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## Chapter I General Provisions

### Article 1

This Law is formulated for the purpose of promoting the capital flow and commodity circulation, safe guarding the realization of obligatory right, and developing the socialist market economy.

### Article 2

In such economic activities as loans, sales, goods freight and hire of processing work, etc., where the creditor needs to safeguard the realization of his obligatory right by the way of guarantee, a guarantee may be established in accordance with the provisions of this Law.

The modes of guarantee provided for in this Law shall be guaranty, mortgage, pledge, lien and deposit.

### Article 3

In activities of guarantee, the principle of equality, voluntariness, fairness and good faith shall be complied with.

### Article 4

When a third party offers the creditor a guarantee on behalf of the debtor, he may require the debtor to offer a counter guarantee.

The provisions on guarantee of this Law shall be applicable to counter-guarantee.

## Article 5

A guarantee contract shall be an accessory contract to the master contract. Where the master contract is invalid, the guarantee contract shall also be invalid. Where an agreement is otherwise reached in the guarantee contract, that agreement shall prevail.

Where a guarantee contract is affirmed to be invalid, the debtor, surety or creditor is in fault, they shall respectively bear the relevant civil liability according to their own faults.

## Chapter II Guaranty

### Section 1 Guaranty and Guarantor

## Article 6

In this Law, guaranty means that the guarantor and the creditor agree that, when the debtor fails to perform his debt, the guarantor will perform the debt or bear the liability in accordance with the agreement.

## Article 7

A guarantor may be a legal person, other organization or a citizen who has ability to discharge of debts on behalf of others.

## Article 8

The state administrative departments shall not be a guarantor, unless they, with the approval of the State Council, transfer loans for the purpose of using the loans of foreign governments or international organizations.

#### Article 9

Such institutions and social organizations as schools, kindergartens and hospitals, etc., which are established for the purpose of public interest shall not be a guarantor.

#### Article 10

A branch or functional department of an enterprise as legal person shall not be a guarantor.

If a branch of an enterprise as legal person has been delegated in writing by the legal person, it may offer the guaranty within the delegation extent.

#### Article 11

No organization or individual may oblige enterprises or financial institutions such as a bank to offer guaranty for others ; enterprises and financial institutions such as a bank shall have the right to refuse to offer guaranty for others when they are obliged to.

#### Article 12

Where there are two or more guarantors for the same debt, the guarantors shall, according to their own guaranty shares agreed in the guaranty contract, bear the guaranty liability. In case of no agreement on the guaranty shares, the guarantors shall bear the joint liability. Thus the creditor may demand any of the guarantors to bear the entire guaranty liability, and any of the guarantors shall bear the obligation to guarantee the entire realization of the obligatory right. The guarantor who has borne the guaranty liability shall be entitled to claim repayment from the debtor, or to demand other guarantors bearing the joint liability to satisfy him their shares that they shall bear.

## Section 2 Guaranty Contract and Guaranty Mode

### Article 13

The guarantor and creditor shall enter into a guaranty contract in written form.

### Article 14

The guarantor and creditor may enter into a guaranty contract respectively as for a single master contract, and may also, within the maximum obligatory right amount as for a loan contract occurred continuously during a certain period or a commodity trade contract, enter into a guaranty contract.

### Article 15

A guaranty contract shall contain the following contents :

1. the categories and amount of a master obligatory right guaranteed ;
2. the time limitation to perform the debt by the debtor ;
3. the guaranty mode ;
4. the scope guaranteed by the guaranty ;
5. the time period of guaranty ; and
6. other items which the two parties consider necessary to agree.

If a guaranty contract has the contents prescribed in the proceeding paragraph incomplete, it may be supplemented.

#### Article 16

The guaranty mode contains :

1. the general guaranty ; and 2. the joint liability guaranty.

#### Article 17

That the parties in a guaranty contract agree that, when the debtor cannot perform the debt, the guaranty liability is to be borne by the guarantor, is the general guaranty.

The guarantor of a general guaranty may, without trial or arbitration on the disputes of a master contract, and before the debt cannot be performed yet with compulsory enforcement on the debtors' property according to the law, refuse to bear the guaranty liability for the creditor.

