

# Guaranty Law of the People's Republic of China

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Chapter 1 General Provisions

Article 1

This Law is enacted with a view to promoting the accommodation of funds and the circulation of commodities, ensuring the enforcement of creditor's rights and developing the socialist market economy.

Article 2

if creditors need to have their claims honoured by means of guaranty in such economic activities as loans, purchase and sale of commodities, transportation of goods, and contract for processing materials, they may establish guaranty according to the provisions of this law.

the modes of guaranty as provided by this law are suretyship, mortgage,pledge,lien and deposit.

Article 3

In guaranty activities, the principles of equality, voluntariness, fairness, honesty and credibility shall be observed.

Article 4

Where a third party provides a guaranty to creditor for a debtor, the third party may require

the debtor to provide him with a counter-guaranty. The provisions on guaranty in this Law shall apply to the counter-guaranty.

#### Article 5

A guaranty contract is an ancillary contract of the principal contract. If the principal contract is null and void, the guaranty contract shall be null and void, accordingly. Where it is otherwise agreed in the guaranty contract, such agreement shall prevail. If a guaranty contract is determined to be null and void, the debtor, the guarantor or the creditor who is in default shall bear civil liability according to their respective fault.

### Chapter 2 Suretyship

#### Section 1 Suretyship and Surety

##### Article 6

Suretyship as used in this Law means an agreement pursuant to which a surety and a creditor agree that the surety shall perform the obligation or bear the liability according to the agreement, when the debtor fails to perform his obligation.

##### Article 7

A legal person, other organization or a citizen capable of assuming debts may act as a surety.

##### Article 8

No State organ may act as a surety, except in the case of securing loans, for onlending, from a foreign government or an international economic organization as is approved by the State Council.

##### Article 9

Institutions such as schools, kindergartens and hospitals established for purposes of public welfare, and public organizations may not act as a surety.

##### Article 10

Branches and functioning departments of an enterprise as a legal person may not act as a surety. If a branch of an enterprise as a legal person has a power of attorney from the legal person, it may provide a suretyship within the scope of authority.

##### Article 11

No organization or individual may compel a bank or another financial institution or an enterprise to provide a suretyship for another; a bank or another financial institution or an enterprise shall have the right to refuse to provide suretyship for another.

##### Article 12

Where there are two or more sureties for one obligation, the sureties shall undertake suretyship liability according to their proportion of suretyship agreed in the suretyship contract. In the absence of an agreement on the proportion of suretyship, the sureties

shall be jointly and severally liable. The creditor may demand any one of the sureties to undertake all suretyship liability, and every surety shall have the obligation to ensure all of the creditor's rights. The surety who has undertaken the suretyship liability shall have the right of recourse against the debtor, or have the right to demand other sureties who are jointly and severally liable to discharge the proportion of obligations which they should respectively assume.

## Section 2 Suretyship Contract and Modes of Suretyship

### Article 13

A surety and a creditor shall conclude a suretyship contract in writing.

### Article 14

A surety and a creditor may conclude separate suretyship contracts for a single principal contract, or may reach an agreement to conclude, to the extent of the maximum amount of claim, a single suretyship contract for loan contracts or for certain commodities transaction contracts which successively occur in a given period of time.

### Article 15

A suretyship contract shall contain the following particulars: (1) the kind and amount of the principal claim guaranteed; (2) the time limit for the debtor to perform the obligation; (3) the modes of suretyship; (4) the scope of the suretyship guaranty; (5) the term of the suretyship; and (6) other matters the parties deem appropriate. If a suretyship contract does not contain all the particulars specified in the preceding paragraph, the particulars omitted may be added by amendment.

### Article 16

The modes of suretyship include: (1) general suretyship; (2) suretyship of joint and several liability.

### Article 17

A general suretyship refers to a suretyship contract wherein the parties agree that the surety shall undertake suretyship liability in case the debtor defaults. A general suretyship allows the surety to refuse to undertake suretyship liability towards the creditor before a dispute over the principal contract is tried or arbitrated and the obligations are not enforceable even after the debtor's assets have been seized according to law. A surety may not exercise the right provided in the preceding paragraph in any of the following circumstances: (1) The change of the debtor's domicile makes it extremely difficult for the creditor to have the debtor's obligation enforced; (2) A People's Court suspends the enforcement proceedings due to its acceptance of the debtor's bankruptcy case; or (3) The surety waives in writing the right provided in the preceding paragraph.

