合而产生的物的归属，有约定的，按照约定；没有约定或者约定不明确的，依照法律规定；法律没有规定的，按照充分发挥物的效用以及保护无过错当事人的原则确定。因一方当事人的过错或者确定物的归属造成另一方当事人损害的，应当给予赔偿或者补偿。

**Article 322** The ownership of property arising from processing, attachment or mixing shall be determined according to the agreement where available; where no agreement exists or the agreement is unclear, the ownership shall be determined in accordance with the law; where the law does not provide, the ownership shall be determined in accordance with the principles of maximising the utility of the property and protecting innocent parties. If one party's fault or the ownership of the property established has caused damage to the other party, compensation or reimbursement shall be given.

### 第三分编 用益物权

#### Subdivision III. Usufruct Rights

#### 第十章 一般规定

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## CHAPTER 10 GENERAL PROVISIONS

第三百二十三条 用益物权人对他人所有的不动产或者动产，依法享有占有、使用和收益的权利。

**Article 323** As regards the real property or movable property owned by another person, a usufructuary right holder is entitled to possess, use and seek proceeds from it.

### 第三百二十四条

国家所有或者国家所有由集体使用以及法律规定属于集体所有的自然资源，组织、个人依法可以占有、使用和收益。

**Article 324** As regards the natural resources that are owned by the state or that are owned by the state but used by the collective as well as those that are owned by the collective as prescribed by law, the organizations and individuals may possess, use and seek proceeds from them.

第三百二十五条 国家实行自然资源有偿使用制度，但是法律另有规定的除外。

**Article 325** Unless the law provides to the contrary, the State implements the system of compensated use of natural resources.

第三百二十六条 用益物权人行使权利，应当遵守法律有关保护和合理开发利用资源、保护生态环境的规定。所有权人不得干涉用益物权人行使权利。

**Article 326** When exercising his rights, a usufructuary right holder shall comply with the provisions on protecting, reasonably exploiting and utilizing resources and protecting the ecological environment. The owner shall not interfere with the usufructuary right holder's exercise of rights.

### 第三百二十七条

因不动产或者动产被征收、征用致使用益物权消灭或者影响用益物权行使的，用益物权人有权依据本法第二百四十三条、第二百四十五条的规定获得相应补偿。

**Article 327** Where the usufructuary right is terminated or its exercise is affected due to expropriation or requisition of real property or movable property, the usufructuary right holder has the right to obtain corresponding compensations in accordance with Articles 243 and 245 of the

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present Law.

**第三百二十八条** 依法取得的海域使用权受法律保护。

**Article 328** The lawfully obtained right to use sea areas shall be protected by law.

**第三百二十九条**

依法取得的探矿权、采矿权、取水权和使用水域、滩涂从事养殖、捕捞的权利受法律保护。

**Article 329** The mineral prospecting right, the mining right, the water drawing right and the right to use water areas or tidal flats for breeding or fishery shall be protected by law.

## 第十一章 土地承包经营权

### Chapter 11 Rights to Land Contractual Management

**第三百三十条** 农村集体经济组织实行家庭承包经营为基础、统分结合的双层经营体制。

**Article 330** The rural collective economic organizations shall apply the dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of operation by households under a contract.

农民集体所有和国家所有由农民集体使用的耕地、林地、草地以及其他用于农业的土地，依法实行土地承包经营制度。

As regards the cultivated land, forestland, grassland, and other land for agricultural use that are owned by farmer collectives as well as those that are owned by the state and used by farmer collectives, the system of land contractual management shall be adopted.

**第三百三十一条**

土地承包经营权人依法对其承包经营的耕地、林地、草地等享有占有、使用和收益的权利，有权从事种植业、林业、畜牧业等农业生产。

**Article 331** A holder of rights to contractual land operations shall, pursuant to the law, have the right to possess, use and benefit from arable land, forest land, grassland, etc under contractual operations and the right to engage in planting, forestry, husbandry, etc.

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### 第三百三十二条

耕地的承包期为三十年。草地的承包期为三十年至五十年。林地的承包期为三十年至七十年。

**Article 332** The term of contract for arable land is 30 years. The contractual term for grassland shall be 30 to 50 years. The contractual term for forestland shall be 30 up to 70 years.

前款规定的承包期限届满，由土地承包经营权人依照农村土地承包的法律规定继续承包。

Upon expiry of the contractual period stipulated in the preceding paragraph, the holder of rights to contractual land operations may continue contractual operations pursuant to the provisions of the rural land contract law.

### 第三百三十三条 土地承包经营权自土地承包经营权合同生效时设立。

**Article 333** Rights to contractual land operations shall be created from the effective date of the contract for contractual land operations.

登记机构应当向土地承包经营权人发放土地承包经营权证、林权证等证书，并登记造册，确认土地承包经营权。

The registration authority shall issue the certificate of the right to the contracted management of land or the certificate of the right to forestland contractual management to the holder, register it in the register so as to confirm such right.

第三百三十四条 土地承包经营权人依照法律规定，有权将土地承包经营权互换、转让。未经依法批准，不得将承包地用于非农建设。

**Article 334** A holder of rights to contractual land operations shall, pursuant to the provisions of the law, have the right to exchange or transfer the rights to contractual land operations. Without approval granted according to law, no contracted land may be used for non-agricultural development.

### 第三百三十五条

土地承包经营权互换、转让的，当事人可以向登记机构申请登记；未经登记，不得对抗善意第三人。

**Article 335** In the event of exchange or transfer of land contracted management rights, the parties concerned may apply to the registration authorities for registration; no claims may be made against a bona fide third party interest where registration is not processed.

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**第三百三十六条** 承包期内发包人不得调整承包地。

**Article 336** The contract-letting party may not readjust the contracted land within the term of a contract.

因自然灾害严重毁损承包地等特殊情形，需要适当调整承包的耕地和草地的，应当依照农村土地承包的法律规定办理。

Where appropriate adjustments need to be made to the contracted arable land or grassland due to serious damage from natural disasters or other special circumstances, the matter shall be dealt with pursuant to the provisions of the laws on rural land contract.

**第三百三十七条** 承包期内发包人不得收回承包地。法律另有规定的，依照其规定。

**Article 337** The contract-letting party may not take back the contracted land within the term of the contract. Where the laws provide otherwise, such provisions shall prevail.

**第三百三十八条**

承包地被征收的，土地承包经营权人有权依据本法第二百四十三条的规定获得相应补偿。

**Article 338** In case a contracted land is expropriated, the holder of the right to the contracted management of such land has the right to obtain corresponding compensations in accordance with Article 243 of the present Law.

**第三百三十九条**

土地承包经营权人可以自主决定依法采取出租、入股或者其他方式向他人流转土地经营权。

**Article 339** A holder of rights to contractual land operations may, at its own discretion, transfer its rights to others by way of lease, equity participation or any other method pursuant to the law.

**第三百四十条**

土地经营权人有权在合同约定的期限内占有农村土地，自主开展农业生产经营并取得收益。

**Article 340** A holder of land management rights shall have the right to occupy rural land within the period stipulated in the contract, carry out agricultural production and operation independently and derive gains.

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第三百四十一条 流转期限为五年以上的土地经营权，自流转合同生效时设立。当事人可以向登记机构申请土地经营权登记；未经登记，不得对抗善意第三人。

**Article 341** The right to the management of land under transfer with the term of more than five years shall be established when the transfer contract comes into effect. The parties concerned may apply to the registration authority for registration of land management rights; no claims may be made against a bona fide third party interest where registration has not been completed.

### 第三百四十二条

通过招标、拍卖、公开协商等方式承包农村土地，经依法登记取得权属证书的，可以依法采取出租、入股、抵押或者其他方式流转土地经营权。

**Article 342** Where a person enters into a contract for rural land through bid invitation, auction or public consultation and obtains the ownership certificate after registration according to law, he may, according to law, circulate his right to land management by means of leasing, buying a stake in, mortgaging or by other means.

第三百四十三条 国家所有的农用地实行承包经营的，参照适用本编的有关规定。

**Article 343** Where contractual management is implemented over any state-owned agricultural land, the relevant provisions of this Part shall be referred to.

## 第十二章 建设用地使用权

### Chapter 12 Right to Use Construction Land

### 第三百四十四条

建设用地使用权人依法对国家所有的土地享有占有、使用和收益的权利，有权利用该土地建造建筑物、构筑物及其附属设施。

**Article 344** Right to use construction land The owner of construction land has the right to possess, use and seek proceeds from the land owned by the state, and shall have the right to use the land to construct buildings, fixtures and their auxiliary facilities.

第三百四十五条 建设用地使用权可以在土地的地表、地上或者地下分别设立。

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Article 345 The Right to use construction land may be created separately on the surface of or above or under the land.

### 第三百四十六条

设立建设用地使用权，应当符合节约资源、保护生态环境的要求，遵守法律、行政法规关于土地用途的规定，不得损害已经设立的用益物权。

Article 346 Right to use construction land shall be created in conformity with the requirements for saving resources and protecting the ecological environment, in conformity with the provisions on land use in laws and administrative regulations and without prejudice to any established usufructuary rights.

### 第三百四十七条 设立建设用地使用权，可以采取出让或者划拨等方式。

Article 347 The right to use construction land may be created through transfer or allotment, or by other means.

工业、商业、旅游、娱乐和商品住宅等经营性用地以及同一土地有两个以上意向用地者的，应当采取招标、拍卖等公开竞价的方式出让。

Public bidding methods such as tender, auction, etc shall be adopted for assignment of land use rights for profit-oriented land use such as industrial, commercial, tourism, entertainment and commercial housing, etc, and land use rights for which there are two or more prospective land users.

严格限制以划拨方式设立建设用地使用权。

Right to use construction land created by means of allocation shall be strictly restricted.

第三百四十八条 通过招标、拍卖、协议等出让方式设立建设用地使用权的，当事人应当采用书面形式订立建设用地使用权出让合同。

Article 348 In case the Right to Use Construction Land is created through bid invitation, auction or agreement, etc., the parties concerned shall conclude a written contract on transfer of the Right to Use Construction Land.

建设用地使用权出让合同一般包括下列条款：

In general, a contract for the grant of Right to Use Construction Land shall contain the following terms:

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(一) 当事人的名称和住所;

1. the names and domiciles of the parties concerned;

(二) 土地界址、面积等;

(II) Boundaries and area, etc. of the land;

(三) 建筑物、构筑物及其附属设施占用的空间;

(III) space to be occupied by buildings, structures and auxiliary facilities thereof;

(四) 土地用途、规划条件;

(IV) Land use and planning conditions;

(五) 建设用地使用权期限;

(V) Right to use construction land within the prescribed term;

(六) 出让金等费用及其支付方式;

(VI) Payments of transfer fees and other expenses;

(七) 解决争议的方法。

(VII) dispute settlement method.

第三百四十九条 设立建设用地使用权的，应当向登记机构申请建设用地使用权登记。建设用地使用权自登记时设立。登记机构应当向建设用地使用权人发放权属证书。

Article 349 For establishing the right to use construction land, an application for registering such right shall be submitted to the registration organ. Right to use construction land shall be established upon registration. The registration authority shall issue an ownership certificate to the holder of the Right to Use Construction Land.

第三百五十条 建设用地使用权人应当合理利用土地，不得改变土地用途；需要改变土地用途的，应当依法经有关行政主管部门批准。

Article 350 The holder of the Right to Use Construction Land shall reasonably use the land and may not alter the use purpose. In case the purpose of land use needs to be altered, the approval of the relevant administrative department shall be obtained.

第三百五十一条 建设用地使用权人应当依照法律规定以及合同约定支付出让金等费用。

Article 351 The holder of the Right to Use Construction Land shall, according to the legal

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provisions and the contract, pay transfer fees and other fees.

### **第三百五十二条**

建设用地使用权人建造的建筑物、构筑物及其附属设施的所有权属于建设用地使用权人，但是有相反证据证明的除外。

Article 352 Unless there is evidence to the contrary, the ownership to buildings, structures and auxiliary facilities constructed by a person who has the Right to use construction land shall belong to the person who has the Right to use construction land.

### **第三百五十三条**

建设用地使用权人有权将建设用地使用权转让、互换、出资、赠与或者抵押，但是法律另有规定的除外。

Article 353 Unless it is otherwise prescribed by any law, a holder of the Right to Use Construction Land has the right to transfer, exchange, use as equity contributions, endow or mortgage the Right to Use Construction Land.

### **第三百五十四条**

建设用地使用权转让、互换、出资、赠与或者抵押的，当事人应当采用书面形式订立相应的合同。使用期限由当事人约定，但是不得超过建设用地使用权的剩余期限。

Article 354 Right to use construction land that is transferred, exchanged, contributed as capital, donated or mortgaged shall be entered into by the parties concerned in writing. The parties may agree on the contractual time limit, but the time limit shall not exceed the remaining period of the Right to Use Construction Land.

### **第三百五十五条**

建设用地使用权转让、互换、出资或者赠与的，应当向登记机构申请变更登记。

Article 355 For alienating, exchanging, using as equity contribution, endowing, or mortgaging the Right to Use Construction Land, an application for alteration registration shall be submitted to the registration organ.

### **第三百五十六条**

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建设用地使用权转让、互换、出资或者赠与的，附着于该土地上的建筑物、构筑物及其附属设施一并处分。

Article 356 In the event of transfer, exchange, use as equity contribution, endowment, or mortgage of the Right to Use Construction Land, the buildings, fixtures and affiliated facilities thereof attached to the land shall be disposed of at the same time.

第三百五十七条 建筑物、构筑物及其附属设施转让、互换、出资或者赠与的，该建筑物、构筑物及其附属设施占用范围内的建设用地使用权一并处分。

Article 357 In the event of transfer, exchange, use as equity contribution, endowment, or mortgage of buildings, constructions and auxiliary facilities thereof, the Right to use construction land occupied by the buildings, constructions and auxiliary facilities thereof shall be disposed of concurrently.

第三百五十八条 建设用地使用权期限届满前，因公共利益需要提前收回该土地的，应当依据本法第二百四十三条的规定对该土地上的房屋以及其他不动产给予补偿，并退还相应的出让金。

Article 358 Where, before the term of the Right to Use Construction Land expires, it is necessary to recover the land ahead of schedule by virtue of public interests, compensations shall, according to the provisions of Article 243 of this Law, be given to the houses and other real property on such land, and corresponding land transfer fees shall be returned back.

第三百五十九条 住宅建设用地使用权期限届满的，自动续期。续期费用的缴纳或者减免，依照法律、行政法规的规定办理。

Article 359 Right to use construction land for a residential purpose shall be renewed automatically upon expiration of term. The payment, reduction or exemption of the renewal fee shall be handled in accordance with the provisions of laws and administrative regulations.

非住宅建设用地使用权期限届满后的续期，依照法律规定办理。该土地上的房屋以及其他不动产的归属，有约定的，按照约定；没有约定或者约定不明确的，依照法律、行政法规的规定办理。

The extension of the term of the right to use construction land for non-residential purpose upon expiration shall be subject to the provisions of the law. Where there is an agreement on the

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ownership of houses and other real property on the land, such agreement shall apply; where there is no agreement or such agreement is unclear, the ownership shall be determined in accordance with the provisions of laws and administrative regulations.

### 第三百六十条

建设用地使用权消灭的，出让人应当及时办理注销登记。登记机构应当收回权属证书。

**Article 360** Right to use construction land that is terminated shall be cancelled registration by the transferor in a timely manner. The registration authority shall withdraw the ownership certificate.

**第三百六十一条** 集体所有的土地作为建设用地的，应当依照土地管理的法律规定办理。

**Article 361** Collectively-owned land used as construction land shall be handled pursuant to the provisions of land administration laws.

## 第十三章 宅基地使用权

### Chapter 13 Right to Use House Sites

### 第三百六十二条

宅基地使用权人依法对集体所有的土地享有占有和使用的权利，有权依法利用该土地建造住宅及其附属设施。

**Article 362** A holder of rights to use residential land shall have the right to possess and use collectively-owned land pursuant to the law, and have the right to use the land to construct residential property and auxiliary facilities.

### 第三百六十三条

宅基地使用权的取得、行使和转让，适用土地管理的法律和国家有关规定。

**Article 363** The relevant laws on land administration and the relevant provisions of the State shall apply to obtaining, exercise and transfer of homestead use rights.

### 第三百六十四条

宅基地因自然灾害等原因灭失的，宅基地使用权消灭。对失去宅基地的村民，应当依法重新

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分配宅基地。

**Article 364** The right to use house sites shall be terminated where a house site is terminated by virtue of any natural disaster, etc. A new residential site shall be allocated to villagers affected by the loss of a residential site in accordance with the law.

### 第三百六十五条

已经登记的宅基地使用权转让或者消灭的，应当及时办理变更登记或者注销登记。

**Article 365** Change registration or de-registration formalities shall be promptly completed for any transfer or extinguishment of registered rights to use residential land.

## 第十四章 居 住 权

### Chapter 14 Right of Abode

### 第三百六十六条

居住权人有权按照合同约定，对他人的住宅享有占有、使用的用益物权，以满足生活居住的需要。

**Article 366** The holder of the right of dwelling shall, according to the stipulations of the contract, have the usufructuary right to possess and use the dwelling house of others so as to meet the need of living and dwelling.

**第三百六十七条** 设立居住权，当事人应当采用书面形式订立居住权合同。

**Article 367** For the establishment of residence rights, the parties concerned shall enter into a written residence rights contract.

居住权合同一般包括下列条款：

In general, a residence permit contract shall contain the items as follows:

（一）当事人的姓名或者名称和住所；

1. Names or titles and domiciles of the parties;

（二）住宅的位置；

(II) Location of residence;

（三）居住的条件和要求；

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(III) the conditions and requirements for residence;

(四) 居住权期限;

(IV) the term of residence right;

(五) 解决争议的方法。

(V) dispute settlement method.

第三百六十八条 居住权无偿设立，但是当事人另有约定的除外。设立居住权的，应当向登记机构申请居住权登记。居住权自登记时设立。

Article 368 Residence rights shall be established without compensation, unless otherwise agreed by the parties concerned. Those who establish residence rights shall apply to the registration institutions for registration of residence rights. The residence right shall be established upon registration.

### 第三百六十九条

居住权不得转让、继承。设立居住权的住宅不得出租，但是当事人另有约定的除外。

Article 369 The residence right shall not be transferred or inherited. Residential houses with residential rights created shall not be leased except where the parties agree otherwise.

### 第三百七十条

居住权期限届满或者居住权人死亡的，居住权消灭。居住权消灭的，应当及时办理注销登记。

Article 370 The right of residence shall terminate upon the expiration of its term or upon the death of the person who has the right of residence. Upon extinguishment of residence rights, deregistration formalities shall be promptly completed.

第三百七十一条 以遗嘱方式设立居住权的，参照适用本章的有关规定。

Article 371 Where residence rights are established by means of a will, reference shall be made to the relevant provisions of this Chapter.

## 第十五章 地 役 权

### Chapter 15 SERVITUDE

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第三百七十二条 地役权人有权按照合同约定，利用他人的不动产，以提高自己的不动产的效益。

Article 372 An easement holder shall, according to the contract, be entitled to utilize the real property of others so as to enhance the efficiency of his own real property.

前款所称他人的不动产为供役地，自己的不动产为需役地。

The real property of another person mentioned in the preceding paragraph is the servient tenement and one's own real property is the dominant tenement.

**第三百七十三条** 设立地役权，当事人应当采用书面形式订立地役权合同。

Article 373 The parties concerned shall conclude a written contract of easement to create an easement.

地役权合同一般包括下列条款：

In general, an easement contract shall contain the items as follows:

（一）当事人的姓名或者名称和住所；

1. Names or titles and domiciles of the parties;

（二）供役地和需役地的位置；

(II) Locations of the servient tenement and dominant tenement;

（三）利用目的和方法；

(III) purpose of use and method;

（四）地役权期限；

(IV) Term of easement right;

（五）费用及其支付方式；

(V) fees and payment method; and

（六）解决争议的方法。

(VI) dispute settlement method.

**第三百七十四条**

地役权自地役权合同生效时设立。当事人要求登记的，可以向登记机构申请地役权登记；未经登记，不得对抗善意第三人。

Article 374 An easement shall be created from the effective date of a contract for easement. The parties concerned may apply to the registration authorities for easement registration if they

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request for registration; no claims may be made against a bona fide third party interest where an easement is not registered.

第三百七十五条 供役地权利人应当按照合同约定，允许地役权人利用其不动产，不得妨害地役人行使权利。

**Article 375** The holder of servient tenement shall allow an easement holder to use the real property pursuant to the contractual provisions, and shall not hinder the easement holder's exercise of rights.

### 第三百七十六条

地役权人应当按照合同约定的利用目的和方法利用供役地，尽量减少对供役地权利人物权的限制。

**Article 376** An easement holder shall, according to the purpose and method of use as stipulated in the contract, use the servient tenement, and make efforts to reduce the real right restrictions on the holder of the servient tenement.

### 第三百七十七条

地役权期限由当事人约定；但是，不得超过土地承包经营权、建设用地使用权等用益物权的剩余期限。

**Article 377** The easement period shall be agreed between the parties concerned; however, the easement period shall not exceed the remaining period of usufructuary rights such as land contracted management rights, right to use construction land, etc.

### 第三百七十八条

土地所有权人享有地役权或者负担地役权的，设立土地承包经营权、宅基地使用权等用益物权时，该用益物权人继续享有或者负担已经设立的地役权。

**Article 378** As regards the easement enjoyed or assumed by a land owner, where such usufructuary rights as the right to the contracted management of land, the right to use house site, etc. are created, the aforesaid holder of usufructuary right may continuously enjoy or assume the established easement.

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### 第三百七十九条

土地上已经设立土地承包经营权、建设用地使用权、宅基地使用权等用益物权的，未经用益物权人同意，土地所有权人不得设立地役权。

**Article 379** Where any usufructuary right such as the right to the contracted management of land, the Right to Use Construction Land or the right to use house site has already been established on the land, the land owner may, without consent of the usufructuary right holder, not establish any easement.

### 第三百八十条

地役权不得单独转让。土地承包经营权、建设用地使用权等转让的，地役权一并转让，但是合同另有约定的除外。

**Article 380** An easement may not be solely transferred. Unless it is otherwise stipulated by the contract, where any such usufruct as the right to the contracted management of land, the right to use construction land, etc. is alienated, the easement shall be alienated at the same time.

第三百八十一条 地役权不得单独抵押。土地经营权、建设用地使用权等抵押的，在实现抵押权时，地役权一并转让。

**Article 381** An easement may not be solely mortgaged. Where land management rights, Right to Use Construction Land, etc. are mortgaged, the easement shall be alienated upon the realization of the mortgage.

第三百八十二条 需役地以及需役地上的土地承包经营权、建设用地使用权等部分转让时，转让部分涉及地役权的，受让人同时享有地役权。

**Article 382** When the dominant tenement as well as the right to the contracted management of land, the Right to Use Construction Land thereon are partially transferred, the transferee shall enjoy the easement simultaneously in case the easement is involved in the transferred property.

第三百八十三条 供役地以及供役地上的土地承包经营权、建设用地使用权等部分转让时，转让部分涉及地役权的，地役权对受让人具有法律约束力。

**Article 383** When the servient tenement as well as the right to the contracted management of land, the Right to Use Construction Land thereon are partially transferred, the easement shall be

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legally binding upon the transferee if the easement is involved in the transferred property.

### 第三百八十四条

地役权人有下列情形之一的，供役地权利人有权解除地役权合同，地役权消灭：

**Article 384** The holder of the servient tenement has the right to rescind the easement contract, and the easement shall be terminated, where an easement holder:

（一）违反法律规定或者合同约定，滥用地役权；

1. Abusing easement in violation of the law or the contract; or

（二）有偿利用供役地，约定的付款期限届满后在合理期限内经两次催告未支付费用。

(II) as regards the paid use of servient tenement, upon expiration of the stipulated time limit for payment, failing to pay fees within a reasonable time limit for two times after being urged to do so.

### 第三百八十五条

已经登记的地役权变更、转让或者消灭的，应当及时办理变更登记或者注销登记。

**Article 385** Change registration or de-registration formalities shall be promptly completed for any change, transfer or extinguishment of a registered easement.

## 第四分编 担保物权

### Subdivision IV. Collateral Rights

## 第十六章 一般规定

### CHAPTER 16 GENERAL PROVISIONS

第三百八十六条 担保物权人在债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，依法享有就担保财产优先受偿的权利，但是法律另有规定的除外。

**Article 386** Where the obligor fails to pay its due debts or any circumstance for realizing the Security Right as stipulated by the parties concerned occurs, the Security Right Holder shall have the priority to seek payments from the secured property, unless otherwise provided by law.

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第三百八十七条 债权人在借贷、买卖等民事活动中，为保障实现其债权，需要担保的，可以依照本法和其他法律的规定设立担保物权。

Article 387. In civil activities such as loans and sales, where security is required to ensure the realisation of creditors' rights, the creditor may establish Security Right in accordance with the provisions of this Law and other laws.

第三人为债务人向债权人提供担保的，可以要求债务人提供反担保。反担保适用本法和其他法律的规定。

Where a third party provides security to the creditor for a debtor, counter-security from the debtor may be required. The countersecurity shall be pursuant to the present Law and other related laws.

第三百八十八条 设立担保物权，应当依照本法和其他法律的规定订立担保合同。担保合同包括抵押合同、质押合同和其他具有担保功能的合同。担保合同是主债权债务合同的从合同。主债权债务合同无效的，担保合同无效，但是法律另有规定的除外。

Article 388 For establishing a Security Right, a security contract shall be entered into in accordance with this Law and other laws. Security contracts shall include mortgage contract, pledge contract and other contracts with the security function. A security contract shall be a subordinate one to the principal contract. Unless it is otherwise prescribed by any law, the security contract shall be invalid if the principal contract is invalid.

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

. If a security contract is confirmed to be void and the debtor, security provider or creditor is at fault, he shall bear the corresponding civil liability according to his fault.

### 第三百八十九条

担保物权的担保范围包括主债权及其利息、违约金、损害赔偿金、保管担保财产和实现担保物权的费用。当事人另有约定的，按照其约定。

Article 389. The security scope of the Security Right includes the principal obligation and its interest, liquidated damages, compensatory damages, expenses incurred in the custody of the secured property and the realization of the Security Right. Where the parties agree otherwise, their agreement

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shall prevail.

### 第三百九十条

担保期间，担保财产毁损、灭失或者被征收等，担保物权人可以就获得的保险金、赔偿金或者补偿金等优先受偿。被担保债权的履行期限未届满的，也可以提存该保险金、赔偿金或者补偿金等。

**Article 390** Where the secured property is damaged, lost or requisitioned during the guarantee period, the Security Right Holder may seek preferential payments in respect of the insurance money, damages or indemnities, etc. obtained in relation thereto. If the term for performing the secured obligee's rights has not expired, such insurance money, damages or indemnities, etc. may be submitted to a competent authority for keeping.

### 第三百九十一条

第三人提供担保，未经其书面同意，债权人允许债务人转移全部或者部分债务的，担保人不冉承担相应的担保责任。

**Article 391** Where a guarantee is provided by a third party and the creditor allows the debtor to transfer all or part of the debt without the written consent of the guarantor, the guarantor shall no longer bear the corresponding guarantee liability.

第三百九十二条 被担保的债权既有物的担保又有人的担保的，债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，债权人应当按照约定实现债权；没有约定或者约定不明确，债务人自己提供物的担保的，债权人应当先就该物的担保实现债权；第三人提供物的担保的，债权人可以就物的担保实现债权，也可以请求保证人承担保证责任。提供担保的第三人承担担保责任后，有权向债务人追偿。

**Article 392** Where a secured creditor's right is secured by property and a guarantor, when the debtor defaults on its debt obligations or where circumstances for the realisation of the security right as agreed by the parties has occurred, the creditor shall realise the creditor's right as agreed. Where there is no agreement or such agreement is unclear, and the debtor himself provides security in the form of property, the creditor's right shall be realised first in respect of the property security. Where the security in the form of property is provided by a third party, the creditor may realise the creditor's right in respect of the property security or request that the guarantor assume his guarantee liability.

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After undertaking the guarantee liability, the third party has the right to seek recourse against the debtor.

**第三百九十三条** 有下列情形之一的，担保物权消灭：

Article 393 The Security Right shall be extinguished under any of the following circumstances:

（一）主债权消灭；

1. The principal obligee's rights are terminated;

（二）担保物权实现；

(II) The Security Right has been realized;

（三）债权人放弃担保物权；

(III) The obligee waives the Security Right; or

（四）法律规定担保物权消灭的其他情形。

(IV) Other circumstances under which the Security Right shall be terminated as provided for by law.

## 第十七章 抵 押 权

### Chapter 17 Right of Mortgage

#### 第一节 一般抵押权

#### Section 1 General Mortgage Right

### 第三百九十四条

为担保债务的履行，债务人或者第三人不转移财产的占有，将该财产抵押给债权人的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就该财产优先受偿。

**Article 394** Where an obligor or a third party mortgages his properties to the obligee without transferring the possession of such properties in order to ensure the payment of debts, if the obligor fails to pay due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right occurs, the obligee has the right to seek preferred payments from such properties.

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押财产。

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The debtor or third party referred to in the preceding paragraph shall be the mortgagor; the creditor shall be the mortgagee and the property provided as a guarantee shall be the mortgaged property.

**第三百九十五条** 债务人或者第三人有权处分的下列财产可以抵押：

**Article 395** A mortgage may be established on the following properties of which the obligor or third party has the right of disposal:

（一）建筑物和其他土地附着物；

1. Buildings and other objects attached to the land;

（二）建设用地使用权；

(II) Right to use construction land;

（三）海域使用权；

(III) right to use sea areas;

（四）生产设备、原材料、半成品、产品；

(IV) Manufacturing facilities, raw materials, semi-manufactured goods and finished products;

（五）正在建造的建筑物、船舶、航空器；

(V) Buildings, vessels and aircraft under construction; and

（六）交通工具；

(VI) Means of transport;

（七）法律、行政法规未禁止抵押的其他财产。

(VII) Other properties not prohibited from being mortgaged by any law or administrative regulation.

抵押人可以将前款所列财产一并抵押。

A mortgagor may mortgage all the properties listed in the preceding paragraph together.

**第三百九十六条** 企业、个体工商户、农业生产经营者可以将现有的以及将有的生产设备、原材料、半成品、产品抵押，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就抵押财产确定时的动产优先受偿。

**Article 396** An enterprise, individual industrial and commercial household or agricultural production operator may mortgage any existing production equipment, raw materials, semi-finished

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products and products thereof or those to be owned in future, and where the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right happens, the obligee has the right to seek preferred payments from the movable property at the time when the mortgaged property is determined.

第三百九十七条 以建筑物抵押的，该建筑物占用范围内的建设用地使用权一并抵押。以建设用地使用权抵押的，该土地上的建筑物一并抵押。

Article 397 Where a building is mortgaged, the Right to use construction land as possessed by the building shall be mortgaged together with the building. Right to use construction land that is mortgaged shall be mortgaged together with the buildings on the land.

抵押人未依据前款规定一并抵押的，未抵押的财产视为一并抵押。

Where a mortgagor fails to mortgage the properties in accordance with the provisions in the preceding paragraph, the properties not mortgaged shall be deemed to be mortgaged together.

### 第三百九十八条

乡镇、村企业的建设用地使用权不得单独抵押。以乡镇、村企业的厂房等建筑物抵押的，其占用范围内的建设用地使用权一并抵押。

Article 398 Right to use construction land of a township or village enterprise may not be mortgaged separately. Where a building such as factory of a township or village enterprise is mortgaged, the Right to use construction land within the area of such building shall be mortgaged concurrently.

### 第三百九十九条 下列财产不得抵押：

Article 399 The following property may not be mortgaged:

(一) 土地所有权；

1. the ownership of land;

(二) 宅基地、自留地、自留山等集体所有土地的使用权，但是法律规定可以抵押的除外；

(II) the right to use such collectively-owned land as homestead, land and hills allotted for private use, except for those that may be mortgaged as prescribed by any law; and

(三) 学校、幼儿园、医疗机构等为公益目的成立的非营利法人的教育设施、医疗

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卫生设施和其他公益设施；

(III) educational, medical and other public welfare facilities of non-profit legal persons established for the purpose of public welfare by schools, kindergartens, medical institutions, etc;

(四) 所有权、使用权不明或者有争议的财产；

(IV) properties with unclear or controversial ownership or use rights;

(五) 依法被查封、扣押、监管的财产；

(V) properties legally sealed up, seized or under supervision; or

(六) 法律、行政法规规定不得抵押的其他财产。

(VI) other properties that cannot be mortgaged as prescribed by any law or administrative regulation.

**第四百条** 设立抵押权，当事人应当采用书面形式订立抵押合同。

**Article 400** For establishing a mortgage right, the parties concerned shall enter into a written mortgage contract.

抵押合同一般包括下列条款：

In general, a mortgage contract shall contain the items as follows:

(一) 被担保债权的种类和数额；

1. the variety and amount of the secured obligee's rights;

(二) 债务人履行债务的期限；

(II) The time limit for the obligor to fulfill obligations;

(三) 抵押财产的名称、数量等情况；

(III) The name and quantity of mortgaged property;

(四) 担保的范围。

(IV) The scope of guarantee.

**第四百零一条**

抵押权人在债务履行期限届满前，与抵押人约定债务人不履行到期债务时抵押财产归债权人所有的，只能依法就抵押财产优先受偿。

**Article 401** Where, before the expiration of the time limit for paying debts, the mortgagee and the mortgagor stipulate that the ownership of the mortgaged property shall be attributed to the obligee when the obligor fails to pay due debts, the mortgagee may only have priority in getting

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compensation from the mortgaged property.

第四百零二条 以本法第三百九十五条第一款第一项至第三项规定的财产或者第五项规定的正在建造的建筑物抵押的，应当办理抵押登记。抵押权自登记时设立。

Article 402 Where any of the property stipulated in item (1) to item (3) of the first paragraph of Article 395 or a building under construction as stipulated in item (5) is mortgaged, mortgage registration formalities shall be completed. Mortgage interests shall be created at the time of registration.

第四百零三条 以动产抵押的，抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

Article 403 For a mortgage on movable property, the mortgage right shall be established as of the date the mortgage contract comes into effect. If the mortgage is not registered, the parties concerned may not challenge any bona fide third party.

#### 第四百零四条

以动产抵押的，不得对抗正常经营活动中已经支付合理价款并取得抵押财产的买受人。

Article 404. The mortgage of movable property may not be used against a buyer who, in the ordinary course of business, has already paid a reasonable price and obtained the mortgaged property.

#### 第四百零五条

抵押权设立前，抵押财产已经出租并转移占有的，原租赁关系不受该抵押权的影响。

Article 405 Where the mortgaged property has been leased and transferred for occupation prior to the establishment of the mortgage right, the original leasehold relation shall not be affected by such mortgage right.

#### 第四百零六条

抵押期间，抵押人可以转让抵押财产。当事人另有约定的，按照其约定。抵押财产转让的，抵押权不受影响。

Article 406 The mortgagor may transfer the mortgaged property during the mortgage term. Where the parties agree otherwise, their agreement shall prevail. Where mortgaged property is

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transferred, the mortgage rights shall not be affected.

抵押人转让抵押财产的，应当及时通知抵押权人。抵押权人能够证明抵押财产转让可能损害抵押权的，可以请求抵押人将转让所得的价款向抵押权人提前清偿债务或者提存。转让的价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

Where a mortgagor assigns the mortgaged property, he shall timely notify the mortgagee. If the mortgagee can prove that the mortgage right may be damaged by the transfer of the mortgaged property, he may require the mortgagor to pay off the debt in advance with the money obtained from such transfer or submit it to a competent authority for safekeeping. The value exceeding the obligee's rights shall be attributed to the mortgagor, and the gap shall be paid off by the obligor.

第四百零七条 抵押权不得与债权分离而单独转让或者作为其他债权的担保。债权转让的，担保该债权的抵押权一并转让，但是法律另有规定或者当事人另有约定的除外。

Article 407 Mortgage interests may not be transferred independently from the creditor's rights or used to secure other creditors' rights. Unless it is otherwise prescribed by any law or is otherwise stipulated by the parties concerned, when the obligee's rights are alienated, the mortgage right thereof shall be alienated concurrently.

#### 第四百零八条

抵押人的行为足以使抵押财产价值减少的，抵押权人有权请求抵押人停止其行为；抵押财产价值减少的，抵押权人有权请求恢复抵押财产的价值，或者提供与减少的价值相应的担保。抵押人不恢复抵押财产的价值，也不提供担保的，抵押权人有权请求债务人提前清偿债务。

**Article 408** Where any act of a mortgagor is sufficient to cause a reduction in value of the mortgaged property, the mortgagee shall have the right to require the mortgagor to cease such act; where the value of the mortgaged property is reduced, the mortgagee shall have the right to require the mortgagor to restore the value of the mortgaged property, or provide security equivalent to the reduced value. Where the mortgagor neither recovers the value nor provides any security, the mortgagee has the right to request the obligor to pay off the debts in advance.

#### 第四百零九条

抵押人可以放弃抵押权或者抵押权的顺位。抵押权人与抵押人可以协议变更抵押权顺位以

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及被担保的债权数额等内容。但是，抵押权的变更未经其他抵押权人书面同意的，不得对其他抵押权人产生不利影响。

**Article 409.** A mortgagee may abandon the mortgage rights or the order in respect of mortgage rights. A mortgagee and a mortgagor may, through negotiations, alter the sequence of receiving compensation in respect of mortgage rights or the amount of secured obligee's rights, etc. However, a change of mortgage rights which has not been consented to in writing by the other mortgagees shall not adversely affect such other mortgagees.

债务人以自己的财产设定抵押，抵押权人放弃该抵押权、抵押权顺位或者变更抵押权的，其他担保人在抵押权人丧失优先受偿权益的范围内免除担保责任，但是其他担保人承诺仍然提供担保的除外。

Where an obligor mortgages his own properties, and the mortgagee abandons the mortgage rights, the sequence thereof or alter the mortgage rights, the other guarantors shall be exempted from the guarantee liability, to the extent that the mortgagee has lost the right to seek preferred payments of compensation, unless any other guarantors undertake to continue to provide the guarantee.

#### 第四百一十条

债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人可以与抵押人协议以抵押财产折价或者以拍卖、变卖该抵押财产所得的价款优先受偿。协议损害其他债权人利益的，其他债权人可以请求人民法院撤销该协议。

**Article 410** When the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right arises, the mortgagee may, upon negotiation with the mortgagor, convert the mortgaged property into money or seek preferred payments from the money generated from the auction or sale of the mortgaged property. Where the agreement has harmed the interests of other creditors, the other creditors may apply to a People's Court for revocation of the agreement.

抵押权人与抵押人未就抵押权实现方式达成协议的，抵押权人可以请求人民法院拍卖、变卖抵押财产。

Where no agreement on the means of realizing the mortgage right is reached by the mortgagee and the mortgagor, the mortgagee may require the people's court to auction or sell off the mortgaged property.

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抵押财产折价或者变卖的，应当参照市场价格。

When cashing or selling the mortgaged property, its market price shall be referred to.

#### 第四百一十一条

依据本法第三百九十六条规定设定抵押的，抵押财产自下列情形之一发生时确定：

**Article 411** As regards the mortgage created in accordance with Article 396 of the present Law, the mortgaged property shall be determined when any of the following circumstances arises:

（一）债务履行期限届满，债权未实现；

1. Upon expiration of the time limit for paying debts, the obligee's rights have not been realized;

（二）抵押人被宣告破产或者解散；

(II) The mortgagor is declared bankrupt or dissolved;

（三）当事人约定的实现抵押权的情形；

(III) Other circumstances as stipulated by the parties concerned for realizing the mortgage right; or

（四）严重影响债权实现的其他情形。

(IV) Any other circumstance seriously impacting the realization of obligee's rights.

#### 第四百一十二条

债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，致使抵押财产被人民法院依法扣押的，自扣押之日起，抵押权人有权收取该抵押财产的天然孳息或者法定孳息，但是抵押权人未通知应当清偿法定孳息义务人的除外。

**Article 412** When the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right arises, and as a result of which the mortgaged property is seized by the people's court in accordance with the law, the mortgagee has the right to collect natural or statutory fruits of the mortgaged property as of the date of seizure, unless the mortgagee fails to notify the obligor for statutory fruits that it/he shall pay off statutory fruits.

前款规定的孳息应当先充抵收取孳息的费用。

The "fruits" as referred to in the preceding paragraph shall be firstly used for paying the expenses for collecting the fruits.

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#### 第四百一十三条

抵押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

**Article 413** Any proceeds from the discount, auction or sale of mortgaged property in excess of the amount of the obligation shall belong to the mortgagor and any shortfall shall be borne by the debtor.

#### 第四百一十四条

同一财产向两个以上债权人抵押的，拍卖、变卖抵押财产所得的价款依照下列规定清偿：

**Article 414** Where a property is mortgaged to two or more creditors, the proceeds from the auction or sale of the mortgaged property shall be applied to paying debts in accordance with the following provisions:

(一) 抵押权已经登记的，按照登记的时间先后确定清偿顺序；

1. where the mortgage rights have been registered, the repayment order shall be determined in light of the order of registration; and

(二) 抵押权已经登记的先于未登记的受偿；

(II) The registered mortgage rights shall have priority over the unregistered ones for compensation; and

(三) 抵押权未登记的，按照债权比例清偿。

(III) Where no mortgage rights are registered, the payments shall be made on the basis of the proportion of obligee's rights.

其他可以登记的担保物权，清偿顺序参照适用前款规定。

Other Security Right that may be registered, The provisions of the preceding paragraph shall apply mutatis mutandis to the order of repayment.

#### 第四百一十五条

同一财产既设立抵押权又设立质权的，拍卖、变卖该财产所得的价款按照登记、交付的时间先后确定清偿顺序。

**Article 415** Where both a mortgage and a pledge are created on the same property, the sequence of repayment from the proceeds of the auction or sale of such property shall be determined according to the time of registration and delivery.

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#### 第四百一十六条

动产抵押担保的主债权是抵押物的价款，标的物交付后十日内办理抵押登记的，该抵押权人优先于抵押物买受人的其他担保物权人受偿，但是留置权人除外。

**Article 416** Where the principal obligation secured by a mortgage on movable property is the price of the mortgaged property and mortgage registration formalities are completed within 10 days after the delivery of the subject matter, the mortgagee shall have priority over other security right holders in the buyer of the mortgaged property in receiving payment, except for the lienor.

第四百一十七条 建设用地使用权抵押后，该土地上新增的建筑物不属于抵押财产。该建设用地使用权实现抵押权时，应当将该土地上新增的建筑物与建设用地使用权一并处分。但是，新增建筑物所得的价款，抵押权人无权优先受偿。

**Article 417** Buildings newly constructed on the land after the mortgage of the Right to Use Construction Land shall not belong to the mortgaged property. When the mortgage right is realized on the Right to Use Construction Land, any newly constructed building on such land shall be disposed together with the Right to Use Construction Land. However, the mortgagee has no right to be paid in priority with the money obtained from the newly added buildings.

#### 第四百一十八条

以集体所有土地的使用权依法抵押的，实现抵押权后，未经法定程序，不得改变土地所有权的性质和土地用途。

**Article 418.** Where collectively owned land use rights are mortgaged in accordance with the law, following the realisation of mortgage rights the nature of the land ownership rights and the purpose of the land use must not be altered without undergoing the statutory procedures.

#### 第四百一十九条

抵押权人应当在主债权诉讼时效期间行使抵押权；未行使的，人民法院不予保护。

**Article 419** A mortgagee shall, within the limitation of action for the principal obligee's rights, exercise the mortgage right, otherwise, such mortgage right will not be protected by the people's court.

### 第二节 最高额抵押权

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## Section 2 Mortgage Right at Maximum Amount

### 第四百二十条

为担保债务的履行，债务人或者第三人对一定期间内将要连续发生的债权提供担保财产的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人有权在最高债权额限度内就该担保财产优先受偿。

**Article 420** Where an obligor or third party, for the purpose of guaranteeing the payment of debts, provides mortgaged properties for the obligee's rights that will continuously happen within a certain term, and the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right happens, the mortgagee has the right to seek preferred payments from the secured properties within the maximum amount of obligee's rights.

最高额抵押权设立前已经存在的债权，经当事人同意，可以转入最高额抵押担保的债权范围。

The obligee's rights existing prior to the establishment of the mortgage right at maximum amount may, upon the consent of the parties concerned, be incorporated into the scope of obligee's rights under the mortgage security at maximum amount.

### 第四百二十一条

最高额抵押担保的债权确定前，部分债权转让的，最高额抵押权不得转让，但是当事人另有约定的除外。

**Article 421** Where part of an obligee's rights are transferred prior to the establishment of the maximum amount of mortgage security, the maximum amount of mortgage rights may not be transferred unless otherwise stipulated by the parties concerned.

### 第四百二十二条

最高额抵押担保的债权确定前，抵押权人与抵押人可以通过协议变更债权确定的期间、债权范围以及最高债权额。但是，变更的内容不得对其他抵押权人产生不利影响。

**Article 422** A mortgagee and a mortgagor may, by agreement, alter the period of confirmation, the scope and maximum amount of creditors' rights before the creditors' rights secured by maximum

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amount of mortgage interests are confirmed. However, the content of the change shall not have adverse effect on other mortgagees.

**第四百二十三条** 有下列情形之一的，抵押权人的债权确定：

**Article 423** The obligee's rights of a mortgagee shall be confirmed under any of the following circumstances:

（一）约定的债权确定期间届满；

1. The stipulated term for the confirmation of the obligee's rights expires;

（二）没有约定债权确定期间或者约定不明确，抵押权人或者抵押人自最高额抵押权设立之日起满二年后请求确定债权；

(II) Where there is no agreement on the confirmation period or such agreement is unclear, the mortgagee or the mortgagor may require confirmation of the obligee's rights after two years from the date the maximum amount of mortgage rights is created;

（三）新的债权不可能发生；

(III) The new creditor's right cannot arise; or

（四）抵押权人知道或者应当知道抵押财产被查封、扣押；

(IV) Where the mortgagee knows or should know that the mortgaged property is sealed up or seized;

（五）债务人、抵押人被宣告破产或者解散；

(V) The obligor or the mortgagor is declared bankrupt or is dissolved; or

（六）法律规定债权确定的其他情形。

(VI) Any other circumstance as prescribed by any law for determining the obligee's rights arises.

**第四百二十四条** 最高额抵押权除适用本节规定外，适用本章第一节的有关规定。

**Article 424** The mortgage right at maximum amount shall be governed by, in addition to the provisions in this Section, the relevant provisions in Section 1 of this Chapter.

## 第十八章 质 权

### Chapter 18 Pledge Right

#### 第一节 动产质权

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## Section 1 Movable Property Right

### 第四百二十五条

为担保债务的履行，债务人或者第三人将其动产出质给债权人占有的，债务人不履行到期债务或者发生当事人约定的实现质权的情形，债权人有权就该动产优先受偿。

**Article 425** Where an obligor or a third party pledges his/its movable property to an obligee for guaranteeing the payment of debts, if the obligor fails to pay due debts or any circumstance for realizing the pledge right as stipulated by the parties concerned occurs, the obligee has the right to seek preferred payments from the movable property.

前款规定的债务人或者第三人为出质人，债权人为质权人，交付的动产为质押财产。

The debtor or third party referred to in the preceding paragraph shall be the pledgor; the creditor shall be the pledgee and the delivered movable property shall be the pledged property.

第四百二十六条 法律、行政法规禁止转让的动产不得出质。

**Article 426** Movable property which is prohibited by laws and administrative regulations from being pledged may not be pledged.

第四百二十七条 设立质权，当事人应当采用书面形式订立质押合同。

**Article 427** For establishing the pledge right, the parties concerned shall enter into a written pledge contract.

质押合同一般包括下列条款：

In general, a pledge contract shall contain the items as follows:

（一）被担保债权的种类和数额；

1. the variety and amount of the secured obligee's rights;

（二）债务人履行债务的期限；

(II) The time limit for the obligor to fulfill obligations;

（三）质押财产的名称、数量等情况；

(III) The name and quantity, etc. of the pledged properties;

（四）担保的范围；

(IV) the scope of guarantee; and

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(五) 质押财产交付的时间、方式。

(V) The time and way of delivery of the pledged properties.

#### 第四百二十八条

质权人在债务履行期限届满前，与出质人约定债务人不履行到期债务时质押财产归债权人所有的，只能依法就质押财产优先受偿。

**Article 428** Where, prior to the expiration of the term for paying debts, the pledgee and the pledgor stipulate that the ownership of pledged properties shall be attributed to the obligee when the obligor fails to pay due debts, the pledgee shall have priority in receiving payment from the pledged properties.

**第四百二十九条** 质权自出质人交付质押财产时设立。

**Article 429** The pledge right shall be established after the pledgee has delivered the pledged properties.

**第四百三十条** 质权人有权收取质押财产的孳息，但是合同另有约定的除外。

**Article 430** Unless it is otherwise stipulated in the contract, a pledgee has the right to obtain the fruits of the pledged properties.

前款规定的孳息应当先充抵收取孳息的费用。

The "fruits" as referred to in the preceding paragraph shall be firstly used for paying the expenses for collecting the fruits.

#### 第四百三十一条

质权人在质权存续期间，未经出质人同意，擅自使用、处分质押财产，造成出质人损害的，应当承担赔偿责任。

**Article 431** Where a pledgee, without consent of the pledger, illegally uses or disposes of the pledged properties within the duration of the pledge right, and thus damages are caused to the pledger, he/it shall make compensations.

#### 第四百三十二条

质权人负有妥善保管质押财产的义务；因保管不善致使质押财产毁损、灭失的，应当承担赔

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偿责任。

**Article 432** A pledgee shall be obliged to properly keep pledged properties; and where pledged properties are damaged or lost by virtue of improper safekeeping, the pledgee shall make compensations.

质权人的行为可能使质押财产毁损、灭失的，出质人可以请求质权人将质押财产提存，或者请求提前清偿债务并返还质押财产。

Where pledged properties may be damaged or lost by act of the pledgee, the pledger may ask for the pledgee to submit them to a competent authority for keeping or require pay debts in advance and take back them.

#### 第四百三十三条

因不可归责于质权人的事由可能使质押财产毁损或者价值明显减少，足以危害质权人权利的，质权人有权请求出质人提供相应的担保；出质人不提供的，质权人可以拍卖、变卖质押财产，并与出质人协议将拍卖、变卖所得的价款提前清偿债务或者提存。

**Article 433** Where any cause not attributable to the pledgee's fault may result in the destruction of the pledged properties or an obvious decrease of the value of the pledged properties, and which is sufficient to damage the pledgee's rights, the pledgee has the right to require the pledger to provide corresponding security. If the pledger fails to do so, the pledgee may auction or sell off the pledged properties, and may, upon negotiation with the pledger, seek preferred payments for the obligee's rights in advance with the money generated from such auction or sell-off, or submit the said money to a competent authority for keeping.

#### 第四百三十四条

质权人在质权存续期间，未经出质人同意转质，造成质押财产毁损、灭失的，应当承担赔偿责任。

**Article 434** Where a pledgee transfers, without consent of the pledgor, the pledge within the duration of the pledge right, thus causing damage or loss to the pledged properties, he/it shall make compensations.

第四百三十五条 质权人可以放弃质权。债务人以自己的财产出质，质权人放弃该质权的，其他担保人在质权人丧失优先受偿权益的范围内免除担保责任，但是其他担保人

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承诺仍然提供担保的除外。

Article 435 A pledgee may abandon the pledge right. Where an obligor provide the pledge right by his/its own properties, and the pledgee abandons the pledge right, unless any of other security providers promises to provide the security all the same, other security providers' security liability will be exempted within the scope for which the pledgee has lost the right to seek preferred payments.

#### 第四百三十六条

债务人履行债务或者出质人提前清偿所担保的债权的，质权人应当返还质押财产。

Article 436 Where the obligor has paid off the debts or the pledger has fulfilled the secured obligee's rights in advance, the pledgee shall return the pledged properties.

债务人不履行到期债务或者发生当事人约定的实现质权的情形，质权人可以与出质人协议以质押财产折价，也可以就拍卖、变卖质押财产所得的价款优先受偿。

Where the debtor defaults on its debt obligations or where circumstances for the realisation of the pledge interest as agreed by the parties has occurred, the pledgee may, by agreement with the pledgor, claim the proceeds from a discount, auction or sale of the pledged property in priority, in satisfaction of its claim.

质押财产折价或者变卖的，应当参照市场价格。

When cashing or selling the pledged properties, their market price shall be referred to.

#### 第四百三十七条

出质人可以请求质权人在债务履行期限届满后及时行使质权；质权人不行使的，出质人可以请求人民法院拍卖、变卖质押财产。

Article 437 A pledgor may, upon expiration of the time limit for paying debts, request the pledgee to exercise the pledge right in a timely manner. If the pledgee fails to do so, the pledgor may request the people's court to auction or sell off the pledged properties.

出质人请求质权人及时行使质权，因质权人怠于行使权利造成出质人损害的，由质权人承担赔偿责任。

Pledgor shall indemnify Pledgee for any damage suffered by Pledgor as a result of Pledgee's indolence in exercising the Pledge.

#### 第四百三十八条

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质押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

**Article 438** Any proceeds from the discount, auction or sale of pledged property in excess of the amount of debt secured shall belong to the pledgor and any shortfall shall be borne by the debtor.

**第四百三十九条** 出质人与质权人可以协议设立最高额质权。

**Article 439** The pledgor and the pledgee may, upon negotiation, agree on the maximum amount of pledge rights.

最高额质权除适用本节有关规定外，参照适用本编第十七章第二节的有关规定。

The provisions of Section 2 of Chapter 17 of this Part shall apply as reference to maximum amount of pledge rights, in addition to the relevant provisions of this Section.

## 第二节 权利质权

### Section 2 Right to Pledge

**第四百四十条** 债务人或者第三人有权处分的下列权利可以出质：

**Article 440** The following rights of which an obligor or third party has the right of disposal may be pledged:

(一) 汇票、本票、支票；

(I) bills of exchange, promissory notes and checks;

(二) 债券、存款单；

(II) Bonds and deposit receipts;

(三) 仓单、提单；

(III) warehouse receipts and bills of lading;

(四) 可以转让的基金份额、股权；

(IV) transferable fund units and stock rights;

(五) 可以转让的注册商标专用权、专利权、著作权等知识产权中的财产权；

(V) such transferable property rights in intellectual property as exclusive trademark rights, patent rights, copyrights, etc;

(六) 现有的以及将有的应收账款；

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(VI) Receivables existing and to be existing;

(七) 法律、行政法规规定可以出质的其他财产权利。

(VII) Other property rights that can be pledged as prescribed by any law or administrative regulation.

第四百四十一条 以汇票、本票、支票、债券、存款单、仓单、提单出质的，质权自权利凭证交付质权人时设立；没有权利凭证的，质权自办理出质登记时设立。法律另有规定的，依照其规定。

Article 441 Where a pledge is made on bills of exchange, promissory notes, cheques, bonds, certificates of deposit, warehouse receipts or bills of lading, the pledge rights shall be established upon the delivery of documents of title to the pledgee. Where there is no document of title, the pledge rights shall be established upon the registration of the pledge. Where the laws provide otherwise, such provisions shall prevail.

#### 第四百四十二条

汇票、本票、支票、债券、存款单、仓单、提单的兑现日期或者提货日期先于主债权到期的，质权人可以兑现或者提货，并与出质人协议将兑现的价款或者提取的货物提前清偿债务或者提存。

Article 442 Where the date of redemption or collection of the draft, promissory note, check, bond, certificate of deposit, warehouse receipt or bill of lading is prior to the due date of the principal obligee's rights, the pledgee may redeem or collect the goods, and may, upon negotiation with the pledgor, seek early payments with the redeemed money or the collected goods, or submit the said money or goods to a competent authority for keeping.

第四百四十三条 以基金份额、股权出质的，质权自办理出质登记时设立。

Article 443 As regards the pledge of fund units or stock rights, the pledge right shall be established as of the date the pledge registration is handled.

基金份额、股权出质后，不得转让，但是出质人与质权人协商同意的除外。出质人转让基金份额、股权所得的价款，应当向质权人提前清偿债务或者提存。

Pledged fund units and equity may not be transferred unless the pledgor and the pledgee negotiated and agreed to the contrary. The pledgor shall apply the proceeds received from a

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transfer of fund units and equity to discharge the debt with the pledgee in advance or deposit the amount.

#### 第四百四十四条

以注册商标专用权、专利权、著作权等知识产权中的财产权出质的，质权自办理出质登记时设立。

**Article 444** Pledge of property rights in intellectual property such as exclusive rights to use registered trademarks, patent rights, copyrights, etc, shall be created at the time of registration of the pledge.

知识产权中的财产权出质后，出质人不得转让或者许可他人使用，但是出质人与质权人协商同意的除外。出质人转让或者许可他人使用出质的知识产权中的财产权所得的价款，应当向质权人提前清偿债务或者提存。

After the property rights in the intellectual property have been pledged, unless it is otherwise agreed to between the pledger and the pledgee upon negotiations, the pledger may not alienate the pledge or permit anyone else to use it. The pledgor shall apply the proceeds received from a transfer or license of the pledged intellectual property to discharge the debt with the pledgee in advance or deposit the amount.

#### 第四百四十五条 以应收账款出质的，质权自办理出质登记时设立。

**Article 445** As regards the pledge of accounts receivable, the pledge right shall be established as of the date the pledge registration is handled.

应收账款出质后，不得转让，但是出质人与质权人协商同意的除外。出质人转让应收账款所得的价款，应当向质权人提前清偿债务或者提存。

After the receivables have been pledged, unless it is otherwise agreed on by the pledger and the pledgee upon negotiations, the pledger may not alienate the pledged receivables. The pledgor shall apply the proceeds received from a transfer of accounts receivable to discharge the debt with the pledgee in advance or deposit the amount.

#### 第四百四十六条 权利质权除适用本节规定外，适用本章第一节的有关规定。

**Article 446** The pledge of rights shall be governed by, in addition to the provisions prescribed in this Section, the relevant provisions in Section 1 of this Chapter.

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## 第十九章 留 置 权

### Chapter 19: Lien

第四百四十七条 债务人不履行到期债务，债权人可以留置已经合法占有的债务人的动产，并有权就该动产优先受偿。

Article 447 Where an obligor fails to pay off its due debts, the obligee may take lien of the movable property that is lawfully possessed by the obligor, and has the right to seek preferred payments from such movable property.

前款规定的债权人为留置权人，占有的动产为留置财产。

The "obligee" as referred to in the preceding Paragraph shall be the lienor, and the occupied movable property shall be the property under lien.