When there is any one of the following circumstances, the guarantor shall not exercise the right prescribed in the proceeding paragraph :

1. the address of the debtor has changed, so that it becomes a major difficulty for the creditor to demand him to perform the debt ;
2. the people's court accepting a debtor's bankruptcy case, orders suspension of execution procedure ; or
3. the guarantor abandons the right described in the proceeding paragraph in written form.

#### Article 18

That the parties in a guaranty contract agree that the guarantor and debtor bear the joint liability on a debt,    is the joint liability guaranty.

If the debtor of a joint liability guaranty cannot perform the debt at the date of expiration of the debt performance time limitation prescribed in the master contract,    the creditor may demand the debtor to perform the debt,    and may also demand the guarantor to bear the guaranty liability within the extent of guaranty.

#### Article 19

If no agreement or the agreement is not clear on the guaranty mode by the parties, the guaranty liability shall be borne according to the joint liability guaranty.

#### Article 20

The guarantor of a general guaranty and joint liability guaranty shall be entitled to have the counter plead right of the debtor. If the debtor abandons his counter plead right,    the guarantor shall still be entitled to have right to counter plead.

The counter plead right means that the right of,    when the creditor exercises his obligatory right,    the debtor according to legal reasons executing the petition right against the creditor.

### Section 3 Guaranty Liability

#### Article 21

The guaranteed scope of a guaranty concludes the master obligatory right and its interest, contractual fine,    damage compensation and expense of credit realization. If there is an



agreement otherwise in the guaranty contract, it shall be complied with.

If no agreement or the agreement is not clear on the guaranteed scope of a guaranty by the parties, the guarantor shall bear the liability to the entire debt.

#### Article 22

During the time period of guaranty, where the creditor assigns the master obligatory right to a third party according to the law, the guarantor continues to bear the guaranty liability within the original guaranteed scope of the guaranty. If there is an agreement otherwise in the guaranty contract, it shall be complied with.

#### Article 23

During the time period of guaranty, if the creditor wants to permit the debtor to assign the debt, he shall get the written consent from the guarantor, the guarantor bears no guaranty liability on the debt assigned without his consent.

#### Article 24

If the creditor and debtor agree to change the master contract, they shall get the written consent from the guarantor, without this written consent, the guarantor bears no longer guaranty liability. If there is an agreement otherwise in the guaranty contract, it shall be complied with.

#### Article 25

If no agreement on guaranty period between the guarantor and creditor of a general guaranty, the guaranty period shall be 6 months from the date of expiration of the master debt

performance time limitation.

During the guaranty period agreed in the contract or described in the proceeding paragraph, if the creditor has not filed a case against the debtor or applied for the arbitration, the guarantor shall be exempted from the guaranty liability ; if the creditor has filed a case or applied for the arbitration, the guaranty period shall be applied to the provisions on the discontinuance of limitation of action.

#### Article 26

If no agreement on a guaranty period between the guarantor and creditor of a joint liability guaranty, the creditor shall be entitled to have the right within 6 months from the date of expiration of the master debt performance time limitation to demand the guarantor to

bear the guaranty liability.

During the guaranty period agreed in the contract or described in the proceeding paragraph, if the creditor has not demanded the guarantor to bear guaranty liability, the guarantor shall be exempted from the guaranty liability.

#### Article 27

The guarantor shall make a guaranty on a credit occurred continuously according to the provisions of Article 14 in this law, if no agreement on guaranty time period, the guarantor may at all times inform the creditor in written form to terminate the guaranty contract, however the guarantor shall, as for the credit occurred before having informed the creditor, bear guaranty liability.

#### Article 28

Where there are both a guaranty and a guarantee of real right on a same obligatory right,

the guarantor shall bear the guaranty liability on the obligatory right except the guarantee of real right.

If the creditor abandons the guarantee of real right, the guarantor shall, within the scope of right abandoned by the creditor, be exempted from the guaranty liability.

#### Article 29

Where a branch of an enterprise as a legal person enters into a guaranty contract with the creditor without written delegation from the enterprise as legal person or exceeding the extent of delegation, this contract shall be invalid or the part exceeding the extent of delegation shall be invalid ; if the creditor and the enterprise as legal person has default, they shall bear the relevant civil liability according to their fault respectively ; if the creditor has no default, the civil liability shall be borne by the enterprise as legal person.