### Article 18

A suretyship of joint and several liability refers to a suretyship contract wherein the parties

agree that the surety and the debtor shall be jointly and severally liable. Where the debtor of a suretyship of joint and several liability defaults when the time limit for his performance of the obligation provided in the principal contract expires, the creditor may demand that the debtor perform his obligation, or demand that the surety undertake the suretyship liability within the scope of the suretyship agreement.

#### Article 19

In the absence of an agreed or explicitly agreed mode of suretyship, the parties shall bear the suretyship liability following the mode of a suretyship of joint and several liability.

#### Article 20

The surety of a general suretyship or a suretyship of joint and several liability shall enjoy the debtor's right of defense. Where a debtor waives his right of defense against the obligation, the surety shall still enjoy a right of defense. The right of defense means a debtor's right to exercise his right of claim on legal basis against the creditor when the creditor seeks to enforce his rights.

### Section 3 Suretyship Liability

#### Article 21

The scope of the suretyship guaranty includes the principal claim and the interest thereof, default fine, compensation for damage and expenses for enforcing the claim, unless the suretyship contract provides otherwise. In the absence of an agreed or explicitly agreed scope of the suretyship guaranty, the surety shall be liable for payment of all the above costs.

#### Article 22

If a creditor transfers, in accordance with law, his principal claim to a third party during the period of the suretyship, the surety shall continue to be bound by the suretyship contract within the scope of the original suretyship guaranty, unless the suretyship contract provides otherwise.

#### Article 23

Where a creditor permits a debtor to transfer his debts to a third party during the period of the suretyship, a consent in writing shall need to be obtained from the surety; the surety shall no longer be liable if the debts are transferred without his prior consent in writing.

#### Article 24

When a creditor and a debtor agree to alter the principal contract, they shall have to obtain the surety's consent in writing; the surety shall no longer be liable if the contract is altered without his prior consent in writing, unless the suretyship contract provides otherwise.

#### Article 25

If the surety of a general suretyship and the creditor have no agreement on the term of

suretyship, the term of suretyship shall be six months from the date of maturity of the principal debts. Where the creditor neither files a lawsuit against the debtor nor applies for arbitration during the term of suretyship agreed in the contract or provided in the preceding paragraph, the surety shall be relieved of the suretyship liability; where the creditor has filed a lawsuit or applied for arbitration, the provisions on the interruption of prescription shall apply to the term of suretyship.

#### Article 26

Where the surety of a suretyship of joint and several liability and the creditor have no agreement on the term of suretyship, the creditor shall, within six months from the date of maturity of the principal debts, have the right to demand that the surety undertake suretyship liability. If the creditor does not demand that the surety undertake suretyship liability during the term of suretyship agreed in the contract or provided by the preceding paragraph, the surety shall be relieved of the suretyship liability.

#### Article 27

Where in accordance with the provisions of Article 14 of this Law, a surety provides a suretyship to a creditor's claims which successively occur but there is no agreement on the term of the suretyship, the surety may at any time notify in writing the creditor of termination of the suretyship contract, nevertheless, the surety shall be liable for the creditor's claims which vested before the creditor receives the notice.

#### Article 28

Where there are both suretyship and property security for the same claim, the surety shall be liable for the creditor's claim unsecured by the property security. If the creditor waives the property security, the surety shall be relieved of his suretyship liability to the extent of the creditor's waiver.

#### Article 29

If a branch of an enterprise as a legal person concludes a suretyship contract with a creditor without the written authorization of the enterprise or beyond the scope of the authorization, the suretyship contract shall be null and void or the part of the contract that is beyond the scope of the authorization shall be null and void . If the creditor and the enterprise as a legal person are both at fault, they shall bear their respective civil liabilities commensurate with their own fault; if the creditor is not at fault, the enterprise as a legal person shall be civilly liable.

#### Article 30

The surety shall not be civilly liable under any of the following circumstances: (1) the parties to the principal contract conspire to defraud the surety of a suretyship; and (2) the creditor to the principal contract resorts to deception or coercion to induce or cause the surety to provide a suretyship against its will.

