

Guaranty Law of the People's Republic of China

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Chapter I 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 debt 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 II 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 shall 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 and public organisations such as schools, kindergartens and hospitals established for purposes of public welfare shall not act as a surety.

Article 10 Branches and functioning departments of an enterprise as a legal person shall 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 authorisation.

Article 11 No organisation or individual shall 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, and the creditor may demand any one of the sureties to undertake all suretyship liability whereas 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 surety of the general suretyship may refuse to undertake suretyship liability towards the creditor before a dispute over the principal contract is adjudicated or arbitrated and the debtor remains incapable of paying the debt even after his assets have been enforced according to law.

A surety shall 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) The 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 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 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 the People's Court's acceptance of the debtor's bankruptcy case, the surety may participate in the distribution of the bankruptcy property to exercise his right of recourse in advance.

Chapter III 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 have the ownership of the property transferred to him at an evaluated price agreed upon by the parties 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 the amount of claim secured shall not in excess of the value 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 shall 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 shall 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 shall 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:

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- (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 shall 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 the 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 off the 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 a corresponding guaranty; if the mortgagor fails to provide the corresponding guaranty, then he may not transfer the mortgaged property.

The proceeds which the mortgagor obtains from the transfer of the mortgaged property shall be used to liquidate the claim secured by the mortgage in advance 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 off by the debtor.

Article 50 The right of mortgage shall 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 sufficient 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 liable for the decline in the value of the mortgaged property, the mortgagee may only demand that the mortgagor provide security within the amount of the compensation acquired by the mortgagor as a result of 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 Right of Mortgage

Article 53 The mortgagee who is not paid off at the maturity of the obligation may, through agreement with the mortgagor, be paid out of the price of the transferred ownership of the mortgaged property or the proceeds of auction or sale of the mortgaged property; if they fail to reach an agreement, the mortgagee may bring a lawsuit in the 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 off 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 unreclaimed lands 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 shall 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 sum equivalent to the granting fees due for the land-use right according to law.

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 shall not be transferred.

Article 62 The provisions of this section plus other provisions of this Chapter shall apply to mortgage of maximum amount.

Chapter IV 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 have the ownership of the property transferred to him at an evaluated price agreed upon by the parties 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 shall 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 corresponding security in like amount. If the pledgor refuses to provide the corresponding 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 ownership of the property shall be transferred to him at an evaluated price agreed upon by the parties in order to pay the debt, or he may auction or sell the said property according to law.

Where the price of the transferred ownership of the pledged property or the proceeds from auction or sale exceeds the debt secured, the balance shall be paid to the pledgor. Where the price or the proceeds does not cover the whole debt secured, the difference shall be paid off 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. If 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 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 otherwise 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 off in advance the pledgee's claims secured, or be deposited with a third party as agreed upon with the pledgor.

Where shares 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 shall not transfer or permit the right to be used by another, unless otherwise agreed between the pledgee and the pledgor. The proceeds from the transfer or the use obtained by the pledgor shall be used to pay off 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 V 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 shall be entitled to the priority of having the debt paid with the ownership of the property transferred to him at an evaluated price agreed upon by the parties 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 the 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 shall not be retained.

Article 85 Where the retained property can be divided, the value of the part retained shall be equivalent 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 a time limit 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 time limit 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 have the ownership of the property transferred to him at an evaluated price agreed upon by the parties upon agreement with the debtor, or may auction or sell the retained property according to law.

Where the price of the transferred ownership of the retained property or the proceeds from auction or sale exceeds the debt secured, their balance shall be paid to the debtor; where the price or proceeds does not cover the entire secured debt; the difference shall be paid off 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 VI 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 part of the total 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 VII Supplementary Provisions

Article 92 The "immovables" as used in this Law means land, and houses, forest, trees 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.

http://www.gov.cn/banshi/2005-09/01/content_68752.htm

中华人民共和国担保法

(1995年6月30日第八届全国人民代表大会常务委员会第十四次会议通过 1995年6月30日中华人民共和国主席令第五十号公布 自1995年10月1日起施行)