第四百四十八条 债权人留置的动产，应当与债权属于同一法律关系，但是企业之间留置的除外。

Article 448 The movable property under lien of the obligee and the obligee's rights shall fall into a same legal relationship, except for the lien between enterprises.

**第四百四十九条** 法律规定或者当事人约定不得留置的动产，不得留置。

Article 449 Where movable property is prohibited by law or by agreement between the parties from being subject to a lien, such property may not be subject to a lien.

**第四百五十条** 留置财产为可分物的，留置财产的价值应当相当于债务的金额。

**Article 450** Where a property under lien is a divisible object, its value shall be equal to the amount of debts.

**第四百五十一条**

留置权人负有妥善保管留置财产的义务；因保管不善致使留置财产毁损、灭失的，应当承担赔偿责任。

**Article 451** A lienor shall assume the obligation to properly keep the property under lien, and shall make compensations in case the property under lien is damaged or lost by virtue of improper

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safekeeping.

**第四百五十二条** 留置权人有权收取留置财产的孳息。

**Article 452** A lienor shall be entitled to the fruits generated from the property under lien.  
前款规定的孳息应当先充抵收取孳息的费用。

The "fruits" as referred to in the preceding paragraph shall be firstly used for paying the expenses for collecting the fruits.

第四百五十三条 留置权人与债务人应当约定留置财产后的债务履行期限；没有约定或者约定不明确的，留置权人应当给债务人六十日以上履行债务的期限，但是鲜活易腐等不易保管的动产除外。债务人逾期未履行的，留置人可以与债务人协议以留置财产折价，也可以就拍卖、变卖留置财产所得的价款优先受偿。

Article 453 A lienor shall, after a property is taken as lien, stipulate with the obligor the time limit for the fulfillment of the obligee's rights. Where there is no such stipulation or the stipulation is not clear, the lienor shall grant the obligor a time limit of 60 days or more for the fulfillment of the obligee's rights, except for such movable property that is not easy to be kept as fresh goods, perishable goods, etc. Where the debtor defaults on the debt obligations within the stipulated period, the lienor may, by agreement with the debtor, claim the proceeds from a discount, auction or sale of the lien property in priority, in satisfaction of its claim.

留置财产折价或者变卖的，应当参照市场价格。

Reference shall be made to the market price for any discounting or sale of lien property.

**第四百五十四条**

债务人可以请求留置权人在债务履行期限届满后行使留置权；留置权人不行使的，债务人可以请求人民法院拍卖、变卖留置财产。

**Article 454** An obligor may, upon expiration of the time limit for fulfilling the obligee's rights, request the lienor to exercise the lien; and where the lienor fails to do so, the obligor may request the People's Court to sell or auction the property under lien.

**第四百五十五条**

留置财产折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债

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务人清偿。

**Article 455** Any excess of the proceeds of the cashing, auction or sale of the property under lien over the amount of the obligee's rights shall belong to the obligor, and any shortfall shall be settled by the obligor.

第四百五十六条 同一动产上已经设立抵押权或者质权，该动产又被留置的，留置权人优先受偿。

**Article 456** Where a mortgage or pledge is created on the same movable property, and the said movable property is taken as lien, the lienor has the right to seek preferential payments.

#### 第四百五十七条

留置权人对留置财产丧失占有或者留置权人接受债务人另行提供担保的，留置权消灭。

**Article 457** The lien shall perish in case a lienor loses the possession of the property under lien or accepts other security separately provided by the obligor.

### 第五分编 占 有

#### Occupation of Subpart V

### 第二十章 占 有

#### Chapter 20 Possession

#### 第四百五十八条

基于合同关系等产生的占有，有关不动产或者动产的使用、收益、违约责任等，按照合同约定；合同没有约定或者约定不明确的，依照有关法律规定。

**Article 458** Where possession arises out of a contractual relationship, the use, benefit and liability for breach of contract of the relevant real property or movable property shall be subject to the contractual provisions; where the contract is silent or the provisions are unclear, the relevant legal provisions shall apply.

#### 第四百五十九条

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占有人因使用占有的不动产或者动产，致使该不动产或者动产受到损害的，恶意占有人应当承担赔偿责任。

Article 459 Where a possessor causes any damage to the real property or movable property under his possession during use, the possessor shall make compensations if he is malicious.

#### 第四百六十条

不动产或者动产被占有人占有的，权利人可以请求返还原物及其孳息；但是，应当支付善意占有人因维护该不动产或者动产支出的必要费用。

Article 460 Where a real property or movable property is possessed by the possessor, the right holder may request the possessor to return the original property and any gains therefrom. However, the right holder shall pay the bona fide possessor necessary expenses incurred in the maintenance of the real property or movable property.

第四百六十一条 占有的不动产或者动产毁损、灭失，该不动产或者动产的权利人请求赔偿的，占有人应当将因毁损、灭失取得的保险金、赔偿金或者补偿金等返还给权利人；权利人的损害未得到足够弥补的，恶意占有人还应当赔偿损失。

Article 461 Where any real property or movable property under possession is damaged or lost, the possessor shall return the insurance money, damages or indemnities for the said damage or loss to the obligee if the obligee requires compensations. A malicious possessor shall make compensations in case the damages to the obligee have not been sufficiently made up.

第四百六十二条 占有的不动产或者动产被侵占的，占有人有权请求返还原物；对妨害占有的行为，占有人有权请求排除妨害或者消除危险；因侵占或者妨害造成损害的，占有人有权依法请求损害赔偿。

Article 462 Where a real property or movable property under possession is encroached upon, the possessor has the right to request the return of the original property. Where any act impairs the possession, the possessor has the right to request the cessation of impairment or danger; where any damage is caused by virtue of encroachment or interference, the possessor has the right to request compensation in accordance with law.

占有人返还原物的请求权，自侵占发生之日起一年内未行使的，该请求权消灭。

The claim of a possessor for returning the original object shall perish, if the possessor fails

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to exercise it within one year as of the date of encroachment.

第三编 合 同

PART III CONTRACT

第一分编 通 则

Subpart I General Principles

第一章 一 般 规 定

CHAPTER 1 GENERAL PROVISIONS

**第四百六十三条** 本编调整因合同产生的民事关系。

**Article 463** This Part deals with civil relations arising out of contracts.

**第四百六十四条** 合同是民事主体之间设立、变更、终止民事法律关系的协议。

**Article 464.** A contract is an agreement between civil subjects which establishes, modifies or terminates a civil legal relationship.

婚姻、收养、监护等有关身份关系的协议，适用有关该身份关系的法律规定；没有规定的，可以根据其性质参照适用本编规定。

Agreements concerning personal relationships such as marriage, adoption and guardianship shall be governed by the provisions of the law governing such personal relationships; where no such provisions exist, the provisions of this Part may be applied by reference and in light of the nature of such agreements.

**第四百六十五条** 依法成立的合同，受法律保护。

**Article 465** A contract established in accordance with the law is protected by the law.

依法成立的合同，仅对当事人具有法律约束力，但是法律另有规定的除外。

Unless otherwise provided by law, a contract concluded in accordance with the law shall be legally binding only on the parties.

**第四百六十六条**

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当事人对合同条款的理解有争议的，应当依据本法第一百四十二条第一款的规定，确定争议条款的含义。

**Article 466** Where a dispute arises between the parties over the understanding of a contractual clause, the meaning of the disputed clause shall be determined in accordance with the provisions of the first paragraph of Article 142 of this Law.

合同文本采用两种以上文字订立并约定具有同等效力的，对各文本使用的词句推定具有相同含义。各文本使用的词句不一致的，应当根据合同的相关条款、性质、目的以及诚信原则等予以解释。

Where a contract is concluded in two or more languages and it is agreed that all versions are equally authentic, the words and sentences in each version are presumed to have the same meaning. In case of any discrepancy in the words and sentences used in different versions, such words and sentences shall be interpreted in accordance with the relevant articles, nature and purpose of the contract as well as the principle of good faith.

#### 第四百六十七条

本法或者其他法律没有明文规定的合同，适用本编通则的规定，并可以参照适用本编或者其他法律最相类似合同的规定。

**Article 467** Where this Law or another law does not expressly provide for contracts, the provisions of the General Principles of this Part shall apply, and reference may be made to the provisions of this Part or other laws relating to contracts the closest to such contracts.

在中华人民共和国境内履行的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，适用中华人民共和国法律。

The law of the People's Republic of China shall apply to contracts that are to be performed within the territory of the People's Republic of China, namely contracts for Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and Chinese-foreign cooperative exploration and development of natural resources.

#### 第四百六十八条

非因合同产生的债权债务关系，适用有关该债权债务关系的法律规定；没有规定的，适用本编通则的有关规定，但是根据其性质不能适用的除外。

**Article 468** As to the creditor-debtor relationship that does not arise from contracts, the legal

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provisions on the said creditor-debtor relationship shall apply; if there is no such provision, the relevant provisions in the General Principles of this Part shall apply, unless the said relationship is not applicable in light of its nature.

## 第二章 合同的订立

### Chapter 2 Conclusion of Contracts

**第四百六十九条** 当事人订立合同，可以采用书面形式、口头形式或者其他形式。

**Article 469.** The parties may conclude a contract in writing, orally or in some other form.

书面形式是合同书、信件、电报、电传、传真等可以有形地表现所载内容的形式。

An agreement is in writing if it is contained in the tangible form of a document such as a contract, letter, telegram, telex, or facsimile.

以电子数据交换、电子邮件等方式能够有形地表现所载内容，并可以随时调取查用的数据电文，视为书面形式。

Any electronic data that can show, in material form, the contents that it specifies through electronic data exchange or e-mail and can be accessed for reference and used at any time shall be regarded as a written form.

**第四百七十条** 合同的内容由当事人约定，一般包括下列条款：

**Article 470** The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses:

（一）当事人的姓名或者名称和住所；

1. Names or titles and domiciles of the parties;

（二）标的；

(II) subject matter;

（三）数量；

(III) quantity;

（四）质量；

(IV) quality;

（五）价款或者报酬；

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(V) price or remuneration;

(六) 履行期限、地点和方式;

(VI) time limit, place and method of performance;

(七) 违约责任;

(VII) Liabilities for breach of contract;

(八) 解决争议的方法。

(VIII) dispute settlement method.

当事人可以参照各类合同的示范文本订立合同。

The parties may conclude a contract by reference to a model text of each type of contract.

**第四百七十一条** 当事人订立合同，可以采取要约、承诺方式或者其他方式。

**Article 471.** The parties may conclude a contract through the use of an offer, acceptance or other methods.

#### **第四百七十二条**

要约是希望与他人订立合同的意思表示，该意思表示应当符合下列条件：

**Article 472** An offer is an expression of an intent to conclude a contract with another person.

Such expression of intent shall satisfy the following conditions:

(一) 内容具体确定；

1. the contents shall be specific and definite;

(二) 表明经受要约人承诺，要约人即受该意思表示约束。

(II) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.

**第四百七十三条** 要约邀请是希望他人向自己发出要约的表示。拍卖公告、招标公告、招股说明书、债券募集办法、基金招募说明书、商业广告和宣传、寄送的价目表等为要约邀请。

**Article 473** An invitation to offer is an expression of a desire that another person make an offer to oneself. Announcements of auction, public tender, prospectus, measures for raising bonds, prospectus of fund raising, commercial advertisements and publicity, price lists sent are invitations to offer.

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商业广告和宣传的内容符合要约条件的，构成要约。

Contents of commercial advertisements and publicity in line with conditions of offer constitute an offer.

**第四百七十四条** 要约生效的时间适用本法第一百三十七条的规定。

**Article 474** The provisions of Article 137 of this Law shall apply as to the time when the offer becomes effective.

第四百七十五条 要约可以撤回。要约的撤回适用本法第一百四十一条的规定。

Article 475. An offer may be withdrawn. The provisions of Article 141 of this Law shall apply to the withdrawal of an offer.

**第四百七十六条** 要约可以撤销，但是有下列情形之一的除外：

**Article 476** An offer may be revoked, except in any of the following circumstances:

（一）要约人以确定承诺期限或者其他形式明示要约不可撤销；

1. the offeror indicates expressly in a fixed time limit for acceptance or in any other form that the offer is irrevocable; or

（二）受要约人有理由认为要约是不可撤销的，并已经为履行合同做了合理准备工作。

(II) the offeree has reasons to believe that the offer is irrevocable and has made reasonable preparations to perform the contract.

**第四百七十七条**

撤销要约的意思表示以对话方式作出的，该意思表示的内容应当在受要约人作出承诺之前为受要约人所知道；撤销要约的意思表示以非对话方式作出的，应当在受要约人作出承诺之前到达受要约人。

**Article 477** If the revocation of the offer is expressed in a verbal form, the contents of the expression of intention shall become known to the offeree before it has been accepted by the offeree; if the revocation of the offer is expressed in a non-verbal form, such contents shall reach the offeree before it has been accepted by the offeree.

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**第四百七十八条** 有下列情形之一的，要约失效：

**Article 478** An offer shall be null and void under any of the following circumstances:

（一）要约被拒绝；

1. the offer is rejected;

（二）要约被依法撤销；

(II) the offer is revoked in accordance with the law;

（三）承诺期限届满，受要约人未作出承诺；

(III) the offeree fails to make an acceptance within the time limit for acceptance; or

（四）受要约人对要约的内容作出实质性变更。

(IV) the offeree materially alters the contents of the offer.

**第四百七十九条** 承诺是受要约人同意要约的意思表示。

**Article 479** An acceptance is a manifestation of the offeree's assent to the offer.

**第四百八十条**

承诺应当以通知的方式作出；但是，根据交易习惯或者要约表明可以通过行为作出承诺的除外。

**Article 480** An acceptance shall be made by notification, except where acceptance may be made by an act on the basis of customary business practice or as expressed in the offer.

**第四百八十一条** 承诺应当在要约确定的期限内到达要约人。

**Article 481** An acceptance shall reach the offeror within the time limit fixed in the offer.

要约没有确定承诺期限的，承诺应当依照下列规定到达：

Where no time limit is fixed in the offer, an acceptance shall reach the offeror in accordance with the following provisions:

（一）要约以对话方式作出的，应当即时作出承诺；

1. if the offer is made verbally, the acceptance shall be made immediately; and

（二）要约以非对话方式作出的，承诺应当在合理期限内到达。

(II) if the offer is made in a form other than verbal communication, the acceptance shall reach the offeror within a reasonable time limit.

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第四百八十二条 要约以信件或者电报作出的，承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的，自投寄该信件的邮戳日期开始计算。要约以电话、传真、电子邮件等快速通讯方式作出的，承诺期限自要约到达受要约人时开始计算。

**Article 482** Where an offer is made by letter or telegram, the time limit for acceptance commences from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, the time limit commences from the postmark date on the envelope. Where the offer is made by means of instantaneous communication, such as telephone, facsimile or electronic mail, the time limit for acceptance commences from the time the offer reaches the offeree.

第四百八十三条 承诺生效时合同成立，但是法律另有规定或者当事人另有约定的除外。

**Article 483.** A contract is concluded at the time an acceptance takes effect, except where laws stipulate otherwise or the parties agree otherwise.

第四百八十四条 以通知方式作出的承诺，生效的时间适用本法第一百三十七条的规定。

**Article 484** The provisions of Article 137 of this Law shall apply to the time when an acceptance entered into force by means of a notification.

承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。

If an acceptance does not require notification, it becomes effective when an act of acceptance is performed in accordance with trade practices or as required in the offer.

第四百八十五条 承诺可以撤回。承诺的撤回适用本法第一百四十一条的规定。

**Article 485.** An acceptance may be withdrawn. The provisions of Article 141 of this Law shall apply to withdrawal of acceptance.

第四百八十六条

受要约人超过承诺期限发出承诺，或者在承诺期限内发出承诺，按照通常情形不能及时到达要约人的，为新要约；但是，要约人及时通知受要约人该承诺有效的除外。

**Article 486** Where the offeree accepts the offer beyond the time limit for acceptance or within the time limit for acceptance but under normal circumstances it is not possible for the acceptance to reach the offeror in time, it shall constitute a new offer, except where the offeror informs the offeree

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that the said acceptance is effective.

#### 第四百八十七条

受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但是因其他原因致使承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺外，该承诺有效。

**Article 487** If an offeree, within the time limit for acceptance, dispatches an acceptance which would under normal circumstances be able to reach the offeror in due time but for other reasons reaches the offeror after the time limit for acceptance has expired, the acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that the acceptance is not accepted because it exceeds the time limit for acceptance.

第四百八十八条 承诺的内容应当与要约的内容一致。受要约人对要约的内容作出实质性变更的，为新要约。有关合同标的、数量、质量、价款或者报酬、履行期限、履行地点和方式、违约责任和解决争议方法等的变更，是对要约内容的实质性变更。

**Article 488** The contents of an acceptance shall be consistent with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quantity, quality, price or remuneration, time limit, place and method of performance, liability for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.

#### 第四百八十九条

承诺对要约的内容作出非实质性变更的，除要约人及时表示反对或者要约表明承诺不得对要约的内容作出任何变更外，该承诺有效，合同的内容以承诺的内容为准。

**Article 489** If an acceptance immaterially modifies the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.

第四百九十条 当事人采用合同书形式订立合同的，自当事人均签名、盖章或者按指印时合同成立。在签名、盖章或者按指印之前，当事人一方已经履行主要义务，对方接

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受时，该合同成立。

**Article 490** Where the parties conclude a contract in written form, the contract is established when both parties have signed it, affixed their seals thereon or have affixed their fingerprints thereon. A contract is established when one party has performed its principal obligations before signing, sealing or affixing its fingerprint and the other party accepts them.

法律、行政法规规定或者当事人约定合同应当采用书面形式订立，当事人未采用书面形式但是一方已经履行主要义务，对方接受时，该合同成立。

Where a contract is to be concluded in written form as provided for by laws and administrative regulations or as agreed by the parties, and the parties fail to conclude the contract in written form, but one party has performed its principal obligation and the other party has accepted it, the contract is established.

#### **第四百九十一条**

当事人采用信件、数据电文等形式订立合同要求签订确认书的，签订确认书时合同成立。

**Article 491** Where the parties concerned conclude a contract in the form of a letter or electronic data etc to require execution of a letter of confirmation, the contract shall be concluded at the time of execution of the letter of confirmation.

当事人一方通过互联网等信息网络发布的商品或者服务信息符合要约条件的，对方选择该商品或者服务并提交订单成功时合同成立，但是当事人另有约定的除外。

Where the information of any commodity or service released by one party via the internet or other information network meets the conditions of offer, the contract shall be established when the other party successfully selects such commodity or service and submits an order, unless otherwise agreed by the parties.

#### **第四百九十二条** 承诺生效的地点为合同成立的地点。

**Article 492** The place of effectiveness of an acceptance shall be the place of formation of the contract.

采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其住所地为合同成立的地点。当事人另有约定的，按照其约定。

If a contract is concluded in the form of electronic messages, the main business place of the recipient shall be the place of establishment of the contract; if there is no main business place,

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the domicile thereof shall be the place of establishment of the contract. Where the parties agree otherwise, their agreement shall prevail.

#### 第四百九十三条

当事人采用合同书形式订立合同的，最后签名、盖章或者按指印的地点为合同成立的地点，但是当事人另有约定的除外。

**Article 493** Where the parties conclude a contract in written form, the place of establishment of the contract shall be the place where the parties last sign or affix their seals on it or place their fingerprints on it, except as otherwise agreed upon by the parties.

#### 第四百九十四条

国家根据抢险救灾、疫情防控或者其他需要下达国家订货任务、指令性任务的，有关民事主体之间应当依照有关法律、行政法规规定的权利和义务订立合同。

**Article 494** The State may, according to emergency rescue and disaster relief, epidemic prevention and control or other needs, assign ordering tasks or mandatory tasks to the State. The relevant civil subjects shall conclude a contract between them in accordance with the rights and obligations provided by the relevant laws and administrative regulations.

依照法律、行政法规的规定负有发出要约义务的当事人，应当及时发出合理的要约。

Any party who is obligated to make an offer in accordance with the provisions of laws and administrative regulations shall make a reasonable offer without delay.

依照法律、行政法规的规定负有作出承诺义务的当事人，不得拒绝对方合理的订立合同要求。

The parties that are obligated to make commitments in accordance with the laws or administrative regulations may not refuse the reasonable request of the other party for conclusion of the contract.

#### 第四百九十五条

当事人约定在将来一定期限内订立合同的认购书、订购书、预订书等，构成预约合同。

**Article 495** A letter of subscription, letter of order, and letter of reservation, which the parties agree to conclude a contract within a certain period in the future, shall constitute an advance contract.

当事人一方不履行预约合同约定的订立合同义务的，对方可以请求其承担预约合同

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的违约责任。

Where one party fails to perform the obligations under the advance contract, the other party may request it to assume the liabilities for breach of the advance contract.

#### 第四百九十六条

格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。

**Article 496** Standard terms are clauses which are prepared in advance for repeated use by one party and which are not the subject of negotiation with the other party when concluding a contract.

采用格式条款订立合同的，提供格式条款的一方应当遵循公平原则确定当事人之间的权利和义务，并采取合理的方式提示对方注意免除或者减轻其责任等与对方有重大利害关系的条款，按照对方的要求，对该条款予以说明。提供格式条款的一方未履行提示或者说明义务，致使对方没有注意或者理解与其有重大利害关系的条款的，对方可以主张该条款不成为合同的内容。

Where standard terms are adopted in concluding a contract, the party supplying the standard terms shall observe the principle of fairness in defining the rights and obligations of the parties, remind the other party in a reasonable way of the provisions that greatly affect the other party, such as those that exclude or mitigate the other party's liabilities, and explain the standard terms at the request of the other party. If the party providing the standard terms fails to perform the obligation of presentation or explanation, causing the other party to fail to notice or understand the terms in which it has a material interest, the other party may claim that the terms do not form the contents of the contract.

**第四百九十七条** 有下列情形之一的，该格式条款无效：

**Article 497** Under any of the following circumstances, the standard terms shall be invalid:

(一) 具有本法第一编第六章第三节和本法第五百零六条规定的无效情形；

1. Invalid circumstances under Section 3 of Chapter VI of Part One of this Law and under Article 506 of this Law;

(二) 提供格式条款一方不合理地免除或者减轻其责任、加重对方责任、限制对方主要权利；

(II) a Party unreasonably exempts or reduces its liabilities, increases the liabilities of the other Party and limits the major rights of the other Party;

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(三) 提供格式条款一方排除对方主要权利。

(III) the party supplying the standard terms excludes the main rights of the other party.

第四百九十八条 对格式条款的理解发生争议的,应当按照通常理解予以解释。对格式条款有两种以上解释的,应当作出不利于提供格式条款一方的解释。格式条款和非格式条款不一致的,应当采用非格式条款。

Article 498 If a dispute over the understanding of a standard term occurs, the term shall be interpreted based on the usual understanding. Where there are two or more interpretations for such term, the interpretation unfavorable to the party supplying such term shall prevail. Where a standard term is inconsistent with a non- standard term, the non- standard term shall prevail.

#### 第四百九十九条

悬赏人以公开方式声明对完成特定行为的人支付报酬的,完成该行为的人可以请求其支付。

Article 499 Where a person who offers a reward makes a public announcement on payment of remuneration to a person who performs a specific act, the person who performs the specific act may request for payment of remuneration.

#### 第五百条

当事人在订立合同过程中有下列情形之一,造成对方损失的,应当承担赔偿责任:

Article 500 A party shall be liable for compensation if it falls under any of the following circumstances in the course of concluding a contract, thereby causing losses to the other party:

(一) 假借订立合同,恶意进行磋商;

1. negotiating the contract in bad faith under the pretext of concluding a contract;

(二) 故意隐瞒与订立合同有关的重要事实或者提供虚假情况;

(II) deliberately concealing important facts relating to the conclusion of the contract or providing false information;

(三) 有其他违背诚信原则的行为。

(III) Having any other act against the principle of good faith.

#### 第五百零一条

当事人在订立合同过程中知悉的商业秘密或者其他应当保密的信息,无论合同是否成立,不

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得泄露或者不正当地使用；泄露、不正当地使用该商业秘密或者信息，造成对方损失的，应当承担赔偿责任。

**Article 501** A party shall not disclose or improperly use business secrets or other confidential information known to it in the course of concluding a contract, no matter whether the contract is established or not; if it discloses or improperly uses such business secrets or information and causes losses to the other party, it shall be liable for compensation.

### 第三章 合同的效力

#### Chapter 3 Validity of the Contracts

##### 第五百零二条

依法成立的合同，自成立时生效，但是法律另有规定或者当事人另有约定的除外。

**Article 502.** A contract which is concluded in accordance with the law takes effect from the time it is concluded, except where the law stipulates otherwise or the parties agree otherwise.

依照法律、行政法规的规定，合同应当办理批准等手续的，依照其规定。未办理批准等手续影响合同生效的，不影响合同中履行报批等义务条款以及相关条款的效力。应当办理申请批准等手续的当事人未履行义务的，对方可以请求其承担违反该义务的责任。

Where a contract is subject to approval or other procedures in accordance with laws and administrative regulations, such provisions shall be followed. Where the validity of a contract is affected due to failure to complete approval or other formalities, the validity of the obligations of reporting for approval and other clauses in the contract and the relevant clauses shall not be affected. Where the party concerned required to complete approval formalities etc does not perform its obligations, the other party may request that the party concerned bear liability for violation of such obligations.

依照法律、行政法规的规定，合同的变更、转让、解除等情形应当办理批准等手续的，适用前款规定。

Where the laws and administrative regulations provide that the alteration, transfer, rescission of a contract etc shall undergo approval formalities, the provisions of the preceding paragraph shall apply.

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### 第五百零三条

无权代理人以被代理人的名义订立合同，被代理人已经开始履行合同义务或者接受相对人履行的，视为对合同的追认。

**Article 503** Where an agent without the power of agency enters into a contract in the name of the principal, and the principal has begun to perform the contractual obligations or accepts the performance of such obligations by the counterparty, the contract shall be deemed to have been ratified.

### 第五百零四条

法人的法定代表人或者非法人组织的负责人超越权限订立的合同，除相对人知道或者应当知道其超越权限外，该代表行为有效，订立的合同对法人或者非法人组织发生效力。

**Article 504** Where the legal representative of a legal person or the responsible person of an unincorporated association concludes a contract beyond the scope of his authority, such act of representation shall be valid and the concluded contract shall have binding force on the legal person or unincorporated association, unless the counterparty knows or ought to know that such person is exceeding the scope of his authority.

### 第五百零五条

当事人超越经营范围订立的合同的效力，应当依照本法第一编第六章第三节和本编的有关规定确定，不得仅以超越经营范围确认合同无效。

**Article 505** The validity of a contract concluded by the parties in excess of the business scope shall be determined in accordance with the relevant provisions of Section 3 of Chapter VI of Part One and this Part. It shall not be permitted to determine a contract as invalid only on the ground of exceeding the business scope.

**第五百零六条** 合同中的下列免责条款无效：

**Article 506** The following exception clauses in a contract shall be null and void:

(一) 造成对方人身损害的；

1. those that cause personal injury to the other party;

(二) 因故意或者重大过失造成对方财产损失的。

(II) those involving property damage to the other party as a result of deliberate intent or

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gross negligence.

#### **第五百零七条**

合同不生效、无效、被撤销或者终止的，不影响合同中有关解决争议方法的条款的效力。

**Article 507** If a contract is ineffective, invalid, revoked or terminated, it shall not affect the validity of the clauses on the methods of dispute settlement contained in the contract.

**第五百零八条** 本编对合同的效力没有规定的，适用本法第一编第六章的有关规定。

**Article 508** If this Part does not specify the validity of a contract, the relevant provisions of Chapter VI of Part One of this Law shall apply.

### 第四章 合同的履行

#### CHAPTER 4 EXECUTION OF CONTRACT

**第五百零九条** 当事人应当按照约定全面履行自己的义务。

**Article 509.** The parties shall perform their respective obligations in full accordance with the parties' agreement.

当事人应当遵循诚信原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

The parties shall observe the principle of good faith, and perform such obligations as notification, rendering assistance and maintaining confidentiality according to the nature and purpose of the contract as well as trade practices.

当事人在履行合同过程中，应当避免浪费资源、污染环境和破坏生态。

In the course of performing a contract, the parties shall avoid wasting resources, polluting the environment and damaging the ecology.

#### **第五百一十条**

合同生效后，当事人就质量、价款或者报酬、履行地点等内容没有约定或者约定不明确的，可以协议补充；不能达成补充协议的，按照合同相关条款或者交易习惯确定。

**Article 510** Where, after a contract becomes effective, there is no agreement in the contract

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between the parties on the terms regarding quality, price or remuneration or place of performance, or such agreement is unclear, the parties may agree upon supplementary terms through consultation; if a supplementary agreement cannot be reached, such terms shall be determined in accordance with the relevant terms of the contract or trade practices.

### 第五百一十一条

当事人就有关合同约定不明确，依据前条规定仍不能确定的，适用下列规定：

**Article 511** Where the relevant terms of a contract are unclear, and cannot be determined in accordance with the provisions of the preceding article, the following provisions shall apply:

（一）质量要求不明确的，按照强制性国家标准履行；没有强制性国家标准的，按照推荐性国家标准履行；没有推荐性国家标准的，按照行业标准履行；没有国家标准、行业标准的，按照通常标准或者符合合同目的的特定标准履行。

1. if quality requirements are unclear, performance shall be in accordance with the compulsory national standards; in the absence of compulsory national standards, performance shall be in accordance with recommended national standards; in the absence of recommended national standards, performance shall be in accordance with industry standards; in the absence of national standards or industry standards, performance shall be in accordance with usual standards or specific standards in conformity with the purpose of the contract;

（二）价款或者报酬不明确的，按照订立合同时履行地的市场价格履行；依法应当执行政府定价或者政府指导价的，依照规定履行。

(II) if the price or remuneration is unclear, the market price of the place of performance at the time the contract was concluded shall apply; if the government-fixed price or government-directed price shall be followed in accordance with the law, the relevant provisions shall apply; and

（三）履行地点不明确，给付货币的，在接受货币一方所在地履行；交付不动产的，在不动产所在地履行；其他标的，在履行义务一方所在地履行。

(III) if the place of performance is unclear, and the payment is in monetary terms, the performance shall be effected at the place of the party receiving the payment; if real property is to be delivered, the performance shall be effected at the place of the real property; in the case of other subject matters, the performance shall be effected at the place of the party fulfilling the obligations.

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（四）履行期限不明确的，债务人可以随时履行，债权人也可以随时请求履行，但是应当给对方必要的准备时间。

(IV) if the time of performance is unclear, the obligor may perform, and the obligee may request performance, at any time, provided that the other party shall be given the time required for preparation;

（五）履行方式不明确的，按照有利于实现合同目的的方式履行。

(V) if the method of performance is unclear, performance shall be rendered in a manner which is conducive to realizing the purpose of the contract; and

（六）履行费用的负担不明确的，由履行义务一方负担；因债权人原因增加的履行费用，由债权人负担。

(VI) if the party responsible for the expenses of performance is unclear, the expenses shall be borne by the party fulfilling the obligations; the expenses increased due to the creditor's reason shall be borne by the creditor.

第五百一十二条 通过互联网等信息网络订立的电子合同的标的为交付商品并采用快递物流方式交付的，收货人的签收时间为交付时间。电子合同的标的为提供服务的，生成的电子凭证或者实物凭证中载明的时间为提供服务时间；前述凭证没有载明时间或者载明时间与实际提供服务时间不一致的，以实际提供服务的时间为准。

Article 512 Where the subject matter of an electronic contract concluded through the Internet or other information network is delivery of goods and the express logistics method is adopted for delivery, the time of receipt by the consignee shall be the time of delivery. Where the subject matter of the electronic contract is provision of services, the time specified in the generated electronic or physical voucher shall be the time of provision of services; if the time specified in the foregoing voucher fails to be specified or the time specified in the foregoing voucher is inconsistent with the time of actual provision of services, the time of actual provision of services shall prevail.

电子合同的标的物为采用在线传输方式交付的，合同标的物进入对方当事人指定的特定系统且能够检索识别的时间为交付时间。

Where the subject matter of an electronic contract is delivered via online transmission, the delivery time shall be the time when the subject matter enters the specific system designated by the other party and can be retrieved and identified.

电子合同当事人对交付商品或者提供服务的方式、时间另有约定的，按照其约定。

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Where the parties to an electronic contract have agreed otherwise on the method and time for delivery of goods or provision of services, such agreement shall prevail.

### 第五百一十三条

执行政府定价或者政府指导价的，在合同约定的交付期限内政府价格调整时，按照交付时的价格计价。逾期交付标的物的，遇价格上涨时，按照原价格执行；价格下降时，按照新价格执行。逾期提取标的物或者逾期付款的，遇价格上涨时，按照新价格执行；价格下降时，按照原价格执行。

**Article 513** Where the government-fixed price or government-directed price shall be followed in a contract, if the said price is readjusted within the time limit for delivery as stipulated in the contract, the payment shall be calculated based on the price at the time of delivery. Where a party delays in delivering the subject matter, the original price shall be adopted if the price rises, and the new price shall be adopted if the price falls. Where a party delays in taking delivery of the subject matter or making payment, the new price shall be adopted if the price rises, and the original price shall be adopted if the price falls.

### 第五百一十四条

以支付金钱为内容的债，除法律另有规定或者当事人另有约定外，债权人可以请求债务人以实际履行地的法定货币履行。

**Article 514** With respect to the payment of money for a debt, the creditor may require the debtor to pay in the legal tender of the place where actual performance takes place, unless otherwise stipulated by the law or agreed by the parties.

### 第五百一十五条

标的有多项而债务人只需履行其中一项的，债务人享有选择权；但是，法律另有规定、当事人另有约定或者另有交易习惯的除外。

**Article 515** Where there are several subject matters and the debtor only needs to perform one of them, the debtor shall have the right to choose, unless otherwise stipulated by the law or agreed between the parties concerned, or there are other transaction practices.

享有选择权的当事人在约定期限内或者履行期限届满未作选择，经催告后在合理期限内仍未选择的，选择权转移至对方。

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Where the party entitled to the option fails to make a choice within the agreed time limit or upon expiry of the performance period, and fails to make a choice within a reasonable time limit after being urged, the option shall be transferred to the other party.

第五百一十六条 当事人行使选择权应当及时通知对方，通知到达对方时，标的确定。标的确定后不得变更，但是经对方同意的除外。

**Article 516** In exercising his option, the party concerned shall promptly notify the other party, and the subject matter shall be determined when the notice reaches the other party. The object shall not be changed after being determined, unless otherwise agreed by the other party.

可选择标的的发生不能履行情形的，享有选择权的当事人不得选择不能履行的标的，但是该不能履行的情形是由对方造成的除外。

Where an event of impossibility of performance occurs to a chosen subject matter, the party who has an option may not choose the subject matter of impossibility of performance unless the impossibility is caused by the other party.

### 第五百一十七条

债权人为二人以上，标的可分，按照份额各自享有债权的，为按份债权；债务人为二人以上，标的可分，按照份额各自负担债务的，为按份债务。

**Article 517** When there are two or more creditors, the subject matter is divisible, and each creditor is entitled to its own share of the debt, the claim is divided into shares. When there are two or more debtors, and each creditor is entitled to its own share of the subject matter, the claim is divided into shares.

按份债权人或者按份债务人的份额难以确定的，视为份额相同。

If it is difficult to determine the share of the creditor or the debtor by share, they shall be deemed to be the same.

### 第五百一十八条

债权人为二人以上，部分或者全部债权人均可以请求债务人履行债务的，为连带债权；债务人为二人以上，债权人可以请求部分或者全部债务人履行全部债务的，为连带债务。

**Article 518** When there are two or more creditors, and some or all of them may request the debtor to perform the debt, this is joint and several obligation. When there are two or more creditors,

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and the creditors may request part or all of them to perform all of the debt, this is joint and several obligation.

连带债权或者连带债务，由法律规定或者当事人约定。

Joint creditor's rights or joint liabilities shall be stipulated by the law or agreed by the parties concerned.

**第五百一十九条** 连带债务人之间的份额难以确定的，视为份额相同。

**Article 519** Where it is difficult to determine the shares held among the joint and several debtors, they shall be deemed to be the same.

实际承担债务超过自己份额的连带债务人，有权就超出部分在其他连带债务人未履行的份额范围内向其追偿，并相应地享有债权人的权利，但是不得损害债权人的利益。其他连带债务人对债权人的抗辩，可以向该债务人主张。

Where a joint and several debtor has actually borne debts in excess of his own share, he shall be entitled to seek recourse against the other joint and several debtors in respect of the excess portion within the scope of their unperformed share, and shall enjoy the rights of a creditor correspondingly, provided that the interests of the creditor are not prejudiced. The other joint debtors may, in respect of the obligee, avail themselves of any defense they have against the obligor.

被追偿的连带债务人不能履行其应分担份额的，其他连带债务人应当在相应范围内按比例分担。

Where the joint debtors who are recovered cannot perform their shares, other joint debtors shall perform their shares on a pro rata basis within the corresponding scope.

**第五百二十条**

部分连带债务人履行、抵销债务或者提存标的物的，其他债务人对债权人的债务在相应范围内消灭；该债务人可以依据前条规定向其他债务人追偿。

**Article 520** If part of the joint debtors perform, offset or place in escrow the obligations, the obligations of the other debtors to the creditors shall be extinguished within the corresponding scope; the debtor may have recourse against the other debtors according to the provisions of the preceding article.

部分连带债务人的债务被债权人免除的，在该连带债务人应当承担的份额范围内，

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其他债务人对债权人的债务消灭。

Where part of the debts of the joint and several debtor is released by the creditor, the debts of other debtors to the creditor shall be extinguished within the scope of the share that the joint and several debtor shall assume.

部分连带债务人的债务与债权人的债权同归于一人的，在扣除该债务人应当承担的份额后，债权人对其他债务人的债权继续存在。

Where part of the debts of a joint and several debtor belongs to the same creditor, the creditor's rights against other debtors shall continue to exist after deduction of the share to be borne by the debtor.

债权人对部分连带债务人的给付受领迟延的，对其他连带债务人发生效力。

Where the creditor delays in receiving payment from part of the joint debtors, such act shall be binding on the other joint debtors.

**第五百二十一条** 连带债权人之间的份额难以确定的，视为份额相同。

**Article 521** Where the shares among the joint creditors are difficult to determine, they shall be deemed to be the same.

实际受领债权的连带债权人，应当按比例向其他连带债权人返还。

The joint creditors who have actually received the claims shall return them to the other joint creditors on a pro rata basis.

连带债权参照适用本章连带债务的有关规定。

The relevant provisions of this Chapter on joint and several debts shall apply as reference to joint and several creditor's rights.

**第五百二十二条**

当事人约定由债务人向第三人履行债务，债务人未向第三人履行债务或者履行债务不符合约定的，应当向债权人承担违约责任。

**Article 522** Where the parties agree that the obligor performs obligations for a third party, but the obligor fails to perform the obligations for the third party or the performance does not comply with the terms of the contract, the obligor shall be liable to the obligee for breach of contract.

法律规定或者当事人约定第三人可以直接请求债务人向其履行债务，第三人未在合理期限内明确拒绝，债务人未向第三人履行债务或者履行债务不符合约定的，第三人可

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以请求债务人承担违约责任；债务人对债权人的抗辩，可以向第三人主张。

Where the laws stipulate or the parties agree that a third party may directly request the obligor to perform the obligation for him, but the third party does not specifically refuse to perform the obligation within a reasonable period, and the obligor fails to perform the obligation for the third party or the performance does not comply with the terms of the contract, the third party may request the obligor to bear liability for breach of contract; the obligor may avail itself of any defense it has against the obligee.

### 第五百二十三条

当事人约定由第三人向债权人履行债务，第三人不履行债务或者履行债务不符合约定的，债务人应当向债权人承担违约责任。

**Article 523** Where the parties agree that a third party performs obligations for the obligee, but the third party fails to perform the obligations or the performance does not comply with the terms of the contract, the obligor shall be liable to the obligee for breach of contract.

### 第五百二十四条

债务人不履行债务，第三人对履行该债务具有合法利益的，第三人有权向债权人代为履行；但是，根据债务性质、按照当事人约定或者依照法律规定只能由债务人履行的除外。

**Article 524** Where the obligor fails to perform its obligations, and a third party has the legitimate interest in the performance of such obligations, the third party shall have the right to perform the obligations on behalf of the obligee, except where the obligations can only be performed by the obligor in accordance with the nature of the obligations, the agreement between the parties or the provisions of the law.

债权人接受第三人履行后，其对债务人的债权转让给第三人，但是债务人和第三人另有约定的除外。

After the obligee accepts performance by a third party, the obligee's rights against the obligor shall be assigned to such third party, unless otherwise agreed by the obligor and such third party.

### 第五百二十五条

当事人互负债务，没有先后履行顺序的，应当同时履行。一方在对方履行之前有权拒绝其履

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行请求。一方在对方履行债务不符合约定时，有权拒绝其相应的履行请求。

**Article 525** Where both parties have obligations towards one another and there is no order of priority in respect of the performance of obligations, the parties shall perform the obligations simultaneously. A party has the right to reject any request for performance by the other party prior to its performance. A Party has the right to reject the corresponding request of the other Party for performance if such other Party's performance does not comply with the provisions hereof.

第五百二十六条 当事人互负债务，有先后履行顺序，应当先履行债务一方未履行的，后履行一方有权拒绝其履行请求。先履行一方履行债务不符合约定的，后履行一方有权拒绝其相应的履行请求。

**Article 526** Where both parties have obligations toward each other and there is an order of priority in respect of the performance of the obligations, and the party which shall first perform its obligations has not performed the obligations, the other party has the right to reject the other party's request for performance. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is to perform later has the right to reject the corresponding performance request.

### 第五百二十七条

应当先履行债务的当事人，有确切证据证明对方有下列情形之一的，可以中止履行：

**Article 527** The party which shall render its performance first may suspend its performance if it has conclusive evidence proving that the other party falls under any of the following circumstances:

（一）经营状况严重恶化；

1. Its business is seriously deteriorating;

（二）转移财产、抽逃资金，以逃避债务；

(II) Transferring property or surreptitiously withdrawing funds in order to evade debts;

（三）丧失商业信誉；

(III) the other party loses its business reputation; or

（四）有丧失或者可能丧失履行债务能力的其他情形。

(IV) Other circumstances showing that it has lost or is likely to lose the ability to perform its obligations.

当事人没有确切证据中止履行的，应当承担违约责任。

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Where a party suspends performance without conclusive evidence, it shall be liable for breach of contract.

### 第五百二十八条

当事人依据前条规定中止履行的，应当及时通知对方。对方提供适当担保的，应当恢复履行。中止履行后，对方在合理期限内未恢复履行能力且未提供适当担保的，视为以自己的行为表明不履行主要债务，中止履行的一方可以解除合同并可以请求对方承担违约责任。

**Article 528** If a party suspends performance in accordance with the provisions of the preceding Article, it shall promptly notify the other party. Where the other party provides an appropriate guarantee, the party shall resume performance. After the suspension of the performance, if the other Party fails to restore its capacity for performance and provide appropriate guarantee within a reasonable time, it shall be deemed to be unable to perform its major obligations by its acts, the Party suspending the performance may rescind the Contract and may request the other Party to bear the liabilities for breach of contract.

### 第五百二十九条

债权人分立、合并或者变更住所没有通知债务人，致使履行债务发生困难的，债务人可以中止履行或者将标的物提存。

**Article 529** Where the obligee fails to notify the obligor of its division, merger or change of domicile, thereby making it difficult for the obligor to perform its obligations, the obligor may suspend performance or have the subject matter in escrow.

### 第五百三十条

债权人可以拒绝债务人提前履行债务，但是提前履行不损害债权人利益的除外。

**Article 530** The obligee may reject an advance performance by the obligor, except where the advance performance does not harm the interests of the obligee.

债务人提前履行债务给债权人增加的费用，由债务人负担。

Any additional expenses incurred by the obligee from the obligor's advance performance shall be borne by the obligor.

### 第五百三十一条

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债权人可以拒绝债务人部分履行债务，但是部分履行不损害债权人利益的除外。

**Article 531** The obligee may reject the obligor's partial performance, except that the partial performance of its obligations does not harm the obligee's interests.

债务人部分履行债务给债权人增加的费用，由债务人负担。

Any additional expense incurred by the obligee from the obligor's partial performance shall be borne by the obligor.

### 第五百三十二条

合同生效后，当事人不得因姓名、名称的变更或者法定代表人、负责人、承办人的变动而不履行合同义务。

**Article 532** Once a contract becomes effective, a party may not refuse to perform its obligations thereunder due to a change in its name, or its legal representative, the person in charge, or the person handling the contract.

### 第五百三十三条

合同成立后，合同的基础条件发生了当事人在订立合同时无法预见的、不属于商业风险的重大变化，继续履行合同对于当事人一方明显不公平的，受不利影响的当事人可以与对方重新协商；在合理期限内协商不成的，当事人可以请求人民法院或者仲裁机构变更或者解除合同。

**Article 533.** After a contract has been concluded, if the basic conditions of the contract have undergone a major change which was unforeseeable by the parties at the time it was concluded and which does not belong to commercial risk, and it is clearly unfair for the party concerned to continue to perform the contract, the party adversely affected may renegotiate with the other party. If negotiation fails within a reasonable period of time, the parties may request a people's court or an arbitration institution to modify or rescind the contract.

人民法院或者仲裁机构应当结合案件的实际情况，根据公平原则变更或者解除合同。

The people's court or arbitration institution shall, in light of the actual circumstances of the case, amend or terminate the contract according to the principle of fairness.

### 第五百三十四条

对当事人利用合同实施危害国家利益、社会公共利益行为的，市场监督管理和其他有关行政主管部门依照法律、行政法规的规定负责监督处理。

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**Article 534** The market supervision and administration authorities and other relevant administrative authorities shall be responsible for supervision and handling of parties concerned that make use of a contract to harm State interests and public interest pursuant to the provisions of laws and administrative regulations.

## 第五章 合同的保全

### Chapter 5 Preservation of Contracts

#### 第五百三十五条

因债务人怠于行使其债权或者与该债权有关的从权利，影响债权人的到期债权实现的，债权人可以向人民法院请求以自己的名义代位行使债务人对相对人的权利，但是该权利专属于债务人自身的除外。

**Article 535** Where the obligor is remiss in exercising its creditor's right or the accessory rights related to its creditor's right, thereby affecting the realization of the creditor's due right, the obligee may petition the People's Court for subrogation in its own name, except that such right exclusively belongs to the obligor.

代位权的行使范围以债权人的到期债权为限。债权人行使代位权的必要费用，由债务人负担。

The scope of subrogation shall be limited to the creditor's due claim. The expenses necessary for the obligee to exercise such subrogation rights shall be borne by the obligor.

相对人对债务人的抗辩，可以向债权人主张。

A counterparty may, in respect of the obligee, avail itself of any defense it has against the obligor.

#### 第五百三十六条

债权人的债权到期前，债务人的债权或者与该债权有关的从权利存在诉讼时效期间即将届满或者未及时申报破产债权等情形，影响债权人的债权实现的，债权人可以代位向债务人的相对人请求其向债务人履行、向破产管理人申报或者作出其他必要的行为。

**Article 536** Prior to the expiration of the creditor's right of a creditor, where the expiration of the limitation of action period for the creditor's right of the debtor or the

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**accessory rights related to the creditor's right is coming to an end or the creditor's right of bankruptcy is not declared in time, thus affecting the realization of the creditor's right**, the creditor may request the other party of the debtor to perform its obligations to the debtor, declare to the bankruptcy administrator or take other necessary acts on its behalf.

### **第五百三十七条**

人民法院认定代位权成立的，由债务人的相对人向债权人履行义务，债权人接受履行后，债权人与债务人、债务人与相对人之间相应的权利义务终止。债务人对相对人的债权或者与该债权有关的从权利被采取保全、执行措施，或者债务人破产的，依照相关法律的规定处理。

**Article 537** Where the People's Court determines that subrogation is established, the other party to the debtor shall perform obligations towards the creditor; upon acceptance of performance by the creditor, the corresponding rights and obligations between the creditor and the debtor, and between the debtor and the other party, shall be terminated. Where preservation or enforcement measures are adopted in respect of the creditor's rights of a debtor against the counterparty or the collateral rights relating to the creditor's rights, or the debtor is bankrupt, the matter shall be dealt with pursuant to the provisions of the relevant laws.

### **第五百三十八条**

债务人以放弃其债权、放弃债权担保、无偿转让财产等方式无偿处分财产权益，或者恶意延长其到期债权的履行期限，影响债权人的债权实现的，债权人可以请求人民法院撤销债务人的行为。

**Article 538** Where the debtor disposes of its property rights and interests without compensation by giving up its creditor's right, giving up the guarantee of the creditor's right, transferring the property without compensation, or maliciously extending the performance term of its due creditor's right, which influences the realization of the creditor's right, the creditor may require the people's court to revoke the debtor's act.

### **第五百三十九条**

债务人以明显不合理的低价转让财产、以明显不合理的高价受让他人财产或者为他人的债务提供担保，影响债权人的债权实现，债务人的相对人知道或者应当知道该情形的，债权人可以请求人民法院撤销债务人的行为。

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**Article 539** Where the obligor transfers its property at an obviously unreasonable low price, or accepts the transfer of another's property at an obviously unreasonable high price, or provides a guarantee for the debts of another party, thereby affecting the realization of the obligee's rights, and the other party to the obligor knows or ought to know of such circumstance, the obligee may petition the People's Court for cancellation of the obligor's act.

#### 第五百四十条

撤销权的行使范围以债权人的债权为限。债权人行使撤销权的必要费用，由债务人负担。

**Article 540** The extent to which the right to cancel can be exercised is limited to the rights of the obligee. The necessary expenses incurred by the obligee in exercising the right of revocation shall be borne by the obligor.

第五百四十一条 撤销权自债权人知道或者应当知道撤销事由之日起一年内行使。自债务人的行为发生之日起五年内没有行使撤销权的，该撤销权消灭。

**Article 541** The right to cancel shall be exercised within one year from the date the obligee knows or ought to know of the matter for cancellation. If the right of revocation is not exercised within five years from the date the act of the obligor takes place, the right of revocation shall be extinguished.

第五百四十二条 债务人影响债权人的债权实现的行为被撤销的，自始没有法律约束力。

**Article 542** Any act of a debtor that affects the fulfillment of the obligee's rights shall be null and void ab initio.

### 第六章 合同的变更和转让

#### Chapter 6 Modification and Assignment of Contracts

第五百四十三条 当事人协商一致，可以变更合同。

**Article 543** A contract may be modified if the parties reach a consensus through consultation.

第五百四十四条 当事人对合同变更的内容约定不明确的，推定为未变更。

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**Article 544** Where an agreement by the parties on the contents of a modification is unclear, the contract shall be presumed as not having been modified.

#### 第五百四十五条

债权人可以将债权的全部或者部分转让给第三人，但是有下列情形之一的除外：

**Article 545** The obligee may assign, in whole or in part, its obligatory rights to a third party, except under any of the following circumstances:

(一) 根据债权性质不得转让；

1. The rights may not be assigned in light of the nature of the claims;

(二) 按照当事人约定不得转让；

(II) such rights may not be assigned according to the agreement between the parties;

(三) 依照法律规定不得转让。

(III) such rights may not be assigned according to the provisions of the laws.

当事人约定非金钱债权不得转让的，不得对抗善意第三人。当事人约定金钱债权不得转让的，不得对抗第三人。

Where the parties concerned have agreed that the non-monetary creditor's rights cannot be transferred, the parties concerned shall not assert claims against a bona fide third party. Where the parties agree that the monetary claim may not be assigned, such an agreement shall not be enforceable against any third party.

**第五百四十六条** 债权人转让债权，未通知债务人的，该转让对债务人不发生效力。

**Article 546** Where the obligee assigns its claims without notifying the obligor, the assignment is not binding on the obligor.

债权转让的通知不得撤销，但是经受让人同意的除外。

Notification of the assignment of the claims shall not be revoked, except with the consent of the assignee.

#### 第五百四十七条

债权人转让债权的，受让人取得与债权有关的从权利，但是该从权利专属于债权人自身的除外。

**Article 547** Where the obligee assigns its claims, the assignee shall acquire the collateral rights

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related to the claims, except that the collateral rights exclusively belong to the obligee.

受让人取得从权利不因该从权利未办理转移登记手续或者未转移占有而受到影响。

The accessory rights obtained by the assignee shall not be affected because the accessory rights are not registered for transfer or are not transferred for possession.

#### **第五百四十八条**

债务人接到债权转让通知后，债务人对让与人的抗辩，可以向受让人主张。

**Article 548** Upon receipt of the notice of assignment of rights, the obligor may assert against the assignee any defenses it has against the assignor.

**第五百四十九条** 有下列情形之一的，债务人可以向受让人主张抵销：

**Article 549** Under any of the following circumstances, the obligor may claim set-off against the assignee:

（一）债务人接到债权转让通知时，债务人对让与人享有债权，且债务人的债权先于转让的债权到期或者同时到期；

1. Upon receipt by the obligor of the notice of assignment of the claims, the obligor shall have claims against the assignor which are due prior to or at the same time as the assigned claims;

（二）债务人的债权与转让的债权是基于同一合同产生。

(II) The obligee's right of the obligor and the assigned right of the obligee arise from the same contract.

**第五百五十条** 因债权转让增加的履行费用，由让与人负担。

**Article 550** The expenses increased due to the transfer of the obligatory right shall be borne by the transferor.

**第五百五十一条** 债务人将债务的全部或者部分转移给第三人的，应当经债权人同意。

**Article 551.** Where the obligor assigns all or part of its obligations to a third party, the consent of the obligee must be obtained.

债务人或者第三人可以催告债权人在合理期限内予以同意，债权人未作表示的，视为不同意。

The debtor or a third party may urge the creditor to give his consent within a reasonable

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period. If the creditor does not respond, his consent shall be deemed not to have been given.

### 第五百五十二条

第三人与债务人约定加入债务并通知债权人，或者第三人向债权人表示愿意加入债务，债权人未在合理期限内明确拒绝的，债权人可以请求第三人在其愿意承担的债务范围内和债务人承担连带债务。

**Article 552** Where a third party agrees with the obligor to join in the debt and notifies the obligee of its intention to join in the debt, or where the third party indicates to the obligee that it is willing to join in the debt, but the obligee does not explicitly refuse to do so within a reasonable period, the obligee may request the third party to bear joint and several debts with the obligor to the extent of the debts it is willing to bear.

### 第五百五十三条

债务人转移债务的，新债务人可以主张原债务人对债权人的抗辩；原债务人对债权人享有债权的，新债务人不得向债权人主张抵销。

**Article 553.** Where the obligor assigns its obligations, the new obligor may assert any defences which the original obligor had against the obligee; where the original obligor has claims against the obligee, the new obligor may not assert any set-off against the obligee.

### 第五百五十四条

债务人转移债务的，新债务人应当承担与主债务有关的从债务，但是该从债务专属于原债务人自身的除外。

**Article 554.** Where the obligor assigns its obligations, the new obligor shall assume all accessory obligations related to the main obligation, except where the said accessory obligation exclusively belongs to the original obligor.

### 第五百五十五条

当事人一方经对方同意，可以将自己在合同中的权利和义务一并转让给第三人。

**Article 555.** A party may, with the consent of the other party, assign to a third party all its rights together with its obligations under the contract.

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**第五百五十六条** 合同的权利和义务一并转让的，适用债权转让、债务转移的有关规定。

**Article 556** Where the rights and obligations under a contract are assigned together, the relevant provisions on assignment of creditor's rights and assignment of debts shall apply.

## 第七章 合同的权利义务终止

### Chapter 7 Termination of Contractual Rights and Obligations

**第五百五十七条** 有下列情形之一的，债权债务终止：

**Article 557** The creditor's rights and debts shall be terminated under any of the following circumstances:

（一）债务已经履行；

1. The debts have been repaid;

（二）债务相互抵销；

(II) the obligations are mutually offset;

（三）债务人依法将标的物提存；

(III) the obligor has escrowed the subject matter in accordance with the law;

（四）债权人免除债务；

(IV) the creditor waives the debt; or

（五）债权债务同归于一人；

(V) Both claims and obligations belong to the same person;

（六）法律规定或者当事人约定终止的其他情形。

(VI) other circumstances for termination as stipulated by the law or agreed upon by the parties concerned.

合同解除的，该合同的权利义务关系终止。

The rights and obligations arising from the rescission of this contract shall be terminated.

## **第五百五十八条**

债权债务终止后，当事人应当遵循诚信等原则，根据交易习惯履行通知、协助、保密、旧物回收等义务。

**Article 558** Upon termination of creditor's rights and debts, the parties concerned shall comply

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with the principles of honesty, etc, and perform obligations of notification, assistance, confidentiality, recycling of used items, etc in accordance with transaction practices.

### 第五百五十九条

债权债务终止时，债权的从权利同时消灭，但是法律另有规定或者当事人另有约定的除外。

**Article 559** Unless otherwise stipulated by the law or agreed between the parties concerned, the incidental rights shall be extinguished simultaneously upon termination of the creditor's rights and debts.

### 第五百六十条

债务人对同一债权人负担的数项债务种类相同，债务人的给付不足以清偿全部债务的，除当事人另有约定外，由债务人在清偿时指定其履行的债务。

**Article 560** Where the debtor bears the same variety of debts to the same creditor and the payment by the debtor is insufficient to pay off all the debts, unless otherwise stipulated by the parties, the debtor shall designate the debtor to pay off the debts when paying off the debts.

债务人未作指定的，应当优先履行已经到期的债务；数项债务均到期的，优先履行对债权人缺乏担保或者担保最少的债务；均无担保或者担保相等的，优先履行债务人负担较重的债务；负担相同的，按照债务到期的先后顺序履行；到期时间相同的，按照债务比例履行。

In the absence of such appointment by the obligor, priority shall be given to the performance of the obligations that are due; where several of the obligations are due, priority shall be given to the performance of the obligation for which there is no security to the obligee or the obligation with the least security; where there is no security in place for all of the obligations or the obligations are secured equally, priority shall be given to the performance of the obligation to which the obligor bears a heavier burden; where the burdens borne are the same, the obligations shall be performed in the order of their maturity; and where two or more obligations are due at the same time, they shall be performed in proportion to their respective obligations.