#### Article 30

If there is any one of the following circumstances, the guarantor shall not bear the civil liability :

1. the parties of the master contract collude to defraud the guarantor to offer a guaranty ; or
2. the creditor of the master contract take means of fraud or coercion to force the guarantor to offer a guaranty against his true intention.

#### Article 31

After the guarantor has borne the guaranty liability, he shall be entitled to claim repayment from the debtor.

## Article 32

After the people's court accepts a debtor's bankruptcy case, if the creditor does not declare his obligatory rights, the guarantor may take part in the bankrupted property distribution, exercise the right to claim repayment in advance.

## Chapter III Mortgage

### Section 1 Mortgage and Gage

Article 33 The mortgage prescribed in this Law, means a guarantee that a debtor or a third party does not transfer the possession of the property listed in Article 34 in this Law, make the said property as obligatory right. When the debtor does not perform the debt, the creditor shall be entitled to have right to keep the said property to offset the debt or have priority in satisfying his claim out of proceeds from the auction, sale of the said property pursuant to the provisions of this Law.

The debtor or third party prescribed in the proceeding paragraph shall be the mortgagor, the creditor shall be the mortgagee, the property offered to guarantee shall be the gage.

Article 34 The following properties may be mortgaged :

1. the house and other land fixtures owned by the mortgagor ;

2. the machine,    transportation means and other property owned by the mortgagor ;
3. the state-owned right to the use of land,    house and other land fixtures which the mortgagor is entitled to dispose of pursuant to the law ;
4. the state-owned machine,    transportation means and other property which the mortgagor is entitled to dispose of pursuant to the law ;
5. the right to the use of land on the unreclaimed land such as unreclaimed mountains, unreclaimed valleys,    unclaimed hills or unreclaimed beaches which is contracted for management by the mortgagor in accordance with law and is agreed to mortgage by the contractee ;    or
6. other property which may be mortgaged in accordance with the law.

The mortgagor may mortgage the properties listed in the proceeding paragraph all together.

Article 35 The obligatory right guaranteed by the mortgagor shall not exceed the value of the gage.

After the property is mortgaged,    the surplus part that the said property is more than the obligatory right guaranteed,    may be mortgaged once more,    but shall not exceed the surplus part.

Article 36 If the house upon the state-owned land obtained according to the law is to be mortgaged, the right to the use of the state-owned land within the scope the house occupies shall be mortgaged at the same time.

If the right to the use of state-owned land obtained by way of transfer according to the law, when mortgaged the house upon the said state-owned land shall be mortgaged at the same time.

The right to the use of land of enterprises of a township (town) or village shall not be mortgaged separately. If the buildings of enterprises of township (town) or village such as a plant is to be mortgaged, the right to the use of the land within the scope it occupies shall be mortgaged at the same time.

Article 37 the following properties shall not be mortgaged :

1. the ownership of land ;
2. the ownership of the lands owned by collectives such as cultivated land, house sites, private plots of cropland and hilly land shall not be mortgaged, except that prescribed in item 5 of Article 34, paragraph 3 of Article 36 of this Law ;
3. the facilities for education, the facilities for public health and medicine and other facilities for social benefit of the institutions or social units for purpose of public interest such

as schools, kindergartens or hospitals ;

4. the properties whose ownership or right to use is uncertain or in dispute ;

5. the properties sealed up, distrained or regulated ; or

6. other properties which shall not be mortgaged pursuant to law.

## Section 2 Mortgage Contract and Gage Registration

Article 38 The mortgagor and the mortgagee shall enter into a mortgage contract in written form.

Article 39 A mortgage contract shall contain the following contents :

1. the categories and amount of master obligatory right guaranteed ;
2. the time limitation to perform the debt by the debtor ;
3. the name, quantity, quality, situation, address, ownership or right to the use of the gage ;
4. the extent guaranteed by the mortgage ; and
5. other items the parties consider necessary to agree.

If a mortgage contract has the contents prescribed in the proceeding paragraph incomplete,

it may be supplemented.

Article 40 When entering into a mortgage contract, the mortgagor and the mortgagee shall not agree that, when the mortgagee is not satisfied at date of expiration of the time limitation for the debt performance, the ownership of the gage is to be transferred to the creditor.