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第一章 总则

第一条 为促进资金融通和商品流通,保障债权的实现,发展社会主义市场经济,制定本法。

第二条 在借贷、买卖、货物运输、加工承揽等经济活动中,债权人需要以担保方式保障其债权实现的,可以依照本法规定设定担保。

本法规定的担保方式为保证、抵押、质押、留置和定金。

第三条 担保活动应当遵循平等、自愿、公平、诚实信用的原则。

第四条 第三人为债务人向债权人提供担保时,可以要求债务人提供反担保。

反担保适用本法担保的规定。

第五条 担保合同是主合同的从合同,主合同无效,担保合同无效。担保合同另有约定的,按照约定。

担保合同被确认无效后,债务人、担保人、债权人有过错的,应当根据其过错各自承担相应的民事责任。

第二章 保证

第一节 保证和保证人

第六条 本法所称保证，是指保证人和债权人约定，当债务人不履行债务时，保证人按照约定履行债务或者承担责任的行为。

第七条 具有代为清偿债务能力的法人、其他组织或者公民，可以作保证人。

第八条 国家机关不得为保证人，但经国务院批准为使用外国政府或者国际经济组织贷款进行转贷的除外。

第九条 学校、幼儿园、医院等以公益为目的的事业单位、社会团体不得为保证人。

第十条 企业法人的分支机构、职能部门不得为保证人。

企业法人的分支机构有法人书面授权的，可以在授权范围内提供保证。

第十一条 任何单位和个人不得强令银行等金融机构或者企业为他人提供保证；银行等金融机构或者企业对强令其为他人提供保证的行为，有权拒绝。

第十二条 同一债务有两个以上保证人的，保证人应当按照保证合同约定的保证份额，承担保证责任。没有约定保证份额的，保证人承担连带责任，债权人可以要求任何一个保证人承担全部保证责任，保证人都负有担保全部债权实现的义务。已经承担保证责任的保证人，有权向债务人追偿，或者要求承担连带责任的其他保证人清偿其应当承担的份额。

第二节 保证合同和保证方式

第十三条 保证人与债权人应当以书面形式订立保证合同。

第十四条 保证人与债权人可以就单个主合同分别订立保证合同，也可以协议在最高债权额限度内就一定期间连续发生的借款合同或者某项商品交易合同订立一个保证合同。

第十五条 保证合同应当包括以下内容：

- （一）被保证的主债权种类、数额；
- （二）债务人履行债务的期限；
- （三）保证的方式；
- （四）保证担保的范围；
- （五）保证的期间；
- （六）双方认为需要约定的其他事项。

保证合同不完全具备前款规定内容的，可以补正。

第十六条 保证的方式有：

- （一）一般保证；
- （二）连带责任保证。

第十七条 当事人在保证合同中约定，债务人不能履行债务时，由保证人承担保证责任的，为一般保证。

一般保证的保证人在主合同纠纷未经审判或者仲裁，并就债务人财产依法强制执行仍不能履行债务前，对债权人可以拒绝承担保证责任。

有下列情形之一的，保证人不得行使前款规定的权利：

- （一）债务人住所变更，致使债权人要求其履行债务发生重大困难的；
- （二）人民法院受理债务人破产案件，中止执行程序的；
- （三）保证人以书面形式放弃前款规定的权利的。

