

## GENERAL PRINCIPLES OF THE CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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#### CHAPTER I BASIC PRINCIPLES

Article 1. This Law is formulated in accordance with the Constitution and the actual

situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3. Parties to a civil activity shall have equal status.

Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7. Civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8. The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

## CHAPTER II CITIZEN (NATURAL PERSON)

### SECTION 1 CAPACITY FOR CIVIL RIGHTS AND CAPACITY FOR CIVIL CONDUCT

Article 9. A citizen 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.

Article 10. All citizens are equal as regards their capacity for civil rights.

Article 11. A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age 18 and whose main source of

income is his own labour shall be regarded as a person with full capacity for civil conduct.

Article 12. A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13. A mentally ill person who is unable to recognize his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully recognize his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14. The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15. The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

## SECTION 2 GUARDIANSHIP

Article 16. The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighbourhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighbourhood or village committee in the place of his residence shall appoint a guardian

from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this Article is available to be the guardian, the units of the minor's parents, the neighbourhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17. A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

(1) spouse;

(2) parent;

(3) adult child;

(4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighbourhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs, or the neighbourhood or village committee in the place of his residence, shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this Article is available to be the guardian, the unit to which the mentally ill person belongs,

the neighbourhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18. A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his wards. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardian's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss.

The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19. A person who shares interests with mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

### SECTION 3 DECLARATIONS OF MISSING PERSONS AND DEATH

Article 20. If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21. A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22. In the event that a person who has been declared missing reappears or his whereabouts is ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing person status.

Article 23. Under any of the following circumstances, an interested person may apply to the people's court for the declaration of a citizen's death:

(1) if the citizen's whereabouts have been unknown for four years; or

(2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24. In the event that a person who has been declared as dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25. A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items are no longer existent.

#### SECTION 4 INDIVIDUAL BUSINESSES AND LEASEHOLDING FARM HOUSEHOLDS

Article 26. " Individual businesses " refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27. " Leaseholding farm households " refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28. The legitimate rights and interests of individual businesses and leaseholding farm households shall be protected by law.

Article 29. The debts of an individual business or a leaseholding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family.

#### SECTION 5 INDIVIDUAL PARTNERSHIP

Article 30. " Individual partnership " refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with law and conduct business operations within the range as approved and registered.

Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise over those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

## CHAPTER III LEGAL PERSONS

### SECTION 1 GENERAL STIPULATIONS

Article 36. A legal person shall be 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.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37. A legal person shall have the following qualifications:

- (1) establishment in accordance with the law;
- (2) possession of the necessary property or funds;
- (3) possession of its own name, organization and premises; and
- (4) ability to independently bear civil liability.

Article 38. 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 exercising its functions

and powers shall be its legal representative.

Article 39. A legal person's domicile shall be the place where its main administrative office is located.

Article 40. When a legal person terminates, it shall go into liquidation in accordance with the law and discontinue all other activities.

## SECTION 2 ENTERPRISE AS LEGAL PERSON

Article 41. An enterprise under ownership by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China, if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42. An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43. An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44. If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45. An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or

(4) for other reasons.

Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48. An enterprise under ownership by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

(1) conducting illegal operations beyond the range approved and registered by the registration authority;

(2) concealing facts from the registration and tax authorities and practising fraud;

(3) secretly withdrawing funds or hiding property to evade repayment of debts;

(4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;

(5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;

(6) engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

### SECTION 3 OFFICIAL ORGAN, INSTITUTION AND SOCIAL ORGANIZATION AS LEGAL PERSONS

Article 50. An independently funded official organ shall be qualified as a legal person

on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

#### SECTION 4 ECONOMIC ASSOCIATION

Article 51. If a new economic entity is formed by the enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52. If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53. If the contract for economic association of enterprises or of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

#### CHAPTER IV CIVIL JURISTIC ACTS AND AGENCY

##### SECTION 1 CIVIL JURISTIC ACTS

Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55. A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest.

Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58. Civil acts in the following categories shall be null and void:

(1) those performed by a person without capacity for civil conduct;

(2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;

(3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavourable position by the other party;

(4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;

(5) those that violate the law or the public interest;

(6) economic contracts that violate the state's mandatory plans; and

(7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

(1) those performed by an actor who seriously misunderstood the contents of the acts; and

(2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60. If a part of a civil act is null and void, it shall not affect the validity of other parts, which shall remain valid.

Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper

share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met.

## SECTION 2 AGENCY

Article 63. Citizens and legal persons may perform civil juristic acts through agents

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64. Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency or is overstepping his power of agency, or that his power of agency has expired, and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69. An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;
- (3) when the agent dies;
- (4) when the principal loses his capacity for civil conduct; or
- (5) when the principal or the agent ceases to be a legal person.

Article 70. A statutory or appointed agency shall end under any of the following circumstances:

- (1) when the principal gains or recovers capacity for civil conduct;
- (2) when the principal or the agent dies;
- (3) when the agent loses capacity for civil conduct;

(4) when the people's court or the unit that appointed the agent rescinds the appointment; or

(5) when the guardian relationship between the principal and the agent ends for other reasons.

## CHAPTER V CIVIL RIGHTS

### SECTION 1 PROPERTY OWNERSHIP AND RELATED PROPERTY RIGHTS

Article 71. " Property ownership " means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72. Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other

lawful means shall be transferred simultaneously with the property itself.

Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

(1) land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;

(2) property of collective economic organizations;

(3) collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific, cultural, health, sports and other facilities; and

(4) other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villagers' committees. Land already under the ownership of the township (town) peasants collective economic organizations may be collectively owned by the peasants' of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, detain, freeze or confiscate it.

Article 75. A citizen's personal property shall include his lawfully-earned income, housing, savings, articles for daily use, objects art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, detain, freeze or confiscate it.

Article 76. Citizens shall have the right of inheritance under the law.

Article 77. The lawful property of social organizations, including religious organizations, shall be protected by law.

Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80. State-owned land may be used according to law by units under ownership by the whole people; it may be also lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under

collective ownership or of state owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may be also lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by the collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collectives may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83. In the spirit of helping production, making things convenient for people's life, enhancing unity and mutual assistance, and being fair and

reasonable, neighbouring users of real estate shall maintain proper neighbourly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damages to his neighbour, shall stop the infringement, eliminate the obstruction and compensate for the damages.

## SECTION 2 CREDITORS' RIGHTS

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and the

party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions.

Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88. The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) If quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.

(2) If the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) If the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) If the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application,

any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset against the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract, and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset against the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90. Legitimate loan relationships shall be protected by law.

Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

### SECTION 3 INTELLECTUAL PROPERTY RIGHTS

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological researches shall have the right to apply for and receive certificates of honour, bonuses or other awards.

### SECTION 4 PERSONAL RIGHTS

Article 98. Citizens shall enjoy the rights of life and health.

Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profits without his consent shall be prohibited.

Article 101. Citizens and legal persons shall enjoy the right of reputation.

The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102. Citizens and legal persons shall enjoy the right of honour. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104. Marriage, the family, old people, mothers and children shall be protected by law.

The lawful rights and interests of the handicapped shall be protected by law.

Article 105. Women shall enjoy equal civil rights with men.

## CHAPTER VI CIVIL LIABILITY

### SECTION 1 GENERAL STIPULATIONS

Article 106. Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property, or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109. If a person suffers damages from preventing or stopping the encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

## SECTION 2 CIVIL LIABILITY FOR BREACH OF CONTRACT

Article 111. If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113. If both parties breach the contract, each party shall bear its respective civil liability.

Article 114. If one party is suffering losses due to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116. If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

## SECTION 3 CIVIL LIABILITY FOR INFRINGEMENT OF RIGHTS

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as

well.

Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120. If a citizen's right of personal name, portrait, reputation or honour is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation rehabilitated, the ill effects eliminated and an apology made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honour.

Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damages, it shall bear civil liability.

Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high above the ground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124. Any person who pollutes the environment and causes damages to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125. Any constructor who engages in excavation, repairs or installation of

underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damages to others shall bear civil liability.

Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damages to others, its owner or manager shall bear civil liability, unless he can prove himself not a fault.

Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128. A person who causes harm for exercising justifiable defence shall not bear civil liability. If justifiable defence exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130. If two or more persons jointly infringe upon another person's rights and cause him damages, they shall bear joint liability.

Article 131. If a victim is also at fault for causing the harm, damages, the civil liability of the infringer may be reduced.

Article 132. If none of the parties are at fault in a damage that has been caused, they may share civil liability according to the actual circumstances.

Article 133. If a person without or with limited capacity for civil conduct causes damages to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damages to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

#### SECTION 4 METHODS OF BEARING CIVIL LIABILITY

Article 134. The main methods of bearing civil liability shall be:

- (1) cessation of infringements;
- (2) removal of obstacles;
- (3) elimination of dangers;
- (4) return of property;
- (5) restoration of original condition;
- (6) repair, reworking or replacement;
- (7) compensation for losses;
- (8) payment of breach of contract damages;
- (9) elimination of ill effects and rehabilitation of reputation; and
- (10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

## CHAPTER VII LIMITATION OF ACTION

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to a people's court for protection of civil rights shall be two years.

Article 136. The limitation of action shall be one year on cases concerning the following:

- (1) claims for compensation for bodily injuries;
- (2) sales of substandard goods without proper notice to that effect;
- (3) delays in paying rent or refusal to pay rent; or

(4) loss of or damage to property left in the care of another person.

Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement.

Under special circumstances, the people's court may extend the limitation of action.

Article 138. If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139. A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140. A limitation of action shall be discontinued if a suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141. If the law has other stipulations concerning limitation of action, those stipulations shall apply.

#### CHAPTER VIII APPLICATION OF LAW IN CIVIL RELATIONS WITH FOREIGNERS

Article 142. The application of law in civil relations with foreigners shall be determined by the provisions in this CHAPTER.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143. If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144. The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145. The parties to a contract involving foreign interests may choose the law

applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146. The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147. The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148. Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150. The application of foreign laws or international practice in accordance with the provisions of this CHAPTER shall not violate the public interest of the People's Republic of China.

#### CHAPTER IX SUPPLEMENTARY PROVISIONS

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in the light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152. If an enterprise under ownership by the whole people has been established with the approval of the competent authority of a province, autonomous region

or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such.

Article 153. For the purpose of this Law, " force majeure " means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

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.

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

Article 155. In this Law, the terms " not less than, " " not more than " " within " and " expires " shall include the given figure; the terms " under " and " beyond " shall not include the given figure.

Article 156. This Law shall come into force on January 1, 1987.