

# Guarantee Law of the PRC

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## Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of promoting the circulation of funds and commodities, ensuring the realization of claims, and developing the socialist market economy.

Article 2 — Where a creditor needs to secure the performance of an obligation by means of a guarantee in the course of lending, buying and selling, transporting goods, processing work, or other economic activities, a guarantee may be established in accordance with the provisions of this Law. The forms of guarantee provided for in this Law are suretyship, mortgage, pledge, lien, and deposit.

Article 3 — In guarantee activities, the principles of equality, free will, fairness, good faith, and trustworthiness shall be followed.

Article 4 — Where a third party provides a guarantee to a creditor on behalf of a debtor, the third party may require the debtor to provide a counter-guarantee. The provisions of this Law shall apply to counter-guarantees.

Article 5 — A guarantee contract shall be a contract ancillary to the principal contract. Where the principal contract is invalid, the guarantee contract shall be invalid. Where the guarantee contract provides otherwise, such provision shall prevail. Where a guarantee contract is confirmed to be invalid, and the debtor, the guarantor, or the creditor is at fault, they shall bear civil liability in accordance with their respective fault.

## **Chapter II — Suretyship**

### **Section 1 — Suretyship and Surety**

Article 6 — For the purposes of this Law, "suretyship" means an agreement whereby the surety and the creditor agree that the surety shall perform the obligation or bear liability when the debtor fails to perform the obligation.

Article 7 — A surety shall be a legal person, other organization, or citizen with the capacity to act as a substitute for the debtor in the performance of an obligation.

Article 8 — State organs shall not act as sureties, except for the provision of guarantee for loans lent by foreign governments or international economic organizations with the approval of the State Council.

Article 9 — Public institutions such as schools, kindergartens, and hospitals, and social organizations established for the public interest shall not act as sureties.

Article 10 — Branches or functional departments of an enterprise legal person shall not act as sureties. Where a branch of an enterprise legal person has a written authorization from the legal person, it may provide a suretyship within the scope of the authorization.

Article 11 — No entity or individual may compel a bank or other financial institution or an enterprise to provide a suretyship for another person. A bank or other financial institution or an enterprise shall have the right to refuse any compulsion to provide a suretyship for another person.

Article 12 — Where there are two or more sureties for the same obligation, the sureties shall bear surety liability in accordance with the proportion of suretyship agreed upon in the suretyship contract. In the absence of an agreement on the proportion of suretyship, the sureties shall bear joint and several liability. The creditor may demand any one of the sureties to bear the surety liability. Each surety shall be obligated to guarantee the performance of the entire obligation. A surety that has borne the surety liability shall have the right to recover from the debtor, or demand any other co-surety to assume the portion that the other co-surety should bear.

### **Section 2 — Suretyship Contract and Forms of Suretyship**

Article 13 — A suretyship contract shall be concluded in writing between the surety and the creditor. The suretyship contract shall include the following contents: (1) the type and amount of the principal claim secured; (2) the time limit for the debtor to perform the obligation; (3) the form of suretyship; (4) the scope of the suretyship guarantee; (5) the period of suretyship; and (6) other matters the parties consider necessary. Where a suretyship contract does not fully specify the contents listed in the preceding paragraph, the

missing items may be supplemented.

Article 14 — A surety and a creditor may conclude a suretyship contract providing for the maximum amount of suretyship for a specific series of claims arising from a continuous commodity transaction or a specific continuous credit transaction within a certain period and within the maximum amount of the claim.

Article 15 — A suretyship contract shall be in writing. Where it is not in writing, the suretyship contract shall not be established.

Article 16 — A suretyship may be in one of two forms: (1) general suretyship; or (2) suretyship with joint and several liability.

Article 17 — Where the parties to a suretyship contract agree that, in the event the debtor is unable to perform the obligation, the surety shall bear the surety liability, the suretyship shall be a general suretyship. A surety in a general suretyship may, before the dispute over the principal contract has been adjudicated or arbitrated and the debtor has been subject to compulsory enforcement but still cannot perform the obligation, refuse to bear the surety liability towards the creditor. A surety shall not exercise the right provided for in the preceding paragraph under any of the following circumstances: (1) the debtor has changed its domicile and it is difficult for the creditor to demand performance of the obligation; (2) a people's court has accepted the debtor's bankruptcy case and suspended the enforcement procedure; or (3) the surety waives in writing the right provided for in the preceding paragraph.