### 第五百六十一条

债务人在履行主债务外还应当支付利息和实现债权的有关费用，其给付不足以清偿全部债务的，除当事人另有约定外，应当按照下列顺序履行：

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**Article 561** In addition to the performance of the principal obligation, the obligor shall also pay any interest accrued thereon and any expenses incurred in the realization of the obligee's rights. Where any such payment is insufficient to pay off all the obligations owed, the parties shall perform the obligations in the following order, unless otherwise agreed by the parties:

(一) 实现债权的有关费用;

1. Expenses related to the realization of creditor's rights;

(二) 利息;

(II) interest;

(三) 主债务。

(III) Principal debts.

**第五百六十二条** 当事人协商一致，可以解除合同。

**Article 562** The parties may terminate a contract if they reach a consensus through consultation.

当事人可以约定一方解除合同的事由。解除合同的事由发生时，解除权人可以解除合同。

The parties may agree upon causes for termination of the contract by either party. When a cause for termination of the contract occurs, the party who has the right to terminate may terminate the contract.

**第五百六十三条** 有下列情形之一的，当事人可以解除合同：

**Article 563** The parties to a contract may rescind the contract under any of the following circumstances:

(一) 因不可抗力致使不能实现合同目的；

(1) it is impossible to achieve the purpose of the Contract due to force majeure;

(二) 在履行期限届满前，当事人一方明确表示或者以自己的行为表明不履行主要债务；

(II) the other party expressly states, or indicates through its conduct, that it will not perform its principal obligations prior to the expiration of the performance period;

(三) 当事人一方迟延履行主要债务，经催告后在合理期限内仍未履行；

(III) any party to the contract delays performing its principal obligations and fails to perform the same within a reasonable period after being urged to do so;

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(四) 当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的;

(IV) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract;

(五) 法律规定的其他情形。

(V) other circumstances stipulated by the law arise.

以持续履行的债务为内容的不定期合同，当事人可以随时解除合同，但是应当在合理期限之前通知对方。

If a non-term contract contains the continuing performance of obligations, the parties may rescind the contract at any time, provided that they notify the other party a reasonable time in advance.

#### 第五百六十四条

法律规定或者当事人约定解除权行使期限，期限届满当事人不行使的，该权利消灭。

**Article 564** Where the laws stipulates or the parties agree upon the time limit to exercise the right to terminate the contract, and no party exercises it when the time limit expires, the said right shall be extinguished.

法律没有规定或者当事人没有约定解除权行使期限，自解除权人知道或者应当知道解除事由之日起一年内不行使，或者经对方催告后在合理期限内不行使的，该权利消灭。

Where the law does not provide for or the parties do not agree upon a time limit for the exercise of the right to rescind a contract, and no party exercises such right within one year from the date on which the party entitled to rescind the contract knows or should have known of the cause for rescission or fails to exercise such right within a reasonable time period after being urged by the other party to do so, the said right shall be extinguished.

第五百六十五条 当事人一方依法主张解除合同的，应当通知对方。合同自通知到达对方时解除；通知载明债务人在一定期限内不履行债务则合同自动解除，债务人在该期限内未履行债务的，合同自通知载明的期限届满时解除。对方对解除合同有异议的，任何一方当事人均可以请求人民法院或者仲裁机构确认解除行为的效力。

**Article 565** A party which lawfully asserts that a contract be rescinded shall notify the other party. The contract shall be discharged upon the receipt of the notice; if such notice specifies that the debtor fails to perform its obligation within a certain time period, the contract shall be discharged

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automatically; if the debtor fails to perform its obligation within the said time period, the contract shall be discharged upon the expiration of such time period specified in the notice. Where the other party objects to the dissolution of the contract, either party may petition the people's court or an arbitration institution to confirm the validity of the dissolution.

当事人一方未通知对方，直接以提起诉讼或者申请仲裁的方式依法主张解除合同，人民法院或者仲裁机构确认该主张的，合同自起诉状副本或者仲裁申请书副本送达对方时解除。

Where a party does not notify the other party but asserts rescission of contract pursuant to the law by way of filing a lawsuit or applying for arbitration, and the People's Court or the arbitration organisation confirms the assertion, the contract shall be rescinded upon service of the duplicate copy of the statement of claim or the duplicate copy of the application form for arbitration on the other party.

#### 第五百六十六条

合同解除后，尚未履行的，终止履行；已经履行的，根据履行情况和合同性质，当事人可以请求恢复原状或者采取其他补救措施，并有权请求赔偿损失。

**Article 566** After the termination of a contract, performance shall cease if the contract has not been performed; if the contract has been performed, a party may, in accordance with the circumstances of performance or the nature of the contract, request that the original position be restored or that other remedial measures be adopted, and shall have the right to request compensation for any losses sustained.

合同因违约解除的，解除权人可以请求违约方承担违约责任，但是当事人另有约定的除外。

Where a contract is rescinded due to breach of contract, the party with the right to rescind may request the breaching party to bear the liability for the breach of contract, except as otherwise agreed upon by the parties.

主合同解除后，担保人对债务人应当承担的民事责任仍应当承担担保责任，但是担保合同另有约定的除外。

. After the principal contract has been rescinded, the security provider shall continue to bear security liability in respect of the civil liability to be borne by the debtor, except where the security contract stipulates otherwise.

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**第五百六十七条** 合同的权利义务关系终止，不影响合同中结算和清理条款的效力。

**Article 567** The termination of the rights and obligations under the Contract shall not affect the validity of the provisions governing settlement and winding-up in the Contract.

**第五百六十八条**

当事人互负债务，该债务的标的物种类、品质相同的，任何一方可以将自己的债务与对方的到期债务抵销；但是，根据债务性质、按照当事人约定或者依照法律规定不得抵销的除外。

**Article 568.** Where parties owe each other obligations, and the subject matter of the said obligations are items of the same kind and quality, either party may offset its own obligation against matured obligations of the other party, except where, depending on the nature of the obligation, the parties agree or in accordance with legal provisions, the offsetting of obligations is not permitted.

当事人主张抵销的，应当通知对方。通知自到达对方时生效。抵销不得附条件或者附期限。

The party who claims such offset shall notify the other party. The notice shall become effective when it reaches the other party. The offset shall not be subject to any condition or time limit.

**第五百六十九条**

当事人互负债务，标的物种类、品质不相同的，经协商一致，也可以抵销。

**Article 569** Where the parties have obligations towards one another, and the type and nature of such obligations are different, the obligations may also be offset upon consensus through consultation.

**第五百七十条** 有下列情形之一的，难以履行债务的，债务人可以将标的物提存：

**Article 570** The obligor may place the subject matter in escrow if the obligations are difficult to be performed under any of the following circumstances:

（一）债权人无正当理由拒绝受领；

1. the obligee refuses to accept the performance without justified reasons;

（二）债权人下落不明；

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(II) the whereabouts of the obligee are unknown;

(三) 债权人死亡未确定继承人、遗产管理人，或者丧失民事行为能力未确定监护人；

(III) the obligee is deceased and the successor or administrator has not been determined, or the obligee has lost civil capacity and a guardian has not been appointed;

(四) 法律规定的其他情形。

(IV) other circumstances stipulated by the law arise.

标的物不适于提存或者提存费用过高的，债务人依法可以拍卖或者变卖标的物，提存所得的价款。

Where the subject matter is not fit for escrow or the escrow expenses are too high, the obligor may auction or sell the subject matter in accordance with the law, and escrow the proceeds therefrom.

### 第五百七十一条

债务人将标的物或者将标的物依法拍卖、变卖所得价款交付提存部门时，提存成立。

**Article 571** Deposit of the subject matter is established when the debtor delivers the subject matter or proceeds from auction or sale of the subject matter pursuant to the law to the escrow authorities.

提存成立的，视为债务人在其提存范围内已经交付标的物。

Where the deposit is admissible, the obligor shall be deemed to have delivered the subject matter within the scope of the deposit.

### 第五百七十二条

标的物提存后，债务人应当及时通知债权人或者债权人的继承人、遗产管理人、监护人、财产代管人。

**Article 572.** After the subject matter of the contract has been lodged, the debtor shall promptly notify the creditor, or the creditor's heir, administrator, guardian or custodian of the property.

第五百七十三条 标的物提存后，毁损、灭失的风险由债权人承担。提存期间，标的物的孳息归债权人所有。提存费用由债权人负担。

**Article 573** Once the subject matter has been placed in escrow, the risk of damage to,

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destruction or loss of the subject matter shall be borne by the obligee. The obligee shall own the fruits of the subject matter during escrow. Escrow expenses shall be borne by the obligee.

第五百七十四条 债权人可以随时领取提存物。但是，债权人对债务人负有到期债务的，在债权人未履行债务或者提供担保之前，提存部门根据债务人的要求应当拒绝其领取提存物。

Article 574 The obligee may claim the subject matter in escrow at any time. However, where the obligee owes matured obligations to the obligor, the escrow institution shall, prior to the obligee's performance of the obligations or provision of guarantee, refuse the obligee's request for collection of the escrowed property.

债权人领取提存物的权利，自提存之日起五年内不行使而消灭，提存物扣除提存费用后归国家所有。但是，债权人未履行对债务人的到期债务，或者债权人向提存部门书面表示放弃领取提存物权利的，债务人负担提存费用后有权取回提存物。

The right of an obligee to claim the subject matter in escrow shall lapse if it is not exercised within five years from the date on which the subject matter is placed in escrow. The subject matter in escrow shall revert to the State after deduction of the escrow expenses. However, if the obligee fails to perform its due obligations to the obligor, or the obligee waives the right to collect the subject matter in escrow by sending a written notice to the escrow institution, the obligor is entitled to retrieve the subject matter in escrow after paying the escrow expenses.

### 第五百七十五条

债权人免除债务人部分或者全部债务的，债权债务部分或者全部终止，但是债务人在合理期限内拒绝的除外。

**Article 575.** If the obligee releases the obligor from its obligations in part or in whole, the obligatory rights and obligations shall terminate in part or in whole, except where the obligor rejects the discharge within a reasonable period of time.

第五百七十六条 债权和债务同归于一人的，债权债务终止，但是损害第三人利益的除外。

**Article 576.** If all the claims and obligations are assumed by the same person, the claims and obligations shall terminate, unless they harm the interests of a third party.

## 第八章 违约责任

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## Chapter 8 Liabilities for Breach

### 第五百七十七条

当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

**Article 577** If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.

### 第五百七十八条

当事人一方明确表示或者以自己的行为表明不履行合同义务的，对方可以在履行期限届满前请求其承担违约责任。

**Article 578** Where one party express explicitly or indicates by its conduct that it will not perform its obligations under a contract, the other party may request it to bear the liability for the breach of contract before the expiry of the performance period.

### 第五百七十九条

当事人一方未支付价款、报酬、租金、利息，或者不履行其他金钱债务的，对方可以请求其支付。

**Article 579** In the event that one party fails to pay the price, remuneration, rental and interest, or fails to perform the other monetary obligations, the other party may request it to pay.

### 第五百八十条

当事人一方不履行非金钱债务或者履行非金钱债务不符合约定的，对方可以请求履行，但是有下列情形之一的除外：

**Article 580** Where a party fails to perform the non- monetary obligations or its performance of the non- monetary obligations fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:

（一）法律上或者事实上不能履行；

1. it is unable to be performed in law or in fact;

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(二) 债务的标的不适于强制履行或者履行费用过高;

(II) the subject matter of the obligation is unfit for compulsory performance or the performance expenses are excessively high;

(三) 债权人在合理期限内未请求履行。

(III) the obligee does not request performance within a reasonable time.

有前款规定的除外情形之一，致使不能实现合同目的的，人民法院或者仲裁机构可以根据当事人的请求终止合同权利义务关系，但是不影响违约责任的承担。

Where the purpose of a contract can no longer be achieved due to any of the exceptions specified in the preceding paragraph, the people's court or an arbitration institution may terminate the contractual rights and obligations at the request of the parties, without prejudice to the assumption of liability for breach of contract.

#### 第五百八十一条

当事人一方不履行债务或者履行债务不符合约定，根据债务的性质不得强制履行的，对方可以请求其负担由第三人替代履行的费用。

**Article 581** Where a party fails to perform, or rendered non-conforming performance, its obligations, and the performance cannot be compelled depending on the nature of the obligations, the other party may request that it bear the expenses of performance by a third party.

#### 第五百八十二条

履行不符合约定的，应当按照当事人的约定承担违约责任。对违约责任没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，受损害方根据标的的性质以及损失的大小，可以合理选择请求对方承担修理、重作、更换、退货、减少价款或者报酬等违约责任。

**Article 582** If the performance does not comply with the parties' agreement, liability for breach of contract shall be borne in accordance with the parties' agreement. Where there has been no agreement or no clear agreement as to liability for breach of contract, and it is not possible to determine the issue in accordance with the provisions of Article 510 of this Law, the party which has sustained the loss, in accordance with the nature of the subject matter and the size of the loss, may reasonably choose to request that the other party assume its breach of contract by carrying out repairs, reworking, replacing or returning the goods, or by reducing the price charged or the remuneration received, etc.

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### 第五百八十三条

当事人一方不履行合同义务或者履行合同义务不符合约定的，在履行义务或者采取补救措施后，对方还有其他损失的，应当赔偿损失。

**Article 583** Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement, and the other party still suffers from other losses after the performance of the obligations or adoption of remedial measures, such party shall compensate the other party for such losses.

### 第五百八十四条

当事人一方不履行合同义务或者履行合同义务不符合约定，造成对方损失的，损失赔偿额应当相当于因违约所造成的损失，包括合同履行后可以获得的利益；但是，不得超过违约一方订立合同时预见到或者应当预见到的因违约可能造成的损失。

**Article 584** Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract; provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the breaching party concludes the contract.

### 第五百八十五条

当事人可以约定一方违约时应当根据违约情况向对方支付一定数额的违约金，也可以约定因违约产生的损失赔偿额的计算方法。

**Article 585** The parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach.

约定的违约金低于造成的损失，人民法院或者仲裁机构可以根据当事人的请求予以增加；约定的违约金过分高于造成的损失，人民法院或者仲裁机构可以根据当事人的请求予以适当减少。

Where the amount of liquidated damages agreed upon is lower than the losses incurred, the

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people's court or an arbitration institution may increase such amount upon the request of the parties; where the amount of liquidated damages agreed upon is excessively higher than the losses incurred, the people's court or an arbitration institution may appropriately reduce such amount upon the request of the parties.

当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

Where the parties agree upon the amount of liquidated damages for delayed performance, the breaching party shall perform the obligations after paying the liquidated damages.

### 第五百八十六条

当事人可以约定一方向对方给付定金作为债权的担保。定金合同自实际交付定金时成立。

**Article 586.** The parties may agree that one party pays a deposit to the other party as security for the claim of the creditor. The deposit contract shall be formed upon the actual payment of the deposit.

定金的数额由当事人约定；但是，不得超过主合同标的额的百分之二十，超过部分不产生定金的效力。实际交付的定金数额多于或者少于约定数额的，视为变更约定的定金数额。

. The amount of the deposit shall be determined by the parties; however, it shall not exceed 20 per cent of the value of the subject matter of the principal contract, and the excess portion shall not be valid as a deposit. Where the actual payment of deposit is more or less than the stipulated amount, the stipulated amount shall be deemed to be changed.

### 第五百八十七条

债务人履行债务的，定金应当抵作价款或者收回。给付定金的一方不履行债务或者履行债务不符合约定，致使不能实现合同目的的，无权请求返还定金；收受定金的一方不履行债务或者履行债务不符合约定，致使不能实现合同目的的，应当双倍返还定金。

**Article 587** Where the debtor performs his/her obligations, the deposit shall be set off against the price or refunded. Where the party paying the deposit fails to perform its obligation or its obligation does not conform to the agreement, making it impossible to achieve the purpose of the contract, the party is not entitled to demand a refund of the deposit; where the party receiving the deposit fails to perform its obligation or its obligation does not conform to the agreement, making it impossible to achieve the purpose of the contract, it shall refund twice the amount of the deposit.

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### 第五百八十八条

当事人既约定违约金，又约定定金的，一方违约时，对方可以选择适用违约金或者定金条款。

**Article 588** If the parties agree on both liquidated damages and a deposit, and one party is in breach, the other party may choose to apply either the provisions for liquidated damages or that for the deposit.

定金不足以弥补一方违约造成的损失，对方可以请求赔偿超过定金数额的损失。

If the deposit is insufficient to compensate for the losses caused by one party's breach of contract, the other party may request compensation for the losses exceeding the deposit.

### 第五百八十九条

债务人按照约定履行债务，债权人无正当理由拒绝受领的，债务人可以请求债权人赔偿增加的费用。

**Article 589** Where the obligor performs its obligations as agreed, but the obligee refuses to accept them without justified reasons, the obligor may request the obligee to compensate the increased expenses.

在债权人受领迟延期间，债务人无须支付利息。

During the period of delay in receipt of the payment, the debtor need not pay interest.

### 第五百九十条

当事人一方因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任，但是法律另有规定的除外。因不可抗力不能履行合同的，应当及时通知对方，以减轻可能给对方造成的损失，并应当在合理期限内提供证明。

**Article 590.** If a party is unable to perform the contract due to force majeure, it shall be partially or wholly exempted from liability in light of the impact of the force majeure, except otherwise provided by law. Where the contract cannot be performed due to force majeure, a notice shall be given to the other party in time so as to reduce the losses possibly caused to the other party, and the proof shall be provided within a reasonable time limit.

当事人迟延履行后发生不可抗力的，不免除其违约责任。

If force majeure occurs after a party has delayed its performance, such party's liability for breach of contract shall not be exempted.

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### 第五百九十一条

当事人一方违约后，对方应当采取适当措施防止损失的扩大；没有采取适当措施致使损失扩大的，不得就扩大的损失请求赔偿。

**Article 591** Where a party breached the contract, the other party shall take the appropriate measures to prevent the losses from increasing; where the other party's failure to take appropriate measures results in additional losses, it cannot claim compensation for the additional losses.

当事人因防止损失扩大而支出的合理费用，由违约方负担。

Any reasonable expense incurred by the other party in preventing additional losses shall be borne by the party in breach.

**第五百九十二条** 当事人都违反合同的，应当各自承担相应的责任。

**Article 592** If both parties breach the contract, each party shall bear its own respective liabilities.

当事人一方违约造成对方损失，对方对损失的发生有过错的，可以减少相应的损失赔偿额。

Where one party breaches an agreement, thereby causing the other party to incur losses, and the other party is at fault for the occurrence of such losses, the amount of compensation for the corresponding losses may be reduced.

### 第五百九十三条

当事人一方因第三人的原因造成违约的，应当依法向对方承担违约责任。当事人一方和第三人之间的纠纷，依照法律规定或者按照约定处理。

**Article 593** Where a party's breach is attributable to a third party, it shall nevertheless be liable to the other party for breach in accordance with the law. Any dispute between the said party and the third party shall be resolved in accordance with the provisions of the law or the agreement between the parties.

### 第五百九十四条

因国际货物买卖合同和技术进出口合同争议提起诉讼或者申请仲裁的时效期间为四年。

**Article 594** The limitation period for bringing a suit or applying for arbitration regarding

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disputes over contracts for international sale of goods and contracts for technology import and export is four years.

## 第二分编 典型合同

### SUBPART II TYPICAL CONTRACT

#### 第九章 买卖合同

#### Chapter 9 Purchase and Sale Contract

##### 第五百九十五条

买卖合同是出卖人转移标的物的所有权于买受人，买受人支付价款的合同。

**Article 595** A sales contract is a contract whereby the seller transfers the ownership of a subject matter to the buyer, and the buyer pays the price for it.

##### 第五百九十六条

买卖合同的内容一般包括标的物的名称、数量、质量、价款、履行期限、履行地点和方式、包装方式、检验标准和方法、结算方式、合同使用的文字及其效力等条款。

**Article 596** The contents of a sale and purchase contract generally include terms such as the name, quantity, quality, price, time limit for performance, place and method of performance, packaging method, inspection standards and method, settlement method, and the language used in the contract and the validity thereof.

##### 第五百九十七条

因出卖人未取得处分权致使标的物所有权不能转移的，买受人可以解除合同并请求出卖人承担违约责任。

**Article 597** If the ownership of the subject matter cannot be transferred due to the seller's failure to obtain the right of disposal, the buyer may rescind the contract and request the seller to bear the liability for breach of contract.

法律、行政法规禁止或者限制转让的标的物，依照其规定。

Where the transfer of a subject matter is prohibited or restricted by laws or administrative

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regulations, such provisions shall apply.

### 第五百九十八条

出卖人应当履行向买受人交付标的物或者交付提取标的物的单证，并转移标的物所有权的义务。

**Article 598.** The seller shall perform its obligation to deliver the subject matter to the purchaser or to deliver a document entitling the purchaser to collect the subject matter, and to transfer ownership of the subject matter.

### 第五百九十九条

出卖人应当按照约定或者交易习惯向买受人交付提取标的物单证以外的有关单证和资料。

**Article 599** In addition to the document for taking delivery of the subject matter, the seller shall deliver to the buyer the relevant documents and materials in accordance with the agreement or transaction practices.

### 第六百条

出卖具有知识产权的标的物的，除法律另有规定或者当事人另有约定外，该标的物的知识产权不属于买受人。

**Article 600.** With respect to the sale of subject matter containing intellectual property rights, except where laws provide otherwise or the parties agree otherwise, the intellectual property rights in respect of such subject matter do not belong to the purchaser.

第六百零一条 出卖人应当按照约定的时间交付标的物。约定交付期限的，出卖人可以在该交付期限内的任何时间交付。

**Article 601.** The seller shall deliver the subject matter at the agreed time. Where a time period for delivery is agreed upon, the seller may deliver at any time within the said time period.

### 第六百零二条

当事人没有约定标的物的交付期限或者约定不明确的，适用本法第五百一十条、第五百一十一条第四项的规定。

**Article 602.** Where the parties have not agreed, or have not come to a clear agreement, on a

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deadline for the delivery of the subject matter, the provisions of Article 510 and Article 511 (4) of this Law shall apply.

**第六百零三条** 出卖人应当按照约定的地点交付标的物。

**Article 603.** The seller shall deliver the subject matter at the agreed place of delivery.

当事人没有约定交付地点或者约定不明确，依据本法第五百一十条的规定仍不能确定的，适用下列规定：

Where there is no agreement in the contract between the parties on the place to deliver the subject matter or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the following provisions shall apply:

（一）标的物需要运输的，出卖人应当将标的物交付给第一承运人以运交给买受人；

1. if the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier so as to hand it over to the buyer;

（二）标的物不需要运输，出卖人和买受人订立合同时知道标的物在某一地点的，出卖人应当在该地点交付标的物；不知道标的物在某一地点的，应当在出卖人订立合同时的营业地交付标的物。

(II) the subject matter does not need carriage, Where the seller and buyer know the place of the subject matter when concluding the contract, the seller shall deliver the subject matter at such place; where the place is unknown, the subject matter shall be delivered at the seller's place of business at the time of conclusion of the contract. (Relevant articles: Articles 1)

**第六百零四条**

标的物毁损、灭失的风险，在标的物交付之前由出卖人承担，交付之后由买受人承担，但是法律另有规定或者当事人另有约定的除外。

**Article 604.** The risk of the subject matter being damaged or lost shall be borne by the seller prior to the delivery of the subject matter, and by the purchaser after the delivery of the subject matter, except where laws provide otherwise or the parties agree otherwise.

**第六百零五条**

因买受人的原因致使标的物未按照约定的期限交付的，买受人应当自违反约定时起承担标的物毁损、灭失的风险。

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**Article 605** Where, for reasons attributable to the buyer, a subject matter is not delivered at the agreed time, the buyer shall, as from the time it breaches the contract, bear the risk of damage to or loss of the subject matter.

#### 第六百零六条

出卖人出卖交由承运人运输的在途标的物，除当事人另有约定外，毁损、灭失的风险自合同成立时起由买受人承担。

**Article 606** Where the seller sells a subject matter delivered to a carrier for carriage and is in transit, unless otherwise agreed upon by the parties, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the time of establishment of the contract.

#### 第六百零七条

出卖人按照约定将标的物运送至买受人指定地点并交付给承运人后，标的物毁损、灭失的风险由买受人承担。

**Article 607** After the seller transports the subject matter to the place designated by the buyer and delivers the subject matter to the carrier in accordance with the contract, the risk of damage to or missing of the subject matter shall be borne by the buyer.

当事人没有约定交付地点或者约定不明确，依据本法第六百零三条第二款第一项的规定标的物需要运输的，出卖人将标的物交付给第一承运人后，标的物毁损、灭失的风险由买受人承担。

Where there is no agreement in the contract between the parties as to the place of delivery or such agreement is not clear, and the subject matter needs carriage according to the provisions of Item 1 of Paragraph 2 of Article 603 of the Law, the risk of damage to or missing of the subject matter shall be borne by the buyer after the seller has delivered the subject matter to the first carrier.

#### 第六百零八条

出卖人按照约定或者依据本法第六百零三条第二款第二项的规定将标的物置于交付地点，买受人违反约定没有收取的，标的物毁损、灭失的风险自违反约定时起由买受人承担。

**Article 608** Where the seller has placed the subject matter at the place of delivery in accordance with the agreement or in accordance with the provisions of Item 2 of Paragraph 2 of

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Article 603 of the Law, while the buyer fails to take delivery in breach of the agreement, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the time of breach of the agreement.

#### 第二百零九条

出卖人按照约定未交付有关标的物的单证和资料的，不影响标的物毁损、灭失风险的转移。

**Article 609** The failure of the seller to deliver the documents and materials relating to the subject matter as agreed upon shall not affect the passing of the risk of damage to or missing of the subject matter.

#### 第六百一十条

因标的物不符合质量要求，致使不能实现合同目的的，买受人可以拒绝接受标的物或者解除合同。买受人拒绝接受标的物或者解除合同的，标的物毁损、灭失的风险由出卖人承担。

**Article 610.** Where the subject matter does not meet quality requirements, and as a result it is impossible to realise the objectives of the contract, the purchaser may refuse to accept the subject matter or may dissolve the contract. Where the buyer refuses to accept the subject matter or rescinds the contract, the risk of damage to or missing of the subject matter shall be borne by the seller.

#### 第六百一十一条

标的物毁损、灭失的风险由买受人承担的，不影响因出卖人履行义务不符合约定，买受人请求其承担违约责任的权利。

**Article 611** Where the risk of damage to or loss of the subject matter is borne by the buyer, the buyer's right to demand the seller to bear liability for breach of contract because the seller's performance of its obligations is not in conformity with the agreement shall not be affected.

#### 第六百一十二条

出卖人就交付的标的物，负有保证第三人对该标的物不享有任何权利的义务，但是法律另有规定的除外。

**Article 612** Unless otherwise provided by law, the seller shall have the obligation to warrant that no third party shall have any right in respect of the delivered subject matter.

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### 第六百一十三条

买受人订立合同时知道或者应当知道第三人对买卖的标的物享有权利的，出卖人不承担前条规定的义务。

**Article 613** Where the buyer knows or ought to know, at the time of concluding the contract, that a third party has rights on the subject matter to be sold, the seller does not assume the obligation prescribed in the preceding article.

### 第六百一十四条

买受人有确切证据证明第三人对标的物享有权利的，可以中止支付相应的价款，但是出卖人提供适当担保的除外。

**Article 614** Where the buyer has conclusive evidence to prove that a third party has the rights on the subject matter, it may suspend the payment of the corresponding price, unless the seller provides a proper guaranty.

### 第六百一十五条

出卖人应当按照约定的质量要求交付标的物。出卖人提供有关标的物质量说明的，交付的标的物应当符合该说明的质量要求。

**Article 615.** The seller shall deliver the subject matter of the contract in accordance with agreed quality requirements. Where the seller provides the quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein.

### 第六百一十六条

当事人对标的物的质量要求没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，适用本法第五百一十一条第一项的规定。

**Article 616** Where there is no agreement between the parties in the contract on the quality requirements of the subject matter or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the provisions of Item 1 of Article 511 of the Law shall apply.

### 第六百一十七条

出卖人交付的标的物不符合质量要求的，买受人可以依据本法第五百八十二条至第五百八十

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四条的规定请求承担违约责任。

**Article 617.** Where the subject matter delivered by the seller does not meet quality requirements, the purchaser may demand that the seller assume liability for breach of contract in accordance with the provisions of Articles 582 to 584 of this Law.

### 第六百一十八条

当事人约定减轻或者免除出卖人对标的物瑕疵承担的责任，因出卖人故意或者重大过失不告知买受人标的物瑕疵的，出卖人无权主张减轻或者免除责任。

**Article 618** Where the parties agree to reduce or exempt the liability of the seller for the defects of the subject matter, and the seller fails to inform the buyer of the defects of the subject matter intentionally or due to gross negligence, the seller shall have no right to claim for reduction or exemption of its liability.

### 第六百一十九条

出卖人应当按照约定的包装方式交付标的物。对包装方式没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，应当按照通用的方式包装；没有通用方式的，应当采取足以保护标的物且有利于节约资源、保护生态环境的包装方式。

**Article 619.** The seller shall use the agreed method of packaging when delivering the subject matter of the contract. Where there is no agreement in the contract on packaging manner or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the subject matter shall be packed in a general manner; where there is no general manner, a packaging manner sufficient to protect the subject matter and conducive to resource conservation and ecological environment protection shall be adopted.

第六百二十条 买受人收到标的物时应当在约定的检验期限内检验。没有约定检验期限的，应当及时检验。

**Article 620.** When the purchaser receives the subject matter of the contract, it shall inspect the subject matter within the agreed inspection period. Where there is no agreement on the inspection period, the goods shall be inspected promptly.

第六百二十一条 当事人约定检验期限的，买受人应当在检验期限内将标的物的数量

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或者质量不符合约定的情形通知出卖人。买受人怠于通知的，视为标的物的数量或者质量符合约定。

Article 621. Where the parties have agreed on an inspection period, the purchaser shall, within the said inspection period, notify the seller of any circumstances whereby the quantity or quality of the subject matter is not as agreed. Where the buyer is negligent in notifying the seller, the quantity or quality of the subject matter is deemed to comply with the contract.

当事人没有约定检验期限的，买受人应当在发现或者应当发现标的物的数量或者质量不符合约定的合理期限内通知出卖人。买受人在合理期限内未通知或者自收到标的物之日起二年内未通知出卖人的，视为标的物的数量或者质量符合约定；但是，对标的物有质量保证期的，适用质量保证期，不适用该二年的规定。

Where the parties have no agreement on an inspection period, the buyer shall notify the seller within a reasonable period, commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance. Where the buyer fails to notify within a reasonable period or fails to notify within two (2) years from the date of receipt of the subject matter, the quantity or quality of the subject matter shall be deemed to comply with the parties' agreement. However, if the subject matter has a quality guarantee period, the said quality guarantee period shall apply, and the said two-year provision shall not apply.

出卖人知道或者应当知道提供的标的物不符合约定的，买受人不受前两款规定的通知时间的限制。

Where the seller knows or ought to know that the subject matter to be provided does not conform to the terms of the contract, the buyer is not subject to the time limits for notification prescribed in the preceding two paragraphs.

## 第六百二十二条

当事人约定的检验期限过短，根据标的物的性质和交易习惯，买受人在检验期限内难以完成全面检验的，该期限仅视为买受人对标的物的外观瑕疵提出异议的期限。

**Article 622** Where the inspection period agreed upon by the parties is too short, and it is difficult for the buyer to complete the inspection within the inspection period due to the nature of the subject matter and transaction practice, the period shall be deemed only as the period for the buyer to raise objection to the appearance defects of the subject matter.

约定的检验期限或者质量保证期短于法律、行政法规规定期限的，应当以法律、行

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政法规规定的期限为准。

Where the agreed inspection period or quality guarantee period is shorter than the period stipulated in the laws and administrative regulations, the period stipulated in the laws and administrative regulations shall prevail.

### 第六百二十三条

当事人对检验期限未作约定，买受人签收的送货单、确认单等载明标的物数量、型号、规格的，推定买受人已经对数量和外观瑕疵进行检验，但是有相关证据足以推翻的除外。

**Article 623** Where the parties do not agree on the inspection period, and the delivery note, confirmation slip, etc signed by a buyer states the quantity, model number, specifications of the subject matter, the buyer shall be deemed to have inspected the quantity and checked whether there is any visible defect, unless there is adequate evidence to subvert.

### 第六百二十四条

出卖人依照买受人的指示向第三人交付标的物，出卖人和买受人约定的检验标准与买受人和第三人约定的检验标准不一致的，以出卖人和买受人约定的检验标准为准。

**Article 624** Where the seller delivers the subject matter to a third party in accordance with the instruction of the buyer, and the inspection standards agreed by the seller and the buyer are inconsistent with those agreed by the buyer and the third party, the inspection standards agreed by the seller and the buyer shall prevail.

### 第六百二十五条

依照法律、行政法规的规定或者按照当事人的约定，标的物在有效使用年限届满后应予回收的，出卖人负有自行或者委托第三人对该标的物予以回收的义务。

**Article 625** Where, in accordance with the provisions of laws and administrative regulations or the agreement between the parties, the subject matter shall be recovered after the expiration of its valid service life, the seller shall be obligated to recover the subject matter by itself or by entrusting a third party.

### 第六百二十六条

买受人应当按照约定的数额和支付方式支付价款。对价款的数额和支付方式没有约定或者约

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定不明确的，适用本法第五百一十条、第五百一十一条第二项和第五项的规定。

**Article 626** The buyer shall pay the price in the agreed amount and according to the agreed method of payment. Where there has been no agreement, or no clear agreement, on the amount of the price and the method of payment, the provisions of Article 510 and Items 2 and 5 of Article 511 of this Law shall apply.

### 第六百二十七条

买受人应当按照约定的地点支付价款。对支付地点没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，买受人应当在出卖人的营业地支付；但是，约定支付价款以交付标的物或者交付提取标的物单证为条件的，在交付标的物或者交付提取标的物单证的所在地支付。

**Article 627.** The purchaser shall pay the purchase price at the agreed place. If there is no agreement in the contract on the place of payment or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the buyer shall make payment at the seller's business place. However, if it is agreed that the delivery of the subject matter or the document for taking delivery thereof is conditional upon the payment of the price, the payment shall be made at the place where the subject matter or the document for taking delivery thereof is delivered.

第六百二十八条 买受人应当按照约定的时间支付价款。对支付时间没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，买受人应当在收到标的物或者提取标的物单证的同时支付。

**Article 628.** The purchaser shall pay the purchase price at the agreed time. Where the time of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 510 of this Law, the buyer shall make payment at the same time it receives the subject matter or the document for taking delivery thereof.

第六百二十九条 出卖人多交标的物的，买受人可以接收或者拒绝接收多交的部分。买受人接收多交部分的，按照约定的价格支付价款；买受人拒绝接收多交部分的，应当及时通知出卖人。

**Article 629** Where the seller delivers the subject matter in a quantity greater than that agreed in

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the contract, the buyer may accept or refuse to accept the excess quantity. Where the buyer accepts the excess quantity, it shall pay for the excess quantity at the agreed price; where the buyer refuses to accept the excess quantity, it shall promptly notify the seller.

第六百三十条 标的物在交付之前产生的孳息，归出卖人所有；交付之后产生的孳息，归买受人所有。但是，当事人另有约定的除外。

Article 630 The fruits of the subject matter belong to the Seller if accrued before delivery, and to the Buyer if accrued after delivery. However, if the parties have agreed otherwise, such agreement shall prevail.

### 第六百三十一条

因标的物主物不符合约定而解除合同的，解除合同的效力及于从物。因标的物的从物不符合约定被解除的，解除的效力不及于主物。

**Article 631** Where the contract is rescinded due to non-compliance of any main component of the subject matter, the effect of rescission extends to the ancillary components. Where the contract is terminated due to non-compliance of any ancillary component of the subject matter, the effect of termination does not extend to the principal component.

第六百三十二条 标的物为数物，其中一物不符合约定的，买受人可以就该物解除。但是，该物与他物分离使标的物的价值显受损害的，买受人可以就数物解除合同。

Article 632. Where the subject matter of the contract is made up of a number of items, and one of the said items does not conform to the parties' agreement, the purchaser may dissolve the said item. However, if the separation of the subject matter from other objects significantly impairs the value of the subject matter, the buyer may rescind the contract in respect of several objects.

### 第六百三十三条

出卖人分批交付标的物的，出卖人对其中一批标的物不交付或者交付不符合约定，致使该批标的物不能实现合同目的的，买受人可以就该批标的物解除。

**Article 633** Where the seller delivers the subject matter in installments, if the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the said installment cannot realize the contract purpose, the buyer may

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terminate the portion of the contract in respect thereof.

出卖人不交付其中一批标的物或者交付不符合约定，致使之后其他各批标的物的交付不能实现合同目的的，买受人可以就该批以及之后其他各批标的物解除。

If the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the delivery of subsequent installments of the subject matter cannot realize the contract purpose, the buyer may terminate the portion of the contract in respect of such installment as well as any subsequent installment.

买受人如果就其中一批标的物解除，该批标的物与其他各批标的物相互依存的，可以就已经交付和未交付的各批标的物解除。

If the buyer dissolves the contract with respect to one batch of the subject matter and the said batch of the subject matter and the other batches of the subject matter are interdependent, the buyer may dissolve the contract with respect to batches of the subject matter delivered and undelivered.

#### 第六百三十四条

分期付款的买受人未支付到期价款的数额达到全部价款的五分之一，经催告后在合理期限内仍未支付到期价款的，出卖人可以请求买受人支付全部价款或者解除合同。

**Article 634** Where the buyer making payment by installments fails to pay the price due and the amount unpaid accounts for one fifth of the total price, and still fails to pay the price due within a reasonable time limit after being urged, the seller may request the buyer to pay the total price or rescind the contract.

出卖人解除合同的，可以向买受人请求支付该标的物的使用费。

Where the seller rescinds the contract, it may require the buyer to pay a fee for the use of such subject matter.

第六百三十五条 凭样品买卖的当事人应当封存样品，并可以对样品质量予以说明。出卖人交付的标的物应当与样品及其说明的质量相同。

Article 635 In a sale by sample, the parties shall place the sample under seal, and may specify the quality of the sample. The subject matter delivered by the seller shall comply with the samples as well as the quality specifications.

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### 第六百三十六条

凭样品买卖的买受人不知道样品有隐蔽瑕疵的，即使交付的标的物与样品相同，出卖人交付的标的物的质量仍然应当符合同种物的通常标准。

**Article 636** In a sale by sample, if the buyer is not aware of a latent defect in the sample, the subject matter delivered by the seller shall nevertheless comply with the normal quality standard for a like item, even though the subject matter delivered complies with the sample.

第六百三十七条 试用买卖的当事人可以约定标的物的试用期限。对试用期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，由出卖人确定。

**Article 637** The parties to a sales transaction by trial use may agree on a trial period for the use of the subject matter. Where such period is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 510 of this Law, it shall be determined by the seller.

第六百三十八条 试用买卖的买受人在试用期内可以购买标的物，也可以拒绝购买。试用期限届满，买受人对是否购买标的物未作表示的，视为购买。

**Article 638.** A purchaser who purchases items on a trial basis may either purchase the subject matter or refuse to purchase the subject matter during the trial period, as appropriate. Upon expiration of the trial period, if the buyer fails to express whether or not to purchase the subject matter, it shall be deemed to have purchased the subject matter.

试用买卖的买受人在试用期内已经支付部分价款或者对标的物实施出卖、出租、设立担保物权等行为的，视为同意购买。

Where the buyer to a sales transaction by trial has already made partial payment or has sold, leased, or created a Security Right over the subject matter during the trial period, it shall be deemed that the buyer has agreed to buy.

### 第六百三十九条

试用买卖的当事人对标的物使用费没有约定或者约定不明确的，出卖人无权请求买受人支付。

**Article 639** In a sale by trial, if the parties have not agreed, or have not come to a clear agreement, on a fee for the use of the subject matter, the seller shall have no right to demand payment by the buyer.

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**第六百四十条** 标的物在试用期内毁损、灭失的风险由出卖人承担。

**Article 640** The risk of damage to or loss of the subject matter during the probationary period shall be borne by the seller.

**第六百四十一条**

当事人可以在买卖合同中约定买受人未履行支付价款或者其他义务的，标的物的所有权属于出卖人。

**Article 641** The parties may agree in a sales contract that the ownership of the subject matter shall belong to the seller if the buyer fails to pay the price or perform other obligations.

出卖人对标的物保留的所有权，未经登记，不得对抗善意第三人。

. Where the seller retains ownership of the subject matter of the contract without registration, the seller may not contest a bona fide third party.

**第六百四十二条**

当事人约定出卖人保留合同标的物的所有权，在标的物所有权转移前，买受人有下列情形之一，造成出卖人损害的，除当事人另有约定外，出卖人有权取回标的物：

**Article 642** Where the parties agree that the seller shall retain the ownership of the subject matter of the contract, if the buyer is under any of the following circumstances before the ownership of the subject matter is transferred, causing damage to the seller, the seller shall have the right to take back the subject matter, unless otherwise agreed by the parties:

（一）未按照约定支付价款，经催告后在合理期限内仍未支付；

1. fails to make payment as agreed and still fails to make payment within a reasonable period after being urged to do so;

（二）未按照约定完成特定条件；

(II) The specified conditions are not fulfilled as agreed;

（三）将标的物出卖、出质或者作出其他不当处分。

(III) selling, pledging or otherwise disposing of the subject matter improperly.

出卖人可以与买受人协商取回标的物；协商不成的，可以参照适用担保物权的实现程序。

The seller may negotiate with the buyer to recover the subject matter; where negotiation is unsuccessful, reference may be made to the procedures for realisation of Security Right.

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### 第六百四十三条

出卖人依据前条第一款的规定取回标的物后，买受人在双方约定或者出卖人指定的合理回赎期限内，消除出卖人取回标的物的事由的，可以请求回赎标的物。

**Article 643** After the seller takes back the subject matter in accordance with the provisions of Paragraph 1 of the preceding Article, the buyer may request to redeem the subject matter if the reasons for the seller's taking back the subject matter are eliminated within the reasonable redeeming period agreed by both parties or specified by the seller.

买受人在回赎期限内没有回赎标的物，出卖人可以以合理价格将标的物出卖给第三人，出卖所得价款扣除买受人未支付的价款以及必要费用后仍有剩余的，应当返还买受人；不足部分由买受人清偿。

Where the buyer does not redeem the subject matter within the redeem period, the seller may sell the subject matter to a third party at a reasonable price; where there is a balance after deducting the amount unpaid by the buyer and the requisite expenses from the sale proceeds, the balance shall be refunded to the buyer; the buyer shall pay any shortfall.

### 第六百四十四条

招标投标买卖的当事人的权利和义务以及招标投标程序等，依照有关法律、行政法规的规定。

**Article 644** In a sale by tender, matters such as the rights and obligations of the parties and the tendering procedure, etc. are governed by the relevant laws and administrative regulations.

### 第六百四十五条

拍卖的当事人的权利和义务以及拍卖程序等，依照有关法律、行政法规的规定。

**Article 645** The rights and obligations of the parties to an auction and the procedures therefor shall be governed by the provisions of the relevant laws and administrative regulations.

### 第六百四十六条

法律对其他有偿合同有规定的，依照其规定；没有规定的，参照适用买卖合同的有关规定。

**Article 646** If there are provisions in the law for other non-gratuitous contracts, such provisions shall apply; in the absence of such provisions, the relevant provisions on sales contracts shall apply mutatis mutandis.

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## 第六百四十七条

当事人约定易货交易，转移标的物的所有权的，参照适用买卖合同的有关规定。

**Article 647** Where the parties agree on a barter transaction involving transfer of title to the subject matter, the relevant provisions on sales contracts shall apply as reference.

## 第十章 供用电、水、气、热力合同

### Chapter 10 Contracts for Supply of Power, Water, Gas, Or Heat

**第六百四十八条** 供用电合同是供电人向用电人供电，用电人支付电费的合同。

**Article 648** A power supply contract is a contract whereby the power supplier supplies power to the power customer, and the power consumer pay an electricity fee.

向社会公众供电的供电人，不得拒绝用电人合理的订立合同要求。

The power supplier supplying power to the general public may not refuse the reasonable request of the power customer to conclude a contract.

## 第六百四十九条

供用电合同的内容一般包括供电的方式、质量、时间，用电容量、地址、性质，计量方式，电价、电费的结算方式，供用电设施的维护责任等条款。

**Article 649** The contents of a power supply contract generally include terms such as the method, quality, and time of power supply, and the capacity, location and nature of power use, and the metering method, electricity rate, the method of settlement of electricity fees, and the responsibility for maintenance of the power supply and use facilities, etc..

## 第六百五十条

供用电合同的履行地点，按照当事人约定；当事人没有约定或者约定不明确的，供电设施的产权分界处为履行地点。

**Article 650.** The place at which a contract for the supply and consumption of electricity is to be performed shall be agreed on by the parties; where the parties have not agreed, or have not come to a clear agreement, on the place of performance, the place of performance shall be at the boundary

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where ownership of the electricity supply facilities is divided.

第六百五十一条 供电人应当按照国家规定的供电质量标准和约定安全供电。供电人未按照国家规定的供电质量标准和约定安全供电，造成用电人损失的，应当承担赔偿责任。

**Article 651** The power supplier shall safely supply power in accordance with the standards for power supply stipulated by the State and with the terms of the contract. Where the power supplier fails to supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract, thereby causing losses to the power customer, it shall be liable for compensation.

#### 第六百五十二条

供电人因供电设施计划检修、临时检修、依法限电或者用电人违法用电等原因，需要中断供电时，应当按照国家有关规定事先通知用电人；未事先通知用电人中断供电，造成用电人损失的，应当承担赔偿责任。

**Article 652** Where the power supplier needs to suspend the power supply due to reasons such as planned maintenance or provisional inspection and repair of the facilities for power supply, restriction on power supply in accordance with the law or illegal use of power by the power customer, the power supplier shall notify the power customer in advance in accordance with the relevant provisions of the State; if it fails to notify the power customer in advance to suspend the power supply, thereby causing losses to the power customer, it shall be liable for compensation.

#### 第六百五十三条

因自然灾害等原因断电，供电人应当按照国家有关规定及时抢修；未及时抢修，造成用电人损失的，应当承担赔偿责任。

**Article 653** Where the power supply is suspended due to a natural disaster or other reasons, the power supplier shall make prompt repairs in accordance with the relevant provisions of the State; if the power supplier fails to make prompt repairs, thereby causing losses to the power customer, it shall be liable for compensation.

#### 第六百五十四条

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用电人应当按照国家有关规定和当事人的约定及时支付电费。用电人逾期不支付电费的，应当按照约定支付违约金。经催告用电人在合理期限内仍不支付电费和违约金的，供电人可以按照国家规定的程序中止供电。

**Article 654** The power customer shall timely pay the electricity fees in accordance with the relevant provisions of the State and with the terms of the contract. Where the consumer fails to pay the electricity charge within the time limit, the consumer shall pay liquidated damages in accordance with the terms of the contract. Where the power customer fails to pay the electricity fees and liquidated damages within a reasonable time limit after receiving demand for payment, the power supplier may suspend the power supply in accordance with the procedures prescribed by the State.

供电人依据前款规定中止供电的，应当事先通知用电人。

Where the power supplier suspends the supply in accordance with the provisions of the preceding paragraph, it shall notify the power customer in advance.

第六百五十五条 用电人应当按照国家有关规定和当事人的约定安全、节约和计划用电。用电人未按照国家有关规定和当事人的约定用电，造成供电人损失的，应当承担赔偿责任。

**Article 655** The consumer of electricity shall consume electricity in a safe, economical and planned manner in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer fails to use power in accordance with the relevant provisions of the State and with the terms of the contract, thereby causing losses to the power supplier, it shall be liable for compensation.

**第六百五十六条** 供用水、供用气、供用热力合同，参照适用供用电合同的有关规定。

**Article 656** Contracts for the supply of water, gas and heat shall be governed by reference to the relevant provisions applicable to power supply contracts.

## 第十一章 赠与合同

### Chapter 11 Gift Contract

**第六百五十七条**

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赠与合同是赠与人将自己的财产无偿给予受赠人，受赠人表示接受赠与的合同。

**Article 657** A donation contract is a contract whereby the donor conveys his property to the donee gratuitously and the donee expresses his acceptance of the donation.

**第六百五十八条** 赠与人在赠与财产的权利转移之前可以撤销赠与。

**Article 658.** The donor may revoke the gift prior to the transfer of its proprietary rights to the granted property.

经过公证的赠与合同或者依法不得撤销的具有救灾、扶贫、助残等公益、道德义务性质的赠与合同，不适用前款规定。

The provisions of the preceding paragraph shall not apply to any notarized donation contract or any donation contract of such public welfare or moral obligation nature as disaster relief, poverty alleviation or disability assistance that may not be revoked in accordance with the law.

**第六百五十九条** 赠与的财产依法需要办理登记或者其他手续的，应当办理有关手续。

**Article 659** Where conveyance of the gifted property is subject to registration or other procedures in accordance with the law, the relevant procedures shall be carried out.

**第六百六十条**

经过公证的赠与合同或者依法不得撤销的具有救灾、扶贫、助残等公益、道德义务性质的赠与合同，赠与人不交付赠与财产的，受赠人可以请求交付。

**Article 660** Where the donor fails to deliver the donated property under a notarized donation contract or a donation contract of such public welfare or moral obligation nature as disaster relief, poverty alleviation or disability alleviation, etc. that cannot be revoked in accordance with the law, the donee may require delivery.

依据前款规定应当交付的赠与财产因赠与人故意或者重大过失致使毁损、灭失的，赠与人应当承担赔偿责任。

Where the gift property to be delivered in accordance with the preceding paragraph is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for compensation.

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**第六百六十一条** 赠与可以附义务。

**Article 661** The donation may be subject to obligations.

赠与附义务的，受赠人应当按照约定履行义务。

Where obligations are attached to the making of a gift, the donee shall perform those obligations as agreed.

**第六百六十二条**

赠与的财产有瑕疵的，赠与人不承担责任。附义务的赠与，赠与的财产有瑕疵的，赠与人在附义务的限度内承担与出卖人相同的责任。

**Article 662.** Where the granted property contains a defect, the donor shall not bear any liability in relation to the defect. In the case of a donation subject to obligations, if the donated property is defective, the donator shall bear the same liability as a seller to the extent of the obligations.

赠与人故意不告知瑕疵或者保证无瑕疵，造成受赠人损失的，应当承担赔偿责任。

Where the donor intentionally fails to inform the donee of the defects or warrants that there are no defects, thereby causing losses to the donee, he shall be liable for compensation.

**第六百六十三条** 受赠人有下列情形之一的，赠与人可以撤销赠与：

**Article 663** Where the donee is in any of the following circumstances, the donator may rescind the donation:

（一）严重侵害赠与人或者赠与人近亲属的合法权益；

1. seriously infringing the lawful rights and interests of the donator or close relatives thereof;

（二）对赠与人有扶养义务而不履行；

(II) Where he fails to perform his maintenance obligation to the donator;

（三）不履行赠与合同约定的义务。

(III) failing to perform the obligations under the donation contract.

赠与人的撤销权，自知道或者应当知道撤销事由之日起一年内行使。

The donor shall exercise its right of revocation within one year from the date on which it knew or ought to have known of the cause for revocation.

**第六百六十四条**

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因受赠人的违法行为致使赠与人死亡或者丧失民事行为能力的，赠与人的继承人或者法定代理人可以撤销赠与。

**Article 664** If, as a result of the donee's illegal acts, the donor dies or loses his capacity for civil conduct, his heir or legal agent may rescind the gift.

赠与人的继承人或者法定代理人的撤销权，自知道或者应当知道撤销事由之日起六个月内行使。

The heir or legal agent of the donor shall exercise the right of revocation within six months after he knows, or ought to know, the cause for revocation.

**第六百六十五条** 撤销权人撤销赠与的，可以向受赠人请求返还赠与的财产。

**Article 665.** Where the party with the right of revocation revokes the gift, it may request that the donee return the granted property.

### **第六百六十六条**

赠与人的经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行赠与义务。

**Article 666.** Where there is a marked deterioration in the economic situation of the donor, seriously affecting the donor's production and business operations or family life, the donor may cease to perform the gift obligations.

## 第十二章 借款合同

### Chapter 12 Loan Contract

**第六百六十七条** 借款合同是借款人向贷款人借款，到期返还借款并支付利息的合同。

**Article 667** A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and repays the borrowed money with interest thereon when it becomes due.

**第六百六十八条** 借款合同应当采用书面形式，但是自然人之间借款另有约定的除外。

**Article 668** A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise.

借款合同的内容一般包括借款种类、币种、用途、数额、利率、期限和还款方式等

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条款。

The contents of a contract for loan of money generally include terms such as the type of loan, currency, purpose, amount, interest rate, term and method of repayment, etc.

#### 第六百六十九条

订立借款合同，借款人应当按照贷款人的要求提供与借款有关的业务活动和财务状况的真实情况。

**Article 669** In entering into a contract for loan of money, the borrower shall provide true information concerning its business operation and financial condition in connection with the loan as required by the lender.

#### 第六百七十条

借款的利息不得预先在本金中扣除。利息预先在本金中扣除的，应当按照实际借款数额返还借款并计算利息。

**Article 670.** Interest on the loan shall not be deducted from the loan principal in advance. If interest is deducted from the principal in advance, the loan shall be repaid and interest shall be calculated on the basis of the actual amount borrowed.

#### 第六百七十一条

贷款人未按照约定的日期、数额提供借款，造成借款人损失的，应当赔偿损失。

**Article 671** Where the lender fails to make the loan amount available on the agreed date and in the agreed amount, thereby causing losses to the borrower, it shall pay damages.

借款人未按照约定的日期、数额收取借款的，应当按照约定的日期、数额支付利息。

Where the borrower fails to accept the loan on the agreed date and in the agreed amount, it shall pay the interest on the agreed date and in the agreed amount.

#### 第六百七十二条

贷款人按照约定可以检查、监督借款的使用情况。借款人应当按照约定向贷款人定期提供有关财务会计报表或者其他资料。

**Article 672** The lender may inspect and supervise the use of the loan in accordance with the terms of the contract. The borrower shall, as agreed, regularly provide the lender with relevant

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financial and accounting statements or other information.

### 第六百七十三条

借款人未按照约定的借款用途使用借款的，贷款人可以停止发放借款、提前收回借款或者解除合同。

**Article 673.** Where the borrower fails to use the loan in accordance with the purpose of the loan as agreed, the lender may withhold funding, call the loan, or terminate the contract.

### 第六百七十四条

借款人应当按照约定的期限支付利息。对支付利息的期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定，借款期间不满一年的，应当在返还借款时一并支付；借款期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在返还借款时一并支付。

**Article 674** The borrower shall pay the interest within the agreed time limit and in accordance with the contract. Where there has been no agreement or no clear agreement as to the time limit for the payment of interest, and the said time limit cannot be determined by reference to the provisions of Article 510 of this Law, then where the loan period is less than one (1) year, interest shall be paid at the same time that the principal is repaid in full; where the loan period is one (1) year or longer, then interest shall be paid at the completion of each annual period, and where that part of the loan period which remains is less than one (1) year, then interest shall be paid at the same time that the principal is repaid in full.

### 第六百七十五条

借款人应当按照约定的期限返还借款。对借款期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，借款人可以随时返还；贷款人可以催告借款人在合理期限内返还。

**Article 675.** The borrower shall repay the loan principal within the agreed time period. Where there has been no agreement or no clear agreement as to the loan term, and the said loan term cannot be determined by reference to the provisions of Article 510 of this Law, the borrower may repay the loan at any time; the lender may call on the borrower to repay the loan within a reasonable period of time.

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### 第六百七十六条

借款人未按照约定的期限返还借款的，应当按照约定或者国家有关规定支付逾期利息。

**Article 676** Where the borrower fails to repay the loan within the agreed time limit, it shall pay overdue interest in accordance with the terms of the contract or the relevant provisions of the State.

### 第六百七十七条

借款人提前返还借款的，除当事人另有约定外，应当按照实际借款的期间计算利息。

**Article 677** Where the borrower repays the loan ahead of schedule, unless otherwise agreed by the parties, the interest shall be calculated based on the actual period of loan.

### 第六百七十八条

借款人可以在还款期限届满前向贷款人申请展期；贷款人同意的，可以展期。

**Article 678** The borrower may apply to the lender for an extension of the loan term before its maturity; such term may be extended if the lender so agrees.

### 第六百七十九条

自然人之间的借款合同，自贷款人提供借款时成立。

**Article 679** A contract for loan of money between natural persons shall be established at the time the lender makes the loan amount available.

### 第六百八十条

禁止高利放贷，借款的利率不得违反国家有关规定。

**Article 680** It is forbidden to lend money at a high interest rate, and the interest rates on loans must not violate relevant State regulations.

借款合同对支付利息没有约定的，视为没有利息。

Where the loan contract does not stipulate the payment of interest, the loan shall be deemed interest free.

借款合同对支付利息约定不明确，当事人不能达成补充协议的，按照当地或者当事人的交易方式、交易习惯、市场利率等因素确定利息；自然人之间借款的，视为没有利息。

Where the agreement on payment of interest in a loan contract is unclear, and the parties concerned are unable to reach a supplementary agreement, interest shall be determined in

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accordance with the transaction method, transaction practice, market interest rate etc of the locality or the parties concerned; where a loan is between natural persons, no interest shall be deemed.

## 第十三章 保证合同

### Chapter 13 Guarantee Contract

#### 第一节 一般规定

#### SECTION 1 GENERAL PROVISIONS

##### 第六百八十一条

保证合同是为保障债权的实现，保证人和债权人约定，当债务人不履行到期债务或者发生当事人约定的情形时，保证人履行债务或者承担责任的合同。

**Article 681.** A guarantee contract is a contract whereby the guarantor and the creditor agree that the guarantor will perform the obligation or assume liability when the debtor fails to perform the obligation on time or when circumstances agreed upon by the parties occur to ensure the realization of the obligation.

第六百八十二条 保证合同是主债权债务合同的从合同。主债权债务合同无效的，保证合同无效，但是法律另有规定的除外。

**Article 682** A guarantee contract shall be a subordinate one to the principal contract. Unless it is otherwise prescribed by any law, the guaranty contract shall be invalid if the principal contract is invalid.

保证合同被确认无效后，债务人、保证人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

. If a guarantee contract is confirmed to be void and the debtor, guarantor and creditor are at fault, they shall bear the corresponding civil liability according to their respective fault.

##### 第六百八十三条

机关法人不得为保证人，但是经国务院批准为使用外国政府或者国际经济组织贷款进行转贷

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的除外。

**Article 683** Government departments with legal person status must not act as guarantors, except where loans from foreign governments or international economic organisations are used in the form of a sub-loan with the approval of the State Council.

以公益为目的的非营利法人、非法人组织不得为保证人。

A non-profit legal person or unincorporated organization for the purpose of public welfare shall not be a guarantor.