Article 41 Where the parties take the properties prescribed in Article 42 of this Law to mortgage, he shall go through the gage registration, the mortgage contract shall be effective as the date of registration.

Article 42 The departments handling the gage registration are as follows :

1. in case that the right to the use of land without fixtures upon the land is to be mortgaged, it shall be the land administration departments which upon verification issue certificates for the right to the use of land ;
2. in case that the city real estates or the building of the township (town) or village enterprises such as a plant is to be mortgaged, it shall be the departments prescribed by the local people's governments at and above the county level ;
3. in case that the woods are to be mortgaged, it shall be the forestry administration



departments at and above the county level ;

4. in case that aircraft, vessels or vehicles are to be mortgaged, it shall be the registration departments for transportation means ; or

5. in case that the equipment or other movables of a enterprise are to be mortgaged, it shall be the administrations of industry and commerce where the properties are located.

Article 43 Where the party takes other properties to mortgage, he may go through the gage registration on a voluntary basis, the mortgage contract shall be effective as the date of registration.

The party who has not handled the gage registration shall not be opposed to a third party. If the party goes through the gage registration, the registration department is to be the notary department of the area where the mortgagor is located.

Article 44 When the gage registration is to be handled, the following documents or their copies shall be produced to the registration department :

1. the master contract and the mortgage contract ; and
2. the certificate of ownership of or right to the use of the gage.

Article 45 The information registered by the registration department shall be allowed to inquire and read, copy by hand and copy.

### Section 3 Effect of Mortgage

Article 46 Within the guaranteed scope of a mortgage shall be the master obligatory and its interest, contractual fine, damage compensation and expense of realization of mortgage.

If there is an agreement otherwise in the mortgage contract, it shall be complied with.

Article 47 At the date of expiration of the debt performance period, if the debtor has not performed the debt so that the gage has been distrained by the people's court, from the date of distraining the mortgagee shall be entitled to collect the natural fruits separated from the gage and the legal fruits that the mortgagee may collect on the gage. If the mortgagee has not informed the fact of the distraining of the gage to the obligatory person who shall satisfy the claim out of proceeds for the legal fruits, the effect of mortgage shall not extend to the said fruits.

The fruits of the proceeding paragraph shall eliminate in advance the expense of collecting the fruits.

Article 48 If the mortgagor wants to mortgage a property that has been leased, he shall notify the leasee in writing, and the original lease contract continues to be effective.

Article 49 During the period of mortgage, if the mortgagor assigns the gage registered, he shall inform the mortgagee and also notify the assignee of the situation that the grant has been mortgaged ; if the mortgagor does not inform the mortgagee or notify the assignee, the assigning behavior shall be invalid.

If the value amount of the gage assigned is obviously lower than its value, the mortgagee may demand the mortgagor to offer the equivalent guarantee ; if the mortgagor does not offer, the gage shall not be assigned.

The value amount from assigning the gage by the mortgagor shall satisfy in advance the mortgagee for the claim out of the proceeds on the obligatory right guaranteed or be deposited to the third party he agreed with the mortgagee. The part exceeding the amount of the obligatory right, shall be owned by the mortgagor, while the short part shall be satisfied by the debtor.

Article 50 The mortgage right shall not be separated from the obligatory right so that it is assigned solely or as a guarantee of other obligatory rights.

Article 51 If the behavior of the mortgagor causes the value of the gage to decrease, the mortgagee shall be entitled to have right to demand the mortgagor to stop his behavior. When

the value of the gage decreases, the mortgagee shall be entitled to have right to demand the mortgagor to restore the value of the gage, or offer a guarantee equivalent to the value decreased.

If the mortgagor has no fault for the decrease of the value of the gage the mortgagee shall demand the mortgagee to be offered only within the extent of compensation for the damage obtained by the mortgagor. The part of the gage of which the value does not decrease, shall still be the guarantee of the obligatory right.

Article 52 The mortgage shall exist simultaneously with the obligatory right it guarantees, where the obligatory right is extinct, the mortgage shall be extinct as well.