Article 18 — Where the parties to a suretyship contract agree that the surety and the debtor shall bear joint and several liability for the obligation, the suretyship shall be a suretyship with joint and several liability. Where a debtor of a suretyship with joint and several liability fails to perform the obligation when the time limit for performance of the obligation under the principal contract expires, the creditor may demand that the debtor perform the obligation or demand that the surety bear the surety liability within the scope of the suretyship.

Article 19 — Where the parties have not agreed on the form of suretyship or the agreement is not clear, the suretyship shall be a suretyship with joint and several liability.

Article 20 — A surety in a general suretyship or a suretyship with joint and several liability shall enjoy the debtor's rights of defense. Where the debtor waives the right of defense against the obligation, the surety shall still have the right of defense. "Right of defense" means the right of a debtor to exercise against the creditor's claim based on statutory grounds.

## **Chapter III — Mortgage**

### **Section 1 — Mortgage and Mortgage Property**

Article 21 — For the purposes of this Law, "mortgage" means the right of a creditor to receive priority payment from the value of specific property that the debtor or a third party has not transferred possession of but has provided as security for the performance of an obligation, and the debtor or the third party shall be the mortgagor, the creditor shall be the mortgagee, and the property provided as security shall be the mortgaged property.

Article 22 — A mortgage contract shall be concluded in writing between the mortgagor and the mortgagee.

Article 23 — A mortgage contract shall include the following contents: (1) the type and amount of the principal claim secured; (2) the time limit for the debtor to perform the obligation; (3) the name, quantity, quality, condition, location, ownership or the ownership of the right to use the mortgaged property; and (4) the scope of the mortgage guarantee. Where a mortgage contract does not fully specify the contents listed in the preceding paragraph, the missing items may be supplemented.

Article 24 — A mortgage contract shall be invalid if it includes a clause providing that the ownership of the mortgaged property shall be transferred to the creditor in the event the debtor fails to pay the obligation at maturity. The invalidity of such a clause shall not affect the validity of other provisions of the mortgage contract.

Article 25 — The parties may create a maximum amount mortgage for a specific series of claims arising from a continuous transaction within a certain period and within the maximum amount of the claim by agreement. The creditor of the maximum amount mortgage shall have the right to receive priority payment from the value of the mortgaged property within the maximum amount of the claim.

Article 26 — The parties shall register the mortgaged property in accordance with the provisions of this Law. The mortgage contract shall take effect from the date of registration.

Article 27 — The parties shall register the following property as mortgaged property: (1) land use rights obtained by means of grant; (2) urban real estate such as houses and factories; (3) forest and trees; (4) aircraft, vessels, and motor vehicles; and (5) equipment and other movable property of enterprises. The parties shall register the mortgaged property specified in the preceding paragraph with the relevant departments.

Article 28 — Where the parties mortgage other property, they may register the mortgage voluntarily. The mortgage contract shall take effect from the date of execution. Where the parties fail to register the mortgage, the mortgage shall not be asserted against a third party acting in good faith.

Article 29 — The departments handling mortgage registration are as follows: (1) for land use rights without any fixtures on the land, the land administration department that verifies and issues the land use right certificate; (2) for urban real estate or the factory buildings of township or village enterprises, the department prescribed by the local people's government at or above the county level; (3) for forest and trees, the forestry administration department at or above the county level; (4) for aircraft, vessels, and motor vehicles, the registration department for means of transport; and (5) for equipment and other movable property of enterprises, the administration for industry and commerce at the place where the property is located.