#### 第六百八十四条

保证合同的内容一般包括被保证的主债权的种类、数额，债务人履行债务的期限，保证的方式、范围和期间等条款。

**Article 684.** The content of a guarantee contract generally includes clauses dealing with the type and amount of the principal obligation guaranteed, the time limit for the debtor to discharge the obligation, the method, scope and term of the guarantee, etc.

#### 第六百八十五条

保证合同可以是单独订立的书面合同，也可以是主债权债务合同中的保证条款。

**Article 685** A guarantee contract may be a written contract entered into separately or a guarantee clause in the principal contract.

第三人单方以书面形式向债权人作出保证，债权人接收且未提出异议的，保证合同成立。

. If a third party unilaterally gives the creditor a written guarantee and the creditor receives such guarantee without objection, a guarantee contract is formed.

#### 第六百八十六条 保证的方式包括一般保证和连带责任保证。

**Article 686** The forms of guarantee include general guarantee and joint and several liability guarantee.

当事人在保证合同中对保证方式没有约定或者约定不明确的，按照一般保证承担保证责任。

If no agreement or the agreement is not clear on the guaranty mode in the guaranty contract, the parties shall bear the guaranty liability according to the general guaranty.

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## 第六百八十七条

当事人在保证合同中约定，债务人不能履行债务时，由保证人承担保证责任的，为一般保证。

**Article 687** A general guarantee is a guarantee whereby the parties agree in a guarantee contract that the guarantor shall bear guarantee liability when the debtor fails to perform his obligation.

一般保证的保证人在主合同纠纷未经审判或者仲裁，并就债务人财产依法强制执行仍不能履行债务前，有权拒绝向债权人承担保证责任，但是有下列情形之一的除外：

The guarantor under a general guarantee shall have the right to refuse to assume guarantee liability to the creditor before a dispute concerning the principal contract has been adjudicated or arbitrated and when such debtor has failed to perform his obligation despite enforcement against his property in accordance with the law, except under any of the following circumstances:

（一）债务人下落不明，且无财产可供执行；

1. The whereabouts of the debtor is unknown and there is no property available for enforcement;

（二）人民法院已经受理债务人破产案件；

(II) the people's court has accepted the debtor's bankruptcy case;

（三）债权人有证据证明债务人的财产不足以履行全部债务或者丧失履行债务能力；

(III) the creditor has evidence to prove that the debtor's property is insufficient to perform all the debts or the debtor has lost the capacity to perform the debts;

（四）保证人书面表示放弃本款规定的权利。

(IV) The guarantor expresses in writing to waive his right as stipulated in this paragraph.

## 第六百八十八条

当事人在保证合同中约定保证人和债务人对债务承担连带责任的，为连带责任保证。

**Article 688** A guarantee with joint and several liability is a guarantee whereby the parties agree in a guarantee contract that the guarantor and the debtor are jointly and severally liable for the obligation.

连带责任保证的债务人不履行到期债务或者发生当事人约定的情形时，债权人可以请求债务人履行债务，也可以请求保证人在其保证范围内承担保证责任。

When the debtor in a guarantee with joint and several liability fails to perform his

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obligation on time or any circumstance agreed by the parties arises, the creditor may require the debtor to perform his obligation or the guarantor to assume guarantee liability within the scope of his guarantee.

**第六百八十九条** 保证人可以要求债务人提供反担保。

**Article 689** A guarantor may require the debtor to provide a counter-guarantee.

### **第六百九十条**

保证人与债权人可以协商订立最高额保证的合同，约定在最高债权额限度内就一定期间连续发生的债权提供保证。

**Article 690.** The guarantor and the creditor may conclude a contract for a guarantee up to the maximum amount, agreeing to provide a guarantee for successive obligations over a certain period up to a maximum obligation amount.

最高额保证除适用本章规定外，参照适用本法第二编最高额抵押权的有关规定。

In addition to the provisions of this Chapter, the relevant provisions on maximum amount mortgage rights in Part 2 of this Law shall apply as reference to maximum amount guarantee.

## 第二节 保证责任

### Section 2 Warranty Responsibility

**第六百九十一条** 保证的范围包括主债权及其利息、违约金、损害赔偿金和实现债权的费用。当事人另有约定的，按照其约定。

**Article 691.** The scope of the guarantee shall include the principal claim and its interest, fines for default, compensation for loss and expenses incurred in the satisfaction of the claim. Where the parties agree otherwise, their agreement shall prevail.

**第六百九十二条** 保证期间是确定保证人承担保证责任的期间，不发生中止、中断和延长。

**Article 692.** The guarantee term is the period during which the guarantor's responsibility under the guarantee is determined and is not subject to suspension, interruption or extension.

债权人与保证人可以约定保证期间，但是约定的保证期间早于主债务履行期限或者

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与主债务履行期限同时届满的，视为没有约定；没有约定或者约定不明确的，保证期间为主债务履行期限届满之日起六个月。

The creditor and the guarantee provider may agree on the guarantee term, however, if the stipulated term of guarantee expires earlier than the term for performing the principal obligation or at the same time as the term for performing the principal obligation, such term shall be deemed to have not been agreed; if there is no agreement or such agreement is unclear, the guarantee term shall be six months from the date of expiration of the term for performing the principal obligation.

债权人与债务人对主债务履行期限没有约定或者约定不明确的，保证期间自债权人请求债务人履行债务的宽限期届满之日起计算。

Where there is no agreement in the contract between the creditor and the debtor on the term for performance of the principal obligation or such agreement is unclear, the term of the guarantee shall commence on the expiry date of the grace period for the debtor to perform his obligation.

### 第六百九十三条

一般保证的债权人未在保证期间对债务人提起诉讼或者申请仲裁的，保证人不再承担保证责任。

**Article 693.** If the creditor secured by an ordinary guarantee fails to institute proceedings or apply for arbitration against the debtor during the guarantee period, the guarantor no longer bears guarantee liability.

连带责任保证的债权人未在保证期间请求保证人承担保证责任的，保证人不再承担保证责任。

If a creditor secured by a joint and several guarantee fails to request that the guarantor assume his guarantee liability during the term of the guarantee, the guarantor shall no longer bear guarantee liability.

### 第六百九十四条

一般保证的债权人在保证期间届满前对债务人提起诉讼或者申请仲裁的，从保证人拒绝承担保证责任的权利消灭之日起，开始计算保证债务的诉讼时效。

**Article 694** Where the creditor in a general guarantee lodges a suit against the debtor or applies

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for arbitration before the expiration of the guarantee term, the limitation of action for the guarantee obligation shall be calculated from the date on which the right of the guarantor to refuse to assume guarantee liability ceases to exist.

连带责任保证的债权人在保证期间届满前请求保证人承担保证责任的，从债权人请求保证人承担保证责任之日起，开始计算保证债务的诉讼时效。

Where a creditor secured by a joint and several guarantee requests that the guarantor assume his guarantee liability before the expiration of the guarantee term, the limitation period for action to be taken in relation to the guarantee shall be calculated from the date on which the creditor requests that the guarantor assume his guarantee liability.

### 第六百九十五条

债权人和债务人未经保证人书面同意，协商变更主债权债务合同内容，减轻债务的，保证人仍对变更后的债务承担保证责任；加重债务的，保证人对加重的部分不承担保证责任。

**Article 695** Where the creditor and debtor, without the written consent of the guarantor, alter the contents of the principal contract through consultation to reduce the debt, the guarantor shall continue to bear guarantee liability for the altered debt. If the debt is increased, the guarantor shall bear no guarantee liability for the increased part.

债权人和债务人变更主债权债务合同的履行期限，未经保证人书面同意的，保证期间不受影响。

Where the creditor and debtor amend the term for performance of the principal contract for creditors' rights and debts without the written consent of the guarantor, the guarantee term shall not be affected.

### 第六百九十六条

债权人转让全部或者部分债权，未通知保证人的，该转让对保证人不发生效力。

**Article 696** Where the creditor transfers all or part of the creditor's right without notifying the guarantor, the transfer shall be of no effect on the guarantor.

保证人与债权人约定禁止债权转让，债权人未经保证人书面同意转让债权的，保证人对受让人不再承担保证责任。

. If the guarantor and the creditor agree to prohibit the assignment of the claim, and the creditor assigns the claim without the written consent of the guarantor, the guarantor no longer

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bears guarantee liability towards the assignee.

### 第六百九十七条

债权人未经保证人书面同意，允许债务人转移全部或者部分债务，保证人对未经其同意转移的债务不再承担保证责任，但是债权人和保证人另有约定的除外。

**Article 697** Where a creditor, without the written consent of the guarantor, allows the debtor to transfer all or part of his obligation, the guarantor no longer bears guarantee liability on the obligation transferred without his consent, unless otherwise agreed upon by the creditor and the guarantor.

第三人加入债务的，保证人的保证责任不受影响。

Where a third party becomes a debtor, the guarantee liability of the guarantor shall not be affected.

### 第六百九十八条

一般保证的保证人在主债务履行期限届满后，向债权人提供债务人可供执行财产的真实情况，债权人放弃或者怠于行使权利致使该财产不能被执行的，保证人在其提供可供执行财产的价值范围内不再承担保证责任。

**Article 698.** After the term for the performance of the principal obligation has expired, the guarantor under an ordinary guarantee shall provide to the creditor true information concerning the debtor's property available for enforcement. Where the creditor waives or neglects to exercise his right and the property cannot be enforced, the guarantor no longer bears guarantee liability to the extent of the value of the property available for enforcement that he provided.

### 第六百九十九条

同一债务有两个以上保证人的，保证人应当按照保证合同约定的保证份额，承担保证责任；没有约定保证份额的，债权人可以请求任何一个保证人在其保证范围内承担保证责任。

**Article 699** Where there are two or more guarantors for the same obligation, the guarantors shall bear guarantee liability in accordance with their respective shares of guarantee as stipulated in the guarantee contract. Where no shares of guarantee are stipulated in the guarantee contract, the creditor may require any of the guarantors to bear guarantee liability within the scope of its guarantee.

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### 第七百条

保证人承担保证责任后，除当事人另有约定外，有权在其承担保证责任的范围内向债务人追偿，享有债权人对债务人的权利，但是不得损害债权人的利益。

**Article 700.** After a guarantor has borne his guarantee liability, unless the parties agree otherwise, he has the right to seek compensation from the debtor within the scope of his guarantee liability, and he enjoys the rights of the creditor against the debtor, without prejudice to the interests of the creditor.

### 第七百零一条

保证人可以主张债务人对债权人的抗辩。债务人放弃抗辩的，保证人仍有权向债权人主张抗辩。

**Article 701** The guarantor may claim any defenses which the debtor has against the creditor. The guarantor shall still have the right to claim against the creditor such defense waived by the debtor.

### 第七百零二条

债务人对债权人享有抵销权或者撤销权的，保证人可以在相应范围内拒绝承担保证责任。

**Article 702** Where the debtor has the right to offset or rescind against the creditor, the guarantor may refuse to bear guarantee liability within the corresponding scope.

## 第十四章 租赁合同

### Chapter 14 Lease Contract

### 第七百零三条

租赁合同是出租人将租赁物交付承租人使用、收益，承租人支付租金的合同。

**Article 703** A leasing contract is a contract whereby the lessor delivers to the lessee the lease item for it to use or accrue benefit from, and the lessee pays the rent.

### 第七百零四条

租赁合同的内容一般包括租赁物的名称、数量、用途、租赁期限、租金及其支付期限和方式

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、租赁物维修等条款。

**Article 704** The contents of a lease contract generally include terms such as the name, quantity and purpose of the leased property, lease term, rent as well as time limit and method for its payment, and maintenance of the leased property.

**第七百零五条** 租赁期限不得超过二十年。超过二十年的，超过部分无效。

**Article 705** The term of the lease shall not exceed twenty years. Where the lease exceeds twenty (20) years, that part of the lease beyond the said limit shall be invalid.

租赁期限届满，当事人可以续订租赁合同；但是，约定的租赁期限自续订之日起不得超过二十年。

At the expiration of the term of the lease, the parties may renew the lease contract; however, the renewed term may not exceed 20 years commencing on the date of renewal.

**第七百零六条**

当事人未依照法律、行政法规规定办理租赁合同登记备案手续的，不影响合同的效力。

**Article 706** If the parties concerned fail to go through the formalities of registration of the lease contract in accordance with the provisions of laws and administrative regulations, the validity of the contract shall not be affected.

**第七百零七条**

租赁期限六个月以上的，应当采用书面形式。当事人未采用书面形式，无法确定租赁期限的，视为不定期租赁。

**Article 707** Where the lease term is six (6) months or longer, the lease shall be in writing. If the parties fail to adopt a written form, and it is impossible to determine the term of lease, the lease shall be deemed as a non-term lease.

**第七百零八条**

出租人应当按照约定将租赁物交付承租人，并在租赁期限内保持租赁物符合约定的用途。

**Article 708** The lessor shall deliver the lease item to the lessee in accordance with the contract and shall, within the lease term, keep the lease item fit for the agreed purpose.

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### 第七百零九条

承租人应当按照约定的方法使用租赁物。对租赁物的使用方法没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，应当根据租赁物的性质使用。

**Article 709.** The lessee shall use the leased goods in accordance with agreed methods. Where there is no agreement in the contract on the method of use of the leased property or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the leased property shall be used in light of its nature.

### 第七百一十条

承租人按照约定的方法或者根据租赁物的性质使用租赁物，致使租赁物受到损耗的，不承担赔偿责任。

**Article 710.** If the lessee uses the leased goods in accordance with the agreed usages or in a manner consistent with their nature, and there is wear and tear to the leased goods as a result, the lessee shall not be liable for compensation.

### 第七百一十一条

承租人未按照约定的方法或者未根据租赁物的性质使用租赁物，致使租赁物受到损失的，出租人可以解除合同并请求赔偿损失。

**Article 711** Where the lessee fails to use the lease item in the agreed manner or in a manner consistent with its nature, thereby causing damage to it, the lessor may rescind the contract and claim compensation for losses.

**第七百一十二条** 出租人应当履行租赁物的维修义务，但是当事人另有约定的除外。

**Article 712.** The lessor shall perform its obligation to make repairs to the leased goods, except where the parties agree otherwise.

**第七百一十三条** 承租人在租赁物需要维修时可以请求出租人在合理期限内维修。出租人未履行维修义务的，承租人可以自行维修，维修费用由出租人负担。因维修租赁物影响承租人使用的，应当相应减少租金或者延长租期。

**Article 713.** When the leased goods need to be repaired, the lessee may request that the lessor make repairs within a reasonable period of time. If the lessor fails to perform its obligations of

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maintenance or repair, the lessee may maintain or repair the lease item on its own at the lessor's expense. Where the lessee's use of the lease item is impaired due to maintenance or repair thereof, the rent shall be reduced or the lease term shall be extended accordingly.

因承租人的过错致使租赁物需要维修的，出租人不承担前款规定的维修义务。

Where the lease item needs maintenance and repair due to the fault of the lessee, the lessor does not assume the maintenance and repair obligations as provided in the preceding paragraph.

#### 第七百一十四条

承租人应当妥善保管租赁物，因保管不善造成租赁物毁损、灭失的，应当承担赔偿责任。

**Article 714** The lessee shall keep the lease item with due care and shall be liable for compensation in case of damage or loss to the lease item due to improper care.

第七百一十五条 承租人经出租人同意，可以对租赁物进行改善或者增设他物。

**Article 715.** With the consent of the lessor, the lessee may make improvements to, or affix attachments to the leased goods.

承租人未经出租人同意，对租赁物进行改善或者增设他物的，出租人可以请求承租人恢复原状或者赔偿损失。

Where the lessee makes improvement on or addition to the lease item without consent of the lessor, the lessor may require the lessee to restore the lease item to its original condition or compensate for the losses.

第七百一十六条 承租人经出租人同意，可以将租赁物转租给第三人。承租人转租的，承租人与出租人之间的租赁合同继续有效；第三人造成租赁物损失的，承租人应当赔偿损失。

**Article 716** Subject to consent of the lessor, the lessee may sublease the lease item to a third party. Where the lessee subleases the leased property, the lease contract between the lessee and the lessor shall remain effective; where a third party causes losses to the leased property, the lessee shall compensate for such losses.

承租人未经出租人同意转租的，出租人可以解除合同。

Where the lessee subleases the leased goods without the consent of the lessor, the lessor may rescind the contract.

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### 第七百一十七条

承租人经出租人同意将租赁物转租给第三人，转租期限超过承租人剩余租赁期限的，超过部分的约定对出租人不具有法律约束力，但是出租人与承租人另有约定的除外。

**Article 717** Where the lessee subleases the leased property to a third party with the consent of the lessor, and the sublease term exceeds the remaining lease term of the lessee, the agreement on the part in excess shall not be legally binding upon the lessor, unless otherwise agreed upon by the lessor and the lessee.

### 第七百一十八条

出租人知道或者应当知道承租人转租，但是在六个月内未提出异议的，视为出租人同意转租。

**Article 718** Where the lessor knows or should know about the sublease of the lessee but fails to raise any objection within six months, it shall be deemed that the lessor agrees to the sublease.

### 第七百一十九条

承租人拖欠租金的，次承租人可以代承租人支付其欠付的租金和违约金，但是转租合同对出租人不具有法律约束力的除外。

**Article 719** If the lessee defaults on the payment of the rent, the sub-lessee may pay the outstanding rent and liquidated damages on behalf of the lessee, except that the sublease contract has no legally binding force upon the lessor.

次承租人代为支付的租金和违约金，可以充抵次承租人应当向承租人支付的租金；超出其应付的租金数额的，可以向承租人追偿。

The rent and liquidated damages paid by the sub-lessee on behalf of the lessee may be used to offset the rent payable by the sub-lessee to the lessee; if the amount of the rent exceeds the payable rent, the sub-lessee may have recourse against the lessee.

### 第七百二十条

在租赁期限内因占有、使用租赁物获得的收益，归承租人所有，但是当事人另有约定的除外。

**Article 720** During the lease term, any benefit accrued from the possession or use of the leased property shall belong to the lessee, except as otherwise agreed by the parties.

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### 第七百二十一条

承租人应当按照约定的期限支付租金。对支付租金的期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定，租赁期限不满一年的，应当在租赁期限届满时支付；租赁期限一年以上的，应当在每届满一年时支付，剩余期限不满一年的，应当在租赁期限届满时支付。

**Article 721** The charterer shall pay the hire within the time limit agreed upon. Where there has been no agreement or no clear agreement as to the deadlines for the payment of rent, and it is not possible to determine the issue in accordance with the provisions of Article 510 of this Law, then where the lease period is less than one (1) year, rent shall be paid at the expiry of the lease period; where the lease period is one (1) year or longer, rent shall be paid at the expiry of each year of the lease period, and where that part of the lease period which remains is less than one (1) year, rent shall be paid at the expiry of the lease period.

### 第七百二十二条

承租人无正当理由未支付或者迟延支付租金的，出租人可以请求承租人在合理期限内支付；承租人逾期不支付的，出租人可以解除合同。

**Article 722** In the event that the lessee fails to pay or delays in paying the rent without justified reasons, the lessor may request the lessee to pay the rent within a reasonable time limit. If the lessee fails to pay the rent within the time limit, the lessor may rescind the contract.

### 第七百二十三条

因第三人主张权利，致使承租人不能对租赁物使用、收益的，承租人可以请求减少租金或者不支付租金。

**Article 723** If due to any claim by a third party, the lessee is unable to use or accrue benefit from the lease item, the lessee may request a reduction in rent or refuse to pay rent.

第三人主张权利的，承租人应当及时通知出租人。

Where rights are claimed by a third party, the lessee shall notify the lessor in time.

### 第七百二十四条

有下列情形之一的，非因承租人原因致使租赁物无法使用的，承租人可以解除合同：

**Article 724** The lessee may rescind the contract under any of the following circumstances

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where the lease item cannot be used due to reasons not attributable to the lessee:

(一) 租赁物被司法机关或者行政机关依法查封、扣押;

1. Where the leased item is legally sealed up or seized by the judicial authority or administrative authority;

(二) 租赁物权属有争议;

(II) There is dispute over the ownership of the leasehold property right;

(三) 租赁物具有违反法律、行政法规关于使用条件的强制性规定情形。

(III) Where the leased item violates the mandatory provisions of laws and administrative regulations in respect of use conditions.

### 第七百二十五条

租赁物在承租人按照租赁合同占有期限内发生所有权变动的, 不影响租赁合同的效力。

**Article 725** Where there is a change of ownership of the leased property during the period of the lessee's possession in accordance with the terms of the lease contract, this shall not affect the validity of the lease contract.

### 第七百二十六条

出租人出卖租赁房屋的, 应当在出卖之前的合理期限内通知承租人, 承租人享有以同等条件优先购买的权利; 但是, 房屋按份共有人行使优先购买权或者出租人将房屋出卖给近亲属的除外。

**Article 726** Where the lessor is to sell a dwelling unit under a lease, it shall give the lessee a notice within a reasonable time limit before the sale, and the lessee has the right of first refusal under the same conditions, except where the co-owners by shares exercise their right of first refusal or the lessor is to sell the dwelling unit to their close relatives.

出租人履行通知义务后, 承租人在十五日内未明确表示购买的, 视为承租人放弃优先购买权。

Where the lessee does not clearly express to purchase the house within 15 days after the lessor performs the obligation of notice, the lessee shall be deemed to waive its pre-emptive right.

第七百二十七条 出租人委托拍卖人拍卖租赁房屋的, 应当在拍卖五日前通知承租人。承租人未参加拍卖的, 视为放弃优先购买权。

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Article 727 Where the lessor entrusts an auctioneer with auction of a leased house, it shall notify the lessee five days prior to the auction. Where the lessee does not participate in the auction, it shall be deemed to have waived the pre-emptive right.

第七百二十八条 出租人未通知承租人或者有其他妨害承租人行使优先购买权情形的，承租人可以请求出租人承担赔偿责任。但是，出租人与第三人订立的房屋买卖合同的效力不受影响。

Article 728 Where the lessor fails to notify the lessee or hinders the lessee from exercising the pre-emptive right, the lessee may request the lessor to bear compensation liability. However, the validity of the house transaction contract concluded by and between the lessor and the third party shall not be affected.

#### 第七百二十九条

因不可归责于承租人的事由，致使租赁物部分或者全部毁损、灭失的，承租人可以请求减少租金或者不支付租金；因租赁物部分或者全部毁损、灭失，致使不能实现合同目的的，承租人可以解除合同。

**Article 729** Where the lease item is damaged or lost in part or in whole due to any reason not attributable to the lessee, the lessee may request a reduction of the rent or not to pay the rent; where the purpose of the contract cannot be achieved due to damage to or loss of the lease item in part or in whole, the lessee may rescind the contract.

#### 第七百三十条

当事人对租赁期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，视为不定期租赁；当事人可以随时解除合同，但是应当在合理期限之前通知对方。

**Article 730** Where the term of a lease is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 510 of this Law, such lease is deemed a non-term lease. The parties may terminate the contract at any time, provided that they notify the other party a reasonable time in advance.

#### 第七百三十一条

租赁物危及承租人的安全或者健康的，即使承租人订立合同时明知该租赁物质量不合格，承

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租人仍然可以随时解除合同。

**Article 731** Where the lease item endangers the safety or health of the lessee, the lessee may terminate the contract at any time even if the lessee knows the lease item does not meet the quality requirements when concluding the contract.

### 第七百三十二条

承租人在房屋租赁期限内死亡的，与其生前共同居住的人或者共同经营人可以按照原租赁合同租赁该房屋。

**Article 732** Where the lessee is deceased during the term of a house lease, the persons who live together with the deceased or the joint operators may lease the house in accordance with the original lease contract.

第七百三十三条 租赁期限届满，承租人应当返还租赁物。返还的租赁物应当符合按照约定或者根据租赁物的性质使用后的状态。

**Article 733.** Upon the expiry of the lease period, the lessee shall return the leased goods. The property returned shall be in conformity with the conditions after use in accordance with the contract or in light of its nature.

### 第七百三十四条

租赁期限届满，承租人继续使用租赁物，出租人没有提出异议的，原租赁合同继续有效，但是租赁期限为不定期。

**Article 734.** Where the lessee continues to use the leased goods after the expiry of the lease period, and the lessor does not raise any objections, the original lease contract shall continue to be valid, but the lease will become a non-fixed term lease.

租赁期限届满，房屋承租人享有以同等条件优先承租的权利。

When the term of the lease expires, the lessee of the house shall have the priority to lease the house on the same conditions.

## 第十五章 融资租赁合同

### Chapter 15 Financial Leasing Contracts

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### 第七百三十五条

融资租赁合同是出租人根据承租人对出卖人、租赁物的选择，向出卖人购买租赁物，提供给承租人使用，承租人支付租金的合同。

**Article 735** A financial leasing contract is a contract whereby the lessor, upon purchase of the lessee -selected lease item from a lessee -selected seller, provides the lease item to the lessee for its use, and the lessee pays the rent.

### 第七百三十六条

融资租赁合同的内容一般包括租赁物的名称、数量、规格、技术性能、检验方法，租赁期限，租金构成及其支付期限和方式、币种，租赁期限届满租赁物的归属等条款。

**Article 736** The contents of a financial leasing contract generally include clauses dealing with the name, quantity, specifications and technical performance of the lease item, the method of inspection, the lease term, the rental components and the time, method and currency of payment, the ownership of the lease item upon the expiry of the lease term, etc.

融资租赁合同应当采用书面形式。

A financial leasing contract shall be in writing.

### 第七百三十七条 当事人以虚构租赁物方式订立的融资租赁合同无效。

**Article 737** Financial leasing contracts concluded by the parties concerned in the form of fictitious leased items shall be invalid.

### 第七百三十八条

依照法律、行政法规的规定，对于租赁物的经营使用应当取得行政许可的，出租人未取得行政许可不影响融资租赁合同的效力。

**Article 738** Where the operation or use of the lease item requires administrative license in accordance with laws and administrative regulations, failure on the part of the lessor to obtain such administrative license shall not affect the validity of the finance lease contract.

### 第七百三十九条

出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，出卖人应当按照约定向承租人交付标的物，承租人享有与受领标的物有关的买受人的权利。

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**Article 739** Under the sales contract concluded by the lessor according to the lessee's selection of the seller and the lease item, the seller shall deliver the subject matter to the lessee in accordance with the contract, and the lessee enjoys the rights of the buyer in respect of taking delivery of the subject matter.

#### 第七百四十条

出卖人违反向承租人交付标的物的义务，有下列情形之一的，承租人可以拒绝受领出卖人向其交付的标的物：

**Article 740** Where a seller fails to perform its obligation of delivery of the subject matter to the lessee, the lessee may refuse to accept the subject matter delivered by the seller to it under any of the following circumstances:

（一）标的物严重不符合约定；

1. the subject matter is materially inconsistent with the agreement;

（二）未按照约定交付标的物，经承租人或者出租人催告后在合理期限内仍未交付。

(II) Failing to deliver the subject matter as agreed and still failing to do so within a reasonable time limit after being urged by the lessee or the lessor.

承租人拒绝受领标的物的，应当及时通知出租人。

Where the lessee refuses to take delivery of the subject matter, it shall timely notify the lessor.

第七百四十一条 出租人、出卖人、承租人可以约定，出卖人不履行买卖合同义务的，由承租人行使索赔的权利。承租人行使索赔权利的，出租人应当协助。

**Article 741** The lessor, the seller and the lessee may agree that any claim arising from the seller's failure in the performance of its obligations under the sales contract will be made by the lessee. Where the lessee exercises the right to claim compensation, the lessor shall provide assistance.

第七百四十二条 承租人对出卖人行使索赔权利，不影响其履行支付租金的义务。但是，承租人依赖出租人的技能确定租赁物或者出租人干预选择租赁物的，承租人请求减免相应租金。

**Article 742** The lessee's exercise of the right to claim against the seller shall not affect the performance of its obligation of rental payment. However, if the lessee relies on the skills of the

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lessor in selecting the lease item or the lessor interferes in the selection of lease item, the lessee may request reduction or exemption of the corresponding rent.

### 第七百四十三条

出租人有下列情形之一，致使承租人对出卖人行使索赔权利失败的，承租人有权请求出租人承担相应的责任：

**Article 743** In case of any of the following circumstances on the part of the lessor, which causes the lessee's failure in exercising the right to claim against the seller, the lessee has the right to request the lessor to bear corresponding liability:

(一) 明知租赁物有质量瑕疵而不告知承租人；

1. Not informing the lessee of any quality defect of the leased item knowingly;

(二) 承租人行使索赔权利时，未及时提供必要协助。

(II) The lessee fails to timely provide necessary assistance when exercising the right to claims.

出租人怠于行使只能由其对出卖人行使的索赔权利，造成承租人损失的，承租人有权请求出租人承担赔偿责任。

Where the lessor is remiss in exercising the right to claim compensation which may only be exercised by it against the seller, thus causing losses to the lessee, the lessee has the right to claim compensation from the lessor.

### 第七百四十四条

出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，未经承租人同意，出租人不得变更与承租人有关的合同内容。

**Article 744** Without the consent of the lessee, the lessor may not amend any lessee -related term in the sales contract concluded by it according to the lessee's selection of the seller and the leasehold property.

**第七百四十五条** 出租人对租赁物享有的所有权，未经登记，不得对抗善意第三人。

**Article 745.** If the ownership of the leased goods by the lessor is not registered, the lessor may not contest a bona fide third party.

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## 第七百四十六条

融资租赁合同的租金，除当事人另有约定外，应当根据购买租赁物的大部分或者全部成本以及出租人的合理利润确定。

**Article 746** Unless otherwise agreed by the parties, the rent under a financial leasing contract shall be determined based on the major portion of or full costs of purchasing the lease item and the lessor's reasonable profit.

第七百四十七条 租赁物不符合约定或者不符合使用目的的，出租人不承担责任。但是，承租人依赖出租人的技能确定租赁物或者出租人干预选择租赁物的除外。

**Article 747** Where the lease item does not comply with the contract or is not fit for the intended purpose, the lessor is not liable. However, there shall be an exception where the lessee relies on the skills of the lessor in selecting the leased goods or the lessor interferes in the selection of leased goods.

第七百四十八条 出租人应当保证承租人对租赁物的占有和使用。

**Article 748.** The lessor shall provide guarantees as to the lessee's possession and use of the leased goods.

出租人有下列情形之一的，承租人有权请求其赔偿损失：

The lessee shall be entitled to claim compensation for losses if the lessor is under any of the following circumstances:

（一）无正当理由收回租赁物；

1. Taking back the leased item without justifiable reason;

（二）无正当理由妨碍、干扰承租人对租赁物的占有和使用；

(II) Impeding or interfering with the lessee's occupation or use of the leased item without justifiable reasons;

（三）因出租人的原因致使第三人对租赁物主张权利；

(III) Causing a third party to claim rights on the leased item due to the reasons of the lessor;

or

（四）不当影响承租人对租赁物占有和使用的其他情形。

(IV) Other circumstances improperly affecting the lessee's occupation and use of the leased item.

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### 第七百四十九条

承租人占有租赁物期间，租赁物造成第三人人身损害或者财产损失的，出租人不承担责任。

**Article 749** Where the leased property causes personal injury or property loss to a third party during the period when the lessee possesses the leased property, the lessor shall not bear any liability.

**第七百五十条** 承租人应当妥善保管、使用租赁物。

**Article 750** The lessee shall keep and use the lease item with due care.

承租人应当履行占有租赁物期间的维修义务。

The lessee shall perform the obligations of maintenance and repair of the leased property during the period when the lessee possesses the leased property.

### 第七百五十一条

承租人占有租赁物期间，租赁物毁损、灭失的，出租人有权请求承租人继续支付租金，但是法律另有规定或者当事人另有约定的除外。

**Article 751** Where the leased property is damaged or lost during the period when the lessee possesses the leased property, the lessor shall have the right to request the lessee to continue to pay the rent, unless otherwise provided by law or agreed by the parties.

**第七百五十二条** 承租人应当按照约定支付租金。承租人经催告后在合理期限内仍不支付租金的，出租人可以请求支付全部租金；也可以解除合同，收回租赁物。

**Article 752** The charterer shall pay the hire as agreed upon. Where the lessee still fails to pay the rent within a reasonable time limit after being urged, the lessor may either request it to pay all the rent, or rescind the contract and take back the leased property.

### 第七百五十三条

承租人未经出租人同意，将租赁物转让、抵押、质押、投资入股或者以其他方式处分的，出租人可以解除融资租赁合同。

**Article 753** Where the lessee transfers, mortgages, pledges, invests or otherwise disposes of the lease item without the consent of the lessor, the lessor may rescind the finance lease contract.

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**第七百五十四条** 有下列情形之一的，出租人或者承租人可以解除融资租赁合同：

**Article 754** The lessor or the lessee may rescind the finance lease contract in any of the following circumstances:

（一）出租人与出卖人订立的买卖合同解除、被确认无效或者被撤销，且未能重新订立买卖合同；

1. Where the purchase and sale contract concluded by the seller and the lessor is terminated, confirmed to be invalid or rescinded, and the lessor and the lessor fail to reconclude the purchase and sale contract;

（二）租赁物因不可归责于当事人的原因毁损、灭失，且不能修复或者确定替代物；  
(II) The lease item is damaged or lost for reasons not attributable to either party and it is impossible to repair it or determine a substitute for it;

（三）因出卖人的原因致使融资租赁合同的目的是不能实现。

(III) The purpose of the finance lease contract is frustrated due to reasons attributable to the seller.

### **第七百五十五条**

融资租赁合同因买卖合同解除、被确认无效或者被撤销而解除，出卖人、租赁物系由承租人选择的，出租人有权请求承租人赔偿相应损失；但是，因出租人原因致使买卖合同解除、被确认无效或者被撤销的除外。

**Article 755** Where a finance lease contract is terminated due to the rescission, confirmation of invalidity or rescission of the contract of sale and purchase, and the seller and the lease item are selected by the lessee, the lessor shall have the right to request that the lessee makes compensation for the corresponding losses, except where the rescission, confirmation of invalidity or rescission of the contract of sale and purchase is attributable to the lessor.

出租人的损失已经在买卖合同解除、被确认无效或者被撤销时获得赔偿的，承租人不再承担相应的赔偿责任。

Where the loss of the lessor has been compensated when the contract of sale is dissolved, deemed invalid or rescinded, the lessee shall not be liable for corresponding compensation.

### **第七百五十六条**

融资租赁合同因租赁物交付承租人后意外毁损、灭失等不可归责于当事人的原因解除的，出

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租人可以请求承租人按照租赁物折旧情况给予补偿。

**Article 756** In the event that a finance lease contract is dissolved for reasons not attributable to either party such as accidental damage or loss of the lease item after delivery to the lessee, the lessor may request the lessee to make compensation in light of the depreciation status of the lease item.

### 第七百五十七条

出租人和承租人可以约定租赁期限届满租赁物的归属；对租赁物的归属没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，租赁物的所有权归出租人。

**Article 757.** The lessor and the lessee may agree on ownership of the leased goods upon the expiry of the lease period. Where there has been no agreement or no clear agreement as to ownership of the leased goods, and the issue cannot be determined by reference to the provisions of Article 510 of this Law, the lessor shall own the leased goods.

### 第七百五十八条

当事人约定租赁期限届满租赁物归承租人所有，承租人已经支付大部分租金，但是无力支付剩余租金，出租人因此解除合同收回租赁物，收回的租赁物的价值超过承租人欠付的租金以及其他费用的，承租人可以请求相应返还。

**Article 758** Where the parties agree that the lease item shall belong to the lessee at the expiry of the lease term, the lessee has paid the majority of the rent but is unable to pay the remaining rent, and the lessor terminates the contract for this reason and takes back the lease item, if the value of the lease item taken back exceeds the rent and other expenses which the lessee owes to the lessor, the lessee may request the lessor to return the same.

当事人约定租赁期限届满租赁物归出租人所有，因租赁物毁损、灭失或者附合、混合于他物致使承租人不能返还的，出租人有权请求承租人给予合理补偿。

Where the parties agree that the lease item shall belong to the lessor at the expiry of the lease term, if the lessee is unable to return the lease item due to damage, loss, addition to or mixing with other property of the lease item, the lessor has the right to request the lessee to make reasonable compensation.

### 第七百五十九条

当事人约定租赁期限届满，承租人仅需向出租人支付象征性价款的，视为约定的租金义务履

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行完毕后租赁物的所有权归承租人。

**Article 759** Where the parties agree that at the expiration of the lease term the lessee only needs to pay a symbolic price to the lessor, the ownership of the lease item shall belong to the lessee after the agreed rent obligation has been performed.

### 第七百六十条

融资租赁合同无效，当事人就该情形下租赁物的归属有约定的，按照其约定；没有约定或者约定不明确的，租赁物应当返还出租人。但是，因承租人原因致使合同无效，出租人不请求返还或者返还后会显著降低租赁物效用的，租赁物的所有权归承租人，由承租人给予出租人合理补偿。

**Article 760** In the event that a finance lease contract is null and void and the parties have agreed on the ownership of the lease item under such circumstance, such agreement shall apply; where there is no agreement or such agreement is unclear, the lease item shall be returned to the lessor. However, if the contract is invalid for reasons attributable to the lessee, and the lessor does not request for return of the leased property or the return of the leased property will significantly reduce the utility thereof, the ownership of the leased property shall belong to the lessee, and the lessee shall make reasonable compensation to the lessor.

## 第十六章 保理合同

### Chapter 16 FACTORING CONTRACT

### 第七百六十一条

保理合同是应收账款债权人将现有的或者将有的应收账款转让给保理人，保理人提供资金融通、应收账款管理或者催收、应收账款债务人付款担保等服务的合同。

**Article 761** A factoring contract shall mean a contract whereby a creditor of accounts receivable transfers its existing accounts receivable or existing accounts receivable to the factor, and the factor provides services such as financing, accounts receivable management or collection, payment guarantee by debtors of accounts receivable, etc.

### 第七百六十二条

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保理合同的内容一般包括业务类型、服务范围、服务期限、基础交易合同情况、应收账款信息、保理融资款或者服务报酬及其支付方式等条款。

**Article 762** The contents of a factoring contract shall generally include clauses such as type of business, scope of services, term of services, information on basic transaction contract, accounts receivable information, factoring financing funds or service remuneration, and payment method thereof.

保理合同应当采用书面形式。

Factoring contracts shall be in writing.

### 第七百六十三条

应收账款债权人与债务人虚构应收账款作为转让标的，与保理人订立保理合同的，应收账款债务人不得以应收账款不存在为由对抗保理人，但是保理人明知虚构的除外。

**Article 763** Where a creditor and a debtor of accounts receivable have fabricated accounts receivable as the subject matter of transfer and entered into a factoring contract with a factor, the debtor of accounts receivable shall not cite non-existence of accounts receivable as a reason to counter the factor, except where the factor is aware of the fabrications.

### 第七百六十四条

保理人向应收账款债务人发出应收账款转让通知的，应当表明保理人身份并附有必要凭证。

**Article 764** Where a factor notifies a debtor of accounts receivable of an assignment of accounts receivable, he/she shall state his/her identity and attach the requisite proof.

### 第七百六十五条

应收账款债务人接到应收账款转让通知后，应收账款债权人与债务人无正当理由协商变更或者终止基础交易合同，对保理人产生不利影响的，对保理人不发生效力。

**Article 765** Upon receipt of a notice of transfer of accounts receivable by the debtor, where the creditor of the accounts receivable and the debtor negotiate on amendment to or termination of the underlying transaction contract without a proper reason, which has an adverse impact on the factor, such amendment or termination shall not be binding on the factor.

### 第七百六十六条

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当事人约定有追索权保理的，保理人可以向应收账款债权人主张返还保理融资款本息或者回购应收账款债权，也可以向应收账款债务人主张应收账款债权。保理人向应收账款债务人主张应收账款债权，在扣除保理融资款本息和相关费用后有剩余的，剩余部分应当返还给应收账款债权人。

**Article 766** Where the parties concerned agree on factoring with recourse, the factor may assert against the creditor of accounts receivable on refund of principal and interest of the factoring financing monies or redemption of creditor's rights on accounts receivable, or assert against the debtor of accounts receivable on creditor's rights on accounts receivable. Where a factor asserts creditor's rights over accounts receivable against a debtor of accounts receivable, and there is a balance after deduction of the principal and interest of the factoring financing monies and the relevant expenses, the balance shall be refunded to the creditor of accounts receivable.

#### 第七百六十七条

当事人约定无追索权保理的，保理人应当向应收账款债务人主张应收账款债权，保理人取得超过保理融资款本息和相关费用的部分，无需向应收账款债权人返还。

**Article 767** Where the parties concerned have agreed on factoring without recourse, the factor shall assert creditor's rights on accounts receivable against the accounts receivable debtor, and the factor is not required to return the excess amount over the principal and interest of the factoring financing monies and the relevant fees obtained to the creditors of accounts receivable.

#### 第七百六十八条

应收账款债权人就同一应收账款订立多个保理合同，致使多个保理人主张权利的，已经登记的先于未登记的取得应收账款；均已经登记的，按照登记时间的先后顺序取得应收账款；均未登记的，由最先到达应收账款债务人的转让通知中载明的保理人取得应收账款；既未登记也未通知的，按照保理融资款或者服务报酬的比例取得应收账款。

**Article 768** Where a creditor of accounts receivable concludes several factoring contracts for the same accounts receivable, causing multiple factors to assert their rights, registered accounts receivable shall be obtained prior to unregistered accounts receivable; registered accounts receivable shall be obtained in chronological order of registration date; unregistered accounts receivable shall be obtained by the factor stated in the notice of assignment from the debtor of the accounts receivable who first reaches the debtor of the accounts receivable; where registered accounts

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receivable are neither registered nor notified, the accounts receivable shall be obtained in accordance with the ratio of factoring financing funds or service remuneration.

**第七百六十九条** 本章没有规定的，适用本编第六章债权转让的有关规定。

**Article 769** Matters not addressed in this Chapter shall be governed by the relevant provisions of Chapter VI Assignment of Claims.

## 第十七章 承揽合同

### Chapter 17 Contracts for Work

#### 第七百七十条

承揽合同是承揽人按照定作人的要求完成工作，交付工作成果，定作人支付报酬的合同。

**Article 770** A contract for work is a contract whereby the contractor shall, in light of the requirements of the ordering party, complete certain work and deliver the results therefrom, and the ordering party pays the remuneration therefor.

承揽包括加工、定作、修理、复制、测试、检验等工作。

Work includes processing, custom-made work, repair, reproduction, testing, inspection, and other work.

#### 第七百七十一条

承揽合同的内容一般包括承揽的标的、数量、质量、报酬、承揽方式，材料的提供，履行期限，验收标准和方法等条款。

**Article 771** The contents of a contract for work shall, in general, contain such clauses as the subject matter, quantity, quality, remuneration and method of the work, supply of materials, term of performance, and standards and method of inspection.

#### 第七百七十二条

承揽人应当以自己的设备、技术和劳力，完成主要工作，但是当事人另有约定的除外。

**Article 772** The contractor shall use its own equipment, technology and labor force to complete the main part of the work, except as otherwise agreed upon by the parties.

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承揽人将其承揽的主要工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责；未经定作人同意的，定作人也可以解除合同。

Where the hiree assigns the main work contracted to a third party for completion, the hiree shall be liable to the hirer for the work results completed by the third party; where the assignment is not approved by the hirer, the hirer may rescind the contract.

### 第七百七十三条

承揽人可以将其承揽的辅助工作交由第三人完成。承揽人将其承揽的辅助工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责。

**Article 773.** The contractor may assign an ancillary work task under the contract to a third party for completion. Where the hiree assigns an auxiliary work task under the contract to a third party for completion, the hiree shall be liable to the hirer for the work results completed by the third party.

**第七百七十四条** 承揽人提供材料的，应当按照约定选用材料，并接受定作人检验。

**Article 774** Where the contractor is to supply the materials, the contractor shall select the materials in accordance with the contract and shall make such materials available for inspection by the ordering party.

### 第七百七十五条

定作人提供材料的，应当按照约定提供材料。承揽人对定作人提供的材料应当及时检验，发现不符合约定时，应当及时通知定作人更换、补齐或者采取其他补救措施。

**Article 775** Where the ordering party is to supply the materials, it shall supply the materials in accordance with the contract. The hiree shall inspect the materials supplied by the hirer in time and shall, if discovering that they do not conform to the terms of the contract, instruct in time the hirer to replace or supplement the materials or take other remedial measures.

承揽人不得擅自更换定作人提供的材料，不得更换不需要修理的零部件。

The hiree may neither, without authorization, replace materials supplied by the hirer nor replace components which do not need to be repaired.

**第七百七十六条** 承揽人发现定作人提供的图纸或者技术要求不合理的，应当及时通

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知定作人。因定作人怠于答复等原因造成承揽人损失的，应当赔偿损失。

**Article 776** Where the hiree discovers that the drawings or technical requirements provided by the hirer are unreasonable, it shall notify the hirer in a timely manner. Where the contractor sustains losses because the party which has placed the order is negligent in making a reply or for other reasons, the said party shall provide compensation for the contractor's losses.

**第七百七十七条** 定作人中途变更承揽工作的要求，造成承揽人损失的，应当赔偿损失。

**Article 777** Where the ordering party changes its requirements for the contracted work while the work is under way, thereby causing losses to the contractor, the ordering party shall be liable for making compensation.

**第七百七十八条** 承揽工作需要定作人协助的，定作人有协助的义务。定作人不履行协助义务致使承揽工作不能完成的，承揽人可以催告定作人在合理期限内履行义务，并可以顺延履行期限；定作人逾期不履行的，承揽人可以解除合同。

**Article 778** Where the performance of the contracted work requires assistance of the ordering party, the ordering party shall have the obligation to provide assistance. Where the contracted work is unable to be completed due to the ordering party's failure in fulfilling its obligation of assistance, the contractor may urge the ordering party to perform its obligation within a reasonable time limit and may extend the term of its performance; where the ordering party fails to perform such obligation within the time limit, the contractor may terminate the contract.

**第七百七十九条** 承揽人在工作期间，应当接受定作人必要的监督检验。定作人不得因监督检验妨碍承揽人的正常工作。

**Article 779** In the period of working, the hiree shall accept the necessary supervision over and inspection of the work by the hirer. The supervision and inspection by the hirer may not obstruct the hiree's normal work.

**第七百八十条** 承揽人完成工作的，应当向定作人交付工作成果，并提交必要的技术资料及有关质量证明。定作人应当验收该工作成果。

**Article 780** Upon the completion of the contracted work, the hiree shall deliver the work results to the hirer, and shall submit necessary technical materials and the relevant quality certificate. The

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ordering party shall conduct acceptance inspection of the work results.

### 第七百八十一条

承揽人交付的工作成果不符合质量要求的，定作人可以合理选择请求承揽人承担修理、重作、减少报酬、赔偿损失等违约责任。

**Article 781** Where the work results delivered by the hiree fail to meet the quality requirements, the hirer may reasonably choose to request the hiree to assume such liability for breach of contract as maintenance and repair, reprocessing, and reduction in remuneration and compensation.

第七百八十二条 定作人应当按照约定的期限支付报酬。对支付报酬的期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，定作人应当在承揽人交付工作成果时支付；工作成果部分交付的，定作人应当相应支付。

**Article 782.** The party which has placed the order shall pay remuneration within the agreed time limits. Where there has been no agreement, or no clear agreement, on the deadlines for the payment of remuneration, and the said deadlines cannot be determined by reference to the provisions of Article 510 of this Law, the said party shall pay remuneration at the same time that the contractor delivers the work product; where the work product is only delivered in part, the said party shall pay a corresponding amount.

### 第七百八十三条

定作人未向承揽人支付报酬或者材料费等价款的，承揽人对完成的工作成果享有留置权或者有权拒绝交付，但是当事人另有约定的除外。

**Article 783.** Where the party which has placed the order has not made remuneration payments or payments of materials expenses, etc, to the contractor, the contractor shall enjoy a lien over the completed work product or shall have the right to refuse delivery, except where the parties agree otherwise.

### 第七百八十四条

承揽人应当妥善保管定作人提供的材料以及完成的工作成果，因保管不善造成毁损、灭失的，应当承担赔偿责任。

**Article 784** The hiree shall keep the materials supplied by the hirer and the work results

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completed with due care, and shall be liable for compensation in case of any damage or loss due to improper care.

#### 第七百八十五条

承揽人应当按照定作人的要求保守秘密，未经定作人许可，不得留存复制品或者技术资料。

**Article 785.** The contractor shall maintain confidentiality in accordance with the requirements of the party which has placed the order, and may not retain replicas or technical information without the consent of the party which has placed the order.

第七百八十六条 共同承揽人对定作人承担连带责任，但是当事人另有约定的除外。

**Article 786.** Joint contractors shall bear joint and several liability to the party which has placed the order, except where the parties agree otherwise.

#### 第七百八十七条

定作人在承揽人完成工作前可以随时解除合同，造成承揽人损失的，应当赔偿损失。

**Article 787.** The party which has placed the order may dissolve the contract at any time prior to the contractor completing work, but the said party shall provide compensation for any losses sustained by the contractor as a result.

### 第十八章 建设工程合同

#### Chapter 18 Contracts for Construction Projects

第七百八十八条 建设工程合同是承包人进行工程建设，发包人支付价款的合同。

**Article 788** A contract for construction project is a contract whereby the contractor performs project construction, and the developer pays the price.

建设工程合同包括工程勘察、设计、施工合同。

Contracts for construction projects include contracts for survey, design, and construction.

第七百八十九条 建设工程合同应当采用书面形式。

**Article 789** A contract for construction project shall be in written form.

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## 第七百九十条

建设工程的招标投标活动，应当依照有关法律的规定公开、公平、公正进行。

**Article 790** Tendering for a construction project shall be conducted in an open, fair and impartial manner in accordance with the relevant laws.

第七百九十一条 发包人可以与总承包人订立建设工程合同，也可以分别与勘察人、设计人、施工人订立勘察、设计、施工承包合同。发包人不得将应当由一个承包人完成的建设工程支解成若干部分发包给数个承包人。

**Article 791.** The contract issuer may conclude a contract for a construction project with a head contractor, and may also conclude separate surveying, design and building work contracts with surveyors, designers and builders. The developer may not divide a construction project which should be completed by one contractor into several parts and contract them out to several contractors.

总承包人或者勘察、设计、施工承包人经发包人同意，可以将自己承包的部分工作交由第三人完成。第三人就其完成的工作成果与总承包人或者勘察、设计、施工承包人向发包人承担连带责任。承包人不得将其承包的全部建设工程转包给第三人或者将其承包的全部建设工程支解以后以分包的名义分别转包给第三人。

Subject to consent by the developer, the prime contractor or the contractor for survey, design, or construction may assign part of the work contracted thereby to a third party for completion. The third party and the prime contractor or the contractor for survey, design, or construction shall be jointly and severally liable to the developer in respect of the work product completed by such third party. A contractor may not assign the entire contracted construction project to a third party, nor may it divide up the entire contracted construction project into several parts and separately assign each part to a third party in the name of subcontracting.

禁止承包人将工程分包给不具备相应资质条件的单位。禁止分包单位将其承包的工程再分包。建设工程主体结构的施工必须由承包人自行完成。

A contractor is prohibited from subcontracting a project to an entity without the appropriate qualifications. Subcontractors are prohibited from further subcontracting their subcontracted work. The main structure of the construction project must be constructed by the contractor itself.

## 第七百九十二条

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国家重大建设工程合同，应当按照国家规定的程序和国家批准的投资计划、可行性研究报告等文件订立。

**Article 792** Contracts for major construction projects of the State shall be concluded in accordance with the procedures provided by the State and the investment plans, feasibility study reports and other documents approved by the State.

### 第七百九十三条

建设工程施工合同无效，但是建设工程经验收合格的，可以参照合同关于工程价款的约定折价补偿承包人。

**Article 793** If the construction project contract is invalid, but the construction project passes the acceptance inspection, the contractor may be compensated with reference to the agreement on the construction price in the contract.

建设工程施工合同无效，且建设工程经验收不合格的，按照以下情形处理：

Where a construction project contract is invalid, and the construction project fails to pass the acceptance check, the following provisions shall apply:

（一）修复后的建设工程经验收合格的，发包人请求承包人承担修复费用；

1. If the restored construction project passes the acceptance check, the developer may request the contractor to bear the costs of the restoration; and

（二）修复后的建设工程经验收不合格的，承包人无权请求参照合同关于工程价款的约定折价补偿。

(II) If the repaired construction project fails to pass the acceptance inspection, the contractor has no right to claim compensation at the agreed price of the project in the contract.

发包人对因建设工程不合格造成的损失有过错的，应当承担相应的责任。

Where the contract letting party has any fault for the loss caused by the substandard construction project, it shall bear the corresponding liability.

### 第七百九十四条

勘察、设计合同的内容一般包括提交有关基础资料和概预算等文件的期限、质量要求、费用以及其他协作条件等条款。

**Article 794.** The contents of survey and design contracts generally include terms such as the time limit for the submission of documents such as basic information and estimated budget, quality

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requirements, fees and other conditions of cooperation, etc.

### 第七百九十五条

施工合同的内容一般包括工程范围、建设工期、中间交工工程的开工和竣工时间、工程质量、工程造价、技术资料交付时间、材料和设备供应责任、拨款和结算、竣工验收、质量保修范围和质量保证期、相互协作等条款。

**Article 795** The contents of construction contracts generally include terms such as scope of works, construction period, the commencement and completion time of works to be handed over in the interim, project quality, project costs, the time of delivery of technical materials, responsibility for the supply of materials and equipment, appropriation and settlement, completion acceptance, scope and period of quality warranty, mutual assistance, etc.

第七百九十六条 建设工程实行监理的，发包人应当与监理人采用书面形式订立委托监理合同。发包人与监理人的权利和义务以及法律责任，应当依照本编委托合同以及其他有关法律、行政法规的规定。

**Article 796** Where the construction project is subject to supervision, the developer shall enter into an agency appointment contract for project supervision with a supervisor in writing. The rights, obligations and legal liabilities of the employer and the supervisor shall comply with the provisions of the commission contract of this compilation and other relevant laws and administrative regulations.

### 第七百九十七条

发包人在不妨碍承包人正常作业的情况下，可以随时对作业进度、质量进行检查。

**Article 797** The Owner may inspect the progress and quality of the work at any time provided that it does not interfere with the Contractor's normal operation.

第七百九十八条 隐蔽工程在隐蔽以前，承包人应当通知发包人检查。发包人没有及时检查的，承包人可以顺延工程日期，并有权请求赔偿停工、窝工等损失。

**Article 798** In the case of concealed work, the contractor shall give the developer notice for inspection prior to concealment. Where the developer fails to timely conduct inspection, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or work slowdown, etc.

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## 第七百九十九条

建设工程竣工后，发包人应当根据施工图纸及说明书、国家颁发的施工验收规范和质量检验标准及时进行验收。验收合格的，发包人应当按照约定支付价款，并接收该建设工程。

**Article 799** The employer should, upon completion of construction, pursuant to the drawings and specifications, norms of execution/acceptance and standards for quality inspection issued by the State, process the acceptance in time. Once the construction project has passed the acceptance inspection, the developer shall pay the prescribed price and accept the construction project.

建设工程竣工验收合格后，方可交付使用；未经验收或者验收不合格的，不得交付使用。

A construction project may be delivered for use only after it has passed the acceptance inspection; no construction project may be delivered for use without being inspected or passing the acceptance inspection.

## 第八百条

勘察、设计的质量不符合要求或者未按照期限提交勘察、设计文件拖延工期，造成发包人损失的，勘察人、设计人应当继续完善勘察、设计，减收或者免收勘察、设计费并赔偿损失。

**Article 800** Where the developer sustains any loss from construction delay due to non-compliance of the survey or design or due to delayed delivery of the survey or design documents, the surveyor or the designer shall continue to improve the survey or design, reduce or forgo the survey fee or design fee, and pay damages.

第八百零一条 因施工人的原因致使建设工程质量不符合约定的，发包人有权请求施工人在合理期限内无偿修理或者返工、改建。经过修理或者返工、改建后，造成逾期交付的，施工人应当承担违约责任。

**Article 801** Where the construction project fails to meet the prescribed quality requirements due to any reason attributable to the constructor, the developer is entitled to require the constructor to repair, re-construct or make alteration free of charge within a reasonable time. Where delivery of the project is delayed due to such repair, re-construction or alteration, the constructor shall be liable for breach of contract.

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### 第二百零二条

因承包人的原因致使建设工程在合理使用期限内造成人身损害和财产损失的，承包人应当承担赔偿责任。

**Article 802** Where the construction project caused personal injury and property losses during its reasonable usage period due to any reason attributable to the contractor, the contractor shall be liable for compensation.

### 第二百零三条

发包人未按照约定的时间和要求提供原材料、设备、场地、资金、技术资料的，承包人可以顺延工程日期，并有权请求赔偿停工、窝工等损失。

**Article 803** If the developer fails to provide raw materials, equipment, site, funds, or technical information at the prescribed time and in accordance with the contractual requirements, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or work slowdown, etc.

### 第二百零四条

因发包人的原因致使工程中途停建、缓建的，发包人应当采取措施弥补或者减少损失，赔偿承包人因此造成的停工、窝工、倒运、机械设备调迁、材料和构件积压等损失和实际费用。

**Article 804** If an ongoing project is stopped or delayed due to any reason attributable to the developer, the developer shall take the appropriate measures to make up or mitigate the loss, and shall indemnify the contractor for its loss and out-of-pocket expenses arising from resulting work stoppage, slowdown, reshipment, re-dispatch of mechanical equipment, and excess inventory of materials and components.

### 第二百零五条

因发包人变更计划，提供的资料不准确，或者未按照期限提供必需的勘察、设计工作条件而造成勘察、设计的返工、停工或者修改设计，发包人应当按照勘察人、设计人实际消耗的工作量增付费用。

**Article 805** Where in the course of survey or design, any repeating work, work stoppage or change of design occurs due to the developer's change of plan, the incorrect information provided by it, or its failure to provide the working conditions necessary for the survey or design at the prescribed

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time, the developer shall increase the fees in light of the actual amount of work done by the surveyor or designer.

**第八百零六条** 承包人将建设工程转包、违法分包的，发包人 can 解除合同。

**Article 806** If a contractor transfers the contract for or illegally subcontracts a construction project, the contract issuer may dissolve the contract.

发包人提供的主要建筑材料、建筑构配件和设备不符合强制性标准或者不履行协助义务，致使承包人无法施工，经催告后在合理期限内仍未履行相应义务的，承包人 can 解除合同。

Where the main building materials, building structural pieces and parts and equipment provided by the employer fail to conform to the compulsory standards or fail to perform assistance obligations, which resulting in the contractor's failure of construction and the failure of performance of corresponding obligations within a reasonable period after reminder, the contractor may cancel the contract.