#### Section 4 Realization of Mortgage

Article 53 At the date of expiration of the debt performance period if the mortgagee has not been satisfied with the claim out of proceeds, he may make an agreement with the mortgagor to keep the said property to offset the gage or satisfies his claim out of proceeds from the auction, sale of the said gage ; if failing to make an agreement, the mortgagor may file a case to the People's Court.

After the gage is set off, auctioned or sold, the part of the value amount exceeding the

amount of the obligatory right shall be owned by the mortgagor, the short part shall be satisfied by the debtor.

Article 54 If there are two or more creditors who have a mortgage on the same property, the value amount obtained from the auction, sale of the gage shall be satisfied pursuant to the following provisions :

1. where the mortgage contract is effective through registration, it shall be satisfied in the registration sequence of the gage ; if equal in sequence, then it shall be satisfied according to the proportion of the obligatory right ; or

2. where the mortgage contract is effective as the date of signing, and the said gage has been registered, it shall be satisfied according to the item 1 of this Article ; if the gage has not registered, it shall be satisfied in the sequence of the effective date of the contracts, and if equal in sequence, it shall be satisfied according to the proportion of the obligatory right. The registered gage has priority to the unregistered gage.

Article 55 After the signing of the city real estates mortgage contract, the houses built lately upon the land shall not belong to the gage. When the said mortgaged real estates is needed to be auctioned, the lately built houses upon the land may be auctioned together with the gage, but as for the amount from the auction of the lately built houses, the

mortgagee shall not be entitled to have priority in satisfying the claim out of proceeds.

Where the right to the use of land of the unreclaimed land contracted for management according to this Law is to be mortgaged, or the right to the use of the land within the extent occupied by the buildings of the township (town) or village enterprises such as a plant is to be mortgaged, after the realization of mortgage, the collective ownership and purpose of the land shall not be changed without the legal procedure is gone through.

Article 56 The value amount obtained from the auction of the right to the use of the stated owned land appropriated, after paying the amount equivalent to the transfer fee of the right to the use of land which shall be paid, the mortgagee shall be entitled to have right in priority for the claim out of proceeds.

Article 57 The third party who offers guarantee of a mortgage on behalf of the debtor, after the realization of the mortgage by the mortgagee, shall be entitled to have right to claim repayment from the debtor.

Article 58 The mortgage right extinguishes with the extinction of the gage. The compensation for the extinction shall be as the mortgaged property.

## Section 5 Mortgage of the Maximum Amount

Article 59 The mortgage of the maximum amount prescribed in this Law, means that the mortgagor and the mortgagee agree, within the extent of maximum amount of the obligatory right, to take the gage as the guarantee of the obligatory right occurred continuously during a certain period.

Article 60 A loan contract may be attached with a mortgage contract of maximum amount.

The contract signed by the creditor and debtor on a certain item commodity with which the trade occurs continuously during a certain period, may be attached with a mortgage contract of maximum amount.

Article 61 The obligatory right of the master contract with the mortgage of maximum amount shall not be assigned.

Article 62 The mortgage of maximum amount shall, besides that it is applied to the provisions of this section, be applied to other provisions of this Chapter.

## **Chapter IV Pledge**

### **Section 1 Pledge of Movables**

Article 63 The pledge of movables described in this Law, means that the debtor or the party delivers his movables to the creditor for possession, and takes the said movables as the guarantee of the obligatory right. When the debtor does not perform the debt, the creditor shall be entitled to have right to keep the said movables to offset or have priority insatisfying in the claim out of proceeds from the value amount of the auction or sale of the said movables.

The debtor or the third party prescribed in the proceeding paragraph shall be a pledgor, the creditor shall be a pledgee, the movables delivered shall be the pledgings.

Article 64 The pledgor and the pledgee shall enter into a pledge contract in writing.

A pledge contract shall be effective as the date of remitting the pledgings to the pledgee.

Article 65 A pledge contract shall contain the following contents :

1. the categories and amount of the master obligation right guaranteed ;
2. the time period to perform the debt by the debtor ;
3. the name, quantity, quality and situation of the pledgings ;
4. the extent guaranteed by the pledge ;



5. the time to deliver the pledgings ; and

6. other items which the parties consider necessary to agree.

If a pledge contract has the contents incompletely prescribed in the proceeding paragraph,  
it may be supplemented.