#### Article 31

The surety, after his assumption of the suretyship liability, shall be entitled to recourse against the debtor.

#### Article 32

If the creditor does not seek to enforce his claim after a People's Court's acceptance of the debtor's bankruptcy case, the surety may participate in the distribution of the bankruptcy property and exercise his right of recourse in advance.

### Chapter 3 Mortgage

#### Section 1 Mortgage and Mortgaged Property

##### Article 33

Mortgage as used in this Law means that the debtor or a third party secures the creditor's rights with property listed in Article 34 of this Law without transference of its possession. If the debtor defaults, the creditor shall be entitled to convert the property into money to offset the debts or have priority in satisfying his claim from the proceeds of auction or sale of the property in accordance with the provisions of this Law. The debtor or the third party specified in the preceding paragraph is the mortgagor, the creditor is the mortgagee, and the property provided as security is the mortgaged property.

##### Article 34

The following property may be mortgaged: (1) houses and other things firmly fixed on the land which are owned by the mortgagor; (2) machines, means of transport and other property owned by the mortgagor; (3) the land-use right to the State-owned land, State-owned houses and other things firmly fixed on the land which the mortgagor is entitled to dispose of according to law; (4) State-owned machines, means of transport and other property which the mortgagor is entitled to dispose of according to law; (5) the land-use right to barren hills, barren gullies, barren hillocks, waste flood land and other unreclaimed land contracted by the mortgagor according to law and consent for the mortgage of such right is obtained from the party granting the contract; and (6) other property that may be mortgaged according to law. A mortgagor may at the same time mortgage all the property listed in the preceding paragraph.

##### Article 35

The amount of a claim secured by a mortgagor shall not exceed the value of his mortgaged property. If the value of the mortgaged property exceeds that of the claim secured, the surplus may be mortgaged again, but not in excess of the surplus.

##### Article 36

Where houses on State-owned land acquired in accordance with law are mortgaged, the land-use right to the State-owned land occupied by the houses shall be mortgaged at the same time. Where the land-use right to State-owned land acquired by means of granting is mortgaged, the houses on the State-owned land shall be mortgaged at the same time. The land-use right to the land used by a township (town) or village enterprise may not be mortgaged separately. Where factories and other buildings of township (town) or village

enterprises are mortgaged, the land-use right to the land occupied by such buildings shall be mortgaged at the same time.

#### Article 37

The following property may not be mortgaged: (1) ownership of the land; (2) the land-use right to the land owned by the collectives such as cultivated land, house sites, private plots and private hills, with the exception of those provided in sub-paragraph (5) of Article 34 and sub-paragraph (3) of Article 36 of this Law; (3) educational facilities, medical and health facilities of schools, kindergartens, hospitals and other institutions or public organizations established in the interest of the public and other facilities in the service of public welfare; (4) property in relation to which the ownership or the right of use is unknown or disputed; (5) property sealed up, distrained or placed under surveillance in accordance with law; or (6) other property which may not be mortgaged as prescribed by law.

### Section 2 Mortgage Contract and Registration of Mortgaged Property

#### Article 38

A mortgagor and a mortgagee shall conclude a mortgage contract in writing.

#### Article 39

A mortgage contract shall include the following particulars: (1) the kind and amount of the principal claim secured; (2) the term in which the debtor performs his obligation; (3) the name, quantity, quality, condition, location, ownership or ownership of the right to the use of the mortgaged property; (4) the scope of the guaranty of mortgage; and (5) other matters the parties deem necessary to include in the contract. If a mortgage contract does not include all the particulars specified in the preceding paragraph, the omissions may be added by amendment.

#### Article 40

In concluding a mortgage contract, the mortgagor and the mortgagee may not stipulate that the ownership of the mortgaged property shall be transferred to the creditor in case the mortgagee's claim is not satisfied after maturity of the debt.

#### Article 41

Where a party mortgages property provided for in Article 42 of this Law, he shall register the mortgaged property, and the mortgage contract shall become effective as of the date of registration.