合同解除后，已经完成的建设工程质量合格的，发包人应当按照约定支付相应的工程价款；已经完成的建设工程质量不合格的，参照本法第七百九十三条的规定处理。

If, after the contract is rescinded, the quality of the completed construction project is found to be up to standard, the developer shall pay the agreed price for the project. If the quality of the completed construction project is found to be substandard, the matter shall be handled with reference to the provisions of Article 793 of this Law.

**第八百零七条** 发包人未按照约定支付价款的，承包人 can 催告发包人在合理期限内支付价款。发包人逾期不支付的，除根据建设工程的性质不宜折价、拍卖外，承包人 can 与发包人协议将该工程折价，也可以请求人民法院将该工程依法拍卖。建设工程的价款就该工程折价或者拍卖的价款优先受偿。

**Article 807** If the employer fails to pay the price in accordance with the contract, the contractor may urge the employer to pay the price within a reasonable period. Where the contract issuer has not made the said payments within the said period of time, then except where it is not appropriate to conduct a sale at a depreciated price or an auction, due to the nature of the construction project, the contractor may conclude an agreement with the contract issuer that the said project be sold off, or may request that the people's court auction the said project in accordance with the law. The

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construction project price shall be paid in priority out of proceeds from the liquidation or auction of the project.

**第八百零八条** 本章没有规定的，适用承揽合同的有关规定。

**Article 808** A matter not provided for in this Chapter shall be governed by the relevant provision governing contracts of hired works.

## 第十九章 运输合同

### CHAPTER 19 SHIPPING CONTRACT

#### 第一节 一般规定

#### SECTION 1 GENERAL PROVISIONS

#### 第八百零九条

运输合同是承运人将旅客或者货物从起运地点运输到约定地点，旅客、托运人或者收货人支付票款或者运输费用的合同。

**Article 809** A transportation contract is a contract whereby the carrier carries passengers or cargoes from the starting place of carriage to the agreed destination, and the passenger, consignor or consignee pays for the ticket-fare or freight.

**第八百一十条** 从事公共运输的承运人不得拒绝旅客、托运人通常、合理的运输要求。

**Article 810** A carrier engaged in public transportation may not refuse the normal and reasonable carriage request of a passenger or consignor.

#### 第八百一十一条

承运人应当在约定期限或者合理期限内将旅客、货物安全运输到约定地点。

**Article 811** The carrier shall safely carry the passengers or cargoes to the agreed destination within the agreed time limit or within a reasonable time.

#### 第八百一十二条

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承运人应当按照约定的或者通常的运输路线将旅客、货物运输到约定地点。

**Article 812** The carrier shall carry the passengers or cargoes to the agreed destination via the agreed route or the customary carriage route.

### 第八百一十三条

旅客、托运人或者收货人应当支付票款或者运输费用。承运人未按照约定路线或者通常路线运输增加票款或者运输费用的，旅客、托运人或者收货人可以拒绝支付增加部分的票款或者运输费用。

**Article 813** A passenger, a consignor or a consignee shall pay for the ticket-fare or the freight. Where a carrier has not taken the agreed or customary carriage route, and consequently increases the ticket-fare or the freight, the passenger, the consignor or the consignee may refuse to pay for the increased part of the ticket-fare or the freight.

## 第二节 客运合同

### Section 2 PASSENGER AND FREIGHT CONTRACT

### 第八百一十四条

客运合同自承运人向旅客出具客票时成立，但是当事人另有约定或者另有交易习惯的除外。

**Article 814** A passenger transportation contract is established at the time when the carrier issues the ticket to the passenger except as otherwise agreed upon by the parties or there are other transaction practices.

第八百一十五条 旅客应当按照有效客票记载的时间、班次和座位号乘坐。旅客无票乘坐、超程乘坐、越级乘坐或者持不符合减价条件的优惠客票乘坐的，应当补交票款，承运人可以按照规定加收票款；旅客不支付票款的，承运人可以拒绝运输。

**Article 815** A passenger shall board the means of transportation pursuant to the time, flight number and seat number recorded on the valid ticket. Where a passenger travels without a ticket, travels a longer distance or exceeds the class or travels on a preferential ticket which does not comply with the terms of price reduction, the passenger shall pay the ticket fare retrospectively and the carrier may collect the additional ticket fare pursuant to the provisions; where the passenger fails

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to pay the ticket fare, the carrier may refuse to carry.

实名制客运合同的旅客丢失客票的，可以请求承运人挂失补办，承运人不得再次收取票款和其他不合理费用。

Where a passenger under a real-name passenger transport contract loses his/her passenger ticket, he/she may request that the carrier report the loss and reissue a ticket, and the carrier shall not collect ticket fees or other unreasonable fees again.

### 第八百一十六条

旅客因自己的原因不能按照客票记载的时间乘坐的，应当在约定的期限内办理退票或者变更手续；逾期办理的，承运人可以不退票款，并不再承担运输义务。

**Article 816** Where the passenger is unable to board the means of transportation at the time stated on the passenger ticket due to any reason attributable to himself, he shall go through the formalities for ticket refund or change within the agreed time limit. Where the formalities are gone through beyond the time limit, the carrier may refuse to refund the ticket-fare, and no longer bear the obligation of carriage.

### 第八百一十七条

旅客随身携带行李应当符合约定的限量和品类要求；超过限量或者违反品类要求携带行李的，应当办理托运手续。

**Article 817** The carry-on baggage of a passenger shall be in conformity with the agreed limit of quantity and the requirements for the category; if the baggage exceeds the limit of quantity or is carried in violation of the requirements for the category, the passenger shall complete the formalities for consignment.

### 第八百一十八条

旅客不得随身携带或者在行李中夹带易燃、易爆、有毒、有腐蚀性、有放射性以及可能危及运输工具上人身和财产安全的危险物品或者违禁物品。

**Article 818** The passenger may not bring with him or pack in the luggage such dangerous articles as are flammable, explosive, toxic, corrosive, or radioactive as well as those that might endanger the safety of life and property on board the means of transportation or contraband articles.

旅客违反前款规定的，承运人可以将危险物品或者违禁物品卸下、销毁或者送交有

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关部门。旅客坚持携带或者夹带危险物品或者违禁物品的，承运人应当拒绝运输。

If a passenger violates the provisions of the preceding paragraph, the carrier may discharge the dangerous articles or contraband articles, destroy them or send them to the relevant departments. Where the passenger insists on carrying in person or placing in his luggage dangerous articles or contraband articles, the carrier shall refuse to carry him.

### 第八百一十九条

承运人应当严格履行安全运输义务，及时告知旅客安全运输应当注意的事项。旅客对承运人为安全运输所作的合理安排应当积极协助和配合。

**Article 819** The carrier shall strictly fulfill its obligation of safe carriage and timely inform the passenger of the matters which need attention in connection with safe carriage. The passenger shall give active assistance and be cooperative in the reasonable arrangements made by the carrier for safe carriage.

第八百二十条 承运人应当按照有效客票记载的时间、班次和座位号运输旅客。承运人迟延运输或者有其他不能正常运输情形的，应当及时告知和提醒旅客，采取必要的安置措施，并根据旅客的要求安排改乘其他班次或者退票；由此造成旅客损失的，承运人应当承担赔偿责任，但是不可归责于承运人的除外。

**Article 820.** A carrier shall transport passengers in accordance with the time, flight number and seat number recorded on the valid ticket. Where the carrier delays in carriage or cannot normally conduct the carriage, it shall inform and remind the passenger in a timely manner, take necessary measures for arrangement, and, at the request of the passenger, arrange the passenger to change to another flight, or refund the ticket; the carrier shall be liable for compensation for any losses thus caused to the passenger, unless such losses are not attributable to the carrier.

### 第八百二十一条

承运人擅自降低服务标准的，应当根据旅客的请求退票或者减收票款；提高服务标准的，不得加收票款。

**Article 821** Where the carrier unilaterally lowers the standards of service, it shall, upon the passenger's request, refund the ticket-fare or reduce the ticket-fare; where the standards of service are raised, no additional ticket-fare may be charged.

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**第八百二十二条** 承运人在运输过程中，应当尽力救助患有急病、分娩、遇险的旅客。

**Article 822** In the course of carriage, the carrier shall give its best efforts to assist the passenger who is seriously ill, or who is giving birth to a child or whose life is at risk.

### **第八百二十三条**

承运人应当对运输过程中旅客的伤亡承担赔偿责任；但是，伤亡是旅客自身健康原因造成的或者承运人证明伤亡是旅客故意、重大过失造成的除外。

**Article 823** The carrier shall be liable for compensation for the death of or personal injury to the passenger in the course of carriage, except where such death or personal injury results from the passenger's own health, or the carrier proves that such death or personal injury is caused by the passenger's intentional misconduct or gross negligence.

前款规定适用于按照规定免票、持优待票或者经承运人许可搭乘的无票旅客。

The provisions of the preceding paragraph shall apply to a passenger who, in accordance with the relevant provisions, is exempted from buying a ticket, holds a preferential ticket, or is permitted by the carrier to be on board without a ticket.

### **第八百二十四条**

在运输过程中旅客随身携带物品毁损、灭失，承运人有过错的，应当承担赔偿责任。

**Article 824** Where an article that the passenger carries with him/her on board is damaged or lost during the period of carriage, the carrier shall be liable for compensation if it has committed faults.

旅客托运的行李毁损、灭失的，适用货物运输的有关规定。

Where the check-in luggage of a passenger is damaged or lost, the relevant provisions on the carriage of goods shall apply.

## 第三节 货运合同

### Section 3 □ Freight Contract □ □

### **第八百二十五条**

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托运人办理货物运输，应当向承运人准确表明收货人的姓名、名称或者凭指示的收货人，货物的名称、性质、重量、数量，收货地点等有关货物运输的必要情况。

**Article 825** In undergoing the formalities for cargoes, the consignor shall precisely indicate to carrier the name of the consignee or the consignee by order, the name, nature weight, quantity and the place for taking delivery of the cargoes, and other information necessary for cargo carriage.

因托运人申报不实或者遗漏重要情况，造成承运人损失的，托运人应当承担赔偿责任。

Where a carrier suffers losses due to untrue declaration or omission of important information by the consignor, the consignor shall bear compensation liability.

### 第八百二十六条

货物运输需要办理审批、检验等手续的，托运人应当将办理完有关手续的文件提交承运人。

**Article 826** Where carriage of the cargo is subject to such procedures as examination and approval or inspection, the consignor shall submit to the carrier the documents of fulfillment of the relevant procedure.

### 第八百二十七条

托运人应当按照约定的方式包装货物。对包装方式没有约定或者约定不明确的，适用本法第六百一十九条的规定。

**Article 827.** A consignor shall package the goods in accordance with agreed packaging methods. Where there has been no agreement or no clear agreement on packaging methods, the provisions of Article 619 of this Law shall be applied.

托运人违反前款规定的，承运人可以拒绝运输。

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry.

### 第八百二十八条

托运人托运易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当按照国家有关危险物品运输的规定对危险物品妥善包装，做出危险物品标志和标签，并将有关危险物品的名称、性质和防范措施的书面材料提交承运人。

**Article 828** In consigning any dangerous articles which are inflammable, explosive, toxic,

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corrosive, or radioactive, the consignor shall, in accordance with the provisions of the State on the carriage of dangerous articles, properly pack the dangerous articles and affix thereon signs and labels for dangerous articles, and shall submit the written papers relating to the name and nature of the dangerous articles and the precautionary measures to the carrier.

托运人违反前款规定的，承运人可以拒绝运输，也可以采取相应措施以避免损失的发生，因此产生的费用由托运人负担。

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse to undertake the carriage, or take corresponding measures to avoid losses, and expenses thus caused shall be borne by the consignor.

### 第八百二十九条

在承运人将货物交付收货人之前，托运人可以要求承运人中止运输、返还货物、变更到达地或者将货物交给其他收货人，但是应当赔偿承运人因此受到的损失。

**Article 829** Before the carrier delivers the cargoes to the consignee, the consignor may request the carrier to suspend the carriage, return the cargoes, change the destination or deliver the cargoes to another consignee. The consignor shall compensate the carrier for losses thus caused.

### 第八百三十条

货物运输到达后，承运人知道收货人的，应当及时通知收货人，收货人应当及时提货。收货人逾期提货的，应当向承运人支付保管费等费用。

**Article 830** Upon arrival of the cargoes, if the carrier has the knowledge of the consignee, it shall timely notify the consignee and the consignee shall timely take delivery. If the consignee fails to take delivery of the goods within the prescribed time limit, the consignee shall pay the carrier storage fees and other expenses.

第八百三十一条 收货人提货时应当按照约定的期限检验货物。对检验货物的期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，应当在合理期限内检验货物。收货人在约定的期限或者合理期限内对货物的数量、毁损等未提出异议的，视为承运人已经按照运输单证的记载交付的初步证据。

**Article 831** Upon taking delivery of the cargoes, the consignee shall inspect the cargoes at the agreed time. Where there is no agreement in the contract on the time limit or such agreement is

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unclear, nor can it be determined in accordance with Article 510 of the Law, the consignee shall inspect the goods within a reasonable time limit. The failure of the consignee to raise any objection against the quantity or any damage of the goods within the agreed time limit or within a reasonable time limit is deemed prima facie evidence that the carrier has delivered the goods in conformity with the description in the transport documents.

### 第八百三十二条

承运人对运输过程中货物的毁损、灭失承担赔偿责任。但是，承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担赔偿责任。

**Article 832** The carrier shall be liable for the damage to or loss of the goods in the course of carriage. However, the carrier shall not be liable if he proves that the damage to or loss of the cargoes is caused by force majeure, the intrinsic characteristics of the cargoes, reasonable depletion, or the fault of the consignor or consignee.

第八百三十三条 货物的毁损、灭失的赔偿额，当事人有约定的，按照其约定；没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，按照交付或者应当交付时货物到达地的市场价格计算。法律、行政法规对赔偿额的计算方法和赔偿限额另有规定的，依照其规定。

**Article 833** Where the parties agree on the amount of damages in case of damage to or loss of the cargoes, the damages payable is the agreed amount; if the amount of damages is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 510 of this Law, it shall be calculated on the basis of the prevailing market price at the destination when the cargoes are or ought to be delivered. Where laws or administrative rules and regulations provide otherwise with respect to the method of calculation of damages and the limit of the amount of damages, those provisions shall apply.

### 第八百三十四条

两个以上承运人以同一运输方式联运的，与托运人订立合同的承运人应当对全程运输承担责任；损失发生在某一运输区段的，与托运人订立合同的承运人和该区段的承运人承担连带责任。

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**Article 834** Where two or more carriers jointly carry the cargoes using the same means of transportation, the carrier contracting with the consignor shall bear the liability for the whole course of carriage; if the losses occurred at a particular segment, the carrier contracting with the consignor and the carrier operating on that segment shall be jointly and severally liable.

第八百三十五条 货物在运输过程中因不可抗力灭失，未收取运费的，承运人不得请求支付运费；已经收取运费的，托运人可以请求返还。法律另有规定的，依照其规定。

**Article 835** Where the cargoes are lost in the course of carriage due to force majeure, if the freight has not been collected, the carrier may not request the payment thereof; if the freight has been collected, the consignor may request the refund of the freight. Where the laws provide otherwise, such provisions shall prevail.

#### 第八百三十六条

托运人或者收货人不支付运费、保管费或者其他费用的，承运人对相应的运输货物享有留置权，但是当事人另有约定的除外。

**Article 836** Where the consignor or the consignee fails to pay the freight, storage fees or other expenses, the carrier is entitled to have a lien on the relevant carried cargoes, except as otherwise agreed upon by the parties.

#### 第八百三十七条

收货人不明或者收货人无正当理由拒绝受领货物的，承运人依法可以提存货物。

**Article 837** Where the consignee is not clear or refuses to take delivery of the goods without justified reasons, the carrier may place the goods in escrow according to law.

### 第四节 多式联运合同

#### Section 4 Section Four Multi-modal Transportation contract

#### 第八百三十八条

多式联运经营人负责履行或者组织履行多式联运合同，对全程运输享有承运人的权利，承担承运人的义务。

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**Article 838.** A multimodal transport operator is responsible for performing or organising the performance of a multimodal transport contract, and it enjoys the rights and bears the obligations of a carrier with respect to the entire journey.

#### 第八百三十九条

多式联运经营人可以与参加多式联运的各区段承运人就多式联运合同的各区段运输约定相互之间的责任；但是，该约定不影响多式联运经营人对全程运输承担的义务。

**Article 839** The MTO may agree with the carriers participating in each stage of the multimodal transport on their mutual responsibilities with respect to each stage of the transport of the multimodal transport contract. However, such an agreement shall not affect the obligations of the MTO with respect to the entire transport.

#### 第八百四十条

多式联运经营人收到托运人交付的货物时，应当签发多式联运单据。按照托运人的要求，多式联运单据可以是可转让单据，也可以是不可转让单据。

**Article 840** Upon receipt of the cargo delivered by the consignor, the multimodal transport operator shall issue thereto a multimodal transport document. The multimodal transport document may, as required by the shipper, be either negotiable or non-negotiable.

#### 第八百四十一条

因托运人托运货物时的过错造成多式联运经营人损失的，即使托运人已经转让多式联运单据，托运人仍然应当承担赔偿责任。

**Article 841** Where the multi-modal carriage operator sustains any loss due to the fault of the consignor in the course of consigning the cargo, the consignor shall be liable for compensation notwithstanding its subsequent assignment of the multi-modal carriage document.

#### 第八百四十二条

货物的毁损、灭失发生于多式联运的某一运输区段的，多式联运经营人的赔偿责任和责任限额，适用调整该区段运输方式的有关法律规定；货物毁损、灭失发生的运输区段不能确定的，依照本章规定承担赔偿责任。

**Article 842** If damage to or loss of the cargo occurred in a particular segment of the course of a

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multi-modal carriage, the multi-modal carriage operator's liability for damages and any limitation thereon are governed by the applicable transportation law of the jurisdiction which such segment is under; if the segment in which the damage to or loss of the cargo occurred cannot be determined, the operator shall be liable for damages in accordance with the provisions of this Chapter.

## 第二十章 技术合同

### CHAPTER 20 TECHNICAL CONTRACT

#### 第一节 一般规定

##### SECTION 1 GENERAL PROVISIONS

#### 第八百四十三条

技术合同是当事人就技术开发、转让、许可、咨询或者服务订立的确立相互之间权利和义务的合同。

**Article 843** A technology contract is a contract the parties conclude for establishing their rights and obligations in respect of the development or transfer of technology, or in respect of technical licensing, consulting or service.

#### 第八百四十四条

订立技术合同，应当有利于知识产权的保护和科学技术的进步，促进科学技术成果的研发、转化、应用和推广。

**Article 844** The conclusion of a technology contract shall be conducive to the protection of intellectual property rights and scientific and technological progress, and promote the research and development, transformation, application and dissemination of scientific and technological achievements.

#### 第八百四十五条

技术合同的内容一般包括项目的名称，标的的内容、范围和要求，履行的计划、地点和方式，技术信息和资料的保密，技术成果的归属和收益的分配办法，验收标准和方法，名词和术语的解释等条款。

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**Article 845. The content of a technology contract shall generally include clauses dealing with the name of the project, the content, scope and requirements of the subject matter, the plan, location and method of performance, the confidentiality of technical information and data, the ownership of technical achievements and the method of profit distribution, standards and methods of examination and acceptance, and explanation of terms and phrases.**

与履行合同有关的技术背景资料、可行性论证和技术评价报告、项目任务书和计划书、技术标准、技术规范、原始设计和工艺文件，以及其他技术文档，按照当事人的约定可以作为合同的组成部分。

The parties may agree to include the following materials relating to the performance of the contract as an integral part thereof: technical background information, feasibility studies and technical evaluation report, project task matrix and project plan, technical standard, technical specifications, original design and technique documents, as well as other technical documentation.

技术合同涉及专利的，应当注明发明创造的名称、专利申请人和专利权人、申请日期、申请号、专利号以及专利权的有效期限。

Where a technology contract involves a patent, the name of the invention or creation, the patent applicant and the patentee, the date and number of application, the patent number as well as the term of validity of the patent right shall be indicated.

#### **第八百四十六条**

技术合同价款、报酬或者使用费的支付方式由当事人约定，可以采取一次总算、一次总付或者一次总算、分期支付，也可以采取提成支付或者提成支付附加预付入门费的方式。

**Article 846 The method for payment of the price, remuneration or licensing fee under a technology contract shall be agreed upon by the parties, who may agree upon lump-sum payment based on one-time calculation or installment payment based on one-time calculation, and may also agree upon royalty payment or royalty payment plus advance payment of initial fee.**

约定提成支付的，可以按照产品价格、实施专利和使用技术秘密后新增的产值、利润或者产品销售额的一定比例提成，也可以按照约定的其他方式计算。提成支付的比例可以采取固定比例、逐年递增比例或者逐年递减比例。

Where it is agreed that one party will pay a royalty, the said amount may be calculated according to a fixed percentage of the product's price, of any increase in output or profit

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following the exploitation of the patent or the use of the technical secret, or of the product's sales volume, or according to another agreed method. The royalty payment may be made at a fixed rate, or on the basis of an increasing or decreasing rate year by year.

约定提成支付的，当事人可以约定查阅有关会计账目的办法。

Where a royalty payment is agreed, the parties may agree on a method for inspection of the relevant accounts.

第八百四十七条 职务技术成果的使用权、转让权属于法人或者非法人组织的，法人或者非法人组织可以就该项职务技术成果订立技术合同。法人或者非法人组织订立技术合同转让职务技术成果时，职务技术成果的完成人享有以同等条件优先受让的权利。

Article 847 Where the right to use and the right to transfer job-related technology belong to a legal person or an organization without legal personality, such legal person or organization may enter into a technology contract in respect of such job-related technology. If the legal person or non-incorporated organization concludes a technology contract to transfer the job-related technological achievement, the individual who accomplished this achievement shall have the priority to be the transferee under the same conditions.

职务技术成果是执行法人或者非法人组织的工作任务，或者主要是利用法人或者非法人组织的物质技术条件所完成的技术成果。

A job-related technological achievement refers to a technological achievement accomplished in the process of carrying out the task assigned by a legal person or an organization without legal personality, or by mainly using the material and technological resources thereof.

#### 第八百四十八条

非职务技术成果的使用权、转让权属于完成技术成果的个人，完成技术成果的个人可以就该项非职务技术成果订立技术合同。

**Article 848** The right to use and transfer a non-job-related technological achievement shall belong to the individual who accomplished it. The individual may conclude a technology contract in respect of such a non-job-related technological achievement.

#### 第八百四十九条

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完成技术成果的个人享有在有关技术成果文件上写明自己是技术成果完成者的权利和取得荣誉证书、奖励的权利。

**Article 849** An individual who has accomplished a technological achievement shall have the right to be named as such in the documents concerning the technological achievement and the right to receive certificates of honor and awards for the achievement.

**第八百五十条** 非法垄断技术或者侵害他人技术成果的技术合同无效。

**Article 850** A technology contract which illegally monopolizes technology or infringes on the technology of a third party is invalid.

## 第二节 技术开发合同

### Section 2 technical development agreement

**第八百五十一条**

技术开发合同是当事人之间就新技术、新产品、新工艺、新品种或者新材料及其系统的研究开发所订立的合同。

**Article 851** A technology development contract is a contract concluded in respect of the development of new technology, new products, new techniques, new varieties or new materials and the associated system.

技术开发合同包括委托开发合同和合作开发合同。

Technology development contracts include commissioned development contracts and cooperative development contracts.

技术开发合同应当采用书面形式。

A technology development contract shall be in written form.

当事人之间就具有实用价值的科技成果实施转化订立的合同，参照适用技术开发合同的有关规定。

A contract on the conversion of a scientific achievement with practical value shall be governed by reference to the relevant provisions on technology development contracts.

**第八百五十二条**

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委托开发合同的委托人应当按照约定支付研究开发经费和报酬，提供技术资料，提出研究开发要求，完成协作事项，接受研究开发成果。

**Article 852** The commissioning party to a commissioned development contract shall, as agreed in the contract, provide development funds and remuneration, supply technical materials, set development requirements, complete its tasks of cooperation and accept the developed technology.

### 第八百五十三条

委托开发合同的研究开发人应当按照约定制定和实施研究开发计划，合理使用研究开发经费，按期完成研究开发工作，交付研究开发成果，提供有关的技术资料和必要的技术指导，帮助委托人掌握研究开发成果。

**Article 853** The developer under a commissioned development contract shall, in accordance with the contract, prepare and implement the development plan, use development funds in a reasonable manner, timely complete the development and deliver the developed technology, as well as provide the relevant technical materials and necessary technical guidance so as to help the commissioning party master the technology developed.

### 第八百五十四条

委托开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

**Article 854** Where a party to a commissioned development contract breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

### 第八百五十五条

合作开发合同的当事人应当按照约定进行投资，包括以技术进行投资，分工参与研究开发工作，协作配合研究开发工作。

**Article 855** Parties to a cooperative development contract shall, in accordance with the contract, make their investment (including investment of technology), participate in the development by performing their respective tasks and cooperate with each other in the development.

### 第八百五十六条

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合作开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

**Article 856** Where a party to a cooperative development contract breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

#### 第八百五十七条

作为技术开发合同标的的技术已经由他人公开，致使技术开发合同的履行没有意义的，当事人可以解除合同。

**Article 857** If the technology which is the subject matter of a technology development contract is made public by a third party, thereby making the performance of the technology development contract meaningless, the parties may rescind the contract.

#### 第八百五十八条

技术开发合同履行过程中，因出现无法克服的技术困难，致使研究开发失败或者部分失败的，该风险由当事人约定；没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，风险由当事人合理分担。

**Article 858** If, in the course of performing a technology development contract, the development is failed in whole or in part due to any insurmountable technical difficulty, such risks shall be agreed upon by the parties. If there is no such agreement in the contract or such agreement is unclear, nor can they be determined in accordance with the provisions of Article 510 of the Law, such risks shall be shared reasonably by the parties.

当事人一方发现前款规定的可能致使研究开发失败或者部分失败的情形时，应当及时通知另一方并采取适当措施减少损失；没有及时通知并采取适当措施，致使损失扩大的，应当就扩大的损失承担责任。

If a party discovers circumstances which are likely to result in a failure or partial failure in research and development as stipulated in the preceding paragraph, it must promptly notify the other party and adopt appropriate measures to reduce the loss. If the loss is increased as a result of a failure to promptly notify and adopt appropriate measures, the party will bear liability for the additional loss.

#### 第八百五十九条

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委托开发完成的发明创造，除法律另有规定或者当事人另有约定外，申请专利的权利属于研究开发人。研究开发人取得专利权的，委托人可以依法实施该专利。

**Article 859** With respect to an invention or creation accomplished in the performance of a commissioned development, the right to apply for a patent belongs to the party that undertakes the research and development, except as otherwise provided for by law or agreed upon by the parties. Where the developer is granted a patent, the commissioning party may exploit such patent in accordance with the law.

研究开发人转让专利申请权的，委托人享有以同等条件优先受让的权利。

If the party which has undertaken the research and development assigns its right to apply for a patent, the commissioning party shall enjoy the priority to acquire the assignment on equal terms.

第八百六十条 合作开发完成的发明创造，申请专利的权利属于合作开发的当事人共有；当事人一方转让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。但是，当事人另有约定的除外。

**Article 860** For an invention or creation accomplished in cooperative development, the right to apply for a patent shall be jointly owned by the parties to the cooperative development. If one of the parties transfers its jointly owned right to apply for a patent, the other parties shall have a priority right to be assigned on equal terms. However, if the parties have agreed otherwise, such agreement shall prevail.

合作开发的当事人一方声明放弃其共有的专利申请权的，除当事人另有约定外，可以由另一方单独申请或者由其他各方共同申请。申请人取得专利权的，放弃专利申请权的一方可以免费实施该专利。

If a party in the cooperative development declares that it waives its joint right to apply for a patent, the patent may be applied for independently by the other party or jointly by the other parties, unless otherwise agreed upon by the parties. If a patent is granted to the applicant, the party that waived its right to apply for the patent may exploit the patent for free.

合作开发的当事人一方不同意申请专利的，另一方或者其他各方不得申请专利。

If one of the parties to the cooperative development does not agree to apply for a patent, the other party or parties may not apply for it.

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第八百六十一条 委托开发或者合作开发完成的技术秘密成果的使用权、转让权以及收益的分配办法，由当事人约定；没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，在没有相同技术方案被授予专利权前，当事人均有使用和转让的权利。但是，委托开发的研究开发人不得在向委托人交付研究开发成果之前，将研究开发成果转让给第三人。

Article 861 The right to use and transfer the technical secret resulting from a commissioned or cooperative development, and the method for distribution of the benefits accrued therefrom shall be agreed upon by the parties. Where there is no such agreement in the contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the parties shall all have the right to use and transfer the technical secret prior to the grant of the patent right for the same technical solution. However, the party responsible for research and development may not transfer the results of the research and development to a third party before delivering them to the commissioning party.

### 第三节 技术转让合同和技术许可合同

#### Section 3 Technology Transfer Contracts and Technology License Contracts

#### 第八百六十二条

技术转让合同是合法拥有技术的权利人，将现有特定的专利、专利申请、技术秘密的相关权利让与他人所订立的合同。

**Article 862** A technology transfer contract is a contract concluded by and between an obligee lawfully owning a technology and assigning to others the relevant rights and interests in respect of a specific patent, patent application or technical secret.

技术许可合同是合法拥有技术的权利人，将现有特定的专利、技术秘密的相关权利许可他人实施、使用所订立的合同。

Technology license contract is a contract made by the lawful owner of the technology, under which the right holder authorizes others to implement and use the particular patent and technical secret.

技术转让合同和技术许可合同中关于提供实施技术的专用设备、原材料或者提供有关的技术咨询、技术服务的约定，属于合同的组成部分。

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The agreements on provision of special equipment and raw materials for implementation of technology or provision of relevant technical consultation and service in technology transfer contract and technology license contract are integral parts of the contract.

**第八百六十三条** 技术转让合同包括专利权转让、专利申请权转让、技术秘密转让等合同。

**Article 863** Technology transfer contracts include contracts for the assignment of patent, assignment of patent application right, transfer of technical secrets, etc.

技术许可合同包括专利实施许可、技术秘密使用许可等合同。

Technology license contracts include contracts for the licensing of patent implementation, licensing of technical secrets, etc.

技术转让合同和技术许可合同应当采用书面形式。

Technology transfer contracts and technology license contracts shall be in written form.

#### **第八百六十四条**

技术转让合同和技术许可合同可以约定实施专利或者使用技术秘密的范围，但是不得限制技术竞争和技术发展。

**Article 864** Technology transfer contracts and technology licensing contracts may stipulate the scope of exploitation of patents or use of technical secrets, provided that they do not restrict technological competition and technological development.

**第八百六十五条** 专利实施许可合同仅在该专利权的存续期限内有效。专利权有效期限届满或者专利权被宣告无效的，专利权人不得就该专利与他人订立专利实施许可合同。

**Article 865** The patent licensing contract is only valid for the term of the patent. Where the term of the patent expires or the patent is declared invalid, the patentee may not conclude a license contract for exploitation of the patent with another person.

#### **第八百六十六条**

专利实施许可合同的许可人应当按照约定许可被许可人实施专利，交付实施专利有关的技术资料，提供必要的技术指导。

**Article 866** The licensor under a patent licensing contract shall, in accordance with the contract, license the patent to the licensee, deliver the technical materials related to the exploitation of the

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patent, and provide the necessary technical guidance.

### 第八百六十七条

专利实施许可合同的被许可人应当按照约定实施专利，不得许可约定以外的第三人实施该专利，并按照约定支付使用费。

**Article 867** The licensee under a patent licensing contract shall exploit the patent in accordance with the contract and may not license the patent to any third party except as provided for in the contract, and shall pay the licensing fee in accordance with the contract.

### 第八百六十八条

技术秘密转让合同的让与人和技术秘密使用许可合同的许可人应当按照约定提供技术资料，进行技术指导，保证技术的实用性、可靠性，承担保密义务。

**Article 868** The transferor under a contract for transfer of technical secret and the licensor under a license contract for use of technical secret shall, in accordance with the contract, supply the technical materials, provide technical guidance, guarantee the practical applicability and reliability of the technology, and undertake the obligation of confidentiality.

前款规定的保密义务，不限制许可人申请专利，但是当事人另有约定的除外。

The confidentiality obligation stipulated in the preceding paragraph shall not restrict patent application by the licensor, unless otherwise agreed between the parties concerned.

### 第八百六十九条

技术秘密转让合同的受让人和技术秘密使用许可合同的被许可人应当按照约定使用技术，支付转让费、使用费，承担保密义务。

**Article 869** The transferee under a contract for transfer of technical secret and the licensee under a license contract for use of technical secret shall, in accordance with the contract, use the technology, pay the transfer fee and licensing fee and abide by its confidentiality obligations.

### 第八百七十条

技术转让合同的让与人和技术许可合同的许可人应当保证自己是所提供的技术的合法拥有者，并保证所提供的技术完整、无误、有效，能够达到约定的目标。

**Article 870** The transferor to a technology transfer contract or the licensor to a technology

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licensing contract shall warrant that it is the lawful owner of the technology provided, and shall warrant that the technology provided is complete, free from error, effective, and capable of achieving the prescribed goals.

### 第八百七十一条

技术转让合同的受让人和技术许可合同的被许可人应当按照约定的范围和期限，对让与人、许可人提供的技术中尚未公开的秘密部分，承担保密义务。

**Article 871** The transferee under a technology transfer contract and the licensee under a technology licensing contract shall, in conformity with the scope and the time period as agreed upon in the contract, abide by its confidentiality obligations in respect of the non-public and secret portion of the technology provided by the transferor or the licensor.

### 第八百七十二条

许可人未按照约定许可技术的，应当返还部分或者全部使用费，并应当承担违约责任；实施专利或者使用技术秘密超越约定的范围的，违反约定擅自许可第三人实施该项专利或者使用该项技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

**Article 872** Where the licensor fails to license technology in accordance with the contract, it shall refund the licensing fee in part or in whole, and shall be liable for the breach of contract; where the licensor exploits the patent or uses the technical secret beyond the agreed scope, or, without authorization, licenses a third party to exploit the patent or use the technical secret in violation of the contract, he shall cease the breach and be liable for the breach of contract; where the licensor breaches any agreed obligation of confidentiality, he shall be liable for the breach of contract.

让与人承担违约责任，参照适用前款规定。

The provisions of the preceding paragraph shall apply as reference to the transferor's default liability.

### 第八百七十三条

被许可人未按照约定支付使用费的，应当补交使用费并按照约定支付违约金；不补交使用费或者支付违约金的，应当停止实施专利或者使用技术秘密，交还技术资料，承担违约责任；实施专利或者使用技术秘密超越约定的范围的，未经许可人同意擅自许可第三人实施该专利

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或者使用该技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

**Article 873** Where the licensee fails to pay the agreed licensing fee, it shall pay the overdue licensing fee and pay breach of contract damages in accordance with the contract; where it fails to pay the overdue licensing fee and breach of contract damages, it shall cease exploitation of the patent or use of the technical secret, return the technical materials, and be liable for the breach of contract; where the licensee exploits the patent or uses the technical secret beyond the agreed scope, or unilaterally allows the patent to be exploited or the technical secret to be used by a third party without consent of the licensor, it shall cease the breach and be liable for the breach of contract; where the licensee breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

受让人承担违约责任，参照适用前款规定。

The provisions of the preceding paragraph apply as a reference to the liability for breach of contract borne by the transferee.

#### 第八百七十四条

受让人或者被许可人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人或者许可人承担责任，但是当事人另有约定的除外。

**Article 874** Where the exploitation of a patent or the use of technical secret by the transferee or licensee in accordance with the contract infringes on the lawful rights and interests of another person, the transferor or the licensor shall bear the liability, unless the parties have agreed otherwise.

#### 第八百七十五条

当事人可以按照互利的原则，在合同中约定实施专利、使用技术秘密后续改进的技术成果的分 享办法；没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，一方后续改进的技术成果，其他各方无权分享。

**Article 875** The parties may, on the basis of mutual benefit, provide in the contract for the method of sharing any subsequent improvement made in the exploitation of the patent or the use of the technical secret. Where there is no such agreement or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the other parties shall have no right to share any subsequent improvement made by one party.

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### 第八百七十六条

集成电路布图设计专有权、植物新品种权、计算机软件著作权等其他知识产权的转让和许可，参照适用本节的有关规定。

**Article 876** The relevant provisions of this Section shall apply mutatis mutandis to the transfer and license of exclusive rights to integrated circuit layout designs, rights to new plant varieties, computer software copyrights and other intellectual property.

### 第八百七十七条

法律、行政法规对技术进出口合同或者专利、专利申请合同另有规定的，依照其规定。

**Article 877** Where the relevant laws or administrative regulations provide otherwise in respect of technology import or export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail.

## 第四节 技术咨询合同和技术服务合同

### Section 4 Technical service agreement and technical consultancy agreement

### 第八百七十八条

技术咨询合同是当事人一方以技术知识为对方就特定技术项目提供可行性论证、技术预测、专题技术调查、分析评价报告等所订立的合同。

**Article 878** A technical consultancy contract refers to a contract whereby one party provides for the other party feasibility studies, technical forecasts, specialized technical investigations and analytical evaluation reports, etc. in respect of a specific technical project by utilizing its technical knowledge.

技术服务合同是当事人一方以技术知识为对方解决特定技术问题所订立的合同，不包括承揽合同和建设工程合同。

A technical service contract is a contract whereby one party solves a particular technical problem for the other party by utilizing its technical knowledge, excluding a contract of hired work or a contract for construction project.

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### 第八百七十九条

技术咨询合同的委托人应当按照约定阐明咨询的问题，提供技术背景材料及有关技术资料，接受受托人的工作成果，支付报酬。

**Article 879** The client under a technical consulting contract shall, in accordance with the contract, describe the problem on which consultancy is sought, provide the technical background information and the relevant technical materials, accept from the consultant the result of its work and pay the remuneration.

### 第八百八十条

技术咨询合同的受托人应当按照约定的期限完成咨询报告或者解答问题，提出的咨询报告应当达到约定的要求。

**Article 880** The consultant to a technical consultancy contract shall complete the consultancy report or answer the questions raised by the client within the agreed period of time, and the consultancy report thus submitted shall meet the requirements set forth in the contract.

### 第八百八十一条

技术咨询合同的委托人未按照约定提供必要的资料，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

**Article 881** Where the client under a technical consulting contract fails to provide the necessary materials in accordance with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work result, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减收或者免收报酬等违约责任。

If the consultant to a technical consultancy contract fails to submit the consultancy report on schedule or the report thus submitted does not meet the requirements as agreed in the contract, the consultant shall assume liability for breach of contract by way of reducing or foregoing the remuneration thereof.

技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，但是当事人另有约定的除外。

The client under a technical consulting contract shall bear any loss resulting from any

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decision made by it based on the consulting report and opinion provided by the consultant in conformity with the requirements of the contract, unless the parties have agreed otherwise.

### 第八百八十二条

技术服务合同的委托人应当按照约定提供工作条件，完成配合事项，接受工作成果并支付报酬。

**Article 882** The client under a technical service contract shall, in accordance with the contract, provide the working conditions, complete its tasks of cooperation, accept the work results and pay the remuneration.

### 第八百八十三条

技术服务合同的受托人应当按照约定完成服务项目，解决技术问题，保证工作质量，并传授解决技术问题的知识。

**Article 883** The service provider under a technical service contract shall, in accordance with the contract, complete the services, solve the technical problem, warrant the quality of its work, and communicate the knowledge for solving the technical problem.

### 第八百八十四条

技术服务合同的委托人不履行合同义务或者履行合同义务不符合约定，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

**Article 884** Where the client under a technical service contract fails to perform its contractual obligations, or the performance is not in conformity with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work results, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

技术服务合同的受托人未按照约定完成服务工作的，应当承担免收报酬等违约责任。

Where the service provider under a technical service contract fails to complete services in accordance with the contract, it shall be liable for the breach of contract by way of forgoing the remuneration, etc.

第八百八十五条 技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成

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果完成的新的技术成果，属于委托人。当事人另有约定的，按照其约定。

**Article 885** Any new technological achievement accomplished by the consultant or service provider in the performance of a technical consultancy contract or a technical service contract by using the technological materials and work facilities supplied by the client shall belong to the consultant or service provider. Any new technical results achieved by the commissioning party through the use of the work products of the commissioned party shall belong to the commissioning party. Where the parties agree otherwise, their agreement shall prevail.

### 第八百八十六条

技术咨询合同和技术服务合同对受托人正常开展工作所需费用的负担没有约定或者约定不明确的，由受托人负担。

**Article 886** Where there are no stipulations in the technical consulting contracts or the technical service contracts on bearing the expenses needed for the entrusted party to carry out the normal work, or such stipulations are not clear, the said expenses shall be borne by the entrusted party.

### 第八百八十七条

法律、行政法规对技术中介合同、技术培训合同另有规定的，依照其规定。

**Article 887.** Where laws and administrative regulations provide otherwise with respect to contracts for the provision of intermediary services in relation to technology and technical training contracts, such provisions shall prevail.

## 第二十一章 保管合同

### CHAPTER 21 CUSTODIAN CONTRACT

**第八百八十八条** 保管合同是保管人保管寄存人交付的保管物，并返还该物的合同。

**Article 888** A storage contract is a contract whereby the depositary keeps the deposit delivered by the depositor, and eventually returns it thereto.

寄存人到保管人处从事购物、就餐、住宿等活动，将物品存放在指定场所的，视为保管，但是当事人另有约定或者另有交易习惯的除外。

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Where the depositor goes to the depository for shopping, dining, lodging or other activities, and deposits the articles at a designated place, it is deemed as depository, except as otherwise agreed by the parties or there are other transaction practices.

**第八百八十九条** 寄存人应当按照约定向保管人支付保管费。

**Article 889.** The depositor shall pay custody fees to the custodian in accordance with the parties' agreement.

当事人对保管费没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，视为无偿保管。

Where there is no agreement in the contract on the custody fee or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the custody fee shall be deemed as free of charge.

**第八百九十条** 保管合同自保管物交付时成立，但是当事人另有约定的除外。

**Article 890.** A storage contract is concluded from the time the custodial goods are delivered, except where the parties agree otherwise.

**第八百九十一条**

寄存人向保管人交付保管物的，保管人应当出具保管凭证，但是另有交易习惯的除外。

**Article 891** Upon the depositor's delivery of the deposit to the depository, the depository shall issue a deposit voucher, except as otherwise practised in transaction.

**第八百九十二条** 保管人应当妥善保管保管物。

**Article 892.** The custodian shall take appropriate custody of the custodial goods.

当事人可以约定保管场所或者方法。除紧急情况或者为维护寄存人利益外，不得擅自改变保管场所或者方法。

The parties may agree on the place or method of custody. The place or method of custody may not be changed without authorization, except in an emergency situation or in order to protect the depositor's interests.

**第八百九十三条**

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寄存人交付的保管物有瑕疵或者根据保管物的性质需要采取特殊保管措施的，寄存人应当将有关情况告知保管人。寄存人未告知，致使保管物受损失的，保管人不承担赔偿责任；保管人因此受损失的，除保管人知道或者应当知道且未采取补救措施外，寄存人应当承担赔偿责任。

**Article 893** Where an object delivered by the depositor for custody has defects, or special measures need to be taken due to the nature of the object, the depositor shall inform the depositary of the relevant situation. Where the depositor fails to so inform the depositary and causes damage to the deposit, the depositary shall not be liable for compensation. Where the depositary sustains any loss as a result of such failure, the depositor shall be liable for compensation, except where the depositary is, or ought to be, aware of the situation and fails to take remedial measures.

**第八百九十四条** 保管人不得将保管物转交第三人保管，但是当事人另有约定的除外。

**Article 894.** The custodian shall not be permitted to pass on the custodial goods to a third party for custody, except where the parties agree otherwise.

保管人违反前款规定，将保管物转交第三人保管，造成保管物损失的，应当承担赔偿责任。

Where the depositary, in violation of the provisions of the preceding paragraph, transfers the deposit to a third party for custody, thereby causing damage to the deposit, the depositary shall be liable for compensation.

**第八百九十五条**

保管人不得使用或者许可第三人使用保管物，但是当事人另有约定的除外。

**Article 895.** The custodian shall not use the custodial goods or permit a third party to use the custodial goods, except where the parties agree otherwise.

**第八百九十六条**

第三人对保管物主张权利的，除依法对保管物采取保全或者执行措施外，保管人应当履行向寄存人返还保管物的义务。

**Article 896** Where a third party makes a claim on the deposit, the depositary shall perform its obligation of returning the deposit to the depositor, except where preservation or enforcement measures are taken in relation to the deposit in accordance with the law.

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第三人对保管人提起诉讼或者对保管物申请扣押的，保管人应当及时通知寄存人。

Where a third party brings a lawsuit against the depository or applies for attachment of the deposit, the depository shall timely notify the depositor.

第八百九十七条 保管期内，因保管人保管不善造成保管物毁损、灭失的，保管人应当承担赔偿责任。但是，无偿保管人证明自己没有故意或者重大过失的，不承担赔偿责任。

Article 897 Where, during the period of custody, the object deposited is damaged or lost due to lack of due care by the depository, the depository shall be liable for compensation. However, if the depository proves that it has no intent or gross negligence, it shall not be liable for compensation.

### 第八百九十八条

寄存人寄存货币、有价证券或者其他贵重物品的，应当向保管人声明，由保管人验收或者封存；寄存人未声明的，该物品毁损、灭失后，保管人可以按照一般物品予以赔偿。

**Article 898** Where the depositor is to deposit money, negotiable securities or other valuables, it shall declare the case to the depository, and the depository shall inspect them before acceptance or seal them up; if the depositor fails to declare the case, after the said valuables are damaged or lost, the depository may compensate for them as if they are ordinary goods.

第八百九十九条 寄存人可以随时领取保管物。

**Article 899.** The depositor may collect the custodial goods at any time.

当事人对保管期限没有约定或者约定不明确的，保管人可以随时请求寄存人领取保管物；约定保管期限的，保管人无特别事由，不得请求寄存人提前领取保管物。

Where there is no agreement between the parties in the contract on the period of custody or such agreement is unclear, the depository may, at any time, request the depositor to collect the object deposited; where there is such an agreement on the period of custody, the depository may not, without special reasons, request the depositor to collect the object deposited ahead of time.

### 第九百条

保管期限届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

**Article 900** At the expiry of the deposit period or if the depositor retrieves the deposit before

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the expiry of the deposit period, the depository shall return the original item together with any fruit thereof to the depositor.

### 第九百零一条

保管人保管货币的，可以返还相同种类、数量的货币；保管其他可替代物的，可以按照约定返还相同种类、品质、数量的物品。

**Article 901** Where the depository keeps money deposit, it may return money of the same type and quantity; where it keeps other fungible goods, it may return articles of the same type, quality and quantity in accordance with the terms of the contract.

**第九百零二条** 有偿的保管合同，寄存人应当按照约定的期限向保管人支付保管费。

**Article 902.** With respect to custody contracts for value, the depositor shall pay custody fees to the custodian in accordance with the agreed deadlines.

当事人对支付期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，应当在领取保管物的同时支付。

Where the time of payment of the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 510 of this Law, the storage fee shall be paid at the same time the deposit is collected.

### 第九百零三条

寄存人未按照约定支付保管费或者其他费用的，保管人对保管物享有留置权，但是当事人另有约定的除外。

**Article 903.** Where the depositor fails to pay custody fees or other fees as agreed by the parties, the custodian shall enjoy a lien over the custodial goods, except where the parties agree otherwise.

## 第二十二章 仓储合同

### Chapter 22 STORAGE CONTRACT

**第九百零四条** 仓储合同是保管人储存存货人交付的仓储物，存货人支付仓储费的合同。

**Article 904** A warehousing contract is a contract whereby the safekeeping party stores the

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goods delivered by the depositor, and the depositor pays the warehousing fee.

**第九百零五条** 仓储合同自保管人和存货人意思表示一致时成立。

**Article 905** A warehousing contract is formed when there is a consensus between the depository and the depositor.

**第九百零六条**

储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品或者易变质物品的，存货人应当说明该物品的性质，提供有关资料。

**Article 906** Where the depositor intends to store any dangerous article which is inflammable, explosive, toxic, corrosive, or radioactive, etc., or any material susceptible to deterioration, it shall indicate the nature of the goods and provide the relevant information.

存货人违反前款规定的，保管人可以拒收仓储物，也可以采取相应措施以避免损失的发生，因此产生的费用由存货人负担。

Where the depositor violates the provisions of the preceding paragraph, the depository may reject the goods to be stored, or take corresponding measures to avoid losses, and expenses thus incurred shall be borne by the depositor.

保管人储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当具备相应的保管条件。

Where the safekeeping party is to store any dangerous article that is inflammable, explosive, toxic, corrosive, or radioactive, etc., it shall have the appropriate safekeeping facilities.

**第九百零七条**

保管人应当按照约定对入库仓储物进行验收。保管人验收时发现入库仓储物与约定不符合的，应当及时通知存货人。保管人验收后，发生仓储物的品种、数量、质量不符合约定的，保管人应当承担赔偿责任。

**Article 907.** The custodian shall, as agreed, conduct examination and acceptance procedures with respect to goods entering the warehouse for storage. Where the safekeeping party discovers in the course of examination and acceptance that the goods entering the warehouse for storage do not conform to the terms of the contract, it shall timely notify the depositor. After inspection and acceptance by the depository, if it is discovered that the type, quantity or quality of the stored goods

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is not in conformity with the terms of the contract, the depository shall be liable for compensation.

**第九百零八条** 存货人交付仓储物的，保管人应当出具仓单、入库单等凭证。

**Article 908** Upon the depositor's delivery of the goods, the safekeeping party shall issue the warehouse receipt, warehousing entry order and other vouchers.

**第九百零九条** 保管人应当在仓单上签名或者盖章。仓单包括下列事项：

**Article 909** The safekeeping party shall sign or affix its seal on the warehouse receipt. A warehouse receipt shall contain the following items:

（一）存货人的姓名或者名称和住所；

1. the name or title and domicile of the depositor;

（二）仓储物的品种、数量、质量、包装及其件数和标记；

(II) type, quantity, quality and packaging of the warehoused goods and the number and mark of pieces thereof;

（三）仓储物的损耗标准；

(III) standards for wear and tear of the stored goods;

（四）储存场所；

(IV) place of storage;

（五）储存期限；

(V) Storage period;

（六）仓储费；

(VI) warehousing fees;

（七）仓储物已经办理保险的，其保险金额、期间以及保险人的名称；

(VII) if the goods have been insured, the insured amount, term of insurance and name of the insurer; and

（八）填发人、填发地和填发日期。

(VIII) The applicant, place and date of filling in and issuance.

**第九百一十条** 仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签名或者盖章的，可以转让提取仓储物的权利。

**Article 910** The warehouse receipt is the voucher for retrieving the goods. . Where the storing

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party or the holder of the storage receipt endorses the storage receipt and the custodian signs or affixes its seal to the receipt, the right to collect the storage goods may be assigned.

### 第九百一十一条

保管人根据存货人或者仓单持有人的要求，应当同意其检查仓储物或者提取样品。

**Article 911** At the request of the depositor or the warehouse receipt holder, the safekeeping party shall allow the person to inspect the goods or take samples therefrom.

### 第九百一十二条

保管人发现入库仓储物有变质或者其他损坏的，应当及时通知存货人或者仓单持有人。

**Article 912** Where the safekeeping party discovers that the goods entering the warehouse for storage have deteriorated or are otherwise damaged, it shall timely notify the depositor or holder of the warehouse receipt.

### 第九百一十三条

保管人发现入库仓储物有变质或者其他损坏，危及其他仓储物的安全和正常保管的，应当催告存货人或者仓单持有人作出必要的处置。因情况紧急，保管人可以作出必要的处置；但是，事后应当将该情况及时通知存货人或者仓单持有人。

**Article 913** Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, thereby endangering the safety and normal safekeeping of other warehoused goods, it shall demand disposal of the goods by the depositor or the holder of the warehouse receipt as necessary. In an emergency situation, the depository may dispose of the goods as necessary. However, the depositor or holder of the warehouse receipt shall be notified of the situation promptly afterwards.

### 第九百一十四条

当事人对储存期限没有约定或者约定不明确的，存货人或者仓单持有人可以随时提取仓储物，保管人也可以随时请求存货人或者仓单持有人提取仓储物，但是应当给予必要的准备时间。

**Article 914** Where there is no agreement in the contract between the parties on the period of storage or such agreement is unclear, the depositor or holder of the warehouse receipt may collect the stored goods at any time, and the depository may also at any time require the depositor to collect the

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stored goods, provided that the other party shall be given the time required for preparation.

### 第九百一十五条

储存期限届满，存货人或者仓单持有人应当凭仓单、入库单等提取仓储物。存货人或者仓单持有人逾期提取的，应当加收仓储费；提前提取的，不减收仓储费。

**Article 915** At the expiry of the warehousing period, the depositor or holder of the warehouse receipt shall retrieve the goods by presenting the warehouse receipt, warehousing entry order, or other documents. Where the depositor or holder of the warehouse receipt delays in collecting the goods, additional warehousing fee shall be paid. If the goods are collected ahead of time, the warehousing fee shall not be reduced.

### 第九百一十六条

储存期限届满，存货人或者仓单持有人不提取仓储物的，保管人可以催告其在合理期限内提取；逾期不提取的，保管人可以提存仓储物。

**Article 916** Where the depositor or holder of the warehouse receipt fails to retrieve the goods at the expiry of the warehousing period, the safekeeping party may demand retrieval within a reasonable period; where the goods are not retrieved at the expiry of the warehousing period, the safekeeping party may place the goods in escrow.

### 第九百一十七条

储存期内，因保管不善造成仓储物毁损、灭失的，保管人应当承担赔偿责任。因仓储物本身的自然性质、包装不符合约定或者超过有效储存期造成仓储物变质、损坏的，保管人不承担赔偿责任。

**Article 917** If, during the period of storage, the stored goods are damaged or lost due to lack of due care, the depository shall be liable for compensation. If the stored goods are deteriorated or damaged due to inconformity of the nature of the goods themselves or of the packaging with the terms of the contract, or if the goods are stored beyond their valid period of storage, the depository shall not be liable for compensation.

**第九百一十八条** 本章没有规定的，适用保管合同的有关规定。

**Article 918** Matters not provided for in this Chapter shall be governed by the relevant provision

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on storage contracts.

## 第二十三章 委托合同

### Chapter 23 Entrustment Contract

**第九百一十九条** 委托合同是委托人和受托人约定，由受托人处理委托人事务的合同。

**Article 919** A commission contract refers to a contract whereby the principal and the agent agree that the agent will handle the principal's affairs.

#### 第九百二十条

委托人可以特别委托受托人处理一项或者数项事务，也可以概括委托受托人处理一切事务。

**Article 920** The principal may specifically appoint the agent to handle one or more of its affairs, or generally appoint the agent to handle all of its affairs.

#### 第九百二十一条

委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用，委托人应当偿还该费用并支付利息。

**Article 921** The principal shall prepay the expenses for the handling of the commissioned affair. With respect to any necessary expenses incurred by the agent in the course of handling the commissioned affair, the principal shall reimburse such expenses and pay interest.

**第九百二十二条** 受托人应当按照委托人的指示处理委托事务。需要变更委托人指示的，应当经委托人同意；因情况紧急，难以和委托人取得联系的，受托人应当妥善处理委托事务，但是事后应当将该情况及时报告委托人。

**Article 922** The agent shall handle the entrusted affair (s) according to the instruction of the principal. Where it is necessary to alter the principal's instructions, the principal's consent shall be obtained; where an emergency arises and it is difficult to establish contact with the principal, the agent shall properly handle the delegated affairs, but after the event the agent shall immediately inform the principal of the situation.

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### 第九百二十三条

受托人应当亲自处理委托事务。经委托人同意，受托人可以转委托。转委托经同意或者追认的，委托人可以就委托事务直接指示转委托的第三人，受托人仅就第三人的选任及其对第三人的指示承担责任。转委托未经同意或者追认的，受托人应当对转委托的第三人的行为承担责任；但是，在紧急情况下受托人为了维护委托人的利益需要转委托第三人的除外。

**Article 923** The agent shall handle the entrusted affair (s) personally. With the consent of the principal, the agent may delegate the agency to a third party. With the consent or acknowledgment of the sub-delegation, the principal may directly instruct the delegated third party to handle the delegated affairs, and the agent shall only bear the liability for its selection of the third party and the instructions it gives to the third party. Where the agency is delegated without consent or acknowledgment, the agent shall be liable for any act of the delegated third party, except in an emergency where the agent has to delegate the agency to a third party in order to safeguard the interests of the principal.

### 第九百二十四条

受托人应当按照委托人的要求，报告委托事务的处理情况。委托合同终止时，受托人应当报告委托事务的结果。

**Article 924** The agent shall report the handling of the entrusted affair (s) at the request of the principal. The agent shall report the result of the entrusted affair (s) when the commission contract is terminated.

### 第九百二十五条

受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人；但是，有确切证据证明该合同只约束受托人和第三人的除外。

**Article 925** Where the agent, acting within the scope of authority granted by the principal, enter into a contract in its own name with a third party who is aware of the agency relationship between the principal and agent, the contract is directly binding upon the principal and such third party, except where there is conclusive evidence establishing that the contract is only binding upon the agent and such third party.

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## 第九百二十六条

受托人以自己的名义与第三人订立合同时，第三人不知道受托人与委托人之间的代理关系的，受托人因第三人的原因对委托人不履行义务，受托人应当向委托人披露第三人，委托人因此可以行使受托人对第三人的权利。但是，第三人与受托人订立合同时如果知道该委托人就不会订立合同的除外。

**Article 926** Where the agent concludes a contract in its own name with a third party and the third party does not know of the agency relationship between the agent and the principal, if the agent fails to perform its obligation to the principal due to any reason attributable to the third party, the agent shall disclose the third party to the principal, and the principal may therefore exercise the agent's rights against the third party. However, there is an exception where the third party would not have entered into a contract with the bailee if he had known of the principal when concluding the contract.

受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但是第三人不得变更选定的相对人。

Where the agent fails to perform a duty owed to the third party due to a reason associated with the principal, the agent shall immediately reveal to the third party the existence of the principal, and the third party may then choose either the agent or the principal as the relevant party against whom it asserts its rights. However, the third party may not at any time change its choice of relevant party.