第十八条 当事人在保证合同中约定保证人与债务人对债务承担连带责任的，为连带责任保证。

连带责任保证的债务人在主合同规定的债务履行期届满没有履行债务的，债权人可以要求债务人履行债务，也可以要求保证人在其保证范围内承担保证责任。

第十九条 当事人对保证方式没有约定或者约定不明确的，按照连带责任保证承担保证

责任。

第二十条 一般保证和连带责任保证的保证人享有债务人的抗辩权。债务人放弃对债务的抗辩权的，保证人仍有权抗辩。

抗辩权是指债权人行使债权时，债务人根据法定事由，对抗债权人行使请求权的权利。

第三节 保证责任

第二十一条 保证担保的范围包括主债权及利息、违约金、损害赔偿金和实现债权的费用。保证合同另有约定的，按照约定。

当事人对保证担保的范围没有约定或者约定不明确的，保证人应当对全部债务承担责任。

第二十二条 保证期间，债权人依法将主债权转让给第三人的，保证人在原保证担保的范围内继续承担保证责任。保证合同另有约定的，按照约定。

第二十三条 保证期间，债权人许可债务人转让债务的，应当取得保证人书面同意，保证人对未经其同意转让的债务，不再承担保证责任。

第二十四条 债权人与债务人协议变更主合同的，应当取得保证人书面同意，未经保证人书面同意的，保证人不再承担保证责任。保证合同另有约定的，按照约定。

第二十五条 一般保证的保证人与债权人未约定保证期间的，保证期间为主债务履行期届满之日起六个月。

在合同约定的保证期间和前款规定的保证期间，债权人未对债务人提起诉讼或者申请仲裁的，保证人免除保证责任；债权人已提起诉讼或者申请仲裁的，保证期间适用诉讼时效中断的规定。

第二十六条 连带责任保证的保证人与债权人未约定保证期间的，债权人有权自主债务履行期届满之日起六个月内要求保证人承担保证责任。

在合同约定的保证期间和前款规定的保证期间，债权人未要求保证人承担保证责任的，保证人免除保证责任。

第二十七条 保证人依照本法第十四条规定就连续发生的债权作保证，未约定保证期间的，保证人可以随时书面通知债权人终止保证合同，但保证人对于通知到债权人前所发生的债权，承担保证责任。

第二十八条 同一债权既有保证又有物的担保的，保证人对物的担保以外的债权承担保证责任。

债权人放弃物的担保的，保证人在债权人放弃权利的范围内免除保证责任。

第二十九条 企业法人的分支机构未经法人书面授权或者超出授权范围与债权人订立保证合同的，该合同无效或者超出授权范围的部分无效，债权人和企业法人有过错的，应当根据其过错各自承担相应的民事责任；债权人无过错的，由企业法人承担民事责任。

第三十条 有下列情形之一的，保证人不承担民事责任：

（一）主合同当事人双方串通，骗取保证人提供保证的；

（二）主合同债权人采取欺诈、胁迫等手段，使保证人在违背真实意思的情况下提供保证的。

第三十一条 保证人承担保证责任后，有权向债务人追偿。

第三十二条 人民法院受理债务人破产案件后，债权人未申报债权的，保证人可以参加破产财产分配，预先行使追偿权。

第三章 抵押

第一节 抵押和抵押物

第三十三条 本法所称抵押，是指债务人或者第三人不转移对本法第三十四条所列财产的占有，将该财产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押物。

第三十四条 下列财产可以抵押：

- （一）抵押人所有的房屋和其他地上定着物；
- （二）抵押人所有的机器、交通运输工具和其他财产；
- （三）抵押人依法有权处分的国有的土地使用权、房屋和其他地上定着物；
- （四）抵押人依法有权处分的国有的机器、交通运输工具和其他财产；
- （五）抵押人依法承包并经发包方同意抵押的荒山、荒沟、荒丘、荒滩等荒地的土地使用权；

- （六）依法可以抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

第三十五条 抵押人所担保的债权不得超出其抵押物的价值。

财产抵押后，该财产的价值大于所担保债权的余额部分，可以再次抵押，但不得超出其余额部分。

第三十六条 以依法取得的国有土地上的房屋抵押的，该房屋占用范围内的国有土地使用权同时抵押。

以出让方式取得的国有土地使用权抵押的，应当将抵押时该国有土地上的房屋同时抵押。

乡（镇）、村企业的土地使用权不得单独抵押。以乡（镇）、村企业的厂房等建筑物抵押的，其占用范围内的土地使用权同时抵押。

第三十七条 下列财产不得抵押：

- （一）土地所有权；
- （二）耕地、宅基地、自留地、自留山等集体所有的土地使用权，但本法第三十四条第（五）项、第三十六条第三款规定的除外；
- （三）学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施；
- （四）所有权、使用权不明或者有争议的财产；
- （五）依法被查封、扣押、监管的财产；
- （六）依法不得抵押的其他财产。