Article 66 The pledgor and the pledgee shall not agree that, when the pledgee is not  
satisfied at date of expiration of the time limitation for the debt performance, the  
ownership of the pledgings is to be transferred to the pledgee.

Article 67 The guaranteed scope of a pledge shall conclude the master obligatory right and its  
interest, contractual fine, damage compensation, expense for keeping the pledgings  
and expense for realization of pledge. If there is an agreement otherwise in the pledge  
contract, it shall be complied with.

Article 68 The pledgee shall be entitled to have right to collect the fruits produced by the  
pledgings. If there is an agreement otherwise in the pledge contract, it shall be complied  
with.

The fruits of the proceeding paragraph shall eliminate in advance the expense of collecting  
the fruits.

Article 69 The pledgee shall bear the obligation to keep the pledgings properly. If he does not keep the pledgings properly so that the pledgings are extinct or damaged, the pledgee shall bear the civil liability.

If the pledgee cannot keep the pledgings properly which probably cause the extinction or damage of the pledgings, the pledgor may demand the pledgee to have the pledgings to be deposited, or demand to satisfy the obligatory right before the date of expiration in order that the pledgings can be returned.

Article 70 If there is a probability of damage of or obvious deduction of the value of the pledgings that is enough to hurt the rights of the pledgee, the pledgee may demand the pledgor to offer the relevant guarantee. If the pledgor does not offer the guarantee, the pledgee may auction or sell the pledgings, and make an agreement with the pledgor that the value amount obtained from the auction or sale is used to satisfy the obligatory right guaranteed before the date of expiration or to be deposited to the third party whom he agrees with the pledgor.

Article 71 At the date of expiration of the debt performance time limitation if the debtor has performed the debt, or the pledgor has satisfied the obligatory right guaranteed before the date of expiration, the pledgee shall return the pledgings.

At the date of expiration of the debt performance time limitation if the pledgee has not been satisfied, he may make an agreement with the pledgor to keep the pledgings to offset, or to auction, sell the pledgings.

After the pledgings are kept to offset or auctioned, sold, the part that the value amount exceeds the amount of the obligatory right shall be owned by the pledgor, the short part shall be satisfied by the debtor.

Article 72 The third party who offers the guarantee of a pledge on behalf of the debtor shall, after the realization of the pledge by the pledgee, be entitled to have right to claim repayment from the debtor.

Article 73 The right of the pledge extinguishes with the extinction of the pledgings. The compensation for the extinction shall be as the pledged property.

Article 74 The pledge shall be existed simultaneously with the obligatory right it guarantees, where the obligatory right is extinct, the pledge is extinct as well.

## Section 2 Pledge of Rights

Article 75 The following rights may be pledged :

1. a bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt ;
2. the share or share paper which may be assigned according to the law ;
3. the property right of the exclusive right to use trademark, patent right, copyright which may be assigned according to the law ; or
4. other rights which may be pledged according to the law ;

Article 76 Where the bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt is to be pledged, the right voucher shall be delivered to the pledgee within the time limitation agreed in the contract. The pledge contract shall be effective from the date of delivery of the right voucher.

Article 77 Where the bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt with clear record of the date of cashing or delivery of the goods is to be pledged, if the date of cashing or delivery of the goods is before expiration of the debt performance time period, the pledgee may make a cashing or delivery of the goods before the date of expiration of the debt performance time period, and make an agreement with the pledgor that the value amount cashed or the goods delivered

is to be used to satisfy the obligatory right guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Article 78 Where the share paper that may be assigned according to the law is to be pledged, the pledgor and the pledgee shall enter into a written contract, and go through the pledge registration to the security registration institution. The pledge contract shall be effective as the date of registration.

After the share paper is pledged, it shall not be assigned, however it may be assigned with the agreement between the pledgor and the pledgee. The value amount obtained from the assignment of the shares by the pledgor shall be used to satisfy the pledgee the obligatory right guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Where the shares of a limited liability corporation are to be pledged, it shall be applied to the concerned provisions of the Corporation Law on the assignment of shares. The pledge contract shall be effective as the date of recording the pledge of the shares in the shareholders' name list.