#### Article 42

The departments responsible for the registration of mortgaged property are as follows: (1) the land administration departments which verify and issue certificates evidencing the land-use right if the land-use right to the land to which nothing is firmly attached is mortgaged; (2) the departments designated by local people's governments at or above the

county level, if urban real estates or factories and other buildings of township (town) or village enterprises are mortgaged; (3) the forestry administration departments at or above the county level, if forest trees are mortgaged; (4) the registration departments for means of transport, if aircraft, ships and vehicles are mortgaged; or (5) the administrative departments of industry and commerce in the place where the property is located, if the equipment and other movables of enterprises are mortgaged.

#### Article 43

Where a party mortgages other property, he may, of his own will, register the mortgaged property, and the mortgage contract shall become effective as of the date of execution. If a party does not register the mortgaged property, he may not defend against the claims of third party. If a party intends to register the mortgaged property, the notary department in the place where the mortgagor resides shall be the registration department.

#### Article 44

To register the mortgaged property, a party shall submit to the registration department the following documents or their duplicates: (1) the principal contract and the mortgage contract; and (2) the certificates evidencing the ownership of or the use right to the mortgaged property.

#### Article 45

Consulting, transcribing or duplicating the materials registered with the registration departments shall be permitted.

### Section 3 Effect of Mortgage

#### Article 46

The scope of guaranty of mortgage includes the principal debt and the interest thereof, default fine, compensation for damage and expenses for enforcing the mortgage, unless otherwise provided in the mortgage contract.

#### Article 47

If the mortgaged property is seized by a People's Court because of the debtor's failure to perform his obligation prior to the maturity of the debt, the mortgagee shall, from the date of seizure, be entitled to collect the natural fruits severed from the mortgaged property and the legal fruits which the mortgagor may collect from the mortgaged property. If the mortgagee fails to notify the person who has the obligation to pay legal fruits of the fact that the mortgaged property is seized, the mortgagee's right shall not extend to such fruits. The fruits provided for in the preceding paragraph shall first be used to offset the expenses for collecting the fruits.

#### Article 48

If a mortgagor mortgages leased property, he shall notify the lessee of the fact in writing, and the original contract of lease continues in effect.

#### Article 49

If a mortgagor transfers mortgaged property already registered during the period of mortgage, he shall notify the mortgagee and inform the transferee that the transferred property is mortgaged; if the mortgagor fails to notify the mortgagee or inform the transferee of the fact, the transfer shall be null and void. If the proceeds expected from the transfer of the mortgaged property are evidently less than its value, the mortgagee may demand that the mortgagor provide an additional guaranty; if the mortgagor fails to provide the additional guaranty, then he may not transfer the mortgaged property. The proceeds which the mortgagor obtains from the transfer of the mortgaged property shall first be used to liquidate the claim secured by the mortgage or it shall be deposited with a third party agreed upon by the mortgagor and the mortgagee. If the proceeds exceed the claim, the balance shall belong to the mortgagor; if the proceeds do not cover the claim, the difference shall be paid by the debtor.

#### Article 50

The right of mortgage may not be separated from the creditor's rights and transferred singly, nor used to secure other creditors' rights.

#### Article 51

Where a mortgagor's acts are likely to cause the value of the mortgaged property to decline, the mortgagee shall be entitled to demand that the mortgagor cease and desist from such acts. Where the value of the mortgaged property has declined, the mortgagee shall be entitled to demand that the mortgagor restore the original value of the mortgaged property or provide security corresponding to the amount of the lost value. If the mortgagor is not responsible for the decline in the value of the mortgaged property, the mortgagee may only demand that the mortgagor provide security to cover the loss resulting from the decline in value. The part of the mortgaged property whose value has not declined shall continue to serve as guaranty for the creditor's right.

#### Article 52

The right of mortgage shall co-exist with the creditor's right secured. If the creditor's right lapses, the right of mortgage shall also lapse.

### Section 4 Enforcement of Mortgage Right

#### Article 53

The mortgagee, who is not paid at the maturity of the obligation, may, through agreement with the mortgagor, be paid out of the proceeds from the conversion of the mortgaged property or from the auction or sale of the mortgaged property; if they fail to reach an agreement, the mortgagee may bring a lawsuit in a People's Court. If the proceeds from the conversion of the mortgaged property or the proceeds from the auction or sale thereof exceed the claim, the balance shall be returned to the mortgagor; if the proceeds do not cover the claim, the difference shall be paid by the debtor.