第二节 抵押合同和抵押物登记

第三十八条 抵押人和抵押权人应当以书面形式订立抵押合同。

第三十九条 抵押合同应当包括以下内容：

- （一）被担保的主债权种类、数额；
- （二）债务人履行债务的期限；
- （三）抵押物的名称、数量、质量、状况、所在地、所有权权属或者使用权权属；
- （四）抵押担保的范围；
- （五）当事人认为需要约定的其他事项。

抵押合同不完全具备前款规定内容的，可以补正。

第四十条 订立抵押合同时，抵押权人和抵押人在合同中不得约定在债务履行期届满抵押权人未受清偿时，抵押物的所有权转移为债权人所有。

第四十一条 当事人以本法第四十二条规定的财产抵押的，应当办理抵押物登记，抵押合同自登记之日起生效。

第四十二条 办理抵押物登记的部门如下：

（一）以无地上定着物的土地使用权抵押的，为核发土地使用权证书的土地管理部门；
（二）以城市房地产或者乡（镇）、村企业的厂房等建筑物抵押的，为县级以上地方人民政府规定的部门；

（三）以林木抵押的，为县级以上林木主管部门；

（四）以航空器、船舶、车辆抵押的，为运输工具的登记部门；

（五）以企业的设备和其他动产抵押的，为财产所在地的工商行政管理部门。

第四十三条 当事人以其他财产抵押的，可以自愿办理抵押物登记，抵押合同自签订之日起生效。

当事人未办理抵押物登记的，不得对抗第三人。当事人办理抵押物登记的，登记部门为抵押人所在地的公证部门。

第四十四条 办理抵押物登记，应当向登记部门提供下列文件或者其复印件：

（一）主合同和抵押合同；

（二）抵押物的所有权或者使用权证书。

第四十五条 登记部门登记的资料，应当允许查阅、抄录或者复印。

第三节 抵押的效力

第四十六条 抵押担保的范围包括主债权及利息、违约金、损害赔偿金和实现抵押权的费用。抵押合同另有约定的，按照约定。

第四十七条 债务履行期届满，债务人不履行债务致使抵押物被人民法院依法扣押的，自扣押之日起抵押权人有权收取由抵押物分离的天然孳息以及抵押人就抵押物可以收取的法定孳息。抵押权人未将扣押抵押物的事实通知应当清偿法定孳息的义务人的，抵押权的效力不及于该孳息。

前款孳息应当先充抵收取孳息的费用。

第四十八条 抵押人将已出租的财产抵押的，应当书面告知承租人，原租赁合同继续有效。

第四十九条 抵押期间，抵押人转让已办理登记的抵押物的，应当通知抵押权人并告知受让人转让物已经抵押的情况；抵押人未通知抵押权人或者未告知受让人的，转让行为无效。

转让抵押物的价款明显低于其价值的，抵押权人可以要求抵押人提供相应的担保；抵押人不提供的，不得转让抵押物。

抵押人转让抵押物所得的价款，应当向抵押权人提前清偿所担保的债权或者向与抵押权人约定的第三人提存。超过债权数额的部分，归抵押人所有，不足部分由债务人清偿。

第五十条 抵押权不得与债权分离而单独转让或者作为其他债权的担保。

第五十一条 抵押人的行为足以使抵押物价值减少的，抵押权人有权要求抵押人停止其行为。抵押物价值减少时，抵押权人有权要求抵押人恢复抵押物的价值，或者提供与减少的价值相当的担保。

抵押人对抵押物价值减少无过错的，抵押权人只能在抵押人因损害而得到的赔偿范围内要求提供担保。抵押物价值未减少的部分，仍作为债权的担保。

第五十二条 抵押权与其担保的债权同时存在，债权消灭的，抵押权也消灭。

第四节 抵押权的实现

第五十三条 债务履行期届满抵押权人未受清偿的，可以与抵押人协议以抵押物折价或者以拍卖、变卖该抵押物所得的价款受偿；协议不成的，抵押权人可以向人民法院提起诉讼。

抵押物折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

第五十四条 同一财产向两个以上债权人抵押的，拍卖、变卖抵押物所得的价款按照以下规定清偿：

（一）抵押合同以登记生效的，按照抵押物登记的先后顺序清偿；顺序相同的，按照债权比例清偿；

（二）抵押合同自签订之日起生效的，该抵押物已登记的，按照本条第（一）项规定清偿；未登记的，按照合同生效时间的先后顺序清偿，顺序相同的，按照债权比例清偿。抵押物已登记的先于未登记的受偿。