## **Chapter IV — Pledge**

### **Section 1 — Pledge of Movable Property**

Article 30 — For the purposes of this Law, "pledge of movable property" means the transfer of possession of movable property by the debtor or a third party to the creditor as security for the performance of an obligation. Where the debtor fails to perform the obligation at maturity, the creditor shall have the right to receive priority payment from the value of the movable property in accordance with the provisions of this Law. The debtor or the third party specified in the preceding paragraph shall be the pledgor, the creditor shall be the pledgee, and the movable property transferred shall be the pledged property.

Article 31 — A pledge contract shall be concluded in writing between the pledgor and the pledgee. The pledge contract shall take effect from the date of delivery of the pledged property to the pledgee's possession.

Article 32 — A pledge contract shall include the following contents: (1) the type and amount of the principal claim secured; (2) the time limit for the debtor to perform the obligation; (3) the name, quantity, quality, and condition of the pledged property; (4) the scope of the pledge guarantee; and (5) the time and place of delivery of the pledged property. Where a pledge contract does not fully specify the contents listed in the preceding paragraph, the missing items may be supplemented.

Article 33 — The pledgor and the pledgee shall not agree that the ownership of the pledged property shall be transferred to the pledgee in the event the debtor fails to pay the obligation at maturity.

Article 34 — The scope of the pledge guarantee shall include the principal claim and interest, penalty, damages, the cost of storage of the pledged property, and the cost of realizing the pledge. Where the pledge contract provides otherwise, such provisions shall prevail.

## **Section 2 — Pledge of Rights**

Article 35 — The following rights may be pledged: (1) negotiable instruments such as bills of exchange, promissory notes, and checks; (2) bonds and certificates of deposit; (3) warehouse receipts and bills of lading; (4) shares of stock and share certificates that are transferable in accordance with the law; (5) property rights in intellectual property such as the right to exclusive use of trademarks, patent rights, and copyright that are transferable in accordance with the law; and (6) other rights that may be pledged in accordance with the law.

Article 36 — Where a right is pledged, the pledgor and the pledgee shall conclude a written contract. The pledge contract shall take effect from the date of delivery of the certificate of the right to the pledgee's possession.

## **Chapter V — Lien**

Article 37 — For the purposes of this Law, "lien" means the right of a creditor under a contract for custody, transportation, or processing work to retain the property of the debtor in its lawful possession where the debtor fails to perform the obligation under the contract at maturity. Where the debtor still fails to perform the obligation within a reasonable period after the creditor has retained the property, the creditor may receive priority payment from the value of the retained property in accordance with the law.

Article 38 — The parties to a lien may not agree to exclude the application of the right of lien in the contract.

Article 39 — The scope of the lien guarantee shall include the principal claim and interest, penalty, damages, the cost of storage of the retained property, and the cost of realizing the lien.

Article 40 — The creditor shall have the duty to properly keep the retained property. Where the creditor causes the retained property to be lost or damaged due to improper keeping, the creditor shall bear civil liability.

## **Chapter VI — Deposit**

Article 41 — The parties may agree that one party shall pay a deposit to the other party as security for a claim. The deposit contract shall take effect from the date of actual delivery of the deposit.

Article 42 — The amount of the deposit shall be agreed upon by the parties but shall not exceed 20 percent of the value of the subject matter of the principal contract.

Article 43 — Where the party that paid the deposit performs the obligation in accordance with the provisions of the contract, the deposit shall be offset against the price or be refunded. Where the party that paid the deposit fails to perform the obligation in accordance with the provisions of the contract, it shall not be entitled to demand the return of the deposit. Where the party that received the deposit fails to perform the obligation in accordance with the provisions of the contract, it shall return twice the amount of the deposit.

Article 44 — Where a party has performed part of the contractual obligation and has ceased performance due to circumstances beyond its control, the deposit shall be applied in proportion to the unperformed portion of the obligation.

## **Chapter VII — Supplementary Provisions**

Article 45 — For the purposes of this Law, "immovable property" means land, houses, forests, trees, and other fixtures on land. "Movable property" means property other than immovable property.

Article 46 — Where a guarantee is created by means of a letter of credit, the relevant provisions of other laws shall apply.

Article 47 — This Law shall come into force on October 1, 1995.

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