#### Article 54

Where the same property is mortgaged to two or more creditors, the proceeds from the auction or sale of the mortgaged property shall be used for liquidation according to the following provisions: (1) Where a mortgage contract takes effect with its registration, the liquidation shall be made in the order of the time of registration of the mortgaged property; if the registration is in the same order, the liquidation shall be made according to the respective proportions of the claims; (2) Where a mortgage contract takes effect on the date of its execution and the mortgaged property is registered, the liquidation shall be made according to the provisions of sub-paragraph (1) of this Article; if the mortgaged property is not registered, the liquidation shall be made in the order of the effective dates of the contracts; if the order of the effective dates is the same, the liquidation shall be made according to the respective proportions of the claims. The claim secured by registered mortgage shall be satisfied prior to the claim secured by unregistered mortgage.

#### Article 55

After the execution of a contract in which urban real estate is mortgaged, the newly-built houses on the land shall not be included in the mortgaged property. Where it is necessary to auction the mortgaged real estate, the newly-built houses on the land may be auctioned, according to law, together with the mortgaged property, but the mortgagee shall have no right to enjoy the priority of having his claim satisfied with the proceeds from auction of the newly-built houses. Where the land-use right to contracted barren hills is mortgaged or the land-use right to the land occupied by the factories and other buildings of a township (town) or village enterprise is mortgaged in accordance with the provisions of this Law, the collective ownership and the uses of the land may not be altered without following the legal procedure after enforcement of the right of mortgage.

#### Article 56

The mortgagee shall be entitled to the priority of having his claim satisfied with the proceeds from auction of the land-use right to the allocated State-owned land after payment of the granting fees for the land-use right.

#### Article 57

The third party who provides guaranty of mortgage for the debtor shall have the right of recourse against the debtor after enforcement of the right of mortgage by the mortgagee.

#### Article 58

The right of mortgage shall lapse due to loss or destruction of the mortgaged property. The compensation obtained for the loss or destruction shall be used as the mortgaged property.

### Section 5 Mortgage of Maximum Amount

#### Article 59

A mortgage of maximum amount as used in this Law means that the mortgaged property shall be used to secure the creditor's claims which occur successively during a given period of time and to the extent of the total amount of the claims, as agreed upon between a mortgagor and a mortgagee.

#### Article 60

A loan contract may be accompanied by a contract of mortgage of maximum amount. The contract executed by a creditor and a debtor for the continuous transaction of a specific commodity in a given period of time may be accompanied by a contract of mortgage of maximum amount.

#### Article 61

The creditor's right to the principal contract secured by a mortgage of maximum amount may not be transferred.

#### Article 62

The provisions of this section plus other provisions of this Chapter shall apply to mortgage of maximum amount.

### Chapter 4 Pledge

#### Section 1 Pledge of Movables

#### Article 63

Pledge of movables as used in this Law means that the debtor or a third party transfers the possession of his movables to the creditor as a security for debt. If the debtor defaults, the creditor shall, in accordance with the provisions of this Law, be entitled to convert the property into money as payment of the debt or enjoy priority of having his claim satisfied with the proceeds of auction or sale of the pledged property. The debtor or the third party mentioned in the preceding paragraph shall be the pledgor, the creditor shall be the pledgee, and the movables transferred shall be the pledged property.

#### Article 64

A pledgor and a pledgee shall conclude a pledge contract in writing. A pledge contract shall become effective upon the delivery of the pledged property to the possession of the pledgee.

#### Article 65

A pledge contract shall include the following particulars: (1) the kind and amount of the principal debt secured; (2) the time limit for the debtor to perform his obligation; (3) the name, quantity, quality and condition of the pledged property; (4) the scope of the guaranty of pledge; (5) the time for delivering the pledged property; and (6) other matters the parties deem necessary to include in the contract. If a pledge contract does not contain all the particulars specified in the preceding paragraph, the omissions may be added by amendment.

#### Article 66

A pledgor and a pledgee may not stipulate in the contract that ownership of the pledged property shall be transferred to the pledgee if the obligation is not discharged at its maturity.