委托人行使受托人对第三人的权利的，第三人可以向委托人主张其对受托人的抗辩。第三人选定委托人作为其相对人的，委托人可以向第三人主张其对受托人的抗辩以及受托人对第三人的抗辩。

If the principal exercises the agent's rights against the third party, the third party may set up against the principal the defences which it has against the agent. If the third party opts to claim against the principal, the principal may set up against the third party the defenses which it has against the agent as well as the defenses which the agent has against the third party.

**第九百二十七条** 受托人处理委托事务取得的财产，应当转交给委托人。

**Article 927.** Any property obtained by the agent in the course of handling delegated affairs shall be passed on to the principal.

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**第九百二十八条** 受托人完成委托事务的，委托人应当按照约定向其支付报酬。

**Article 928** Upon completion of the commissioned affair by the agent, the principal shall pay remuneration to the agent in accordance with the contract.

因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。当事人另有约定的，按照其约定。

Where, due to causes not attributable to the agent, the commission contract is rescinded or the entrusted affair (s) cannot be completed, the principal shall pay the agent corresponding remuneration. Where the parties agree otherwise, their agreement shall prevail.

**第九百二十九条** 有偿的委托合同，因受托人的过错造成委托人损失的，委托人可以请求赔偿损失。无偿的委托合同，因受托人的故意或者重大过失造成委托人损失的，委托人可以请求赔偿损失。

**Article 929.** With respect to mandate contracts for value, if the principal sustains losses due to the fault of the agent, the principal may demand compensation for the losses sustained. Under a gratuitous commission contract, if the principal sustains any loss due to the agent's intentional misconduct or gross negligence, the principal may claim damages.

受托人超越权限造成委托人损失的，应当赔偿损失。

The agent shall provide compensation for losses sustained by the principal as a result of the agent acting in excess of its authority.

### **第九百三十条**

受托人处理委托事务时，因不可归责于自己的事由受到损失的，可以向委托人请求赔偿损失。

**Article 930** In the course of handling the commissioned affair, if the agent sustains any loss due to a reason not attributable to itself, the agent may seek compensation from the principal.

### **第九百三十一条**

委托人经受托人同意，可以在受托人之外委托第三人处理委托事务。因此造成受托人损失的，受托人可以向委托人请求赔偿损失。

**Article 931** With the consent of the agent, the principal may entrust a third party other than the agent to handle the entrusted affair (s). Where the agent sustains any loss as a result thereof, the

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agent may seek compensation from the principal.

**第九百三十二条** 两个以上的受托人共同处理委托事务的，对委托人承担连带责任。

**Article 932** Where two or more agents jointly handle the entrusted affair (s), they shall be jointly and severally liable to the principal.

### **第九百三十三条**

委托人或者受托人可以随时解除委托合同。因解除合同造成对方损失的，除不可归责于该当事人的事由外，无偿委托合同的解除方应当赔偿因解除时间不当造成的直接损失，有偿委托合同的解除方应当赔偿对方的直接损失和合同履行后可以获得的利益。

**Article 933** Either the principal or the agent may terminate the agency appointment contract at any time. If the other party sustains any loss due to such termination, the discharging party under the entrustment agreement shall indemnify the other party for direct loss due to the improper termination time, except for causes not attributable to such party. The dissolving party under an entrustment agreement with consideration shall compensate the other party for the direct loss and the benefit it may gain after the performance of the contract.

### **第九百三十四条**

委托人死亡、终止或者受托人死亡、丧失民事行为能力、终止的，委托合同终止；但是，当事人另有约定或者根据委托事务的性质不宜终止的除外。

**Article 934.** Where the principal dies or terminates, or where the agent dies or loses its capacity for civil acts or terminates, the mandate contract shall be terminated, unless the parties have agreed otherwise, or termination is not appropriate due to the nature of the delegated affairs.

### **第九百三十五条**

因委托人死亡或者被宣告破产、解散，致使委托合同终止将损害委托人利益的，在委托人的继承人、遗产管理人或者清算人承受委托事务之前，受托人应当继续处理委托事务。

**Article 935.** Where the principal dies or is declared bankrupt or dissolved, and the resulting termination of the mandate contract will be detrimental to the principal's interests, then prior to the principal's heirs, estate manager or liquidator assuming responsibility for the delegated affairs, the agent shall continue to handle the delegated affairs.

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第九百三十六条 因受托人死亡、丧失民事行为能力或者被宣告破产、解散，致使委托合同终止的，受托人的继承人、遗产管理人、法定代理人或者清算人应当及时通知委托人。因委托合同终止将损害委托人利益的，在委托人作出善后处理之前，受托人的继承人、遗产管理人、法定代理人或者清算人应当采取必要措施。

Article 936. Where the agent dies, loses its capacity for civil acts, or is declared bankrupt or dissolved, resulting in the termination of the mandate contract, the agent's heirs, estate manager, legal agent or liquidator shall promptly notify the principal. Where the termination of the mandate contract will be detrimental to the principal's interests, then prior to the principal acting to rectify the situation, the agent's heirs, estate manager, legal agent or liquidator shall take necessary measures.

## 第二十四章 物业服务合同

### Chapter 24 Property Service Contract

#### 第九百三十七条

物业服务合同是物业服务人在物业服务区域内，为业主提供建筑物及其附属设施的维修养护、环境卫生和相关秩序的管理维护等物业服务，业主支付物业费的合同。

**Article 937** A property service contract refers to a contract whereby the property service provider provides the owner with property services such as repair and maintenance of the building and ancillary facilities thereof, management and maintenance of environmental health and relevant order within the property service area and the owner pays property fees.

物业服务人包括物业服务企业和其他管理人。

Estate services providers shall include estate services enterprises and other managers.

#### 第九百三十八条

物业服务合同的内容一般包括服务事项、服务质量、服务费用的标准和收取办法、维修资金的使用、服务用房的管理和使用、服务期限、服务交接等条款。

**Article 938** The contents of an estate service contract shall generally include clauses such as service items, service quality, standard and collection method of service fees, use of maintenance and repair fund, management and use of service premises, service period, handover of services, etc.

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物业服务人公开作出的有利于业主的服务承诺，为物业服务合同的组成部分。

A service commitment made publicly by the property service provider in favor of the property owners is an integral part of the property service contract.

物业服务合同应当采用书面形式。

The property service contract shall be made in writing.

### 第九百三十九条

建设单位依法与物业服务人订立的前期物业服务合同，以及业主委员会与业主大会依法选聘的物业服务人订立的物业服务合同，对业主具有法律约束力。

**Article 939** The prophase realty service contract concluded by a construction entity and a realty service provider pursuant to law and the realty service contract concluded by the owners' committee and the realty service provider selected by the owners' congress pursuant to law shall be legally binding on the owners.

### 第九百四十条

建设单位依法与物业服务人订立的前期物业服务合同约定的服务期限届满前，业主委员会或者业主与新物业服务人订立的物业服务合同生效的，前期物业服务合同终止。

**Article 940** The prophase realty service contract concluded by the owners' committee or by the owners and the new realty service provider shall be terminated before the expiry of the service period stipulated in the prophase realty service contract concluded by the construction entity and the realty service provider pursuant to law.

### 第九百四十一条

物业服务人将物业服务区域内的部分专项服务事项委托给专业性服务组织或者其他第三人的，应当就该部分专项服务事项向业主负责。

**Article 941** Where an estate services provider has entrusted part of the special services within the estate services region to a professional services organisation or a third party, it shall be accountable to the owners for such part of the special services within the estate services region.

物业服务人不得将其应当提供的全部物业服务转委托给第三人，或者将全部物业服务支解后分别转委托给第三人。

The estate services provider shall not sub-entrust a third party to provide all the estate

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services it is required to provide, or upon splitting up of the estate services, sub-entrust a third party separately.

### 第九百四十二条

物业服务人应当按照约定和物业的使用性质，妥善维修、养护、清洁、绿化和经营管理物业服务区域内的业主共有部分，维护物业服务区域内的基本秩序，采取合理措施保护业主的人身、财产安全。

**Article 942 A realty service provider shall**, in accordance with the stipulations and the nature of use of the realty, properly repair, maintain, clean, afforest, and manage the common parts of the owners within the realty service area, maintain the basic order within the realty service area, and take reasonable measures to protect the personal and property safety of the owners.

对物业服务区域内违反有关治安、环保、消防等法律法规的行为，物业服务人应当及时采取合理措施制止、向有关行政主管部门报告并协助处理。

A realty service provider shall, in good time, take reasonable measures to stop the acts that violate the relevant laws and regulations on public security, environmental protection, and fire control, etc., within the realty service area, report such acts to the relevant administrative department and assist in the handling thereof.

### 第九百四十三条

物业服务人应当定期将服务的事项、负责人员、质量要求、收费项目、收费标准、履行情况，以及维修资金使用情况、业主共有部分的经营与收益情况等以合理方式向业主公开并向业主大会、业主委员会报告。

**Article 943 Estate services providers shall** announce service items, accountable personnel, quality requirements, fee items, fee rates, performance status, usage of maintenance and repair fund, operation and earnings of common areas of the owners, etc on a regular basis to owners in a reasonable manner and report to the owners' group and the owners' committee.

### 第九百四十四条

业主应当按照约定向物业服务人支付物业费。物业服务人已经按照约定和有关规定提供服务的，业主不得以未接受或者无需接受相关物业服务为由拒绝支付物业费。

**Article 944 An owner shall pay realty fees to the realty service provider pursuant to the**

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stipulations. Where the estate services provider has provided services pursuant to the agreement and the relevant provisions, the owners shall not cite non-acceptance or non-acceptance of the relevant estate services to refuse payment of estate fees.

业主违反约定逾期不支付物业费的，物业服务人可以催告其在合理期限内支付；合理期限届满仍不支付的，物业服务人可以提起诉讼或者申请仲裁。

Where an owner violates the agreement in failing to pay estate fees within the stipulated period, the estate services provider may remind the owner to make payment within a reasonable period; where the owner fails to make payment within the reasonable period, the estate services provider may file a lawsuit or apply for arbitration.

物业服务人不得采取停止供电、供水、供热、供燃气等方式催交物业费。

Property service providers shall not urge the payment of property management fees by suspending the supply of electricity, water, heat, or gas, or by other means.

#### 第九百四十五条

业主装饰装修房屋的，应当事先告知物业服务人，遵守物业服务人提示的合理注意事项，并配合其进行必要的现场检查。

**Article 945** An owner who decorates/renovates the premises shall notify the estate services party beforehand, comply with the reasonable precautions highlighted by the estate services party, and cooperate in the requisite onsite inspection.

业主转让、出租物业专有部分、设立居住权或者依法改变共有部分用途的，应当及时将相关情况告知物业服务人。

Where an owner transfers or leases the exclusive parts of the property, establishes residential rights or changes the purpose of use of the common parts pursuant to the law, the owner shall promptly notify the estate services provider of the relevant information.

#### 第九百四十六条

业主依照法定程序共同决定解聘物业服务人的，可以解除物业服务合同。决定解聘的，应当提前六十日书面通知物业服务人，但是合同对通知期限另有约定的除外。

**Article 946** Where an owner jointly decides to dismiss any realty service provider pursuant to the statutory procedures, he/she may cancel the realty service contract. Where a decision on termination is made, the estate services provider shall be notified in writing 60 days in advance,

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unless the contract stipulates otherwise on the notice period.

依据前款规定解除合同造成物业服务人损失的，除不可归责于业主的事由外，业主应当赔偿损失。

Where the rescission of contract pursuant to the provisions of the preceding paragraph causes the estate services party to suffer losses, the owners shall make compensation for the losses, except where the rescission is not attributable to the owners.

#### 第九百四十七条

物业服务期限届满前，业主依法共同决定续聘的，应当与原物业服务人在合同期限届满前续订物业服务合同。

**Article 947** Where the owners have jointly decided on renewal of appointment pursuant to the law prior to expiry of the term of estate services, they shall renew the estate services contract with the original estate services provider before expiry of the term of the contract.

物业服务期限届满前，物业服务人不同意续聘的，应当在合同期限届满前九十日书面通知业主或者业主委员会，但是合同对通知期限另有约定的除外。

Where the realty service provider does not agree to renew the employment prior to the expiration of the term of the realty service, he shall, 90 days prior to the expiration of the contract term, notify the owner or the owners' committee in writing, unless the contract provides otherwise for the period of notice.

#### 第九百四十八条

物业服务期限届满后，业主没有依法作出续聘或者另聘物业服务人的决定，物业服务人继续提供物业服务的，原物业服务合同继续有效，但是服务期限为不定期。

**Article 948** Upon expiry of the term of estate services, where the owners have not decided on renewal of appointment or engagement of a new estate service provider and the estate service provider continues to provide estate services, the original estate service contract shall continue to be valid but the term of service shall be ad hoc.

当事人可以随时解除不定期物业服务合同，但是应当提前六十日书面通知对方。

The party concerned may rescind a non-scheduled realty service contract at any time, but shall notify the other party in writing 60 days in advance.

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### 第九百四十九条

物业服务合同终止的，原物业服务人应当在约定期限或者合理期限内退出物业服务区域，将物业服务用房、相关设施、物业服务所必需的相关资料等交还给业主委员会、决定自行管理的业主或者其指定的人，配合新物业服务人做好交接工作，并如实告知物业的使用和管理状况。

**Article 949** Upon termination of an estate services contract, the original estate services provider shall exit from the estate services region within the agreed period or a reasonable period, return the estate services premises, the relevant facilities and the relevant materials required for the estate services to the owners' committee, the owners who have decided on self-management or their designated person, cooperate with the new estate services provider in the handover work, and notify the use and management of the estate truthfully.

原物业服务人违反前款规定的，不得请求业主支付物业服务合同终止后的物业费；造成业主损失的，应当赔偿损失。

Where the original estate services provider has violated the provisions of the preceding paragraph, it shall not request for payment of estate fees by the owners following termination of the estate services contract; where the violation causes the owners to suffer losses, the original estate services provider shall compensate for the losses.

### 第九百五十条

物业服务合同终止后，在业主或者业主大会选聘的新物业服务人或者决定自行管理的业主接管之前，原物业服务人应当继续处理物业服务事项，并可以请求业主支付该期间的物业费。

**Article 950** Upon termination of the estate services contract, the original estate services provider shall continue to handle estate services matters and may request the owners to pay estate fees for such period until the new estate services provider is appointed by the owners or the owners' group or before the owners who decide to manage the estate themselves take over.

## 第二十五章 行纪合同

### Chapter 25 CONTRACT OF COMMISSION AGENCY

### 第九百五十一条

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行纪合同是行纪人以自己的名义为委托人从事贸易活动，委托人支付报酬的合同。

**Article 951** A commission contract refers to a contract whereby the commission agent conducts trading activities in its own name for the principal, and the principal pays the remuneration.

#### 第九百五十二条

行纪人处理委托事务支出的费用，由行纪人负担，但是当事人另有约定的除外。

**Article 952.** Expenses paid by the commission agent in the course of handling delegated affairs shall be borne by the commission agent, except where the parties agree otherwise.

#### 第九百五十三条 行纪人占有委托物的，应当妥善保管委托物。

**Article 953** Where the commission agent is in possession of the entrusted item, it shall keep the entrusted item with due care.

#### 第九百五十四条

委托物交付给行纪人时有瑕疵或者容易腐烂、变质的，经委托人同意，行纪人可以处分该物；不能与委托人及时取得联系的，行纪人可以合理处分。

**Article 954** If an entrusted item is defective, perishable, or susceptible to deterioration at the time it was delivered to the commission agent, the commission agent may dispose of it with the consent of the principal. If the commission agent is unable to contact the principal in time, it may dispose of the entrusted item in a reasonable manner.

#### 第九百五十五条

行纪人低于委托人指定的价格卖出或者高于委托人指定的价格买入的，应当经委托人同意；未经委托人同意，行纪人补偿其差额的，该买卖对委托人发生效力。

**Article 955** Where the commission agent sells at a price lower than the price set by the principal or buys at a price higher than the price set by the principal, it shall obtain consent from the principal. Where the commission agent makes up for the difference in price without consent from the principal, the transaction is binding on the principal.

行纪人高于委托人指定的价格卖出或者低于委托人指定的价格买入的，可以按照约定增加报酬；没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，该利益属于委托人。

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Where the commission agent sells the entrusted item above, or buys the entrusted item below, the price designated by the principal, the remuneration may be increased in accordance with the contract; where there is no such agreement in the contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of the Law, the benefit shall belong to the principal.

委托人对价格有特别指示的，行纪人不得违背该指示卖出或者买入。

Where the principal gives special pricing instructions, the commission agent may not make any sale or purchase in contravention thereof.

### 第九百五十六条

行纪人卖出或者买入具有市场定价的商品，除委托人有相反的意思表示外，行纪人自己可以作为买受人或者出卖人。

**Article 956** Where the commission agent is to sell or purchase a commodity the price of which is determined by the market, it may act as the purchaser or seller itself, unless the principal has expressed a contrary intention.

行纪人有前款规定情形的，仍然可以请求委托人支付报酬。

Under the circumstance specified in the preceding paragraph, the broker may still request the principal to pay remuneration.

### 第九百五十七条

行纪人按照约定买入委托物，委托人应当及时受领。经行纪人催告，委托人无正当理由拒绝受领的，行纪人依法可以提存委托物。

**Article 957.** Where the commission agent purchases entrusted goods as agreed, the principal shall promptly collect the said goods. If, after the broker's urging with a notice, the principal refuses to accept the articles without justified reasons, the broker may place the entrusted articles in escrow in accordance with the law.

委托物不能卖出或者委托人撤回出卖，经行纪人催告，委托人不取回或者不处分该物的，行纪人依法可以提存委托物。

Where the entrusted articles cannot be sold or the principal withdraws the sale, and the principal fails to take back or dispose of the articles after the broker's urging with a notice, the broker may place the entrusted articles in escrow in accordance with the law.

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**第九百五十八条** 行纪人与第三人订立合同的，行纪人对该合同直接享有权利、承担义务。

**Article 958.** Where the commission agent concludes a contract with a third party, the commission agent shall directly enjoy rights and assume obligations under the said contract.

第三人不履行义务致使委托人受到损害的，行纪人应当承担赔偿责任，但是行纪人与委托人另有约定的除外。

Where the third party fails to perform its obligations, thereby causing damage to the principal, the commission agent shall be liable for compensation, unless the commission agent and the principal have agreed otherwise.

**第九百五十九条** 行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但是当事人另有约定的除外。

**Article 959** Where the commission agent has completed all or part of the entrusted affair (s), the principal shall pay the appropriate remuneration thereto. Where the principal fails to pay the remuneration in due time, the broker shall be entitled to a lien on the entrusted articles, unless the parties have agreed otherwise.

**第九百六十条** 本章没有规定的，参照适用委托合同的有关规定。

**Article 960** Matters not covered in this Chapter shall be handled with reference to the relevant provisions on mandate contracts.

## 第二十六章 中介合同

### Chapter 26 China Intermediary Contract

#### 第九百六十一条

中介合同是中介人向委托人报告订立合同的机会或者提供订立合同的媒介服务，委托人支付报酬的合同。

**Article 961** An intermediary contract is a contract whereby the intermediary reports to the entrusting party on an opportunity for concluding a contract or provides intermediary services in

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connection with the conclusion thereof, and the entrusting party pays the remuneration.

**第九百六十二条** 中介人应当就有关订立合同的事项向委托人如实报告。

**Article 962** The intermediary shall faithfully report to the entrusting party the relevant matters for concluding a contract.

中介人故意隐瞒与订立合同有关的重要事实或者提供虚假情况，损害委托人利益的，不得请求支付报酬并应当承担赔偿责任。

Where the intermediary intentionally conceals important facts relating to conclusion of the contract or provides false information, thus harming the interests of the entrusting party, the intermediary shall not request for payment of remuneration and shall bear compensation liability.

**第九百六十三条** 中介人促成合同成立的，委托人应当按照约定支付报酬。对中介人的报酬没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，根据中介人的劳务合理确定。因中介人提供订立合同的媒介服务而促成合同成立的，由该合同的当事人平均负担中介人的报酬。

**Article 963.** Where the intermediary facilitates the establishment of a contract, the principal shall pay remuneration in accordance with the parties' agreement. Where there has been no agreement or no clear agreement on intermediary remuneration, and it is not possible to determine remuneration in accordance with the provisions of Article 510 of this Law, remuneration shall be determined reasonably on the basis of the intermediary's labour. Where the conclusion of a contract has been facilitated by the provision of intermediary services, the remuneration to be paid to the intermediary shall be borne equally by the parties to the contract.

中介人促成合同成立的，中介活动的费用，由中介人负担。

If the medium party facilitates the establishment of a contract, the expenses of intermediary activities shall be borne by the medium party.

**第九百六十四条**

中介人未促成合同成立的，不得请求支付报酬；但是，可以按照约定请求委托人支付从事中介活动支出的必要费用。

**Article 964** An intermediary which fails to facilitate the establishment of a contract shall not request for payment of remuneration; however, the intermediary may, pursuant to the agreement,

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request the entrusting party to pay the requisite expenses incurred for intermediary activities.

### 第九百六十五条

委托人在接受中介人的服务后，利用中介人提供的交易机会或者媒介服务，绕开中介人直接订立合同的，应当向中介人支付报酬。

**Article 965** The entrusting party shall pay remuneration to the medium party if it, after accepting the medium party's service, takes advantage of the opportunity for transaction or medium service provided by the medium party and bypasses the medium party to conclude a contract directly.

**第九百六十六条** 本章没有规定的，参照适用委托合同的有关规定。

**Article 966** Matters not addressed in this chapter shall be handled with reference to the relevant provisions applying to mandate contracts.

## 第二十七章 合伙合同

### CHAPTER 27 PARTNERSHIP CONTRACT

### 第九百六十七条

合伙合同是两个以上合伙人为了共同的事业目的，订立的共享利益、共担风险的协议。

**Article 967.** A partnership contract shall refer to an agreement concluded between two or more partners for the purpose of achieving common business objectives, and the partners shall share profits and risks.

**第九百六十八条** 合伙人应当按照约定的出资方式、数额和缴付期限，履行出资义务。

**Article 968** A partner shall fulfil the obligation of capital contribution in accordance with the mode, amount and time limit for contribution.

**第九百六十九条** 合伙人的出资、因合伙事务依法取得的收益和其他财产，属于合伙财产。

**Article 969** The capital contributions of the partners, the profits lawfully obtained as a result of the partnership affairs and other property shall belong to the property of the partnership.

合伙合同终止前，合伙人不得请求分割合伙财产。

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Prior to the termination of a partnership contract, no partner may request for the division of partnership property.

### 第九百七十条

合伙人就合伙事务作出决定的，除合伙合同另有约定外，应当经全体合伙人一致同意。

**Article 970.** Unless the partnership contract stipulates otherwise, a decision made by the partners on partnership affairs shall require the unanimous consent of all the partners.

合伙事务由全体合伙人共同执行。按照合伙合同的约定或者全体合伙人的决定，可以委托一个或者数个合伙人执行合伙事务；其他合伙人不再执行合伙事务，但是有权监督执行情况。

The partnership affairs shall be executed jointly by all the partners. . One or more partners may be entrusted to conduct partnership affairs in accordance with the provisions of the partnership contract or a decision by all the partners. The other partners shall cease to conduct partnership affairs but shall have the right to supervise the status of implementation.

合伙人分别执行合伙事务的，执行事务合伙人可以对其他合伙人执行的事务提出异议；提出异议后，其他合伙人应当暂停该项事务的执行。

In case partners execute partnership affairs separately, an executive partner may object to the affairs executed by other partners, in which case the other partners shall suspend the execution of such affairs.

### 第九百七十一条

合伙人不得因执行合伙事务而请求支付报酬，但是合伙合同另有约定的除外。

**Article 971.** Unless the partnership contract stipulates otherwise, a partner shall not be permitted to request the payment of remuneration for the performance of partnership affairs.

### 第九百七十二条

合伙的利润分配和亏损分担，按照合伙合同的约定办理；合伙合同没有约定或者约定不明确的，由合伙人协商决定；协商不成的，由合伙人按照实缴出资比例分配、分担；无法确定出资比例的，由合伙人平均分配、分担。

**Article 972** The profits and losses of a partnership shall be distributed among the partners according to the stipulations of the partnership contract; if there are no such stipulations in the

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partnership contract or the stipulations are not clear, the profits and losses shall be distributed among the partners through consultation; if no agreement has been reached through consultation, the profits and losses shall be distributed among the partners according to the proportion of their paid-in capital contributions; if the proportion of capital contributions cannot be determined, the profits and losses shall be equally distributed among the partners.

### 第九百七十三条

合伙人对合伙债务承担连带责任。清偿合伙债务超过自己应当承担份额的合伙人，有权向其他合伙人追偿。

**Article 973.** Partners shall bear joint and several liability for partnership debts. The partner whose payment for clearing off the debts of the partnership exceeds the proportion that this partner should bear shall have the right to recover the difference from the other partners.

### 第九百七十四条

除合伙合同另有约定外，合伙人向合伙人以外的人转让其全部或者部分财产份额的，须经其他合伙人一致同意。

**Article 974** Unless the partnership contract stipulates otherwise, a partner proposing to transfer all or part of his/her share to an external party shall obtain the unanimous consent of all other partners.

### 第九百七十五条

合伙人的债权人不得代位行使合伙人依照本章规定和合伙合同享有的权利，但是合伙人享有的利益分配请求权除外。

**Article 975.** A creditor of a partner shall not be permitted to subrogate the partner to exercise the rights enjoyed by the partner pursuant to the provisions of this Chapter and the partnership contract, except where the partner has the right to claim a distribution of profits.

### 第九百七十六条

合伙人对合伙期限没有约定或者约定不明确，依据本法第五百一十条的规定仍不能确定的，视为不定期合伙。

**Article 976** Where there is no agreement in the contract between the partners on the duration of

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the partnership or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 510 of this Law, the partnership shall be deemed as a non-term partnership.

合伙期限届满，合伙人继续执行合伙事务，其他合伙人没有提出异议的，原合伙合同继续有效，但是合伙期限为不定期。

. Where the term of a partnership has expired and partners continue to conduct partnership affairs, and no objections have been raised by the other partners, the original partnership contract shall continue to be valid, but the term of the partnership shall be for an indefinite period.

合伙人可以随时解除不定期合伙合同，但是应当在合理期限之前通知其他合伙人。

A partner may cancel a partnership contract at any time, but shall notify the other partners a reasonable time in advance.

### 第九百七十七条

合伙人死亡、丧失民事行为能力或者终止的，合伙合同终止；但是，合伙合同另有约定或者根据合伙事务的性质不宜终止的除外。

**Article 977.** A partnership contract shall be terminated in the event of the death of a partner, loss of capacity for civil conduct or termination of partnership contract, unless the partnership contract stipulates otherwise or where termination is inappropriate due to the nature of the partnership matter.

### 第九百七十八条

合伙合同终止后，合伙财产在支付因终止而产生的费用以及清偿合伙债务后有剩余的，依据本法第九百七十二条的规定进行分配。

**Article 978** After the termination of the partnership contract, any balance of the property of the partnership after the payment of expenses incurred due to such termination and the repayment of debts of the partnership shall be distributed in accordance with Article 972 hereof.

## 第三分编 准 合 同

### The third subdivision of the standard contract

## 第二十八章 无 因 管 理

### Chapter 28 Negotiorum gestio

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### 第九百七十九条

管理人没有法定的或者约定的义务，为避免他人利益受损失而管理他人事务的，可以请求受益人偿还因管理事务而支出的必要费用；管理人因管理事务受到损失的，可以请求受益人给予适当补偿。

**Article 979.** Where an administrator does not have statutory or agreed obligations to manage the affairs of another party in order to avoid any loss in the interests of such party, the administrator may request that the beneficiary repay any necessary expenses incurred in the course of managing the affairs of such party. Where the administrator suffers any loss in the course of managing affairs, the administrator may request that the beneficiary give appropriate compensation.

管理事务不符合受益人真实意思的，管理人不享有前款规定的权利；但是，受益人的真实意思违反法律或者违背公序良俗的除外。

Where the management matters do not comply with the true intent of the beneficiary, the administrator shall not enjoy the rights stipulated in the preceding paragraph, except where the true intent of the beneficiary violates the law or the public order and morals.

### 第九百八十条

管理人管理事务不属于前条规定的情形，但是受益人享有管理利益的，受益人应当在其获得的利益范围内向管理人承担前条第一款规定的义务。

**Article 980** Where the management affairs of the administrator do not fall under the circumstances stipulated in the preceding Article, but the beneficiaries enjoy management interests, the beneficiaries shall bear the obligations stipulated in the first paragraph of the preceding Article to the extent of their gains.

### 第九百八十一条

管理人管理他人事务，应当采取有利于受益人的方法。中断管理对受益人不利的，无正当理由不得中断。

**Article 981.** An administrator in charge of other party affairs shall adopt measures favourable to the beneficiaries. Where the suspension of management is unfavourable to the beneficiary, it shall not be suspended without a proper reason.

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### 第九百八十二条

管理人管理他人事务，能够通知受益人的，应当及时通知受益人。管理的事务不需要紧急处理的，应当等待受益人的指示。

**Article 982.** Where the administrator manages the affairs of another party and is able to notify the beneficiaries, the beneficiaries shall be notified promptly. If there is no need to deal with the matters under management urgently, it shall wait for the instruction of the beneficiary.

第九百八十三条 管理结束后，管理人应当向受益人报告管理事务的情况。管理人管理事务取得的财产，应当及时转交给受益人。

**Article 983** Upon completion of administration, the administrator shall report the status of administration matters to the beneficiaries. The property acquired by the administrator in managing affairs shall be promptly transferred to the beneficiaries. (Relevant articles:

### 第九百八十四条

管理人管理事务经受益人事后追认的，从管理事务开始时起，适用委托合同的有关规定，但是管理人另有意思表示的除外。

**Article 984** Where the management affairs of the administrator are subsequently ratified by the beneficiary, the relevant provisions of the entrustment contract shall apply with effect from the commencement of the management affairs, unless the administrator has indicated otherwise.

## 第二十九章 不当得利

### Chapter 29 Unjust Enrichment

### 第九百八十五条

得利人没有法律根据取得不当利益的，受损失的人可以请求得利人返还取得的利益，但是有下列情形之一的除外：

**Article 985** If a person who has obtained unjust enrichment without any legal basis, the person who has suffered loss may request the person who has obtained the benefit to return the gained interest, except under any of the following circumstances:

(一) 为履行道德义务进行的给付；

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1. any payment made in order to fulfill a moral obligation;

(二) 债务到期之前的清偿;

(II) repayment of debts prior to their maturity;

(三) 明知无给付义务而进行的债务清偿。

(III) Repayment of debts in full awareness of no obligation to pay.

### 第九百八十六条

得利人不知道且不当知道取得的利益没有法律根据，取得的利益已经不存在的，不承担返还该利益的义务。

**Article 986** If the beneficiary does not know and should not have known that the interest obtained has no legal basis and the interest obtained has ceased to exist, the beneficiary is not obliged to return the said interest.

### 第九百八十七条

得利人知道或者应当知道取得的利益没有法律根据的，受损失的人可以请求得利人返还其取得的利益并依法赔偿损失。

**Article 987** Where the beneficiary knows or should have known that the interest obtained has no legal basis, the person suffering losses may request the beneficiary to return the interest obtained and make compensation for the losses in accordance with the law.

### 第九百八十八条

得利人已经将取得的利益无偿转让给第三人的，受损失的人可以请求第三人在相应范围内承担返还义务。

**Article 988** Where the beneficiary has transferred the interest obtained without compensation to a third party, the person suffering losses may request the third party to assume the obligation of returning the interest within a corresponding scope.

## 第四编 人格权

### Part 4 Personality Rights

#### 第一章 一般规定

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## CHAPTER 1 GENERAL PROVISIONS

**第九百八十九条** 本编调整因人格权的享有和保护产生的民事关系。

**Article 989** This Part governs civil relationships arising from the enjoyment and protection of rights to personality.

### 第九百九十条

人格权是民事主体享有的生命权、身体权、健康权、姓名权、名称权、肖像权、名誉权、荣誉权、隐私权等权利。

**Article 990** Personality rights are the right to life, physical rights, health rights, name rights, name rights, portrait rights, reputation rights, honor rights, privacy rights, and other rights to which a civil subject is entitled.

除前款规定的人格权外，自然人享有基于人身自由、人格尊严产生的其他人格权益。

Except for the personality rights provided in the preceding paragraph, a natural person shall enjoy other personality rights and interests generated from personal freedom and personal dignity.

**第九百九十一条** 民事主体的人格权受法律保护，任何组织或者个人不得侵害。

**Article 991** The right of personality of civil subjects shall be protected by the law; no organization or individual may infringe such right.

**第九百九十二条** 人格权不得放弃、转让或者继承。

**Article 992** Personality rights shall not be renounced, transferred or inherited.

### 第九百九十三条

民事主体可以将自己的姓名、名称、肖像等许可他人使用，但是依照法律规定或者根据其性质不得许可的除外。

**Article 993** A civil subject may license others to use his or her name, title, portrait, etc., except where such license is not allowed according to the law or the nature of the civil subject.

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#### 第九百九十四条

死者的姓名、肖像、名誉、荣誉、隐私、遗体等受到侵害的，其配偶、子女、父母有权依法请求行为人承担民事责任；死者没有配偶、子女且父母已经死亡的，其他近亲属有权依法请求行为人承担民事责任。

**Article 994** Where the name, portrait, reputation, honor, privacy or remains of the deceased is infringed upon, his spouse, children or parents shall have the right to request the actor to bear civil liability according to law. Where the deceased has no spouse or children and his parents are dead, other close relatives shall have the right to request the actor to bear civil liability according to law.

第九百九十五条 人格权受到侵害的，受害人有权依照本法和其他法律的规定请求行为人承担民事责任。受害人的停止侵害、排除妨碍、消除危险、消除影响、恢复名誉、赔礼道歉请求权，不适用诉讼时效的规定。

**Article 995** Where the personal rights are infringed, the victim shall have the right to request the actor to bear civil liability in accordance with the provisions of this Law and other laws. The provisions on the limitation of action shall not apply to a victim's rights to request for cessation of an infringement, removal of an obstacle, elimination of danger, elimination of impact, restoration of reputation or extension of an apology.

#### 第九百九十六条

因当事人一方的违约行为，损害对方人格权并造成严重精神损害，受损害方选择请求其承担违约责任的，不影响受损害方请求精神损害赔偿。

**Article 996** Where a party's breach of contract harms the other party's personality and causes serious mental impairment, and the aggrieved party opts to request such party to assume liability for breach of contract, the aggrieved party's request for emotional damages shall not be affected.

#### 第九百九十七条

民事主体有证据证明行为人正在实施或者即将实施侵害其人格权的违法行为，不及时制止将使其合法权益受到难以弥补的损害的，有权依法向人民法院申请采取责令行为人停止有关行为的措施。

**Article 997** Where a civil subject has evidence to prove that an actor is committing or is going to commit an illegal act that infringes upon its personality, and its legitimate rights and

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**interests will suffer irreparable damage if such act is not stopped promptly, it has the right to apply to the people's court for ordering the actor to cease the relevant act.**

### **第九百九十八条**

认定行为人承担侵害除生命权、身体权和健康权外的人格权的民事责任，应当考虑行为人和受害人的职业、影响范围、过错程度，以及行为的目的、方式、后果等因素。

**Article 998** In determining an actor's civil liability for infringing upon personality rights other than the right to life, personal rights and health rights, such factors as the occupation, scope of influence, degree of fault of the actor and the victim, as well as the purpose, method and consequence of the conduct shall be considered.

### **第九百九十九条**

为公共利益实施新闻报道、舆论监督等行为的，可以合理使用民事主体的姓名、名称、肖像、个人信息等；使用不合理侵害民事主体人格权的，应当依法承担民事责任。

**Article 999** Persons who carry out news reporting, public opinion supervision etc for public interest may make reasonable use of the name, title, portrait, personal information etc of a civil entity; persons who use unreasonably to infringe upon the personality rights of a civil entity shall bear civil liability pursuant to the law.

### **第一千条**

行为人因侵害人格权承担消除影响、恢复名誉、赔礼道歉等民事责任的，应当与行为的具体方式和造成的影响范围相当。

**Article 1,000** The assumption of such civil liabilities as elimination of ill effects, rehabilitation of reputation and apology by an actor due to infringement upon the right of personality shall be in line with the specific way of the act and the scope of influence.

行为人拒不承担前款规定的民事责任的，人民法院可以采取在报刊、网络等媒体上发布公告或者公布生效裁判文书等方式执行，产生的费用由行为人负担。

If the actor refuses to bear the civil liability prescribed in the preceding paragraph, the people's court may enforce the judgment or ruling at the cost of the actor, by publishing an announcement in the newspapers, the Internet or other media or by publishing the effective judgment.

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### 第一千零一条

对自然人因婚姻家庭关系等产生的身份权利的保护，适用本法第一编、第五编和其他法律的相关规定；没有规定的，可以根据其性质参照适用本编人格权保护的有关规定。

**Article 101** For the protection of the status rights of natural persons arising from marriage and family relations, the relevant provisions of Part 1 and Part 5 of this Law and other laws shall apply; if there is no provision, the relevant provisions of this Part on the protection of rights of personality may apply by reference according to the nature thereof.

## 第二章 生命权、身体权和健康权

### Chapter 2 Right to Life, Right to Body and Right to Health

第一千零二条 自然人享有生命权。自然人的生命安全和生命尊严受法律保护。任何组织或者个人不得侵害他人的生命权。

**Article 1102** A natural person shall enjoy the right to life. The safety and dignity of life of natural persons are protected by law. No organization or individual may infringe upon the right to life of any other person.

### 第一千零三条

自然人享有身体权。自然人的身体完整和行动自由受法律保护。任何组织或者个人不得侵害他人的身体权。

**Article 103** A natural person enjoys bodily rights. Physical integrity and freedom of movement of natural persons are protected by law. No organization or individual may infringe upon the bodily rights of others.

第一千零四条 自然人享有健康权。自然人的身心健康受法律保护。任何组织或者个人不得侵害他人的健康权。

**Article 104** A natural person shall enjoy the right to health. The physical and mental health of natural persons is protected by law. No organization or individual may infringe upon others' right to health.

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### 第一千零五条

自然人的生命权、身体权、健康权受到侵害或者处于其他危难情形的，负有法定救助义务的组织或者个人应当及时施救。

**Article 105** Where the right to life, physical rights or health of a natural person is infringed upon or is in other dangerous situations, the organization or individual that is obliged to rescue in accordance with the law shall rescue him/her without delay.

### 第一千零六条

完全民事行为能力人有权依法自主决定无偿捐献其人体细胞、人体组织、人体器官、遗体。任何组织或者个人不得强迫、欺骗、利诱其捐献。

**Article 106** A person with full capacity for civil conduct shall have the right to decide on his/her own voluntary donation of human cells, human tissues, human organs or body pursuant to the law. No organization or individual may force, cheat or induce the benefactor to donate.

完全民事行为能力人依据前款规定同意捐献的，应当采用书面形式，也可以订立遗嘱。

If the person with full capacity for civil conduct agrees to donate the human organ mentioned in the preceding paragraph, he shall make the donation in writing or make a will.

自然人生前未表示不同意捐献的，该自然人死亡后，其配偶、成年子女、父母可以共同决定捐献，决定捐献应当采用书面形式。

If a natural person does not express disapproval to donate during his lifetime, his spouse, adult children and parents may jointly decide to donate the human organ after his death. The decision on donation shall be made in writing.

### 第一千零七条 禁止以任何形式买卖人体细胞、人体组织、人体器官、遗体。

**Article 107** It is prohibited to purchase or sell human cells, human tissues, human organs or corpses in any form.

违反前款规定的买卖行为无效。

Any purchase or sale in violation of the preceding paragraph shall be null and void.

### 第一千零八条

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为研制新药、医疗器械或者发展新的预防和治疗方法，需要进行临床试验的，应当依法经相关主管部门批准并经伦理委员会审查同意，向受试者或者受试者的监护人告知试验目的、用途和可能产生的风险等详细情况，并经其书面同意。

**Article 108** Where clinical trials are required to develop new drugs and medical devices or new prophylactic and treatment methods, such clinical trials shall be approved by the relevant competent departments in accordance with the law and shall be subject to the examination and approval of the ethics committee. The subjects or their guardians shall be informed of the purpose, purpose, possible risks and other details of the trials and shall be subject to the written consent of the ethics committee.

进行临床试验的，不得向受试者收取试验费用。

To conduct a clinical trial, no charge may be collected from the human subjects.

### 第一千零九条

从事与人体基因、人体胚胎等有关的医学和科研活动的，应当遵守法律、行政法规和国家有关规定，不得危害人体健康，不得违背伦理道德，不得损害公共利益。

**Article 109** Persons engaged in medical and scientific research activities related to human genes or human embryos shall abide by the laws, administrative regulations and the relevant provisions of the State, and shall not endanger human health, violate ethics or damage public interests.

### 第一千零一十条

违背他人意愿，以言语、文字、图像、肢体行为等方式对他人实施性骚扰的，受害人有权依法请求行为人承担民事责任。

**Article 1010** Where a person acts sexually harassing another person in words, words, images, physical behaviors or otherwise against the will of the person, the victim has the right to request the person to bear civil liability according to the law.

机关、企业、学校等单位应当采取合理的预防、受理投诉、调查处置等措施，防止和制止利用职权、从属关系等实施性骚扰。

Agencies, enterprises, schools etc shall adopt reasonable prevention, acceptance and handling of complaints, investigation and handling measures etc to prevent and curb sexual harassment by making use of official powers and affiliation etc.

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### 第一千零一十一条

以非法拘禁等方式剥夺、限制他人的行动自由，或者非法搜查他人身体的，受害人有权依法请求行为人承担民事责任。

**Article 1011** Where a person is deprived of or restricted in his freedom of movement by such means as illegal detention, or makes an illegal body search of another person, the victim shall have the right to request the person committing the act to bear civil liability in accordance with law.

## 第三章 姓名权和名称权

### Chapter 3 Rights Relating to Names and Rights Relating to Names

### 第一千零一十二条

自然人享有姓名权，有权依法决定、使用、变更或者许可他人使用自己的姓名，但是不得违背公序良俗。

**Article 1012** A natural person shall enjoy the right to a name and shall be entitled to determine, use, change or license others to use his/her name in accordance with the law, provided that the public order and good morals are not violated.

### 第一千零一十三条

法人、非法人组织享有名称权，有权依法决定、使用、变更、转让或者许可他人使用自己的名称。

**Article 1013** A legal person or an unincorporated association shall enjoy the naming rights and shall be entitled to determine, use, change, transfer or license others to use its own name in accordance with the law.

第一千零一十四条 任何组织或者个人不得以干涉、盗用、假冒等方式侵害他人的姓名权或者名称权。

**Article 1014** No organization or individual may infringe upon the right to a name or the naming rights of others by interference, usurpation, imitation or other means.

### 第一千零一十五条

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自然人应当随父姓或者母姓，但是有下列情形之一的，可以在父姓和母姓之外选取姓氏：

**Article 1015** A natural person shall adopt his or her father's or mother's surname, but may choose a surname other than that of his or her father or mother under any of the following circumstances:

（一）选取其他直系长辈血亲的姓氏；

1. choose the surname of a senior lineal relative by blood;

（二）因由法定扶养人以外的人扶养而选取扶养人姓氏；

(II) choose the surname of the fosterer where he or she is raised by a person other than the legal fosterers; and

（三）有不违背公序良俗的其他正当理由。

(III) where there is any other justified reason not in violation of public order and good morals.

少数民族自然人的姓氏可以遵从本民族的文化传统和风俗习惯。

The surnames of natural persons of ethnic minorities may follow the cultural traditions and customs of their own ethnic groups.

### 第一千零一十六条

自然人决定、变更姓名，或者法人、非法人组织决定、变更、转让名称的，应当依法向有关机关办理登记手续，但是法律另有规定的除外。

**Article 1016** Where a natural person decides on or changes his/her name, or a legal person or an unincorporated association decides on, changes or assigns its name, registration formalities shall be completed with the relevant authorities in accordance with the law, unless otherwise stipulated by the law.

民事主体变更姓名、名称的，变更前实施的民事法律行为对其具有法律约束力。

Where a civil subject changes its name or title, the civil juristic acts performed by it before such change shall be legally binding.

第一千零一十七条 具有一定社会知名度，被他人使用足以造成公众混淆的笔名、艺名、网名、译名、字号、姓名和名称的简称等，参照适用姓名权和名称权保护的有关规定。

**Article 1017** For a pen name, stage name, website name, translated name, trade name,

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abbreviation of a name, etc., which enjoys certain social popularity and is used by others enough to cause public confusion, the relevant provisions on the protection of the rights of name and naming rights shall apply mutatis mutandis.

## 第四章 肖像权

### Chapter 4 Pictorial Rights

#### 第一千零一十八条

自然人享有肖像权，有权依法制作、使用、公开或者许可他人使用自己的肖像。

**Article 1018** A natural person shall enjoy the right of portrait and shall be entitled to make, use, make public, or permit others to use his own portrait.

肖像是通过影像、雕塑、绘画等方式在一定载体上所反映的特定自然人可以被识别的外部形象。

Portrait is an external image that can be recognized by a specific natural person reflected on a certain carrier by means of image, sculpture and painting.

#### 第一千零一十九条

任何组织或者个人不得以丑化、污损，或者利用信息技术手段伪造等方式侵害他人的肖像权。未经肖像权人同意，不得制作、使用、公开肖像权人的肖像，但是法律另有规定的除外。

**Article 1019** No organization or individual may infringe upon any other person's right to portrait by vilifying, defacing, forging by means of information technology or otherwise. Without the consent of a person entitled to portrait, the portrait of such person shall not be produced, used or made public, unless otherwise provided by law.

未经肖像权人同意，肖像作品权利人不得以发表、复制、发行、出租、展览等方式使用或者公开肖像权人的肖像。

Without the consent of a person entitled to portrait, the holder of rights to portrait works shall not use or make public the portrait of such person by means of publication, reproduction, distribution, lease, exhibition, etc.

**第一千零二十条** 合理实施下列行为的，可以不经肖像权人同意：

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**Article 1020** The consent of a person entitled to portrait is not required for reasonable implementation of any of the following acts:

(一) 为个人学习、艺术欣赏、课堂教学或者科学研究，在必要范围内使用肖像权人已经公开的肖像；

1. using a public portrait of a person with the right of portrait within a necessary scope for the purpose of personal study, artistic appreciation, classroom teaching or scientific research;

(二) 为实施新闻报道，不可避免地制作、使用、公开肖像权人的肖像；

(II) producing, using or making public the portrait of a person entitled to portrait inevitably for the purpose of news report;

(三) 为依法履行职责，国家机关在必要范围内制作、使用、公开肖像权人的肖像；

(III) for the purpose of performing duties in accordance with the law, producing, using or making public the portrait of a person entitled to portrait within the necessary scope;

(四) 为展示特定公共环境，不可避免地制作、使用、公开肖像权人的肖像；

(IV) Inevitably producing, using or making public the portrait of a person entitled to portrait for the purpose of displaying the specific public environment;

(五) 为维护公共利益或者肖像权人合法权益，制作、使用、公开肖像权人的肖像的其他行为。

(V) Other acts of making, using or making public the portrait of a person entitled to portrait, for the purpose of safeguarding public interests or the legitimate rights and interests of the person.

### 第一千零二十一条

当事人对肖像许可使用合同中关于肖像使用条款的理解有争议的，应当作出有利于肖像权人的解释。

**Article 1021** Where any dispute arises between the parties over the understanding of any term on the use of a portrait under a portrait licensing contract, an interpretation in favor of the holder of the right to portrait shall be made.

### 第一千零二十二条

当事人对肖像许可使用期限没有约定或者约定不明确的，任何一方当事人可以随时解除肖像许可使用合同，但是应当在合理期限之前通知对方。

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**Article 1022** Where there are no stipulations between the parties on the duration of the license for using a portrait or such stipulations are unclear, any of the parties may rescind the contract for the license for using a portrait at any time, but shall notify the other party a reasonable time in advance.

当事人对肖像许可使用期限有明确约定，肖像权人有正当理由的，可以解除肖像许可使用合同，但是应当在合理期限之前通知对方。因解除合同造成对方损失的，除不可归责于肖像权人的事由外，应当赔偿损失。

Where the parties concerned have expressly agreed upon the term of license for use of the portrait, and the holder of the right to portrait has justified reasons, the contract for license for use of portrait may be rescinded, provided that the other party shall be notified before a reasonable term. The party causing losses to the other party due to the rescission of the contract shall compensate for such losses, except for causes not attributable to the holder of the right to portrait.

**第一千零二十三条** 对姓名等的许可使用，参照适用肖像许可使用的有关规定。

**Article 1023** The relevant provisions on license for use of portrait shall apply *mutatis mutandis* to the license for use of names and so on.

对自然人声音的保护，参照适用肖像权保护的有关规定。

The relevant provisions on protection of rights to portrait shall apply as reference to protection of voices of natural persons.

## 第五章 名誉权和荣誉权

### Chapter 5 Rights of reputation and honour

**第一千零二十四条** 民事主体享有名誉权。任何组织或者个人不得以侮辱、诽谤等方式侵害他人的名誉权。

**Article 1024** A civil subject shall enjoy the right of reputation. No organization or individual may infringe upon a person's rights to reputation by such means as insult or libel.

名誉是对民事主体的品德、声望、才能、信用等的社会评价。

Reputation is the social evaluation of the moral character, prestige, ability and credit of the civil subject.

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### 第一千零二十五条

行为人为公共利益实施新闻报道、舆论监督等行为，影响他人名誉的，不承担民事责任，但是有下列情形之一的除外：

**Article 1025** If an actor commits an act of news reporting or public opinion supervision for the public interest, thus affecting the reputation of another person, he shall not bear civil liability, except under any of the following circumstances:

（一）捏造、歪曲事实；

1. Fabricate or distort the facts;

（二）对他人提供的严重失实内容未尽到合理核实义务；

(II) Where the service provider fails to fulfill its obligation of reasonable verification of seriously inaccurate contents provided by others;

（三）使用侮辱性言辞等贬损他人名誉。

(III) Using insulting words to belittle the reputation of others.

### 第一千零二十六条

认定行为人是否尽到前条第二项规定的合理核实义务，应当考虑下列因素：

**Article 1026** The following factors shall be considered in determining whether or not an actor has fulfilled the obligation of reasonable verification as prescribed in Item 2 of the preceding Article:

（一）内容来源的可信度；

1. Credibility of the source of content;

（二）对明显可能引发争议的内容是否进行了必要的调查；

(II) whether necessary investigations have been made into the content that is obviously likely to cause a dispute; and

（三）内容的时限性；

(III) timeliness of the content;

（四）内容与公序良俗的关联性；

(IV) relevance between contents and public order and good morals;

（五）受害人名誉受贬损的可能性；

(V) the possibility that the victim's reputation may be defamed;

（六）核实能力和核实成本。

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## (VI) Verification Capability and Verification Cost

### 第一千零二十七条

行为人发表的文学、艺术作品以真人真事或者特定人为描述对象，含有侮辱、诽谤内容，侵害他人名誉权的，受害人有权依法请求该行为人承担民事责任。

**Article 1027** If a literary or artistic work published by an actor uses a real person, a real fact or a specific person as the subject of description to insult or slander others and thus infringes upon the rights to reputation of others, the victim shall have the right to request the actor to bear civil liability in accordance with the law.

行为人发表的文学、艺术作品不以特定人为描述对象，仅其中的情节与该特定人的情况相似的，不承担民事责任。

If a literary or artistic work published by an actor does not take a specific person as the object of description but has circumstances similar to those of such specific person, he shall not bear civil liability.

### 第一千零二十八条

民事主体有证据证明报刊、网络等媒体报道的内容失实，侵害其名誉权的，有权请求该媒体及时采取更正或者删除等必要措施。

**Article 1028** Where a civil subject has evidence to prove that any content reported by newspapers, periodicals, the internet or other media is inaccurate, thereby infringing its right of reputation, it shall have the right to request the media to promptly take necessary measures to correct or delete the content.

第一千零二十九条 民事主体可以依法查询自己的信用评价；发现信用评价不当的，有权提出异议并请求采取更正、删除等必要措施。信用评价人应当及时核查，经核查属实的，应当及时采取必要措施。

**Article 1029** A civil subject may inquire about its own credit rating according to the law; if it finds that any credit rating is improper, it has the right to raise an objection and request necessary measures such as corrections or deletions. The credit evaluator shall conduct the verification in a timely manner, and take necessary measures in a timely manner if the verification is true.

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### 第一千零三十条

民事主体与征信机构等信用信息处理者之间的关系，适用本编有关个人信息保护的规定和其他法律、行政法规的有关规定。

**Article 1030** The relationship between civil subjects and credit information processors such as credit reporting agencies shall be governed by the provisions of this Part on personal information protection and the relevant provisions of other laws and administrative regulations.

第一千零三十一条 民事主体享有荣誉权。任何组织或者个人不得非法剥夺他人的荣誉称号，不得诋毁、贬损他人的荣誉。

**Article 1031** A civil subject shall enjoy the right of honor. No organization or individual may unlawfully deprive other people of their honorary titles, or defame or belittle their honors.

获得的荣誉称号应当记载而没有记载的，民事主体可以请求记载；获得的荣誉称号记载错误的，民事主体可以请求更正。

Where an honorary title obtained shall be recorded but has not been recorded, the civil subject may request such record; where an honorary title obtained is recorded incorrectly, the civil subject may request a correction.

## 第六章 隐私权和个人信息保护

### Chapter 6 Right to Privacy and Protection of Personal Information

### 第一千零三十二条

自然人享有隐私权。任何组织或者个人不得以刺探、侵扰、泄露、公开等方式侵害他人的隐私权。

**Article 1032** A natural person shall enjoy the right of privacy. No organization or individual may infringe upon the privacy of any other person by spying, invading and harassing, disclosing or disclosing the relevant information or by any other means.

隐私是自然人的私人生活安宁和不愿为他人知晓的私密空间、私密活动、私密信息。

Privacy is a natural person's private life peace and do not want to know for others private space, private activities, private information.

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### 第一千零三十三条

除法律另有规定或者权利人明确同意外，任何组织或者个人不得实施下列行为：

**Article 1033** Unless otherwise prescribed by the law or specifically agreed by the rights holders, no organization or individual may carry out any of the following acts:

（一）以电话、短信、即时通讯工具、电子邮件、传单等方式侵扰他人的私人生活安宁；

1. disturbing the private peace of others by means of telephone, text message, instant messaging tools, e-mails, leaflets, etc.;

（二）进入、拍摄、窥视他人的住宅、宾馆房间等私密空间；

(II) Entering, shooting or peeping into the private spaces of others' houses or hotel rooms;

（三）拍摄、窥视、窃听、公开他人的私密活动；

(III) Photographing, peeping, eavesdropping, or making public the private activities of others;

（四）拍摄、窥视他人身体的私密部位；

(IV) taking photos of or peeping at private parts of others' bodies;

（五）处理他人的私密信息；

(V) Dealing with the confidential information of others;

（六）以其他方式侵害他人的隐私权。

(VI) infringing upon the privacy of others by other means.

**第一千零三十四条** 自然人的个人信息受法律保护。

**Article 1034** The personal information of a natural person shall be protected by the law.

个人信息是以电子或者其他方式记录的能够单独或者与其他信息结合识别特定自然人的各种信息，包括自然人的姓名、出生日期、身份证件号码、生物识别信息、住址、电话号码、电子邮箱、健康信息、行踪信息等。

Personal information refers to all kinds of information recorded by electronic or otherwise that can be used to independently identify or be combined with other information to identify specific natural persons, including the natural persons' names, dates of birth, ID numbers, biometric information, addresses, telephone numbers, e-mail addresses, health information, whereabouts, etc.

个人信息中的私密信息，适用有关隐私权的规定；没有规定的，适用有关个人信息

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保护的规定。

For the confidential information included in personal information, the provisions on privacy rights shall apply; if no provisions are available, the provisions on personal information protection shall apply.

### 第一千零三十五条

处理个人信息的，应当遵循合法、正当、必要原则，不得过度处理，并符合下列条件：

**Article 1035** The handling of personal information shall be subject to the principle of legitimacy, rightfulness and necessity, shall not involve excessive handling and shall meet the following conditions:

（一）征得该自然人或者其监护人同意，但是法律、行政法规另有规定的除外；

1. unless otherwise provided by laws or administrative regulations, with the consent of the natural person or the guardian thereof; and

（二）公开处理信息的规则；

(II) rules on disclosure of processing information;

（三）明示处理信息的目的、方式和范围；

(III) to expressly state the purpose, method and scope of information treatment;

（四）不违反法律、行政法规的规定和双方的约定。

(IV) The provision of the laws and administrative regulations and the agreement of both parties shall not be violated.

个人信息的处理包括个人信息的收集、存储、使用、加工、传输、提供、公开等。

Personal information processing includes the collection, storage, use, processing, transmission, provision and disclosure of Personal information, etc.

第一千零三十六条 处理个人信息，有下列情形之一的，行为人不承担民事责任：

**Article 1036** Where the handling of personal information falls under any of the following circumstances, the actor concerned shall not bear civil liability:

（一）在该自然人或者其监护人同意的范围内合理实施的行为；

1. Acts performed reasonably within the scope agreed by the natural person or his or her guardian;

（二）合理处理该自然人自行公开的或者其他已经合法公开的信息，但是该自然人

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明确拒绝或者处理该信息侵害其重大利益的除外；

(II) Deal reasonably with the information made public by the natural person himself or herself or other information that has been legally made public, unless the natural person explicitly refuses to do so or deals with the circumstance where such information infringes upon his or her major interests; and

(三) 为维护公共利益或者该自然人合法权益，合理实施的其他行为。

(III) Other reasonable acts performed to protect the public interests or the legitimate rights and interests of the natural persons.

### 第一千零三十七条

自然人可以依法向信息处理者查阅或者复制其个人信息；发现信息有错误的，有权提出异议并请求及时采取更正等必要措施。

**Article 1037** A natural person may consult or copy his/her personal information with any information processor in accordance with the law; if any error is found in the information, the natural person has the right to raise an objection and request the information processor to take necessary measures such as corrections in a timely manner.

自然人发现信息处理者违反法律、行政法规的规定或者双方的约定处理其个人信息的，有权请求信息处理者及时删除。

Where a natural person discovers that an information processor has processed his/her personal information in violation of the provisions of laws and administrative regulations or the agreement between both parties, he/she shall have the right to request that the information processor promptly delete the information.