Article 79 Where the property right of the exclusive right to use trademark, patent right or copyright which may be assigned according to the law is to be pledged, the pledgor and the

pledgee shall enter into a written contract, and go through the pledge registration to its administration department. The pledge contract shall be effective as of the date of registration.

Article 80 After the right prescribed in Article 79 is pledged, the pledgor shall not assign or permit others to use them, however it may be assigned with the agreement between the pledgor and the pledgee. The assignment fee, permission fee obtained by the pledgor shall be used to satisfy the obligatory right of the pledgee guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Article 81 The pledge of rights shall, besides that it is applied to the provisions of this section, be applied to other provisions of Section 1 in this Chapter.

## **Chapter V Lien**

### **Article 82**

The lien prescribed in this Law means that, according to the provisions of Article 84 in this Law, the creditor possess the property of the debtor according to the agreement of the contract, if the debtor does not perform the debt pursuant to the time limitation agreed in the contract, the creditor shall be entitled to have right to have a lien on the said property according to this Law, to keep the said property to offset or have priority in satisfying for the claim out of proceeds from the value amount of the auction, sale of the said property.

### **Article 83**

The guaranteed scope of a lien shall conclude the master obligatory right and its interest, contractual fine, damage compensation, expense for keeping the subject with a lien and expense for realization of the right of lien.

#### Article 84

As for the obligatory right occurred with the contract of safekeeping, contract of carriage or contract for processing work, if the debtor does not perform the debt, the creditor shall be entitled to have a lien on it.

Other contracts in which a lien may be agreed prescribed by the laws, shall be applied to the provisions of the proceeding paragraph.

The parties may agree in the contract the subject that shall not be had with a lien.

#### Article 85

If the property with a lien is separable, the value of the subject with a lien shall be equal to the amount of the debt.

#### Article 86

The lien or shall bear the obligation to keep the subject with a lien properly. If he does not keep the subject with a lien properly so that the subject with a lien is extinct or damaged, the lien or shall bear the civil liability.

#### Article 87

The creditor and the debtor shall agree in the contract that, after the creditor has a lien on the property, the debtor shall perform the debt within the time limitation that shall not be

less than 2 months. If the creditor and the debtor have not agreed in the contract, after the creditor has a lien on the property of the debtor, he shall determine a time limitation of more than 2 months, inform the debtor to perform the debt within the said time limitation.

If the debtor does not perform the debt yet at the date of expiration of the time limitation, the creditor may make an agreement with the debtor to keep the subject with a lien to offset, and may also auction, sell the subject with a lien according to the law.

After the subject with a lien is kept to offset or auctioned, sold, the part of which the value amount exceeds the amount of the obligatory right shall be owned by the debtor, the short part shall be satisfied by the debtor.

#### Article 88

The right of lien extinguishes,

1. if the obligatory right extinguishes ; or
2. if the debtor offers guarantee otherwise and it is accepted by the creditor.

### **Chapter VI Deposit**

#### Article 89

The parties may agree that one party will pay the deposit to another party as guarantee. After the debtor performs the debt, the deposit shall offset the value amount or be returned. If the party who pays the deposit does not perform the debt, he shall not be entitled to have right to demand the deposit to be returned ; if the party who accepts the deposit does not perform the debt, he shall return twice the amount of the deposit.



#### Article 90

The deposit shall be agreed in writing. The parties shall agree the time limitation to pay the deposit in the deposit contract. The deposit contract shall be effective as the date of actual payment of the deposit.

#### Article 91

The amount of the deposit shall be determined by the parties, but shall not exceed 20 percent of the target amount of the master contract.

### **Chapter VII Supplementary Provisions**

#### Article 92

The real estate prescribed in this Law indicates the land and the fixtures upon the land such as a house or woods.

The movables prescribed in this Law indicates the subjects except the real estate.

#### Article 93

The guaranty contract, mortgage contract, pledge contract, deposit contract prescribed in this Law may be a written contract entered into separately, including the mails or letters, faxes between the parties which have the nature of guarantee, and may also be the guarantee articles in the master contract.

Article 94

When the gage, pledgings and subject with a lien is offset or sold, the market price shall be refereed to.

Article 95

If any law such as the Maritime Code has specific provisions on the guarantee, they shall be complied with.

Article 96

This Law shall become effective on the date of October 1, 1995.