#### Article 67

The scope of guaranty of pledge includes the principal claim and the interest thereof, default fine, the compensation for damage, the storage charges and the cost of enforcing the right of the pledge. If otherwise provided for in the pledge contract, the provisions there shall apply.

#### Article 68

The pledgee shall be entitled to collect the fruits derived from the pledged property. If otherwise provided for in the pledge contract, the provisions there shall apply. The fruits mentioned in the preceding paragraph shall first be used to pay the expenses for collecting the fruits.

#### Article 69

The pledgee shall have the obligation to maintain the pledged property in good condition. The pledgee shall be civilly liable for the loss or destruction of or damage to the pledged property resulting from his negligence in storage. Where the pledgee is unable to maintain the pledged property in good condition and may thus cause loss or destruction of or damage to the pledged property, the pledgor may demand that the pledgee have the pledged property deposited, or demand that his obligation be discharged in advance and the pledged property returned.

#### Article 70

Where there is a possibility for the pledged property to perish or for its value to obviously decline to a point sufficient to impair the rights of the pledgee, the pledgee may demand that the pledgor provide additional security in like amount. If the pledgor refuses to provide the additional security, the pledgee may auction or sell the pledged property, and conclude an agreement with the pledgor that the proceeds from the auction or sale shall be used to pay in advance the debt secured or be deposited with a third party as agreed upon with the pledgor.

#### Article 71

Where the debtor performs his obligation at its maturity, or where the pledgor pays, prior to maturity, the debt secured, the pledgee shall return the pledged property. If the pledgee is not paid at the maturity of the obligation, he may conclude an agreement with the pledgor that the pledged property be converted into money in order to pay the debt, or he may auction or sell the said property according to law. Where the money converted from the pledged property or the proceeds from auction or sale exceed the debt secured, the balance shall be paid to the pledgor. Where the money or the proceeds do not cover the

whole debt secured, the difference shall be paid by the debtor.

#### Article 72

The third party who secures the obligation of the debtor shall have the right of recourse against the debtor after the pledgee's enforcement of the right of the pledge.

#### Article 73

The right of pledge shall lapse due to loss or destruction of the pledged property. The compensation obtained for the loss or destruction shall be used as the pledged property.

#### Article 74

The right of pledge shall co-exist with the creditor's right secured. When the creditor's right lapses, the right of pledge shall also lapse.

### Section 2 Pledge of Rights

#### Article 75

The following rights may be pledged: (1) bills of exchange, cheques, promissory notes, bonds, certificates of deposit, warehouse receipts, bills of lading; (2) shares of stocks or certificates of stocks which are transferable according to law; (3) the rights to exclusive use of trademarks, the property right among patent rights and copyrights which are transferable according to law; and (4) other rights which may be pledged according to law.

#### Article 76

Where a bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is pledged, the document of title shall be delivered to the pledgee within the time limit specified in the pledge contract. The pledge contract shall become effective upon the delivery of the document of title.

#### Article 77

Where a bill of exchange, cheque, promissory note, bond, certificate of deposit warehouse receipt or bill of lading, which carries the date of payment or the date of delivery of goods, is pledged and if the date of its payment or delivery of goods is prior to the time limit for the performance of the obligation, the pledgee may be paid or accept the delivery of the goods before the expiration of the time limit for the performance of the obligation, and conclude an agreement with the pledgor that the payment or the goods accepted shall be used to pay in advance the debt secured or be deposited with a third party as agreed upon with the pledgor.

#### Article 78

Where certificates of stock transferable according to law are pledged, the pledgor and the pledgee shall conclude a contract in writing and register the pledge contract with the securities registration authorities. The pledge contract shall become effective on the date of the registration. The certificates of stocks pledged may not be transferred, unless

agreed between the pledgor and the pledgee. The proceeds the pledgor obtained from the transfer of the certificates of stocks shall be used to pay in advance the pledgee's claims secured, or be deposited with a third party as agreed upon with the pledgor. Where shares of stocks of a limited liability company are pledged, the relevant provisions of the Company Law governing the transfer of shares shall apply. The pledge contract shall become effective on the date on which the pledge of shares is written into the shareholders' name-list.