### 第一千零三十八条

信息处理者不得泄露或者篡改其收集、存储的个人信息；未经自然人同意，不得向他人非法提供其个人信息，但是经过加工无法识别特定个人且不能复原的除外。

**Article 1038** Information processors shall not divulge or tamper with personal information collected or stored by them; without the consent of a natural person, information processors shall not illegally provide personal information of such person to others, except for information that has been processed and cannot be identified with specific persons and cannot be restored.

信息处理者应当采取技术措施和其他必要措施，确保其收集、存储的个人信息安全

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，防止信息泄露、篡改、丢失；发生或者可能发生个人信息泄露、篡改、丢失的，应当及时采取补救措施，按照规定告知自然人并向有关主管部门报告。

An information processor shall take technical measures and other necessary measures to ensure the security of the personal information it collects and stores and to prevent the information from being divulged, tampered with or lost; where personal information has been or may be divulged, tampered with or lost, it shall take remedial measures in a timely manner, inform the natural person concerned in accordance with the provisions and report the case to the relevant competent department.

### 第一千零三十九条

国家机关、承担行政职能的法定机构及其工作人员对于履行职责过程中知悉的自然人的隐私和个人信息，应当予以保密，不得泄露或者向他人非法提供。

**Article 1039** State organs, statutory agencies with administrative functions and their staff shall keep confidential the privacy and personal information of natural persons that come into their knowledge during the performance of duties, and shall not divulge the same or illegally provide the same to others.

## 第五编 婚姻家庭

### PART FIVE MARRIAGE COURT

#### 第一章 一般规定

### CHAPTER 1 GENERAL PROVISIONS

**第一千零四十条** 本编调整因婚姻家庭产生的民事关系。

**Article 1040** This Part is for the purpose of regulating civil relations arising out of marriage or family.

**第一千零四十一条** 婚姻家庭受国家保护。

**Article 1041.** Marriage and the family are protected by the State.

实行婚姻自由、一夫一妻、男女平等的婚姻制度。

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A marriage system based on the free choice of partners, on monogamy and on equality between men and women shall be applied.

保护妇女、未成年人、老年人、残疾人的合法权益。

The lawful rights and interests of women, minors, the elderly and the disabled shall be protected.

**第一千零四十二条** 禁止包办、买卖婚姻和其他干涉婚姻自由的行为。禁止借婚姻索取财物。

**Article 1042** Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited. It is forbidden to extort money by marriage.

禁止重婚。禁止有配偶者与他人同居。

Bigamy is forbidden. Those who have spouses are forbidden to cohabit with others.

禁止家庭暴力。禁止家庭成员间的虐待和遗弃。

Domestic violence is prohibited. Abuse and abandonment of family members are prohibited.

**第一千零四十三条** 家庭应当树立优良家风，弘扬家庭美德，重视家庭文明建设。

**Article 1043** Families shall cultivate good family customs, carry forward family virtues, and attach importance to the construction of family civilization.

夫妻应当互相忠实，互相尊重，互相关爱；家庭成员应当敬老爱幼，互相帮助，维护平等、和睦、文明的婚姻家庭关系。

Husband and wife shall be loyal to each other, respect and care for each other; family members shall respect the old and cherish the young, help each other, and maintain the marriage and family relationship characterized by equality, harmony and civility.

**第一千零四十四条**

收养应当遵循最有利于被收养人的原则，保障被收养人和收养人的合法权益。

**Article 1044** Adoption shall follow the principle of benefiting the adoptee to the largest extent, and the lawful rights and interests of both the adoptee and the adopter shall be protected.

禁止借收养名义买卖未成年人。

It is prohibited to buy or sell minors under the cloak of adoption.

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**第一千零四十五条** 亲属包括配偶、血亲和姻亲。

**Article 1045** Relatives include spouses, blood relatives and in-laws. (Relevant articles: Articles

1)

配偶、父母、子女、兄弟姐妹、祖父母、外祖父母、孙子女、外孙子女为近亲属。

Spouse, parents, children, brothers and sisters, paternal grandparents, maternal grandparents, grandchildren, and maternal grandchildren are close relatives.

配偶、父母、子女和其他共同生活的近亲属为家庭成员。

Spouses, parents, children and other close relatives living together shall be family members.

## 第二章 结 婚

### CHAPTER 2 MARRIAGE

**第一千零四十六条**

结婚应当男女双方完全自愿，禁止任何一方对另一方加以强迫，禁止任何组织或者个人加以干涉。

**Article 1046** Marriage shall be based upon the complete willingness of both man and woman. Coercion by either party against the other party shall be prohibited, and interference by any organization or individual shall be prohibited.

**第一千零四十七条** 结婚年龄，男不得早于二十二周岁，女不得早于二十周岁。

**Article 1047** No marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age. (Relevant articles: Legislation 1)

**第一千零四十八条** 直系血亲或者三代以内的旁系血亲禁止结婚。

**Article 1048** It shall be forbidden for people who are lineal relatives by blood or collateral relatives by blood up to the third degree of kinship to get married.

**第一千零四十九条** 要求结婚的男女双方应当亲自到婚姻登记机关申请结婚登记。符合本法规定的，予以登记，发给结婚证。完成结婚登记，即确立婚姻关系。未办理结婚

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登记的，应当补办登记。

**Article 1049** Both the man and the woman desiring to contract a marriage shall apply in person to the marriage registration office for marriage registration. If the proposed marriage is found to conform with the provisions of this Law, the couple shall be allowed to register and issued marriage certificates. Upon completion of marriage registration, the marriage relationship is established. A couple shall go through marriage registration if it has not done so.

### 第一千零五十条

登记结婚后，按照男女双方约定，女方可以成为男方家庭的成员，男方可以成为女方家庭的成员。

**Article 1050** After a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties.

**第一千零五十一条** 有下列情形之一的，婚姻无效：

**Article 1051** The marriage shall be null and void under any of the following circumstances:

(一) 重婚；

1. Bigamy; or

(二) 有禁止结婚的亲属关系；

(II) there is the prohibited degree of kinship between the married parties;

(三) 未到法定婚龄。

(III) under the legal age for marriage.

**第一千零五十二条** 因胁迫结婚的，受胁迫的一方可以向人民法院请求撤销婚姻。

**Article 1052** Where marriage is contracted by coercion, the coerced party may appeal to the people's court for annulment of marriage.

请求撤销婚姻的，应当自胁迫行为终止之日起一年内提出。

The petition for revoking the marriage shall be submitted within one year from the date when the coercion ceases.

被非法限制人身自由的当事人请求撤销婚姻的，应当自恢复人身自由之日起一年内提出。

Where the party concerned whose personal freedom is illegally restrained, such an appeal

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for annulment of marriage shall be submitted within one year from the date of the restoration of the personal freedom.

### 第一千零五十三条

一方患有重大疾病的，应当在结婚登记前如实告知另一方；不如实告知的，另一方可以向人民法院请求撤销婚姻。

**Article 1053** If one party suffers from a serious illness, the other party shall be informed truthfully prior to marriage registration; if the other party fails to do so, the other party may request a people's court to revoke the marriage.

请求撤销婚姻的，应当自知道或者应当知道撤销事由之日起一年内提出。

An application for annulment of marriage shall be submitted within one year from the date on which the grounds for annulment were known or ought to be known.

### 第一千零五十四条

无效的或者被撤销的婚姻自始没有法律约束力，当事人不具有夫妻的权利和义务。同居期间所得的财产，由当事人协议处理；协议不成的，由人民法院根据照顾无过错方的原则判决。对重婚导致的无效婚姻的财产处理，不得侵害合法婚姻当事人的财产权益。当事人所生的子女，适用本法关于父母子女的规定。

**Article 1054** Invalid or revoked marriages shall have no legal binding force ab initio, and the parties shall have no rights or obligations of a husband and wife. The property acquired by them during the period of their cohabitation shall be disposed of by agreement between the parties; if they fail to reach an agreement, the People's Court shall make a judgment on the principle of giving consideration to the unerring party. The property acquired through bigamy shall not be disposed of to prejudice the rights and interests attached to the property of the party under lawful contract of marriage. With regard to the children born by the party concerned, the provisions of this Law on parents and children shall apply.

婚姻无效或者被撤销的，无过错方有权请求损害赔偿。

Where the marriage is invalid or revoked, the innocent party shall have the right to claim for damages.

## 第三章 家庭关系

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## Chapter 3 Family Relations

### 第一节 夫妻关系

#### Section 1: Matrimonial Relationship

**第一千零五十五条** 夫妻在婚姻家庭中地位平等。

**Article 1055.** Husband and wife shall have equal status in marriage and the family.

**第一千零五十六条** 夫妻双方都有各自使用自己姓名的权利。

**Article 1056** Both husband and wife shall have the right to use his or her own name and title.

**第一千零五十七条**

夫妻双方都有参加生产、工作、学习和社会活动的自由，一方不得对另一方加以限制或者干涉。

**Article 1057** Both husband and wife shall have the freedom to engage in production and other work, to study and to participate in social activities; neither party shall restrict or interfere with the other party.

**第一千零五十八条**

夫妻双方平等享有对未成年子女抚养、教育和保护的權利，共同承担对未成年子女抚养、教育和保护的义务。

**Article 1058** Both husband and wife shall equally enjoy the right to raise, educate and protect their minor child (children), and shall jointly bear the obligation to raise, educate and protect their minor child (children).

**第一千零五十九条** 夫妻有相互扶养的义务。

**Article 1059.** Husband and wife shall have the duty to maintain each other.

需要扶养的一方，在另一方不履行扶养义务时，有要求其给付扶养费的权利。

The party in need of maintenance shall have the right to demand maintenance payments from the other party if that other party fails to perform this obligation.

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### 第一千零六十条

夫妻一方因家庭日常生活需要而实施的民事法律行为，对夫妻双方发生效力，但是夫妻一方与相对人另有约定的除外。

**Article 1060** Any civil juristic act that is performed by one party of a couple due to the needs of daily family life shall be binding on both parties thereto, unless otherwise agreed upon by the said party and the counterparty.

夫妻之间对一方可以实施的民事法律行为范围的限制，不得对抗善意相对人。

The restriction on the scope of civil juristic acts that can be performed by one party between a couple shall not challenge any bona fide other party.

### 第一千零六十一条 夫妻有相互继承遗产的权利。

**Article 1061** Husband and wife shall have the right to inherit each other's property.

### 第一千零六十二条

夫妻在婚姻关系存续期间所得的下列财产，为夫妻的共同财产，归夫妻共同所有：

**Article 1062** The following property acquired by the husband and the wife during the period in which they are under contract of marriage are property in their joint possession:

（一）工资、奖金、劳务报酬；

1. wages, bonuses, and remuneration for labor services;

（二）生产、经营、投资的收益；

(II) proceeds of production, business operation or investment;

（三）知识产权的收益；

(III) proceeds of intellectual property rights;

（四）继承或者受赠的财产，但是本法第一千零六十三条第三项规定的除外；

(IV) property inherited or donated, except for that provided for in sub-paragraph (3) of

Article 1063 of this Law; and

（五）其他应当归共同所有的财产。

(V) other property that should be in their joint possession.

夫妻对共同财产，有平等的处理权。

Husband and wife shall have equal rights in the disposition of their common property.

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**第一千零六十三条** 下列财产为夫妻一方的个人财产：

**Article 1063** The following property shall be deemed the personal property of one party of the couple:

(一) 一方的婚前财产；

1. the property that belongs to one party before marriage;

(二) 一方因受到人身损害获得的赔偿或者补偿；

(II) compensation or indemnity obtained by one party for a personal injury;

(三) 遗嘱或者赠与合同中确定只归一方的财产；

(III) the property to be in the possession of one party as determined by will or by an agreement on gift;

(四) 一方专用的生活用品；

(IV) Articles for daily use specially used by one party;

(五) 其他应当归一方的财产。

(V) other property which should be in the possession of one party.

#### **第一千零六十四条**

夫妻双方共同签名或者夫妻一方事后追认等共同意思表示所负的债务，以及夫妻一方在婚姻关系存续期间以个人名义为家庭日常生活需要所负的债务，属于夫妻共同债务。

**Article 1064** Debts incurred jointly by a couple in the form of signatures by the couple, acknowledgement by either spouse after such debt was incurred by the other spouse or other form of expression of their common will, as well as debts incurred by either spouse in his or her own name during the existence of the marriage relationship for the purpose of meeting the needs of the couple's daily family life shall be deemed as jointly-incurred debts of the couple.

夫妻一方在婚姻关系存续期间以个人名义超出家庭日常生活需要所负的债务，不属于夫妻共同债务；但是，债权人能够证明该债务用于夫妻共同生活、共同生产经营或者基于夫妻双方共同意思表示的除外。

Any debt that is incurred by either spouse in his/her own name during the existence of the marriage relationship beyond meeting the needs of the couple's daily family life shall not be deemed as community debt, unless the creditor can prove that such debt is used for the couple's life or common production or operation activities, or is incurred based on expression of the

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couple's common will.

第一千零六十五条 男女双方可以约定婚姻关系存续期间所得的财产以及婚前财产归各自所有、共同所有或者部分各自所有、部分共同所有。约定应当采用书面形式。没有约定或者约定不明确的，适用本法第一千零六十二条、第一千零六十三条的规定。

Article 1065 Both the man and woman may conclude an agreement that the property acquired by them during the period in which they are under contract of marriage and the property acquired before marriage shall be in their respective possession separately or jointly or part of the property shall be in their possession separately and the other part jointly. The agreement shall be in writing. Where such an agreement is lacking, or the provisions in the agreement are not clear, the provisions of Articles 1062 and 1063 of this Law shall apply.

夫妻对婚姻关系存续期间所得的财产以及婚前财产的约定，对双方具有法律约束力。

The agreement concluded by the husband and the wife with regard to the property acquired during the period in which they are under contract of marriage and the property acquired before marriage shall be legally binding on both parties.

夫妻对婚姻关系存续期间所得的财产约定归各自所有，夫或者妻一方对外所负的债务，相对人知道该约定的，以夫或者妻一方的个人财产清偿。

Where the husband and the wife agree that the property acquired by them during the period in which they are under contract of marriage shall be in their possession separately, debts contracted by the husband or the wife shall be paid off with the personal property of the party of the husband or the wife, if the other party knows that there is such an agreement.

### 第一千零六十六条

婚姻关系存续期间，有下列情形之一的，夫妻一方可以向人民法院请求分割共同财产：

**Article 1066** During the period in which they are under contract of marriage, either of them may make a request to the people's court for division of their jointly owned property under any of the following circumstances:

(一) 一方有隐藏、转移、变卖、毁损、挥霍夫妻共同财产或者伪造夫妻共同债务等严重损害夫妻共同财产利益的行为；

1. One party commits the acts that seriously harm the interests of community property, such as hiding, transferring, selling off, destroying, or squandering community property or

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forging community debts; or

(二) 一方负有法定扶养义务的人患重大疾病需要医治，另一方不同意支付相关医疗费用。

(II) If a person who is legally obliged to maintain one party suffers from a serious disease and needs medical treatment, the other party does not agree to pay the relevant medical expenses.

## 第二节 父母子女关系和其他近亲属关系

### Section 2 Parents, Children and Other Close Relatives

#### 第一千零六十七条

父母不履行抚养义务的，未成年子女或者不能独立生活的成年子女，有要求父母给付抚养费的权利。

**Article 1067** If parents fail to perform their duty, children who are minors or who are adults and are not capable of living on their own shall have the right to demand the costs of upbringing from their parents.

成年子女不履行赡养义务的，缺乏劳动能力或者生活困难的父母，有要求成年子女给付赡养费的权利。

If children who have come of age fail to perform their duty, or if parents are unable to work or have difficulty in providing for themselves, they shall have the right to demand support payments from their children.

第一千零六十八条 父母有教育、保护未成年子女的权利和义务。未成年子女造成他人损害的，父母应当依法承担民事责任。

**Article 1068** Parents shall have the right and duty to educate and protect their children who are minors. If children who are minors cause damage to others, their parents shall bear civil liability according to law.

#### 第一千零六十九条

子女应当尊重父母的婚姻权利，不得干涉父母离婚、再婚以及婚后的生活。子女对父母的赡养义务，不因父母的婚姻关系变化而终止。

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**Article 1069** Children shall respect their parents' right of marriage, they are not allowed to interfere in their parents' divorce, remarriage and post-marriage life. The duty of the children to support their parents shall not end with the change of the marriage relationship of their parents.

**第一千零七十条** 父母和子女有相互继承遗产的权利。

**Article 1070** Parents and children shall have the right to inherit each other's property.

**第一千零七十一条**

非婚生子女享有与婚生子女同等的权利，任何组织或者个人不得加以危害和歧视。

**Article 1071** Children born out of wedlock shall enjoy the same rights as children born in wedlock. No organization or individual may harm or discriminate against them.

不直接抚养非婚生子女的生父或者生母，应当负担未成年子女或者不能独立生活的成年子女的抚养费。

The natural father or mother who does not directly bring up a child born out of wedlock shall bear the costs of support for his or her minor children or adult children who are not capable of living on their own.

**第一千零七十二条** 继父母与继子女间，不得虐待或者歧视。

**Article 1072.** Maltreatment and discrimination shall not be allowed between step-parents and step-children.

继父或者继母和受其抚养教育的继子女间的权利义务关系，适用本法关于父母子女关系的规定。

The provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between step-fathers or step-mothers and their step-children who receive care and education from them.

**第一千零七十三条**

对亲子关系有异议且有正当理由的，父或者母可以向人民法院提起诉讼，请求确认或者否认亲子关系。

**Article 1073** Where a paternity dispute is raised with proper reasons, the father or the mother may bring a suit to the People's Court to claim confirmation or denial of the paternity.

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对亲子关系有异议且有正当理由的，成年子女可以向人民法院提起诉讼，请求确认亲子关系。

Where parenthood is objected with justification, the adult child may file an action with the people's court to request confirmation of parenthood.

#### 第一千零七十四条

有负担能力的祖父母、外祖父母，对于父母已经死亡或者父母无力抚养的未成年孙子女、外孙子女，有抚养的义务。

**Article 1074** Grandparents and maternal grandparents who can afford it shall have the duty to bring up their grandchildren who are minors and whose parents are dead or have no means to bring them up.

有负担能力的孙子女、外孙子女，对于子女已经死亡或者子女无力赡养的祖父母、外祖父母，有赡养的义务。

Grandchildren and maternal grandchildren who can afford it shall have the duty to support their grandparents and maternal grandparents whose children are dead or have no means to support them.

#### 第一千零七十五条

有负担能力的兄、姐，对于父母已经死亡或者父母无力抚养的未成年弟、妹，有扶养的义务。

**Article 1075** Elder brothers and elder sisters who can afford it shall have the duty to maintain their younger brothers and sisters who are minors, if their parents are dead or have no means to bring them up.

由兄、姐扶养长大的有负担能力的弟、妹，对于缺乏劳动能力又缺乏生活来源的兄、姐，有扶养的义务。

A brother or sister who is brought up by his or her brother or sister and can afford it shall have the duty to maintain his or her brother or sister who lacks both the ability to work and the source of his or her income.

## 第四章 离 婚

### Chapter 4 Divorce

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### 第一千零七十六条

夫妻双方自愿离婚的，应当签订书面离婚协议，并亲自到婚姻登记机关申请离婚登记。

**Article 1076** Where both husband and wife intend to get divorced voluntarily, they shall sign a written divorce agreement and shall apply for divorce registration in person to the marriage registration authority.

离婚协议应当载明双方自愿离婚的意思表示和对子女抚养、财产以及债务处理等事项协商一致的意见。

The divorce agreement shall set forth both parties' intention of voluntary divorce and consensus on matters of children upbringing, property and debt settlement through consultation.

### 第一千零七十七条

自婚姻登记机关收到离婚登记申请之日起三十日内，任何一方不愿意离婚的，可以向婚姻登记机关撤回离婚登记申请。

**Article 1077** If, within 30 days after the marriage registration bureaus receive the divorce registration applications, any of the parties does not want to get divorced, he/she may withdraw the divorce registration applications from the marriage registration bureaus.

前款规定期限届满后三十日内，双方应当亲自到婚姻登记机关申请发给离婚证；未申请的，视为撤回离婚登记申请。

Within 30 days after the expiration of the above prescribed period, both parties shall in person apply to the marriage registration bureaus for the issuance of divorce certificates; those who fail to make the application shall be deemed to have withdrawn the application.

### 第一千零七十八条

婚姻登记机关查明双方确实是自愿离婚，并已经对子女抚养、财产以及债务处理等事项协商一致的，予以登记，发给离婚证。

**Article 1078** The marriage registration office, after clearly establishing that both parties desire divorce voluntarily and have reached unanimity through consultation in matters of child rearing and property management and the handling of debts, shall grant registration and issue the divorce certificates.

### 第一千零七十九条

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夫妻一方要求离婚的，可以由有关组织进行调解或者直接向人民法院提起离婚诉讼。

**Article 1079** If one party alone desires a divorce, the organization concerned may carry out mediation or the party may directly file a divorce suit in a People's Court.

人民法院审理离婚案件，应当进行调解；如果感情确已破裂，调解无效的，应当准予离婚。

In dealing with a divorce case, the people's court should carry out mediation; divorce shall be granted if mediation fails because mutual affection no longer exists.

有下列情形之一的，调解无效的，应当准予离婚：

In any of the following circumstances, divorce shall be granted if mediation fails:

（一）重婚或者与他人同居；

1. Bigamy or cohabitation with another person;

（二）实施家庭暴力或者虐待、遗弃家庭成员；

(II) where one party indulges in family violence or maltreats or abandons family members;

or

（三）有赌博、吸毒等恶习屡教不改；

(III) gambling, drug taking and other bad habits do not change after repeated education;

（四）因感情不和分居满二年；

(IV) having separated from each other for two full years for lack of mutual affection;

（五）其他导致夫妻感情破裂的情形。

(V) other circumstances leading to the shattering of affection between husband and wife.

一方被宣告失踪，另一方提起离婚诉讼的，应当准予离婚。

Where one party is declared to be missing and the other party starts divorce proceedings, divorce shall be granted.

经人民法院判决不准离婚后，双方又分居满一年，一方再次提起离婚诉讼的，应当准予离婚。

Where, after the People's Court has made a judgment that divorce shall not be granted, both parties live apart for another year and one party files a divorce suit again, divorce shall be granted.

**第一千零八十条** 完成离婚登记，或者离婚判决书、调解书生效，即解除婚姻关系。

**Article 1080** Upon completion of divorce registration, or where the divorce judgment or

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mediation statement takes effect, the marriage shall be dissolved.

### 第一千零八十一条

现役军人的配偶要求离婚，应当征得军人同意，但是军人一方有重大过错的除外。

**Article 1081** If the spouse of a soldier in active service desires a divorce, the matter shall be subject to the soldier's consent, unless the soldier has made grave errors.

### 第一千零八十二条

女方在怀孕期间、分娩后一年内或者终止妊娠后六个月内，男方不得提出离婚；但是，女方提出离婚或者人民法院认为确有必要受理男方离婚请求的除外。

**Article 1082** A husband may not apply for a divorce when his wife is pregnant, or is within one year after the birth of the child, or within six months after the termination of her gestation, except where his wife applies for a divorce, or where the people's court deems it necessary to accept the divorce application made by the husband.

### 第一千零八十三条

离婚后，男女双方自愿恢复婚姻关系的，应当到婚姻登记机关重新进行结婚登记。

**Article 1083** If, after divorce, both parties desire to resume their marriage relationship, they shall apply for marriage registration anew with the marriage registration office.

### 第一千零八十四条

父母与子女间的关系，不因父母离婚而消除。离婚后，子女无论由父或者母直接抚养，仍是父母双方的子女。

**Article 1084** The relationship between parents and children shall not come to an end with the parents' divorce. After divorce, whether the children are directly put in the custody of the father or the mother, they shall remain the children of both parents.

离婚后，父母对于子女仍有抚养、教育、保护的权利和义务。

After divorce, both parents shall still have the right and duty to bring up, educate and protect their children.

离婚后，不满两周岁的子女，以由母亲直接抚养为原则。已满两周岁的子女，父母双方对抚养问题协议不成的，由人民法院根据双方的具体情况，按照最有利于未成年子

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女的原则判决。子女已满八周岁的，应当尊重其真实意愿。

In principle, children under the age of two after divorce shall be directly put in the custody of their mother. If the parents of a child who has reached the age of two fail to reach an agreement on the matter of his or her upbringing, the People's Court shall, in accordance with the actual conditions of both parties and on the principle of benefiting the minor child to the greatest extent, make a judgment. If a child has reached the age of eight, his or her true will shall be respected.

第一千零八十五条 离婚后，子女由一方直接抚养的，另一方应当负担部分或者全部抚养费。负担费用的多少和期限的长短，由双方协议；协议不成的，由人民法院判决。

Article 1085 If, after divorce, the children are directly put in the custody of one party, the other party shall bear part or the whole of the fosterage expenses. The two parties shall seek agreement regarding the amount and duration of such payment. If they fail to reach an agreement, the People's Court shall make a judgment.

前款规定的协议或者判决，不妨碍子女在必要时向父母任何一方提出超过协议或者判决原定数额的合理要求。

The agreement or judgment specified in the preceding paragraph shall not prevent the child from making a reasonable request, when necessary, to either parent for an amount exceeding what is decided upon in the said agreement or judgment.

### 第一千零八十六条

离婚后，不直接抚养子女的父或者母，有探望子女的权利，另一方有协助的义务。

**Article 1086** After divorce, the father or the mother who does not directly bring up the child shall have the right to visit his or her child, and the other party shall have the duty to cooperate.

行使探望权利的方式、时间由当事人协议；协议不成的，由人民法院判决。

The manner and time for exercising the right to visit a child shall be decided by the parties through consultation; if they fail to reach an agreement upon in this regard, the People's Court shall make a judgment.

父或者母探望子女，不利于子女身心健康的，由人民法院依法中止探望；中止的事由消失后，应当恢复探望。

Where the visit to a child paid by the father or the mother is not conducive to the physical

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and mental health of the child, the People's Court shall terminate such visit; after the cause of such termination disappears, such visit shall be resumed.

#### 第一千零八十七条

离婚时，夫妻的共同财产由双方协议处理；协议不成的，由人民法院根据财产的具体情况，按照照顾子女、女方和无过错方权益的原则判决。

**Article 1087** At the time of divorce, the husband and the wife shall seek agreement regarding the disposition of their jointly possessed property. If they fail to reach an agreement, the People's Court shall, on the basis of the actual circumstances of the property and on the principle of taking into consideration the rights and interests of the child, the wife and the unerring party.

对夫或者妻在家庭土地承包经营中享有的权益等，应当依法予以保护。

The rights and interests enjoyed by the husband or the wife in contracting land management on a household basis shall be protected in accordance with law.

#### 第一千零八十八条

夫妻一方因抚育子女、照料老年人、协助另一方工作等负担较多义务的，离婚时有权向另一方请求补偿，另一方应当给予补偿。具体办法由双方协议；协议不成的，由人民法院判决。

**Article 1088** Where one party of a couple bears comparatively more obligations for bringing up a child, taking care of the elderly or assisting the other party in work, it shall, at the time of divorce, have the right to request the other party to make compensation for the above, and the other party shall do so accordingly. Specific arrangements shall be made by both parties through consultation. If they fail to reach an agreement, the People's Court shall make a judgment.

第一千零八十九条 离婚时，夫妻共同债务应当共同偿还。共同财产不足清偿或者财产归各自所有的，由双方协议清偿；协议不成的，由人民法院判决。

**Article 1089** At the time of divorce, the husband and the wife shall repay their common debts jointly. Where their jointly possessed property is insufficient to pay the debts or the property is in their separate possession, the two parties shall discuss alternative ways of payment; if they fail to reach an agreement, the People's Court shall make a judgment.

#### 第一千零九十条

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离婚时，如果一方生活困难，有负担能力的另一方应当给予适当帮助。具体办法由双方协议；协议不成的，由人民法院判决。

**Article 1090** If, at the time of divorce, one party has difficulty in supporting himself or herself, the other party who can afford it shall render appropriate assistance. Specific arrangements shall be made by both parties through consultation. If they fail to reach an agreement, the People's Court shall make a judgment.

**第一千零九十一条** 有下列情形之一的，导致离婚的，无过错方有权请求损害赔偿：

**Article 1091** Where one of the following circumstances leads to divorce, the unerring party shall have the right to claim compensation:

(一) 重婚；

1. Bigamy; or

(二) 与他人同居；

(II) cohabiting with another person;

(三) 实施家庭暴力；

(III) Domestic violence; or

(四) 虐待、遗弃家庭成员；

(IV) maltreating or abandoning family members; or

(五) 有其他重大过错。

(V) Having any other serious fault.

**第一千零九十二条** 夫妻一方隐藏、转移、变卖、毁损、挥霍夫妻共同财产，或者伪造夫妻共同债务企图侵占另一方财产的，在离婚分割夫妻共同财产时，对该方可以少分或者不分。离婚后，另一方发现有上述行为的，可以向人民法院提起诉讼，请求再次分割夫妻共同财产。

**Article 1092** If one party of a couple conceals, transfers, sells off, destroys or squander the property in the joint possession of the couple, or forges the debts in the joint possession of the couple in an attempt to encroach upon the property of the other party, the former may get less or no property when the property in the joint possession of the couple is partitioned because of divorce. After divorce, if the other party discovers the above, it may bring a suit in the People's Court to demand re-partition of the property in the joint possession of the couple.

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## 第五章 收 养

### Chapter 5 Adoption

#### 第一节 收养关系的成立

##### Section 1 Establishment of Adoptive Relationship

**第一千零九十三条** 下列未成年人，可以被收养：

**Article 1093** The following juveniles may be adopted:

（一）丧失父母的孤儿；

1. Orphans bereaved of parents;

（二）查找不到生父母的未成年人；

(II) minors whose biological parents cannot be ascertained or found;

（三）生父母有特殊困难无力抚养的子女。

(III) children whose parents are unable to rear them due to unusual difficulties.

**第一千零九十四条** 下列个人、组织可以作送养人：

**Article 1094** The individuals and institutions listed below may be entitled to place out children for adoption:

（一）孤儿的监护人；

1. Guardians of an orphan;

（二）儿童福利机构；

(II) Child welfare institutions;

（三）有特殊困难无力抚养子女的生父母。

(III) parents unable to rear their children due to unusual difficulties.

#### **第一千零九十五条**

未成年人的父母均不具备完全民事行为能力且可能严重危害该未成年人的，该未成年人的监护人可以将其送养。

**Article 1095** Where the parents of a minor do not have full capacity for civil conduct and are likely to do serious harm to the minor, the guardian of the minor may place out the minor for

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adoption.

### **第一千零九十六条**

监护人送养孤儿的，应当征得有抚养义务的人同意。有抚养义务的人不同意送养、监护人不愿意继续履行监护职责的，应当依照本法第一编的规定另行确定监护人。

**Article 1096** Where a guardian intends to place out an orphan for adoption, the guardian shall obtain the consent of the person who has obligations to support the orphan. Where the person who has obligations to support the orphan disagrees to place out the orphan for adoption, and the guardian is unwilling to continue the performance of his guardianship, another guardian shall be determined according to the provisions of Chapter I of this Law.

第一千零九十七条 生父母送养子女，应当双方共同送养。生父母一方不明或者查找不到的，可以单方送养。

**Article 1097** Where the parents intend to place out their child for adoption, they shall act in concert. Where one parent cannot be ascertained or found, the other parent may place out the child for adoption alone.

**第一千零九十八条** 收养人应当同时具备下列条件：

**Article 1098** Adopters shall simultaneously meet all of the following requirements:

（一）无子女或者只有一名子女；

1. Having no child or only one child;

（二）有抚养、教育和保护被收养人的能力；

(II) capable of bringing up, educating and protecting the adoptee; and

（三）未患有在医学上认为不应当收养子女的疾病；

(III) suffering no such disease as is medically regarded as unfit for adopting a child; and

（四）无不利于被收养人健康成长的违法犯罪记录；

(IV) Having no illegal or criminal record that is detrimental to the healthy growth of the adoptee;

（五）年满三十周岁。

(V) to have reached the age of 30.

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### 第一千零九十九条

收养三代以内旁系同辈血亲的子女，可以不受本法第一千零九十三条第三项、第一千零九十四条第三项和第一千一百零二条规定的限制。

**Article 1099** A person may adopt a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, irrespective of the restrictions specified in sub-paragraph (3) of Article 1093, sub-paragraph (3) of Article 1094 and Article 1102 of this Law.

华侨收养三代以内旁系同辈血亲的子女，还可以不受本法第一千零九十八条第一项规定的限制。

An overseas Chinese, in adopting a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, may also be not subject to the restriction specified in Item 1 of Article 1098 of this Law.

**第一千一百条** 无子女的收养人可以收养两名子女；有子女的收养人只能收养一名子女。

**Article 1100** Adopters without children may adopt two children; an adopter with children may adopt one child only, if they have only one child.

收养孤儿、残疾未成年人或者儿童福利机构抚养的查找不到生父母的未成年人，可以不受前款和本法第一千零九十八条第一项规定的限制。

Whoever adopts an orphan, a disabled minor or a minor under the care of a child welfare institution whose parents cannot be ascertained or found may be exempted from the restrictions specified in the preceding paragraph and in Item (1) of Article 1098 of this Law.

**第一千一百零一条** 有配偶者收养子女，应当夫妻共同收养。

**Article 1101** Where a person with spouse adopts a child, the husband and wife shall adopt the child in concert.

### 第一千一百零二条

无配偶者收养异性子女的，收养人与被收养人的年龄应当相差四十周岁以上。

**Article 1102** Where a person without spouse adopts a child of the opposite sex, the age difference between the adopter and the adoptee shall be no less than 40 years.

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### 第一千一百零三条

继父或者继母经继子女的生父母同意，可以收养继子女，并可以不受本法第一千零九十三条第三项、第一千零九十四条第三项、第一千零九十八条和第一千一百条第一款规定的限制。

**Article 1103 A step-father or step-mother may, with the consent of the parents of the step-son or step-daughter, adopt the step-son or step-daughter, and such adoption may be free from the restrictions specified in sub-paragraph (3) of Article 1093, sub-paragraph (3) of Article 1094, Article 1098 and paragraph 1 of Article 1100 of this Law.**

第一千一百零四条 收养人收养与送养人送养，应当双方自愿。收养八周岁以上未成年人的，应当征得被收养人的同意。

Article 1104 Adoption of a child and the placing out of the child for the adoption shall both take place on a voluntary basis. Where the adoption involves a minor aged eight or more, the consent of the adoptee shall be obtained.

### 第一千一百零五条

收养应当向县级以上人民政府民政部门登记。收养关系自登记之日起成立。

**Article 1105 The adoption shall be registered with the civil affairs department of the people's government at or above the county level. The adoptive relationship shall be established as of the date of registration.**

收养查找不到生父母的未成年人的，办理登记的民政部门应当在登记前予以公告。

Where a minor whose biological parents cannot be found is adopted, the civil affairs department in charge of registration shall make it known to the general public before registration.

收养关系当事人愿意签订收养协议的，可以签订收养协议。

If the parties involved in the adoptive relationship wish to enter into an agreement on adoption, they may conclude such an agreement.

收养关系当事人各方或者一方要求办理收养公证的，应当办理收养公证。

If the parties or one party involved in the adoptive relationship wishes that the adoption be notarized, it shall be done accordingly.

县级以上人民政府民政部门应当依法进行收养评估。

The civil affairs departments of the people's governments at or above the county level shall evaluate the adoption in accordance with the law.

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### 第一千一百零六条

收养关系成立后，公安机关应当按照国家有关规定为被收养人办理户口登记。

**Article 1106** After the adoptive relationship is established, the public security organ shall, in accordance with the relevant regulations of the State, register the adoptee's residence.

### 第一千一百零七条

孤儿或者生父母无力抚养的子女，可以由生父母的亲属、朋友抚养；抚养人与被抚养人的关系不适用本章规定。

**Article 1107** Orphans or children whose parents are unable to rear them may be supported by relatives or friends of their parents; the provisions of this Chapter shall not apply to the relationship between the supporter and the supported.

### 第一千一百零八条

配偶一方死亡，另一方送养未成年子女的，死亡一方的父母有优先抚养的权利。

**Article 1108** Where a spouse places out a minor child for adoption after the death of the other spouse, the parents of the deceased shall have the priority in rearing the child.

### 第一千一百零九条 外国人依法可以在中华人民共和国收养子女。

**Article 1109** A foreigner may, in accordance with the law, adopt a child (male or female) in the People's Republic of China.

外国人在中华人民共和国收养子女，应当经其所在国主管机关依照该国法律审查同意。收养人应当提供由其所在国有权机构出具的有关其年龄、婚姻、职业、财产、健康、有无受过刑事处罚等状况的证明材料，并与送养人签订书面协议，亲自向省、自治区、直辖市人民政府民政部门登记。

Where a foreigner wishes to adopt a child in the People's Republic of China, the matter shall be subject to examination and approval of the competent authorities of the country, to which he or she belongs, in accordance with the law of that country. The adopter shall provide papers certifying such particulars of the adopter as age, marital status, profession, property, health and whether ever subjected to criminal punishment, which are issued by the competent agencies of the country to which the adopter belongs. The adopter shall also sign a written

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agreement with the person who places out the child for adoption and register in person the deed with the civil affairs department of the people's government of the province, autonomous region, or municipality directly under the Central Government.

前款规定的证明材料应当经收养人所在国外交机关或者外交机关授权的机构认证，并经中华人民共和国驻该国使领馆认证，但是国家另有规定的除外。

The certifying documents mentioned in the preceding paragraph shall be authenticated by the diplomatic department of the adopter's country or of an agency authorized by the diplomatic department and, unless otherwise provided by the State, by the embassy or consulate of the People's Republic of China in the adopter's country.

### 第一千一百一十条

收养人、送养人要求保守收养秘密的，其他人应当尊重其意愿，不得泄露。

**Article 1110** When the adopter and the person placing out the child for adoption wish to make a secret of the adoption, others shall respect their wish and shall not make a disclosure thereof.

## 第二节 收养的效力

### Section 2 EFFECT OF ADOPTION

### 第一千一百一十一条

自收养关系成立之日起，养父母与养子女间的权利义务关系，适用本法关于父母子女关系的规定；养子女与养父母的近亲属间的权利义务关系，适用本法关于子女与父母的近亲属关系的规定。

**Article 111** As of the date of establishment of the adoptive relationship, the provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between adoptive parents and adopted children; the provisions of this Law governing the relationship between children and close relatives of their parents shall apply to the rights and duties in the relationship between adopted children and close relatives of the adoptive parents.

养子女与生父母以及其他近亲属间的权利义务关系，因收养关系的成立而消除。

The rights and duties in the relationship between an adopted child and his or her parents and other close relatives shall terminate with the establishment of the adoptive relationship.

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### 第一千一百一十二条

养子女可以随养父或者养母的姓氏，经当事人协商一致，也可以保留原姓氏。

**Article 112** An adopted child may adopt his or her adoptive father's or adoptive mother's surname, and may also retain his or her original surname, if so agreed through consultation between the parties concerned.

### 第一千一百一十三条

有本法第一编关于民事法律行为无效规定情形或者违反本编规定的收养行为无效。

**Article 1113** Any act of adoption violating the provisions of Part One of this Law or the provisions of Part One of this Law shall be null and void.

无效的收养行为自始没有法律约束力。

Invalid adoptions are not legally binding from the outset.

## 第三节 收养关系的解除

### Section 3 Termination of Adoptive Relationship

第一千一百一十四条 收养人在被收养人成年以前，不得解除收养关系，但是收养人、送养人双方协议解除的除外。养子女八周岁以上的，应当征得本人同意。

**Article 114** No adopter may terminate the adoptive relationship before the adoptee comes of age, except when the adopter and the person having placed out the child for the adoption agree to terminate such relationship. If the adopted child involved reaches the age of eight or more, his or her consent shall be obtained.

收养人不履行抚养义务，有虐待、遗弃等侵害未成年养子女合法权益行为的，送养人有权要求解除养父母与养子女间的收养关系。送养人、收养人不能达成解除收养关系协议的，可以向人民法院提起诉讼。

Where an adopter fails to perform the duty of rearing the adoptee or commits maltreatment, abandonment, or other acts of encroachment upon the lawful rights of the minor adopted child, the person having placed out the child for adoption shall have the right to demand termination of the adoptive relationship. Where the adopter and the person having placed out the child for

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adoption fail to reach an agreement thereon, a suit may be brought in a people's court.

第一千一百一十五条 养父母与成年养子女关系恶化、无法共同生活的，可以协议解除收养关系。不能达成协议的，可以向人民法院提起诉讼。

**Article 115** Where the relationship between the adoptive parents and an adult adopted child deteriorates to such a degree that their living together in a same household becomes impossible, they may terminate their adoptive relationship by agreement. In the absence of an agreement, they may bring a suit in a People's Court.

### 第一千一百一十六条

当事人协议解除收养关系的，应当到民政部门办理解除收养关系登记。

**Article 116** Where the parties agree to terminate the adoptive relationship, they shall register the termination of the adoptive relationship with a civil affairs department.

第一千一百一十七条 收养关系解除后，养子女与养父母以及其他近亲属间的权利义务关系即行消除，与生父母以及其他近亲属间的权利义务关系自行恢复。但是，成年养子女与生父母以及其他近亲属间的权利义务关系是否恢复，可以协商确定。

**Article 117** Upon termination of an adoptive relationship, the rights and duties in the relationship between an adopted child and his or her adoptive parents and their close relatives shall also terminate, and the rights and duties in the relationship between the child and his or her parents and their close relatives shall be restored automatically. However, with respect to the restoration of the rights and duties in the relationship between an adult adopted child and his or her parents and their close relatives, it may be decided through consultation.

第一千一百一十八条 收养关系解除后，经养父母抚养的成年养子女，对缺乏劳动能力又缺乏生活来源的养父母，应当给付生活费。因养子女成年后虐待、遗弃养父母而解除收养关系的，养父母可以要求养子女补偿收养期间支出的抚养费。

**Article 118** Upon termination of an adoptive relationship, an adult adopted child who has been reared by the adoptive parents shall provide an amount of money to support the adoptive parents who have lost ability to work and are short of any source of income. If the adoptive relationship is terminated on account of the maltreatment or desertion of the adoptive parents by the grown-up

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adopted child, the adoptive parents may demand a compensation from the adopted child for the child-raising fees paid during the period of adoption.

生父母要求解除收养关系的，养父母可以要求生父母适当补偿收养期间支出的抚养费；但是，因养父母虐待、遗弃养子女而解除收养关系的除外。

If the parents of an adopted child request the termination of the adoptive relationship, the adoptive parents may demand an appropriate compensation from the parents for the upbringing expenses paid during the period of adoption, except if the adoptive relationship is terminated on account of the maltreatment or desertion of the adopted child by the adoptive parents.

## 第六编 继 承

### Part VI Succession

#### 第一章 一般规定

#### CHAPTER 1 GENERAL PROVISIONS

**第一千一百一十九条** 本编调整因继承产生的民事关系。

**Article 1119** This Part deals with civil relations arising out of succession.

**第一千一百二十条** 国家保护自然人的继承权。

**Article 1120** The State protects the inheritance right of natural persons.

**第一千一百二十一条** 继承从被继承人死亡时开始。

**Article 1121** Succession begins at the death of a decedent.

相互有继承关系的数人在同一事件中死亡，难以确定死亡时间的，推定没有其他继承人的人先死亡。都有其他继承人，辈份不同的，推定长辈先死亡；辈份相同的，推定同时死亡，相互不发生继承。

If several persons who have inherited each other die in the same event and it is difficult to determine the time of death, it shall be presumed that the person without any other successor dies first. Where there are other successors and they are of different generations, the elder shall be presumed to die first; if they are of the same generation, they shall be presumed to die at the

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same time and no succession shall occur to each other.

**第一千一百二十二条** 遗产是自然人死亡时遗留的个人合法财产。

**Article 1122** The estate refers to the lawful personal property left over by a natural person upon his death.

依照法律规定或者根据其性质不得继承的遗产，不得继承。

Estates whose inheritance is prohibited by law or by their nature shall not be inherited.

**第一千一百二十三条**

继承开始后，按照法定继承办理；有遗嘱的，按照遗嘱继承或者遗赠办理；有遗赠扶养协议的，按照协议办理。

**Article 1123** Succession shall, after it has commenced, be handled in accordance with statutory succession provisions; where a will exists, it shall be handled in accordance with testamentary succession or as legacy; where there is an agreement on legacy in return for support, the former shall be handled in accordance with the terms of the agreement.

**第一千一百二十四条**

继承开始后，继承人放弃继承的，应当在遗产处理前，以书面形式作出放弃继承的表示；没有表示的，视为接受继承。

**Article 1124** A successor who, after the opening of succession, disclaims inheritance should make known his decision in writing before the disposition of the estate; if he does not do so, he shall be deemed to have accepted the succession.

受遗赠人应当在知道受遗赠后六十日内，作出接受或者放弃受遗赠的表示；到期没有表示的，视为放弃受遗赠。

A legatee should, within 60 days from the time he learns of the legacy, indicate whether he accepts it or disclaims it; in the absence of such indication within the specified period of time, he is deemed to have disclaimed the legacy.

**第一千一百二十五条** 继承人有下列行为之一的，丧失继承权：

**Article 1125** A successor shall be disinherited upon his commission of any of the following acts:

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(一) 故意杀害被继承人；

1. Intentionally killing the decedent;

(二) 为争夺遗产而杀害其他继承人；

(II) killing any other successor in a dispute over the estate;

(三) 遗弃被继承人，或者虐待被继承人情节严重；

(III) the circumstances of abandoning or maltreating the decedent are serious; and

(四) 伪造、篡改、隐匿或者销毁遗嘱，情节严重；

(IV) Forging, tampering with, concealing or destroying the will in serious circumstances;

(五) 以欺诈、胁迫手段迫使或者妨碍被继承人设立、变更或者撤回遗嘱，情节严重。

(V) Compelling or obstructing the making, alteration or withdrawal of a will by fraud or coercion where the circumstances are serious.

继承人有前款第三项至第五项行为，确有悔改表现，被继承人表示宽恕或者事后在遗嘱中将其列为继承人的，该继承人不丧失继承权。

Where a successor commits any act specified in Items 3 to 5 of the preceding paragraph and shows true repentance, and the decedent expresses forgiveness or is listed as a successor in his will, the successor shall not lose the right of succession.

受遗赠人有本条第一款规定行为的，丧失受遗赠权。

A legatee who commits any act specified in the first paragraph of this Article shall lose the right to legacy.

## 第二章 法定继承

### CHAPTER 2 — LEGAL SUCCESSION

**第一千一百二十六条** 继承权男女平等。

**Article 1126** Men and women are equal in their right to inheritance.

**第一千一百二十七条** 遗产按照下列顺序继承：

**Article 1127** Estates shall be inherited in the following order of priority:

(一) 第一顺序：配偶、子女、父母；

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1. The first sequence: the spouse, children, parents;

(二) 第二顺序：兄弟姐妹、祖父母、外祖父母。

(II) Second in line: brothers and sisters, paternal grandparents, maternal grandparents.

继承开始后，由第一顺序继承人继承，第二顺序继承人不继承；没有第一顺序继承人继承的，由第二顺序继承人继承。

When succession commences, the successor (s) first in order shall inherit to the exclusion of the successor (s) second in order; in the absence of any successor first in order, the successor (s) second in order shall inherit to the exclusion of the successor (s).

本编所称子女，包括婚生子女、非婚生子女、养子女和有扶养关系的继子女。

For the purposes of this Part, "children" shall include children born in wedlock, children born out of wedlock, adopted children and dependent stepchildren.

本编所称父母，包括生父母、养父母和有扶养关系的继父母。

For the purposes of this Part, the term "parents" includes biological parents, adoptive parents and dependent stepparents.

本编所称兄弟姐妹，包括同父母的兄弟姐妹、同父异母或者同母异父的兄弟姐妹、养兄弟姐妹、有扶养关系的继兄弟姐妹。

The term "brothers and sisters" as mentioned in this Part includes brothers and sisters with the same parents, half brothers and sisters, adopted brothers and sisters, as well as step-brothers and step-sisters in maintenance relationship.

### 第一千一百二十八条

被继承人的子女先于被继承人死亡的，由被继承人的子女的直系晚辈血亲代位继承。

**Article 1128** Where a decedent survives any child of his, the direct lineal descendants of the decedent shall inherit the child in subrogation.

被继承人的兄弟姐妹先于被继承人死亡的，由被继承人的兄弟姐妹的子女代位继承。

Where a decedent's brother or sister dies before his, the child (s) of the decedent's brother or sister shall inherit in subrogation.

代位继承人一般只能继承被代位继承人有权继承的遗产份额。

Descendants who inherit in subrogation generally shall take only the share of the estate to which the descendant is entitled.

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### 第一千一百二十九条

丧偶儿媳对公婆，丧偶女婿对岳父母，尽了主要赡养义务的，作为第一顺序继承人。

**Article 1129** Widowed daughters-in-law or sons-in-law who have made the predominant contributions in supporting their parents-in-law shall, in relation to their parents-in-law, be regarded as successors first in line.

**第一千一百三十条** 同一顺序继承人继承遗产的份额，一般应当均等。

**Article 1130** Successors belonging to the same order shall, in general, inherit in equal shares.  
对生活有特殊困难又缺乏劳动能力的继承人，分配遗产时，应当予以照顾。

At the time an estate is distributed, due consideration shall be given to successors who face special financial difficulties and are unable to work.

对被继承人尽了主要扶养义务或者与被继承人共同生活的继承人，分配遗产时，可以多分。

At the time an estate is distributed, successors who have made the predominant contribution in supporting the decedent or have lived with the decedent may be given a larger share.

有扶养能力和有扶养条件的继承人，不尽扶养义务的，分配遗产时，应当不分或者少分。

At the time an estate is distributed, successors who had the ability and were in a position to support the decedent but failed to fulfill their duties shall be given no share or a smaller share of the estate.

继承人协商同意的，也可以不均等。

Successors may take unequal shares if an agreement to that effect is reached among them.

### 第一千一百三十一条

对继承人以外的依靠被继承人扶养的人，或者继承人以外的对被继承人扶养较多的人，可以分给适当的遗产。

**Article 1131** An appropriate share of the estate may be given to a person, other than a successor, who depended on the support of the decedent, or to a person, other than a successor, who was largely responsible for supporting the decedent.

**第一千一百三十二条** 继承人应当本着互谅互让、和睦团结的精神，协商处理继承问题。

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遗产分割的时间、办法和份额，由继承人协商确定；协商不成的，可以由人民调解委员会调解或者向人民法院提起诉讼。

Article 132 Succession issues should be dealt with through consultation by and among successors in the spirit of mutual understanding, mutual accommodation, amity and unity. The timing of and method for partitioning an estate and the shares into which it is divided shall be determined by the successors through consultation; where consultation fails, the people's mediation committee may conduct mediation or institute legal proceedings in a people's court.

### 第三章 遗嘱继承和遗赠

#### Chapter 3 Testamentary Succession and Legacy

##### 第一千一百三十三条

自然人可以依照本法规定立遗嘱处分个人财产，并可以指定遗嘱执行人。

**Article 133** A natural person may, by means of a will made in accordance with the provisions of this Law, dispose of his personal property and appoint a testamentary executor for that purpose.

自然人可以立遗嘱将个人财产指定由法定继承人中的一人或者数人继承。

A natural person may, in making a will, designate one or more of the statutory successors to inherit his personal property.

自然人可以立遗嘱将个人财产赠与国家、集体或者法定继承人以外的组织、个人。

A natural person may, by making a will, donate his personal property to the State or a collective, or to an organization or individual other than his statutory successors.

自然人可以依法设立遗嘱信托。

A natural person may establish testamentary trusts in accordance with the law.

##### 第一千一百三十四条 自书遗嘱由遗嘱人亲笔书写，签名，注明年、月、日。

**Article 134** A testator -written will is one made in the testator's own handwriting and signed by him, specifying the date on which it is made.

##### 第一千一百三十五条

代书遗嘱应当有两个以上见证人在场见证，由其中一人代书，并由遗嘱人、代书人和其他见

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证人签名，注明年、月、日。

**Article 1135** A will written on behalf of the testator shall be witnessed by two or more witnesses, of whom one writes the will which shall be signed by the testator, the person who writes the will on behalf of the testator and other witnesses and dated.

第一千一百三十六条 打印遗嘱应当有两个以上见证人在场见证。遗嘱人和见证人应当在遗嘱每一页签名，注明年、月、日。

**Article 1136** Two or more witnesses shall be present at the scene when a will is printed. The testator and the witness shall sign their names on each page of the will, indicating the date, month and year.

### 第一千一百三十七条

以录音录像形式立的遗嘱，应当有两个以上见证人在场见证。遗嘱人和见证人应当在录音录像中记录其姓名或者肖像，以及年、月、日。

**Article 1137** A will made in the form of a sound recording and video recording shall be witnessed by two or more eyewitnesses. The testator and witness shall record their names or portraits, and the date, month and year in the audio and video recordings.

第一千一百三十八条 遗嘱人在危急情况下，可以立口头遗嘱。口头遗嘱应当有两个以上见证人在场见证。危急情况消除后，遗嘱人能够以书面或者录音录像形式立遗嘱的，所立的口头遗嘱无效。

**Article 1138** A testator may, in an emergency situation, make a nuncupative will. A will that is made orally shall be witnessed by two or more witnesses. When the emergency situation no longer exists and the testator is able to make a will in writing or in the form of a sound recording or video recording, the nuncupative will he has made shall become null and void.

第一千一百三十九条 公证遗嘱由遗嘱人经公证机构办理。

**Article 1139** A notarial will is one made by a testator through a notary agency.

第一千一百四十条 下列人员不能作为遗嘱见证人：

**Article 1140** None of the following persons shall act as a witness to a will:

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(一) 无民事行为能力人、限制民事行为能力人以及其他不具有见证能力的人；

1. the persons having no capacity for civil conduct, the persons having limited capacity for civil conduct and other persons having no witness capacity;

(二) 继承人、受遗赠人；

(II) Successors and legatees; and

(三) 与继承人、受遗赠人有利害关系的人。

(III) Persons whose interests are related to those of any successor or legatee.

### 第一千一百四十一条

遗嘱应当为缺乏劳动能力又没有生活来源的继承人保留必要的遗产份额。

**Article 1141** Reservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.

### 第一千一百四十二条 遗嘱人可以撤回、变更自己所立的遗嘱。

**Article 1142** A testator may withdraw or alter a will he has previously made.

立遗嘱后，遗嘱人实施与遗嘱内容相反的民事法律行为的，视为对遗嘱相关内容的撤回。

Where the testator performs the civil juristic acts that are contrary to the contents of the will after the making of the will, it shall be deemed as withdrawal of relevant contents of the will.

立有数份遗嘱，内容相抵触的，以最后的遗嘱为准。

Where several wills have been made and their contents contradict each other, the last one shall prevail.

### 第一千一百四十三条 无民事行为能力人或者限制民事行为能力人所立的遗嘱无效。

**Article 143** Wills made by persons with no capacity for civil conduct or with limited capacity for civil conduct shall be null and void.

遗嘱必须表示遗嘱人的真实意思，受欺诈、胁迫所立的遗嘱无效。

Wills shall manifest the genuine intention of the testator; those made under fraud or duress shall be void.

伪造的遗嘱无效。

A forged will is void.

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遗嘱被篡改的，篡改的内容无效。

Where a will has been tampered with, the affected parts of it shall be void.

第一千一百四十四条 遗嘱继承或者遗赠附有义务的，继承人或者受遗赠人应当履行义务。没有正当理由不履行义务的，经利害关系人或者有关组织请求，人民法院可以取消其接受附义务部分遗产的权利。

Article 1144 Where there are obligations attached to testamentary succession or legacy, the successor or legatee shall perform such obligations. Where any party fails to perform his obligations without any justified reason, the people's court may, upon request by the interested party or relevant organization, cancel his right to accept a part of the estate subject to collateral obligations.

#### 第四章 遗产的处理

#### Chapter 4 Disposition of Estates

##### 第一千一百四十五条

继承开始后，遗嘱执行人为遗产管理人；没有遗嘱执行人的，继承人应当及时推选遗产管理人；继承人未推选的，由继承人共同担任遗产管理人；没有继承人或者继承人均放弃继承的，由被继承人生前住所地的民政部门或者村民委员会担任遗产管理人。

**Article 1145** After the commencement of succession, a testamentary executor shall be the estate manager; where there is no testamentary executor, a successor shall promptly elect a estate manager; where no successor has elected a successor, the successors shall jointly act as the estate manager; where there is no successor or the successors have abandoned the succession, the civil affairs department or villagers' committee of the decedent's place of domicile shall act as the estate manager.

##### 第一千一百四十六条

对遗产管理人的确定有争议的，利害关系人可以向人民法院申请指定遗产管理人。

**Article 1146** Where there is any dispute over the determination of the administrator, any interested party may apply to the People's Court for the appointment of the administrator.

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**第一千一百四十七条** 遗产管理人应当履行下列职责：

**Article 1147** A legacy administrator shall perform the following duties and responsibilities:

(一) 清理遗产并制作遗产清单；

I. clearing the property and preparing a list of the property;

(二) 向继承人报告遗产情况；

(II) To report the situation of the estate to the inheritor;

(三) 采取必要措施防止遗产毁损、灭失；

(III) Necessary measures shall be taken to prevent damage or loss of the estate; and

(四) 处理被继承人的债权债务；

(IV) Dealing with the credits and debts of the decedent;

(五) 按照遗嘱或者依照法律规定分割遗产；

(V) Partition of the estate according to the will or the provisions of the law;

(六) 实施与管理遗产有关的其他必要行为。

(VI) performing other acts necessary for the management of the estate.

#### **第一千一百四十八条**

遗产管理人应当依法履行职责，因故意或者重大过失造成继承人、受遗赠人、债权人损害的，应当承担民事责任。

**Article 1148** A legacy administrator shall perform its duties in accordance with the law, and shall bear civil liability for any damage caused to successors, legatees or creditors either intentionally or by gross negligence.

#### **第一千一百四十九条** 遗产管理人可以依照法律规定或者按照约定获得报酬。

**Article 1149** The estate administrator may receive remuneration in accordance with legal provisions or the terms of the contract.

**第一千一百五十条** 继承开始后，知道被继承人死亡的继承人应当及时通知其他继承人和遗嘱执行人。继承人中无人知道被继承人死亡或者知道被继承人死亡而不能通知的，由被继承人生前所在单位或者住所地的居民委员会、村民委员会负责通知。

**Article 1150** After the opening of succession, a successor who has knowledge of the death should promptly notify the other successors and the testamentary executor. If none of the successors

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knows about the death or if there is no way to make the notification, the organization to which the decedent belonged before his death or the residents' committee or villagers' committee at his place of residence shall make the notification.