#### Article 79

Where the right to exclusive use of trademarks, the property rights among patent rights and copyrights transferable according to law are pledged, the pledgor and the pledgee shall conclude a contract in writing and register the pledge contract with the administrative department in charge. The pledge contract shall become effective upon registration.

#### Article 80

If a right mentioned in Article 79 of this Law is pledged, the pledgor may not transfer or permit the right to be used by another, unless agreed between the pledgee and the pledgor. The proceeds from the transfer or the use obtained by the pledgor shall be used to pay in advance the pledgee's claims secured or be deposited with a third party as agreed between the pledgor and the pledgee.

#### Article 81

The pledge of rights is governed not only by the provisions of this Section, but also by the provisions of Section 1 of this Chapter.

#### Chapter 5 Lien

#### Article 82

"Lien" as used in this Law means that the creditor shall possess the debtor's movables according to the terms of the contract as provided by Article 84 of this Law. If the debtor defaults on his debt, the creditor shall be entitled to retain the property in accordance with the provisions of this Law and to the priority of having the debt paid with the money converted from the property or proceeds from sale or auction of the property.

#### Article 83

The scope of guaranty of lien covers the principal claim and the interest thereof, default fine, compensation for damage, cost of preservation of the retained property and expenses for enforcing the lien.

#### Article 84

In the event of any costs arising from a storage, transportation or processing contract, if the debtor defaults, the creditor shall have the right to retain the property. The provisions of the preceding paragraph shall be applicable to other contracts whereby the creditor has the right of retention as provided by law. The parties may specify in the contract the property that may not be retained.

#### Article 85

Where the retained property can be divided, the value of the part retained shall be equal to the sum of the debt.

#### Article 86

The lien holder shall have the obligation to maintain the retained property in good condition. The lien holder shall be civilly liable for loss or destruction of or damage to the retained property resulting from his negligence.

#### Article 87

The creditor and the debtor shall stipulate in the contract that the debtor shall perform his obligation within not less than two months after the creditor takes possession of the debtor's property. If the creditor and the debtor fail to stipulate the same in the contract, the creditor shall, after taking possession of the debtor's property, fix a time limit of two months or more and notify the debtor to perform his obligation within such time limit. If the debtor defaults within the specified time limit, the creditor may convert the retained property into money upon agreement with the debtor, or may auction or sell the retained property according to law. Where the money converted from the retained property or the proceeds from auction or sale exceed the debt secured, their balance shall be paid to the debtor; where the money or proceeds do not cover the entire secured debt, the difference shall be paid by the debtor.

#### Article 88

The right of retention shall lapse due to the following reasons: (1) the creditor's right lapses; or (2) the debtor gives other security which is accepted by the creditor.

### Chapter 6 Deposit

#### Article 89

The parties may agree that one party shall pay a deposit to the other for the security of a debt. After the debtor performs his obligation, the deposit shall either be retained as partial payment or be returned. If the party paying the deposit defaults, he shall have no right to demand the return of the deposit; if the party accepting the deposit defaults, he shall return twice the amount of the deposit.

#### Article 90

The deposit shall be executed in written form. The parties shall specify the time limit for the delivery of the deposit in the deposit contract. The deposit contract shall become effective on the date of the actual delivery of the deposit.

#### Article 91

The amount of the deposit shall be stipulated by the parties, but it shall not exceed 20 percent of the amount of the principal contract.

### Chapter 7 Supplementary Provisions

#### Article 92

The "immovables" as used in this Law means land, and houses, forest, tress and other

things firmly fixed on the land. The "movables" as used in this Law means things other than the immovables.

Article 93

"Suretyship contract", "mortgage contract", "pledge contract" or "deposit contract" as used in this Law may be contract concluded separately in writing that includes the letters and telex in the nature of guaranty between the parties, or the guaranty clauses in the principal contract.

Article 94

Where the mortgaged property, the pledged property or the retained property is converted into money or sold, the price shall be fixed with reference to the market price.

Article 95

Where the Maritime Code and other laws have special provisions on guaranty, such provisions shall apply.

Article 96

This Law shall be implemented as of October 1, 1995.

Translated by the Legislative Affairs Bureau of the State Council of PRC