#### 第一千一百五十一条

存有遗产的人，应当妥善保管遗产，任何组织或者个人不得侵吞或者争抢。

**Article 1151** Any person who has in his possession any property of the decedent shall take good care of such property and no organization or individual shall misappropriate it or contend for it.

#### 第一千一百五十二条

继承开始后，继承人于遗产分割前死亡，并没有放弃继承的，该继承人应当继承的遗产转给其继承人，但是遗嘱另有安排的除外。

**Article 1152** Where, after succession begins, a successor dies before the partition of the estate and does not relinquish the inheritance, the estate which should have been inherited by the successor shall be transferred to the successor, unless the will provides otherwise.

#### 第一千一百五十三条

夫妻共同所有的财产，除有约定的外，遗产分割时，应当先将共同所有的财产的一半分出为配偶所有，其余的为被继承人的遗产。

**Article 1153** At the time a decedent's estate is partitioned, half of the joint property owned by the spouses in common shall, unless otherwise agreed upon, be first allotted to the surviving spouse as his or her own property; the remainder shall constitute the decedent's estate.

遗产在家庭共有财产之中的，遗产分割时，应当先分出他人的财产。

If the decedent's estate forms part of the common property of his family, that portion of the property belonging to the other members of his family shall first be separated at the time of the partitioning of the decedent's estate.

**第一千一百五十四条** 有下列情形之一的，遗产中的有关部分按照法定继承办理：

**Article 1154** Under any of the following circumstances, the affected part of the estate shall be dealt with in accordance with statutory succession provisions:

（一）遗嘱继承人放弃继承或者受遗赠人放弃受遗赠；

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1. Where a testamentary successor disclaims inheritance or a legatee disclaims legacy;
- (二) 遗嘱继承人丧失继承权或者受遗赠人丧失受遗赠权;
- (II) Loss of the right of inheritance by a testamentary successor or loss of the right of legacy by a legatee;
- (三) 遗嘱继承人、受遗赠人先于遗嘱人死亡或者终止;
- (III) A testamentary successor or legatee dies or terminates before the testator;
- (四) 遗嘱无效部分所涉及的遗产;
- (IV) Where an invalid will involves part of the estate; or
- (五) 遗嘱未处分的遗产。
- (V) Legacy not disposed of under the will.

第一千一百五十五条 遗产分割时，应当保留胎儿的继承份额。胎儿娩出时是死体的，保留的份额按照法定继承办理。

**Article 1155** At the time an estate is partitioned, reservation shall be made for the share of any unborn child. If the baby is born dead, the share reserved shall be dealt with in accordance with statutory succession provisions.

**第一千一百五十六条** 遗产分割应当有利于生产和生活需要，不损害遗产的效用。

**Article 156** The partitioning of a decedent's estate shall be conducted in a manner beneficial to the requirements of production and livelihood; it shall not diminish the usefulness of the estate.

不宜分割的遗产，可以采取折价、适当补偿或者共有等方法处理。

Where the estate is unsuitable for partitioning, it may be disposed of by such means as price evaluation, appropriate compensation or co-ownership.

**第一千一百五十七条**

夫妻一方死亡后另一方再婚的，有权处分所继承的财产，任何组织或者个人不得干涉。

**Article 1157** Any surviving spouse who remarries shall be entitled to dispose of the property he or she has inherited; no organization or individual may interfere with this right.

第一千一百五十八条 自然人可以与继承人以外的组织或者个人签订遗赠扶养协议。按照协议，该组织或者个人承担该自然人生养死葬的义务，享有受遗赠的权利。

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Article 1158 A natural person may enter into a legacy -support agreement with an organization or individual other than a successor. In accordance with the agreement, the organization or individual shall assume the obligation of maintenance of life and death and enjoy the right to legacy.

#### **第一千一百五十九条**

分割遗产，应当清偿被继承人依法应当缴纳的税款和债务；但是，应当为缺乏劳动能力又没有生活来源的继承人保留必要的遗产。

**Article 1159** The decedent shall pay off all taxes and debts payable by him according to law when the estate is partitioned; however, the estate shall be reserved for any successor who neither can work nor has a source of income.

#### **第一千一百六十条**

无人继承又无人受遗赠的遗产，归国家所有，用于公益事业；死者生前是集体所有制组织成员的，归所在集体所有制组织所有。

**Article 1160** Any estate which is left with neither a successor nor a legatee shall be owned by the state and used for public welfare undertakings; where the decedent was a member of an organization under collective ownership before his death, such estate shall be owned by such organization.

#### **第一千一百六十一条**

继承人以所得遗产实际价值为限清偿被继承人依法应当缴纳的税款和债务。超过遗产实际价值部分，继承人自愿偿还的不在此限。

**Article 161** The successor shall pay off the taxes and debts payable by the decedent according to law within the limit of the actual value of the estate obtained. Any amount in excess of the value of the estate may be paid by the successors voluntarily.

继承人放弃继承的，对被继承人依法应当缴纳的税款和债务可以不负清偿责任。

The successor who disclaims inheritance is not liable for the taxes and debts payable by the decedent according to law.

#### **第一千一百六十二条** 执行遗赠不得妨碍清偿遗赠人依法应当缴纳的税款和债务。

**Article 162** The carrying out of a legacy shall not affect the payment of taxes and debts payable

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by the legator according to law.

### 第一千一百六十三条

既有法定继承又有遗嘱继承、遗赠的，由法定继承人清偿被继承人依法应当缴纳的税款和债务；超过法定继承遗产实际价值部分，由遗嘱继承人和受遗赠人按比例以所得遗产清偿。

**Article 163** Where there are both statutory inheritance and testamentary inheritance or legacy, the statutory successor shall pay off the taxes and debts payable by the decedent according to law; the portion in excess of the actual value of the legally inherited property shall be paid off by the testamentary successor and the legatee according to the proportion of the property acquired.

## 第七编 侵权责任

### PART VII INFRINGEMENT LIABILITY

#### 第一章 一般规定

#### CHAPTER 1 GENERAL PROVISIONS

第一千一百六十四条 本编调整因侵害民事权益产生的民事关系。

**Article 1164** This Part deals with civil relationships arising from infringements of civil rights and interests.

第一千一百六十五条 行为人因过错侵害他人民事权益造成损害的，应当承担侵权责任。

**Article 165** Whoever is at fault in infringing upon another party's civil rights and interests and causing damage thereto shall bear tort liability.

依照法律规定推定行为人有过错，其不能证明自己没有过错的，应当承担侵权责任。

Persons who are presumed to be at fault pursuant to the provisions of the laws and are unable to prove that they are not at fault shall bear tort liability.

### 第一千一百六十六条

行为人造成他人民事权益损害，不论行为人有无过错，法律规定应当承担侵权责任的，依照

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其规定。

**Article 166** Where a doer has caused others to suffer damages to civil rights and interests, regardless if the doer has committed negligence, and the law stipulates that the doer shall bear tort liability, such provisions shall prevail.

#### 第一千一百六十七条

侵权行为危及他人人身、财产安全的，被侵权人有权请求侵权人承担停止侵害、排除妨碍、消除危险等侵权责任。

**Article 167** Where a tortious act endangers the personal or property safety of another person, the party whose rights are infringed upon shall have the right to request that the infringing party assume tort liability such as ceasing infringement, removing obstruction, eliminating danger, etc.

第一千一百六十八条 二人以上共同实施侵权行为，造成他人损害的，应当承担连带责任。

**Article 168** Where two or more persons have committed a tortious act jointly and caused others to suffer damages, they shall bear connected liability.

第一千一百六十九条 教唆、帮助他人实施侵权行为的，应当与行为人承担连带责任。

**Article 169** Persons who instigate or assist others in committing a tortious act shall bear joint and several liability with the doer.

教唆、帮助无民事行为能力人、限制民事行为能力人实施侵权行为的，应当承担侵权责任；该无民事行为能力人、限制民事行为能力人的监护人未尽到监护职责的，应当承担相应的责任。

Persons who instigate or assist persons with no capacity for civil conduct or persons with restricted capacity for civil conduct in committing a tortious act shall bear tort liability; where the guardian of a person with no capacity for civil conduct or a person with restricted capacity for civil conduct has not performed guardianship duties, he/she shall bear the corresponding liability.

#### 第一千一百七十条

二人以上实施危及他人人身、财产安全的行为，其中一人或者数人的行为造成他人损害，能够确定具体侵权人的，由侵权人承担责任；不能确定具体侵权人的，行为人承担连带责任。

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**Article 170** In the case of two or more persons who have committed an act which compromises the personal safety or property safety of others and the action of one or several of them has caused others to suffer damages, where the specific tortfeasor (s) can be determined, the tortfeasor (s) shall be held liable; where the specific tortfeasor (s) cannot be determined, the doers shall bear connected liability.

**第一千一百七十一条**

二人以上分别实施侵权行为造成同一损害，每个人的侵权行为都足以造成全部损害的，行为人承担连带责任。

**Article 171** Where the tortious acts committed by two or more persons have caused the same damages, and the tortious acts of each person are able to cause all the damages, the doers shall bear connected liability.

**第一千一百七十二条**

二人以上分别实施侵权行为造成同一损害，能够确定责任大小的，各自承担相应的责任；难以确定责任大小的，平均承担责任。

**Article 172** Where the tortious acts committed by two or more persons have caused the same damages, and the extents of responsibilities can be determined, such persons shall bear the corresponding liability respectively; where it is difficult to determine the extents of responsibilities, such persons shall bear liability equally.

**第一千一百七十三条**

被侵权人对同一损害的发生或者扩大有过错的，可以减轻侵权人的责任。

**Article 173** Where the infringed party is at fault for occurrence or amplification of the same damages, the liability of the tortfeasor (s) may be mitigated.

**第一千一百七十四条** 损害是因受害人故意造成的，行为人不承担责任。

**Article 174** Where the damages are intentionally caused by the victim, the doer shall not be held liable. "

**第一千一百七十五条** 损害是因第三人造成的，第三人应当承担侵权责任。

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**Article 1175** Where the damages are caused by a third party, the third party shall bear tort liability.

#### 第一千一百七十六条

自愿参加具有一定风险的文体活动，因其他参加者的行为受到损害的，受害人不得请求其他参加者承担侵权责任；但是，其他参加者对损害的发生有故意或者重大过失的除外。

**Article 176** In the event that the participant is willing to participate in recreational and sports activities with certain risks, the injured party shall not request other participants to bear tort liability if the damages are caused by the conduct of other participants, unless other participants have intentional or gross negligence on the occurrence of the damages.

活动组织者的责任适用本法第一千一百九十八条至第一千二百零一条的规定。

The responsibility of the organizer of an activity shall be governed by Articles 1198 through 201 of this Law.

#### 第一千一百七十七条

合法权益受到侵害，情况紧迫且不能及时获得国家机关保护，不立即采取措施将使其合法权益受到难以弥补的损害的，受害人可以在保护自己合法权益的必要范围内采取扣留侵权人的财物等合理措施；但是，应当立即请求有关国家机关处理。

**Article 177** Where the lawful rights and interests are infringed upon, the situation is urgent, such rights and interests cannot be protected by the state organ in a timely manner, and failure to take immediate measures will cause irreparable damage to the lawful rights and interests of the infringed, the victim may, within the necessary scope for protecting his/her lawful rights and interests, take reasonable measures such as detaining the properties of the infringer; however, the victim shall immediately request the relevant state organ to handle the matter.

受害人采取的措施不当造成他人损害的，应当承担侵权责任。

Where a victim has adopted improper measures and caused others to suffer damages, the victim shall bear tort liability.

#### 第一千一百七十八条

本法和其他法律对不承担责任或者减轻责任的情形另有规定的，依照其规定。

**Article 178** Where this Law and other laws provide otherwise in respect of circumstances

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under which liability may be exempted or mitigated, such provisions shall prevail.

## 第二章 损害赔偿

### Chapter 2 Compensation for Damage

#### 第一千一百七十九条

侵害他人造成人身损害的，应当赔偿医疗费、护理费、交通费、营养费、住院伙食补助费等为治疗和康复支出的合理费用，以及因误工减少的收入。造成残疾的，还应当赔偿辅助器具费和残疾赔偿金；造成死亡的，还应当赔偿丧葬费和死亡赔偿金。

**Article 179** A person whose tortious act has caused others to suffer a personal injury shall make compensation for reasonable expenses incurred for treatment and rehabilitation such as medical fees, nursing fees, transportation fees, nutrition fees, hospitalisation meal subsidies, etc, and decreased income due to loss of working time. Where disability is caused, the expenses for assistive devices and disability compensation shall be compensated for; where death is caused, the funeral expenses and death compensation shall be compensated for.

**第一千一百八十条** 因同一侵权行为造成多人死亡的，可以以相同数额确定死亡赔偿金。

**Article 1180** Where the same tortious act causes more than one person to die, the amount of death compensation payable may be the same.

**第一千一百八十一条** 被侵权人死亡的，其近亲属有权请求侵权人承担侵权责任。被侵权人为组织，该组织分立、合并的，承继权利的组织有权请求侵权人承担侵权责任。

**Article 1181** In the event of death of an infringed party, his/her immediate relatives shall have the right to request that the tortfeasor (s) bear tort liability. Where the infringed party is an organisation and the organisation is divided or merged, the organisation which succeeds its rights shall have the right to request that the tortfeasor (s) bear tort liability.

被侵权人死亡的，支付被侵权人医疗费、丧葬费等合理费用的人有权请求侵权人赔偿费用，但是侵权人已经支付该费用的除外。

Where the party whose rights are infringed upon dies, the party who has paid reasonable expenses such as medical expenses and funeral expenses shall be entitled to request the

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infringing party to make compensation, unless the infringing party has already paid such expenses.

### 第一千一百八十二条

侵害他人人身权益造成财产损失的，按照被侵权人因此受到的损失或者侵权人因此获得的利益赔偿；被侵权人因此受到的损失以及侵权人因此获得的利益难以确定，被侵权人和侵权人就赔偿数额协商不一致，向人民法院提起诉讼的，由人民法院根据实际情况确定赔偿数额。

**Article 182** Where the infringement upon personal rights and interests of others causes property losses, the compensation shall be made according to the losses suffered by the infringed upon party or the benefits obtained by the infringer thereby; where it is difficult to determine the losses suffered by the infringed upon party or the benefits obtained by the infringer thereby, and the infringed upon party and the infringer cannot reach an agreement on the amount of compensation but bring a lawsuit to a people's court, the people's court shall determine the amount of compensation according to the actual situation.

### 第一千一百八十三条

侵害自然人人身权益造成严重精神损害的，被侵权人有权请求精神损害赔偿。

**Article 183** Where the infringement upon a natural person's personal rights and interests causes serious mental suffering, the infringed party shall have the right to claim compensation for mental suffering.

因故意或者重大过失侵害自然人具有人身意义的特定物造成严重精神损害的，被侵权人有权请求精神损害赔偿。

Where a natural person has suffered serious mental suffering as a result of intentional or gross negligence infringement of property with personal significance, the infringed party shall have the right to claim compensation for mental suffering.

### 第一千一百八十四条

侵害他人财产的，财产损失按照损失发生时的市场价格或者其他合理方式计算。

**Article 1184** As regards infringements on another person's property, the property loss shall be calculated according to the market price when the loss is incurred or by other reasonable means.

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### 第一千一百八十五条

故意侵害他人知识产权，情节严重的，被侵权人有权请求相应的惩罚性赔偿。

**Article 1185** Where an offender intentionally infringes upon the intellectual property of others and the case is serious, the infringed party shall have the right to request for the corresponding punitive compensation.

### 第一千一百八十六条

受害人和行为人对损害的发生都没有过错的，依照法律的规定由双方分担损失。

**Article 1186** Where neither the victim nor the perpetrator is at fault in the occurrence of damage, both parties shall share the loss in accordance with the law.

第一千一百八十七条 损害发生后，当事人可以协商赔偿费用的支付方式。协商不一致的，赔偿费用应当一次性支付；一次性支付确有困难的，可以分期支付，但是被侵权人有权请求提供相应的担保。

**Article 1187** Upon occurrence of damages, the parties concerned may negotiate the payment method for compensation expenses. Where the negotiation is unsuccessful, one-off payment of compensation expenses shall be made; where there is genuine difficulty in making a one-off payment, instalments may be made, provided that the infringed party shall have the right to request for the corresponding guarantee.

## 第三章 责任主体的特殊规定

### Chapter 3 Special Provisions on Liability Subjects

第一千一百八十八条 无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担侵权责任。监护人尽到监护职责的，可以减轻其侵权责任。

**Article 1188** Where a person without or with limited capacity for civil conduct causes damage to others, his/her guardian shall bear tort liability. Where the guardian has performed guardianship duties, his/her tort liability may be mitigated.

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用；不足部分，由监护人赔偿。

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If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property; if the property is insufficient, the guardian shall compensate the shortfall.

### 第一千一百八十九条

无民事行为能力人、限制民事行为能力人造成他人损害，监护人将监护职责委托给他人的，监护人应当承担侵权责任；受托人有过错的，承担相应的责任。

**Article 1189** Where a person without or with limited capacity for civil conduct causes damage to others, if the guardian entrusts the guardianship to others, the guardian shall bear tort liability; if the entrusted person is at fault, he/she shall bear the corresponding liability.

### 第一千一百九十条

完全民事行为能力人对自己的行为暂时没有意识或者失去控制造成他人损害有过错的，应当承担侵权责任；没有过错的，根据行为人的经济状况对受害人适当补偿。

**Article 1190** Where a person with full capacity for civil conduct has committed negligence in respect of others' damages due to temporary loss of awareness or loss of control in his/her action, he/she shall bear tort liability; where the doer has not committed negligence, he/she shall make appropriate compensation to the victim in accordance with his/her financial status.

完全民事行为能力人因醉酒、滥用麻醉药品或者精神药品对自己的行为暂时没有意识或者失去控制造成他人损害的，应当承担侵权责任。

Where a person with full capacity for civil conduct has a temporary loss of consciousness or has lost control over his/her action as a result of drunken state or abuse of narcotics or psychotropic substances and has caused others to suffer damages, he/she shall bear tort liability.

### 第一千一百九十一条

用人单位的工作人员因执行工作任务造成他人损害的，由用人单位承担侵权责任。用人单位承担侵权责任后，可以向有故意或者重大过失的工作人员追偿。

**Article 1191** Where an employee of an employer has caused others to suffer damages as a result of performance of work assignment, the employer shall bear tort liability. Upon bearing tort liability, the employer may seek recourse from the staff member who has committed intentional act or gross negligence.

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劳务派遣期间，被派遣的工作人员因执行工作任务造成他人损害的，由接受劳务派遣的用工单位承担侵权责任；劳务派遣单位有过错的，承担相应的责任。

Where a seconded worker causes others to suffer damages as a result of performance of work assignment during the secondment period, the secondment employer shall bear tort liability; where the secondment employer has committed negligence, it shall bear the corresponding liability.

### 第一千一百九十二条

个人之间形成劳务关系，提供劳务一方因劳务造成他人损害的，由接受劳务一方承担侵权责任。接受劳务一方承担侵权责任后，可以向有故意或者重大过失的提供劳务一方追偿。提供劳务一方因劳务受到损害的，根据双方各自的过错承担相应的责任。

**Article 1192** In the event of labour relations formed between individuals where the party providing labour services has caused others to suffer damages as a result of the labour services, the party accepting labour services shall bear tort liability. After assuming the liabilities for infringement, the party receiving the labor services may claim compensation from the party providing the labor services with intent or gross negligence. If the party providing labor suffers any damage due to such labor services, both parties shall bear corresponding liability based on their respective fault.

提供劳务期间，因第三人的行为造成提供劳务一方损害的，提供劳务一方有权请求第三人承担侵权责任，也有权请求接受劳务一方给予补偿。接受劳务一方补偿后，可以向第三人追偿。

Where the party providing labour services has caused an injury or damage during the provision of labour services as a result of the action of a third party, the party providing labour services shall have the right to request that the third party bears tort liability and shall have the right to request that the party accepting labour services make compensation. The party receiving the services may, after making compensation, claim compensation from the third party.

### 第一千一百九十三条

承揽人在完成工作过程中造成第三人损害或者自己损害的，定作人不承担侵权责任。但是，定作人对定作、指示或者选任有过错的，应当承担相应的责任。

**Article 1193.** Where the contractor causes damage to a third party or to itself in the course of completing work, the party which has placed the order shall not bear tortious liability. However, if

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the hirer has any fault with respect to the order, instruction or selection, he shall bear the corresponding liability.

第一千一百九十四条 网络用户、网络服务提供者利用网络侵害他人民事权益的，应当承担侵权责任。法律另有规定的，依照其规定。

Article 1194 Network users and network service providers that use the network to infringe upon others' civil rights and interests shall bear tortious liability. Where the laws provide otherwise, such provisions shall prevail.

### 第一千一百九十五条

网络用户利用网络服务实施侵权行为的，权利人有权通知网络服务提供者采取删除、屏蔽、断开链接等必要措施。通知应当包括构成侵权的初步证据及权利人的真实身份信息。

Article 1195 Where a network user has used network services to commit a tortious act, the rights holder shall have the right to notify the network service provider to adopt the requisite measures such as deletion, shielding, breaking of hyperlinks, etc. The notice shall include the preliminary evidence for the infringement and the true identity information of the right holder.

网络服务提供者接到通知后，应当及时将该通知转送相关网络用户，并根据构成侵权的初步证据和服务类型采取必要措施；未及时采取必要措施的，对损害的扩大部分与该网络用户承担连带责任。

Upon receipt of the notice, the network service provider shall promptly forward the notice to the relevant network user, and adopt the requisite measures based on the preliminary evidence of infringement and the type of service; where the network service provider failed to adopt the requisite measures promptly, it shall bear joint and several liability with the network user in respect of the escalated damages.

权利人因错误通知造成网络用户或者网络服务提供者损害的，应当承担侵权责任。法律另有规定的，依照其规定。

If a right holder causes damage to a network user or provider of network services due to an erroneous notice, it shall bear tort liability. Where the laws provide otherwise, such provisions shall prevail.

第一千一百九十六条 网络用户接到转送的通知后，可以向网络服务提供者提交不存在

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侵权行为的声明。声明应当包括不存在侵权行为的初步证据及网络用户的真实身份信息。

**Article 1196** Upon receipt of the forwarded notice, the network user may submit to the network service provider a statement of non- infringement of rights. The statement shall include the preliminary evidence of non- infringement act and the true identity information of network users.

网络服务提供者接到声明后，应当将该声明转送发出通知的权利人，并告知其可以向有关部门投诉或者向人民法院提起诉讼。网络服务提供者在转送声明到达权利人后的合理期限内，未收到权利人已经投诉或者提起诉讼通知的，应当及时终止所采取的措施。

After receiving the statement, the network service provider shall forward the statement to the owner issuing the notice and inform such owner that it may complain to relevant departments or file a lawsuit with the people's court. Where the network service provider does not receive the notice of complaint or lawsuit from the right holder within a reasonable period after forwarding the statement to the right holder, it shall promptly terminate the measures taken.

#### **第一千一百九十七条**

网络服务提供者知道或者应当知道网络用户利用其网络服务侵害他人民事权益，未采取必要措施的，与该网络用户承担连带责任。

**Article 1197** Where the network service provider is or should be aware that the network user has used its network services to harm the civil rights and interests of others but failed to adopt the requisite measures, it shall bear joint and several liability with the network user.

#### **第一千一百九十八条**

宾馆、商场、银行、车站、机场、体育场馆、娱乐场所等经营场所、公共场所的经营者、管理者或者群众性活动的组织者，未尽到安全保障义务，造成他人损害的，应当承担侵权责任。

**Article 1198 Operators, managers of business premises such as hotels, shopping malls, banks, stations, airports, sports stadiums, entertainment premises, etc and public premises or organisers of mass activities who failed to perform safety assurance obligations and caused others to suffer damages shall bear tort liability.**

因第三人的行为造成他人损害的，由第三人承担侵权责任；经营者、管理者或者组织者未尽到安全保障义务的，承担相应的补充责任。经营者、管理者或者组织者承担补充责任后，可以向第三人追偿。

In the event of damages of others caused by an act of a third party, the third party shall bear

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tort liability; business operators, managers or organisers who have failed to perform safety protection obligations shall bear the corresponding supplementary responsibilities. After bearing the supplementary liability, the business operator, manager or organizer may claim compensation from the third party.

第一千一百九十九条 无民事行为能力人在幼儿园、学校或者其他教育机构学习、生活期间受到人身损害的，幼儿园、学校或者其他教育机构应当承担侵权责任；但是，能够证明尽到教育、管理职责的，不承担侵权责任。

**Article 1199** Where a person with no capacity for civil conduct has suffered personal injury during learning or living in a kindergarten, school or any other educational institution, the kindergarten, school or educational institution shall bear tort liability; however, if it can be proven that the kindergarten, school or educational institution has performed education and management duties, it shall not bear tort liability.

### 第一千二百条

限制民事行为能力人在学校或者其他教育机构学习、生活期间受到人身损害，学校或者其他教育机构未尽到教育、管理职责的，应当承担侵权责任。

**Article 1200** Where a person with limited capacity for civil conduct has suffered personal injury during learning or living in a school or any other educational institution, and the school or educational institution has failed to perform education and management duties, the school or educational institution shall bear tort liability.

### 第一千二百零一条

无民事行为能力人或者限制民事行为能力人在幼儿园、学校或者其他教育机构学习、生活期间，受到幼儿园、学校或者其他教育机构以外的第三人人身损害的，由第三人承担侵权责任；幼儿园、学校或者其他教育机构未尽到管理职责的，承担相应的补充责任。幼儿园、学校或者其他教育机构承担补充责任后，可以向第三人追偿。

**Article 121** Where a person with no capacity for civil conduct or a person with limited capacity for civil conduct has suffered personal injury caused by a third party other than the kindergarten, school or any other educational institution during learning or living in the kindergarten, school or educational institution, the third party shall bear tort liability; where the kindergarten, school or

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educational institution has failed to perform management duties, it shall bear the corresponding supplementary responsibilities. Upon bearing the supplementary liability, the kindergarten, school or any other educational institution may seek recourse against the third party.

## 第四章 产品责任

### Chapter 4 Product Liability

**第一千二百零二条** 因产品存在缺陷造成他人损害的，生产者应当承担侵权责任。

**Article 202** In the event of product defects which have caused others to suffer damages, the manufacturer shall bear tort liability.

#### 第一千二百零三条

因产品存在缺陷造成他人损害的，被侵权人可以向产品的生产者请求赔偿，也可以向产品的销售者请求赔偿。

**Article 203** In the event of damages of others caused by product defects, the infringed party may seek compensation from the manufacturer of the products or the seller of the products.

(Relevant articles: Articles 2 Legislation 2)

产品缺陷由生产者造成的，销售者赔偿后，有权向生产者追偿。因销售者的过错使产品存在缺陷的，生产者赔偿后，有权向销售者追偿。

Where the product defect is caused by the producer, the seller may, after paying compensation, claim the same from the producer. Where the product defect is caused by the seller, the producer may, after paying compensation, claim the same from the seller.

#### 第一千二百零四条

因运输者、仓储者等第三人的过错使产品存在缺陷，造成他人损害的，产品的生产者、销售者赔偿后，有权向第三人追偿。

**Article 124** Where the product defects caused by the negligence of a third party such as the transporter, the warehouse, etc have caused others to suffer damages, the manufacturer and the seller of the products shall have the right to seek recourse against the third party after the manufacturer and the seller have made compensation.

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### 第一千二百零五条

因产品缺陷危及他人人身、财产安全的，被侵权人有权请求生产者、销售者承担停止侵害、排除妨碍、消除危险等侵权责任。

**Article 205** In the event of product defects which compromise the personal safety and property security of others, the infringed party shall have the right to request that the manufacturer and the seller bear tort liability such as cessation of infringement, removal of obstruction, elimination of danger, etc.

### 第一千二百零六条

产品投入流通后发现存在缺陷的，生产者、销售者应当及时采取停止销售、警示、召回等补救措施；未及时采取补救措施或者补救措施不力造成损害扩大的，对扩大的损害也应当承担侵权责任。

**Article 206** Where a product is found to be defective after it is put into circulation, the manufacturer and the seller shall promptly adopt remedy measures such as stopping sale, issuing a warning, and recalling the product; where the damages are aggravated as a result of failure to adopt remedy measures promptly or ineffective remedy measures, the manufacturer and the seller shall also bear tort liability for the aggravated damages.

依据前款规定采取召回措施的，生产者、销售者应当负担被侵权人因此支出的必要费用。

Where recall measures are adopted pursuant to the provisions of the preceding paragraph, the manufacturer and the seller shall bear the requisite expenses incurred by the infringed party.

### 第一千二百零七条

明知产品存在缺陷仍然生产、销售，或者没有依据前条规定采取有效补救措施，造成他人死亡或者健康严重损害的，被侵权人有权请求相应的惩罚性赔偿。

**Article 207** Where any producer or seller knowingly produces or sells defective products or fails to take effective remedial measures in accordance with the preceding article, thus causing death or serious damage to the health of another person, the infringed shall be entitled to claim appropriate punitive damages.

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## Chapter 5 Motor Vehicle Traffic Accident Liability

### 第一千二百零八条

机动车发生交通事故造成损害的，依照道路交通安全法律和本法的有关规定承担赔偿责任。

**Article 128** Where any damage is caused by a traffic accident involving a motor vehicle, the liability for compensation shall be borne in accordance with the relevant provisions of the road traffic safety laws and the Law.

### 第一千二百零九条

因租赁、借用等情形机动车所有人、管理人与使用人不是同一人时，发生交通事故造成损害，属于该机动车一方责任的，由机动车使用人承担赔偿责任；机动车所有人、管理人对损害的发生有过错的，承担相应的赔偿责任。

**Article 129** Where the owner or manager of a motor vehicle is not the user of the motor vehicle under leasing or borrowing circumstances, if the damages are caused in a traffic accident, and the user of the motor vehicle is liable for the damages, the user of the motor vehicle shall bear compensation liability; where the owner or manager of the motor vehicle is at fault for the damages, the owner or manager shall bear the corresponding compensation liability.

### 第一千二百一十条

当事人之间已经以买卖或者其他方式转让并交付机动车但是未办理登记，发生交通事故造成损害，属于该机动车一方责任的，由受让人承担赔偿责任。

**Article 210** Where a motor vehicle has been transferred and delivered to the transferee by way of sale or purchase or by other means but registration has not been completed, and the damages are caused by a traffic accident, which is attributable to the side of the motor vehicle, the transferee shall bear the liability for compensation.

### 第一千二百一十一条

以挂靠形式从事道路运输经营活动的机动车，发生交通事故造成损害，属于该机动车一方责任的，由挂靠人和被挂靠人承担连带责任。

**Article 211** Where a motor vehicle that is affiliated to an organization for conducting road

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transport causes a traffic accident and the party owning the vehicle is liable for the accident, the affiliating party and the affiliated party shall bear joint and several liability.

#### 第一千二百一十二条

未经允许驾驶他人机动车，发生交通事故造成损害，属于该机动车一方责任的，由机动车使用人承担赔偿责任；机动车所有人、管理人对损害的发生有过错的，承担相应的赔偿责任，但是本章另有规定的除外。

**Article 212** Where a person drives another person's motor vehicle without the person's permission and causes damages in a traffic accident, which is attributable to the side of the motor vehicle, the user of the motor vehicle shall bear the liability for compensation; if the owner or manager of the motor vehicle is at fault for the damages, he shall bear the corresponding liability for compensation, except as otherwise provided in this Chapter.

#### 第一千二百一十三条

机动车发生交通事故造成损害，属于该机动车一方责任的，先由承保机动车强制保险的保险人在强制保险责任限额范围内予以赔偿；不足部分，由承保机动车商业保险的保险人按照保险合同的约定予以赔偿；仍然不足或者没有投保机动车商业保险的，由侵权人赔偿。

**Article 213** In the event of damages caused by a traffic accident involving a motor vehicle, where the motor vehicle is liable, the insurer underwriting the motor vehicle compulsory insurance shall make compensation within the scope of limits of mandatory insurance liability; where the compensation is inadequate, the insurer underwriting the motor vehicle commercial insurance shall make compensation pursuant to the agreement in the insurance contract; where the damages are still insufficient or the motor vehicle is not covered by motor vehicle commercial insurance, the tortfeasor shall make compensation.

#### 第一千二百一十四条

以买卖或者其他方式转让拼装或者已经达到报废标准的机动车，发生交通事故造成损害的，由转让人和受让人承担连带责任。

**Article 214** In the event of damages caused by a traffic accident involving a motor vehicle which has been transferred and assembled by way of sale and purchase or other means or a motor vehicle which has attained scrap standards, the transferor and the transferee shall bear connected

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liability.

第一千二百一十五条 盗窃、抢劫或者抢夺的机动车发生交通事故造成损害的，由盗窃人、抢劫人或者抢夺人承担赔偿责任。盗窃人、抢劫人或者抢夺人与机动车使用人不是同一人，发生交通事故造成损害，属于该机动车一方责任的，由盗窃人、抢劫人或者抢夺人与机动车使用人承担连带责任。

Article 1215 In the event of damages caused by a traffic accident involving a motor vehicle which is stolen, robbed or plundered, the thief, robber or plunderer shall bear compensation liability. In the event that a thief, robber or plunderer is not the user of a motor vehicle and the damages are caused in a traffic accident, if the liability of the traffic accident lies with the motor vehicle user, the thief, robber or plunderer and the motor vehicle user shall bear joint liability.

保险人在机动车强制保险责任限额范围内垫付抢救费用的，有权向交通事故责任人追偿。

Where the insurer pays the rescue expenses within the liability limit of the compulsory insurance for motor vehicles on behalf of the liable party, it shall be entitled to recover the rescue expenses from the liable party of the traffic accident.

### 第一千二百一十六条

机动车驾驶人发生交通事故后逃逸，该机动车参加强制保险的，由保险人在机动车强制保险责任限额范围内予以赔偿；机动车不明、该机动车未参加强制保险或者抢救费用超过机动车强制保险责任限额，需要支付被侵权人人身伤亡的抢救、丧葬等费用的，由道路交通事故社会救助基金垫付。道路交通事故社会救助基金垫付后，其管理机构有权向交通事故责任人追偿。

Article 216 Where a motor vehicle driver flees after a traffic accident, if the motor vehicle is subject to compulsory insurance, the insurer shall make compensation within the compensation limit under the compulsory insurance procured for said motor vehicle; if the motor vehicle is unknown, if the motor vehicle is not subject to compulsory insurance or the rescue expenses exceed the liability limit under the compulsory insurance procured for said motor vehicle, the costs incurred in rescuing or burying the injured party or other expenses shall be advanced from the social assistance fund for road traffic accidents. After the social relief fund for road traffic accidents has been advanced, its administrative agency shall have the right to claim repayment from the person liable for the traffic

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accident.

### 第一千二百一十七条

非营运机动车发生交通事故造成无偿搭乘人损害，属于该机动车一方责任的，应当减轻其赔偿责任，但是机动车使用人有故意或者重大过失的除外。

**Article 217** Where a non-commercial motor vehicle causes any damage to a rider free of charge in a traffic accident, if the liability of the driver of the motor vehicle is attributed to his or her side, the compensation liability of the driver shall be mitigated, unless the user of the motor vehicle has committed intentional or gross negligence.

## 第六章 医疗损害责任

### Chapter 6 Medical Malpractice Liability

### 第一千二百一十八条

患者在诊疗活动中受到损害，医疗机构或者其医务人员有过错的，由医疗机构承担赔偿责任。

**Article 218** Where any damage is caused to a patient in the course of medical treatment, if the medical institution or its medical professionals are at fault, the medical institution shall be liable to pay compensation.

第一千二百一十九条 医务人员在诊疗活动中应当向患者说明病情和医疗措施。需要实施手术、特殊检查、特殊治疗的，医务人员应当及时向患者具体说明医疗风险、替代医疗方案等情况，并取得其明确同意；不能或者不宜向患者说明的，应当向患者的近亲属说明，并取得其明确同意。

**Article 219** Medical workers shall explain the illness situation and medical measures to patients in diagnosis and treatment activities. Where a patient needs to undergo surgery, special examination or special treatment, the medical personnel shall promptly explain detailed medical risks, alternative medical procedures, etc to the patient and obtain his/her specific consent; where the patient is unable or unsuitable to be informed, the medical personnel shall explain to his/her immediate relatives and obtain their specific consent.

医务人员未尽到前款义务，造成患者损害的，医疗机构应当承担赔偿责任。

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In the event of damages suffered by a patient due to failure of the medical personnel to perform the obligations in the preceding paragraph, the medical institution shall bear compensation liability.

#### 第一千二百二十条

因抢救生命垂危的患者等紧急情况，不能取得患者或者其近亲属意见的，经医疗机构负责人或者授权的负责人批准，可以立即实施相应的医疗措施。

**Article 220** Under emergency circumstances such as rescue of critical patients or where the medical institution is unable to obtain the opinion of the patient or his/her immediate relatives, upon approval by the person-in-charge of the medical institution or the authorised person-in-charge, the corresponding medical measures may be forthwith implemented.

#### 第一千二百二十一条

医务人员在诊疗活动中未尽到与当时的医疗水平相应的诊疗义务，造成患者损害的，医疗机构应当承担赔偿责任。

**Article 221** In the event that medical personnel failed to perform diagnosis and treatment obligations corresponding to the prevailing medical standards in clinic activities and caused a patient to suffer damages, the medical institution shall bear compensation liability.

#### 第一千二百二十二条

患者在诊疗活动中受到损害，有下列情形之一的，推定医疗机构有过错：

**Article 222** If any damage is caused to a patient in the course of medical treatment, the medical institution shall be deemed to be at fault under any of the following circumstances:

（一）违反法律、行政法规、规章以及其他有关诊疗规范的规定；

1. Violating laws, administrative regulations, rules or other relevant provisions on diagnosis and treatment norms;

（二）隐匿或者拒绝提供与纠纷有关的病历资料；

(II) It conceals or refuses to provide medical records relating to the dispute; or

（三）遗失、伪造、篡改或者违法销毁病历资料。

(III) losing, forging, tampering with or illegally destroying medical records.

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### 第一千二百二十三条

因药品、消毒产品、医疗器械的缺陷，或者输入不合格的血液造成患者损害的，患者可以向药品上市许可持有人、生产者、血液提供机构请求赔偿，也可以向医疗机构请求赔偿。患者向医疗机构请求赔偿的，医疗机构赔偿后，有权向负有责任的药品上市许可持有人、生产者、血液提供机构追偿。

**Article 223** Where a patient suffers damages due to defects in drugs, disinfectants or medical equipment, or receipt of transfusion of unqualified blood, the patient may seek compensation from the drug marketing permit holder, manufacturer or the organisation which provides the blood, or seek compensation from the medical institution. Where the patient seeks compensation from the medical institution, the medical institution shall have the right to recover the compensation from the liable drug marketing authorization holder, the drug manufacturer, or the institution supplying the blood, after it has made the compensation.

### 第一千二百二十四条

患者在诊疗活动中受到损害，有下列情形之一的，医疗机构不承担赔偿责任：

**Article 224** Under any of the following circumstances, a medical institution shall not be liable to pay compensation in the event that a patient has suffered damage in diagnosis and treatment:

（一）患者或者其近亲属不配合医疗机构进行符合诊疗规范的诊疗；

1. The patient or any of his close relatives fails to cooperate with the medical institution in the course of qualified medical treatment;

（二）医务人员在抢救生命垂危的患者等紧急情况下已经尽到合理诊疗义务；

(II) the medical staff have performed their reasonable obligation of diagnosis and treatment under emergency circumstances such as rescue of critically ill patients;

（三）限于当时的医疗水平难以诊疗。

(III) Existing medical standards are not high enough to treat the patient.

前款第一项情形中，医疗机构或者其医务人员也有过错的，应当承担相应的赔偿责任。

For item (1) of the preceding paragraph, where the medical institution or its medical personnel are at fault, the medical institution or its medical personnel shall bear the corresponding compensation liability.

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### 第一千二百二十五条

医疗机构及其医务人员应当按照规定填写并妥善保管住院志、医嘱单、检验报告、手术及麻醉记录、病理资料、护理记录等病历资料。

**Article 225** Medical institutions and their medical personnel shall fill in and keep medical records such as hospitalisation records, doctor's advices, examination reports, operation and anesthesia records, pathological information, nursing records, etc properly pursuant to the provisions.

患者要求查阅、复制前款规定的病历资料的，医疗机构应当及时提供。

Where a patient requests for inspection or replication of medical records stipulated in the preceding paragraph, the medical institution shall promptly provide the same.

第一千二百二十六条 医疗机构及其医务人员应当对患者的隐私和个人信息保密。泄露患者的隐私和个人信息，或者未经患者同意公开其病历资料的，应当承担侵权责任。

**Article 226** Medical institutions and their medical professionals shall maintain the privacy and confidentiality of patients' personal information. Any person who divulges the privacy or personal information of a patient or discloses medical records of a patient without the patient's consent shall bear tortious liability.

第一千二百二十七条 医疗机构及其医务人员不得违反诊疗规范实施不必要的检查。

**Article 227** No medical institution or medical professional thereof shall carry out unnecessary checks in violation of diagnosis and treatment norms.

第一千二百二十八条 医疗机构及其医务人员的合法权益受法律保护。

**Article 228** The legitimate rights and interests of medical institutions and their medical professionals shall be protected by the law.

干扰医疗秩序，妨碍医务人员工作、生活，侵害医务人员合法权益的，应当依法承担法律责任。

Persons who disrupt medical order, hinder work or living of medical personnel, harm the legitimate rights and interests of medical personnel shall bear legal liability pursuant to the law.

## 第七章 环境污染和生态破坏责任

### Chapter 7 Liability for Environmental Pollution and Ecological Damage

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**第一千二百二十九条** 因污染环境、破坏生态造成他人损害的，侵权人应当承担侵权责任。

**Article 229** In the event of damages of others caused by environmental pollution and ecological destruction, the infringer shall bear tort liability.

**第一千二百三十条**

因污染环境、破坏生态发生纠纷，行为人应当就法律规定的不承担责任或者减轻责任的情形及其行为与损害之间不存在因果关系承担举证责任。

**Article 230** In the case of a dispute over environmental pollution or ecological destruction, the doer shall bear the burden of proof for the disclaimer or mitigation circumstances stipulated by the law and non-existence of cause and effect relationship between its action and the damages.

**第一千二百三十一条**

两个以上侵权人污染环境、破坏生态的，承担责任的大小，根据污染物的种类、浓度、排放量，破坏生态的方式、范围、程度，以及行为对损害后果所起的作用等因素确定。

**Article 231** Where two or more infringers pollute the environment or damage the ecology, the extent of liability to be borne by them shall be determined in accordance with factors such as the type, concentration and emission of pollutants, the method, scope and extent of ecological destruction, and the role of the conduct in the consequences of the damage, etc.

**第一千二百三十二条**

侵权人违反法律规定故意污染环境、破坏生态造成严重后果的，被侵权人有权请求相应的惩罚性赔偿。

**Article 232** Where an infringer, in violation of laws and regulations, intentionally pollutes the environment or damages the ecology, thereby causing serious consequences, the infringed is entitled to claim appropriate punitive damages.

**第一千二百三十三条** 因第三人的过错污染环境、破坏生态的，被侵权人可以向侵权人请求赔偿，也可以向第三人请求赔偿。侵权人赔偿后，有权向第三人追偿。

**Article 233** In the event of environmental pollution and ecological destruction caused by negligence of a third party, the infringed party may seek compensation from the tortfeasor or the

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third party. After paying compensation, the infringer shall have the right to recover such compensation from the third party.

#### 第一千二百三十四条

违反国家规定造成生态环境损害，生态环境能够修复的，国家规定的机关或者法律规定的组织有权请求侵权人在合理期限内承担修复责任。侵权人在期限内未修复的，国家规定的机关或者法律规定的组织可以自行或者委托他人进行修复，所需费用由侵权人负担。

**Article 234** Where damage to the ecological environment is caused in violation of State regulations and the ecological environment is able to be restored, the authorities stipulated by the State or the organisations stipulated by the law shall have the right to request that the infringer bears the liability for restoration within a reasonable period. Where the infringer fails to carry out the repair within the time limit, the organ or organization as prescribed by the state may carry out the repair on its own or entrust others with the repair, and the expenses required shall be borne by the infringer.

#### 第一千二百三十五条

违反国家规定造成生态环境损害的，国家规定的机关或者法律规定的组织有权请求侵权人赔偿下列损失和费用：

**Article 235** In the event of eco-environmental damage caused by violations of state regulations, organs or organizations designated by the state shall have the right to request the infringing party to compensate for the following losses and costs:

（一）生态环境受到损害至修复完成期间服务功能丧失导致的损失；

1. the loss of service functions due to the damage to the ecological environment until the completion of the restoration;

（二）生态环境功能永久性损害造成的损失；

(II) Losses caused by permanent damage to the functions of the ecological environment;

（三）生态环境损害调查、鉴定评估等费用；

(III) the expenses of eco-environmental damage investigations, appraisal, and assessment;

（四）清除污染、修复生态环境费用；

(IV) expenses for removal of pollution and restoration of ecological environment;

（五）防止损害的发生和扩大所支出的合理费用。

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(V) the reasonable costs incurred in preventing the occurrence or amplification of the damage.

## 第八章 高度危险责任

### Chapter 8 High Risk Liability

**第一千二百三十六条** 从事高度危险作业造成他人损害的，应当承担侵权责任。

**Article 236** Persons who have caused others to suffer damages by engaging in ultrahazardous operations shall bear tort liability.

#### 第一千二百三十七条

民用核设施或者运入运出核设施的核材料发生核事故造成他人损害的，民用核设施的营运单位应当承担侵权责任；但是，能够证明损害是因战争、武装冲突、暴乱等情形或者受害人故意造成的，不承担责任。

**Article 237** Where any damage is caused by a nuclear accident to another person caused by a civilian nuclear facility or by nuclear materials transported into or out of the nuclear facility, the unit that operates such facility shall bear tortious liability; however, if it can be proved that the damage was caused by war, armed conflict, riot, etc., or was deliberately caused by the victim (s), it shall not be held liable.

#### 第一千二百三十八条

民用航空器造成他人损害的，民用航空器的经营者应当承担侵权责任；但是，能够证明损害是因受害人故意造成的，不承担责任。

**Article 238** In the event of damages of others caused by a civil aircraft, the operator of the civil aircraft shall bear tort liability; however, if it can be proven that the damages are caused deliberately by the victim (s), the operator of the civil aircraft shall not be held liable.

第一千二百三十九条 占有或者使用易燃、易爆、剧毒、高放射性、强腐蚀性、高致病性等高度危险物造成他人损害的，占有人或者使用人应当承担侵权责任；但是，能够证明损害是因受害人故意或者不可抗力造成的，不承担责任。被侵权人对损害的发生有重

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大过失的，可以减轻占有人或者使用人的责任。

**Article 239** In the event of damages of others caused by possession or use of ultrahazardous substances such as flammable, explosive, toxic, highly radioactive, strongly corrosive, highly pathogenic substances, etc, the owner or the user shall bear tort liability; however, if it can be proven that the damages are caused deliberately by the victim (s) or caused by a force majeure event, the owner or the user shall not be held liable. Where the infringed party has committed gross negligence in respect of the occurrence of damages, the liability of the owner or the user may be mitigated.

第一千二百四十条 从事高空、高压、地下挖掘活动或者使用高速轨道运输工具造成他人损害的，经营者应当承担侵权责任；但是，能够证明损害是因受害人故意或者不可抗力造成的，不承担责任。被侵权人对损害的发生有重大过失的，可以减轻经营者的责任。

**Article 240** Where any damage is caused by high-altitude operations, high-pressure operations, underground mining activities or the use of high-speed rail transport, the operator shall bear tortious liability unless he can prove that that that the victim deliberately incurred the damage or that the damage was caused by a force majeure event. Where the infringed party has committed gross negligence in respect of the occurrence of damages, the liability of the operator may be mitigated.

#### 第一千二百四十一条

遗失、抛弃高度危险物造成他人损害的，由所有人承担侵权责任。所有人将高度危险物交由他人管理的，由管理人承担侵权责任；所有人有过错的，与管理人承担连带责任。

**Article 241** In the event of damages of others caused by loss or littering of ultrahazardous substances, the owner shall bear tort liability. Where the owner has arranged for others to manage the ultrahazardous substances, the manager shall bear tort liability; where the owner has committed negligence, it shall bear connected liability with the manager.

#### 第一千二百四十二条

非法占有高度危险物造成他人损害的，由非法占有人承担侵权责任。所有人、管理人不能证明对防止非法占有尽到高度注意义务的，与非法占有人承担连带责任。

**Article 242** In the event of damages of others caused by illegal possession of ultrahazardous substances, the party who possesses the ultrahazardous substances illegally shall bear tort liability.

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The owner and manager shall be jointly and severally liable with the party in illegal possession if they cannot prove that they exercise due care to prevent illegal possession.

### 第一千二百四十三条

未经许可进入高度危险活动区域或者高度危险物存放区域受到损害，管理人能够证明已经采取足够安全措施并尽到充分警示义务的，可以减轻或者不承担责任。

**Article 243** In the event of damages caused by unauthorised entry into premises of ultrahazardous activities or storage premises of ultrahazardous substances, where the manager is able to prove that it has adopted adequate safety measures and has performed adequate warning obligations, the liability of the manager may be mitigated or the manager may not be held liable.

### 第一千二百四十四条

承担高度危险责任，法律规定赔偿限额的，依照其规定，但是行为人有故意或者重大过失的除外。

**Article 244** Where the law provides limits for compensation for liability for ultrahazardous activities, such provisions shall prevail, except where the doer has committed intentional or gross negligence.

## 第九章 饲养动物损害责任

### Chapter 9 Liability for Damage Caused by Domesticated Animals

### 第一千二百四十五条

饲养的动物造成他人损害的，动物饲养人或者管理人应当承担侵权责任；但是，能够证明损害是因被侵权人故意或者重大过失造成的，可以不承担或者减轻责任。

**Article 245** In the event of damages of others caused by domesticated animals, the animal keeper or the manager shall bear tort liability; however, if it can be proven that the damages are caused deliberately by the infringed party or caused by gross negligence of the infringed party, the animal keeper or the manager may not be held liable or the liability of the animal keeper or the manager may be mitigated.

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### 第一千二百四十六条

违反管理规定，未对动物采取安全措施造成他人损害的，动物饲养人或者管理人应当承担侵权责任；但是，能够证明损害是因被侵权人故意造成的，可以减轻责任。

**Article 246** In the event of damages of others caused by violation of administrative provisions in failure to adopt safety measures for animals, the animal keeper or the manager shall bear tort liability; however, where it can be proven that the damages are deliberately caused by the infringed party, the liability of the animal keeper or the manager may be mitigated.

### 第一千二百四十七条

禁止饲养的烈性犬等危险动物造成他人损害的，动物饲养人或者管理人应当承担侵权责任。

**Article 247** In the event of damages of others caused by dangerous animals such as fierce dogs for which keeping is prohibited, the animal keeper or the manager shall bear tort liability.

### 第一千二百四十八条

动物园的动物造成他人损害的，动物园应当承担侵权责任；但是，能够证明尽到管理职责的，不承担侵权责任。

**Article 248** In the event of damages of others caused by zoo animals, the zoo shall bear tort liability; however, if it can be proven that the zoo has performed management duties, the zoo shall not bear tort liability.

### 第一千二百四十九条

遗弃、逃逸的动物在遗弃、逃逸期间造成他人损害的，由动物原饲养人或者管理人承担侵权责任。

**Article 249** Where any damage is caused by an animal that is abandoned or at large after being abandoned or at large after escaping, the original keeper or manager thereof shall bear tortious liability.

### 第一千二百五十条

因第三人的过错致使动物造成他人损害的，被侵权人可以向动物饲养人或者管理人请求赔偿，也可以向第三人请求赔偿。动物饲养人或者管理人赔偿后，有权向第三人追偿。

**Article 1250** In the event of damages of others caused by animals as a result of negligence of a

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third party, the infringed party may seek compensation from the animal keeper or the manager or seek compensation from the third party. The keeper or manager may, after paying compensation, claim the same from the third party.

**第一千二百五十一条** 饲养动物应当遵守法律法规，尊重社会公德，不得妨碍他人生活。

**Article 251** Anyone who raises animals shall abide by the laws and regulations, respect the social ethics and shall not hinder the life of others.

## 第十章 建筑物和物件损害责任

### Chapter 10 Liability for Damage to Buildings and Articles

第一千二百五十二条 建筑物、构筑物或者其他设施倒塌、塌陷造成他人损害的，由建设单位与施工单位承担连带责任，但是建设单位与施工单位能够证明不存在质量缺陷的除外。建设单位、施工单位赔偿后，有其他责任人的，有权向其他责任人追偿。

**Article 252** In the event of damages of others caused by collapsed buildings, structures or other facilities, the developer and the builder shall bear liability jointly and severally, except where the developer and the builder can prove that there is no quality defect. Where there are any other responsible persons, the developer or the builder shall have the right to seek recourse against such responsible persons after the developer or the builder has made compensation.

因所有人、管理人、使用人或者第三人的原因，建筑物、构筑物或者其他设施倒塌、塌陷造成他人损害的，由所有人、管理人、使用人或者第三人承担侵权责任。

In the event of damages of others caused by collapse or collapse of a building, structure or any other facility due to reason of the owner, manager, user or a third party, the owner, manager, user or a third party shall bear tort liability.

### 第一千二百五十三条

建筑物、构筑物或者其他设施及其搁置物、悬挂物发生脱落、坠落造成他人损害，所有人、管理人或者使用人不能证明自己没有过错的，应当承担侵权责任。所有人、管理人或者使用人赔偿后，有其他责任人的，有权向其他责任人追偿。

**Article 253** In the event of damages of others caused by detached or fallen parts of buildings,

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structures or other facilities and objects hung or suspended thereon, the owner, the manager or the user shall bear tort liability if it cannot prove that it has not committed negligence. The owner, manager or user may, after paying compensation, claim the same from other liable parties, if any.

#### 第一千二百五十四条

禁止从建筑物中抛掷物品。从建筑物中抛掷物品或者从建筑物上坠落的物品造成他人损害的，由侵权人依法承担侵权责任；经调查难以确定具体侵权人的，除能够证明自己不是侵权人的外，由可能加害的建筑物使用人给予补偿。可能加害的建筑物使用人补偿后，有权向侵权人追偿。

**Article 1254.** It shall be prohibited to throw articles from buildings. In the event of damages of others caused by objects thrown from buildings or objects fallen from buildings, the infringer shall bear tort liability pursuant to the law; where it is difficult to determine the specific infringer upon investigation, the user of the building who may have caused harm shall make compensation unless he/she can prove that he/she is not the infringer. The user of the building who may cause damage shall have the right to recover the compensation from the infringer.

物业服务企业等建筑物管理人应当采取必要的安全保障措施防止前款规定情形的发生；未采取必要的安全保障措施的，应当依法承担未履行安全保障义务的侵权责任。

Managers of buildings such as estate services enterprises, etc shall adopt the requisite security measures to prevent occurrence of the circumstances stipulated in the preceding paragraph; those who failed to adopt the requisite security measures shall bear tort liability for non-performance of security protection obligations pursuant to the law.

发生本条第一款规定的情形的，公安等机关应当依法及时调查，查清责任人。

Under any of the circumstances stipulated in the first paragraph of this Article, the public security authorities etc shall promptly investigate pursuant to the law and identify the accountable person (s).

#### 第一千二百五十五条

堆放物倒塌、滚落或者滑落造成他人损害，堆放人不能证明自己没有过错的，应当承担侵权责任。

**Article 255** In the event of damages of others caused by collapse, rolling or sliding of stacked materials, the party which stacks the materials shall bear tort liability if it cannot prove that it has not

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committed negligence.

第一千二百五十六条 在公共道路上堆放、倾倒、遗撒妨碍通行的物品造成他人损害的，由行为人承担侵权责任。公共道路管理人不能证明已经尽到清理、防护、警示等义务的，应当承担相应的责任。

**Article 256** In the event of damages of others caused by stacking, dumping and scattering of objects on public roads which obstruct access, the doer (s) shall bear tort liability. The manager of the public road shall bear corresponding liability if he cannot prove that he has fulfilled the obligations of cleaning, prevention and warning.

#### 第一千二百五十七条

因林木折断、倾倒或者果实坠落等造成他人损害，林木的所有人或者管理人不能证明自己没有过错的，应当承担侵权责任。

**Article 257** Where any damage is caused by a broken or tipped tree or by a fruit falling, the owner or manager of the tree shall bear tortious liability unless he can prove that he was not at fault.

#### 第一千二百五十八条

在公共场所或者道路上挖掘、修缮安装地下设施等造成他人损害，施工人不能证明已经设置明显标志和采取安全措施的，应当承担侵权责任。

**Article 258** Where any damage is caused by digging or repairing an underground facility in a public place or road, the constructor shall bear tortious liability unless he can prove that a conspicuous sign has been erected and that safety measures have been taken.

窨井等地下设施造成他人损害，管理人不能证明尽到管理职责的，应当承担侵权责任。

Where any damage is caused by a manhole or other underground facilities, the manager shall bear tortious liability unless he can prove that he has exercised due care.

### 附 则

### SUPPLEMENTARY PROVISIONS

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### 第一千二百五十九条

民法所称的“以上”、“以下”、“以内”、“届满”，包括本数；所称的“不满”、“超过”、“以外”，不包括本数。

**Article 259** In this Law, the terms "not less than," "not more than," "within," and "expires" shall include the given figure; the terms "under," "exceeds," and "beyond" shall not include the given figure.

**第一千二百六十条** 本法自 2021 年 1 月 1 日起施行。《中华人民共和国婚姻法》、《中华人民共和国继承法》、《中华人民共和国民法通则》、《中华人民共和国收养法》、《中华人民共和国担保法》、《中华人民共和国合同法》、《中华人民共和国物权法》、《中华人民共和国侵权责任法》、《中华人民共和国民法总则》同时废止。

**Article 260** This Law shall come into force as of January 1, 2021. The Marriage Law of the People's Republic of China, the Law of Succession of the People's Republic of China, the General Principles of Civil Law of the People's Republic of China, the Adoption Law of the People's Republic of China, the Security Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Real Rights Law of the People's Republic of China, the Tort Law of the People's Republic of China and the General Rules of the Civil Law of the People's Republic of China shall be repealed simultaneously.

### 本篇引用的法规

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