第五十五条 城市房地产抵押合同签订后，土地上新增的房屋不属于抵押物。需要拍卖该抵押的房地产时，可以依法将该土地上新增的房屋与抵押物一同拍卖，但对拍卖新增房屋所得，抵押权人无权优先受偿。

依照本法规定以承包的荒地的土地使用权抵押的，或者以乡（镇）、村企业的厂房等建筑物占用范围内的土地使用权抵押的，在实现抵押权后，未经法定程序不得改变土地集体所有和土地用途。

第五十六条 拍卖划拨的国有土地使用权所得的价款，在依法缴纳相当于应缴纳的土地使用权出让金的款额后，抵押人有优先受偿权。

第五十七条 为债务人抵押担保的第三人，在抵押权人实现抵押权后，有权向债务人追偿。

第五十八条 抵押权因抵押物灭失而消灭。因灭失所得的赔偿金，应当作为抵押财产。

第五节 最高额抵押

第五十九条 本法所称最高额抵押，是指抵押人与抵押权人协议，在最高债权额限度内，以抵押物对一定期间内连续发生的债权作担保。

第六十条 借款合同可以附最高额抵押合同。

债权人与债务人就某项商品在一定期间内连续发生交易而签订的合同，可以附最高额抵押合同。

第六十一条 最高额抵押的主合同债权不得转让。

第六十二条 最高额抵押除适用本节规定外，适用本章其他规定。

第四章 质押

第一节 动产质押

第六十三条 本法所称动产质押，是指债务人或者第三人将其动产移交债权人占有，将该动产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该动产折价或者以拍卖、变卖该动产的价款优先受偿。

前款规定的债务人或者第三人为出质人，债权人为质权人，移交的动产为质物。

第六十四条 出质人和质权人应当以书面形式订立质押合同。

质押合同自质物移交于质权人占有时生效。

第六十五条 质押合同应当包括以下内容：

- （一）被担保的主债权种类、数额；
- （二）债务人履行债务的期限；
- （三）质物的名称、数量、质量、状况；
- （四）质押担保的范围；
- （五）质物移交的时间；
- （六）当事人认为需要约定的其他事项。

质押合同不完全具备前款规定内容的，可以补正。

第六十六条 出质人和质权人在合同中不得约定在债务履行期届满质权人未受清偿时，质物的所有权转移为质权人所有。

第六十七条 质押担保的范围包括主债权及利息、违约金、损害赔偿金、质物保管费用和实现质权的费用。质押合同另有约定的，按照约定。

第六十八条 质权人有权收取质物所生的孳息。质押合同另有约定的，按照约定。

前款孳息应当先充抵收取孳息的费用。

第六十九条 质权人负有妥善保管质物的义务。因保管不善致使质物灭失或者毁损的，质权人应当承担民事责任。

质权人不能妥善保管质物可能致使其灭失或者毁损的，出质人可以要求质权人将质物提存，或者要求提前清偿债权而返还质物。

第七十条 质物有损坏或者价值明显减少的可能，足以危害质权人权利的，质权人可以要求出质人提供相应的担保。出质人不提供的，质权人可以拍卖或者变卖质物，并与出质人协议将拍卖或者变卖所得的价款用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十一条 债务履行期届满债务人履行债务的，或者出质人提前清偿所担保的债权的，质权人应当返还质物。

债务履行期届满质权人未受清偿的，可以与出质人协议以质物折价，也可以依法拍卖、变卖质物。

质物折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

第七十二条 为债务人质押担保的第三人，在质权人实现质权后，有权向债务人追偿。

第七十三条 质权因质物灭失而消灭。因灭失所得的赔偿金，应当作为出质财产。

第七十四条 质权与其担保的债权同时存在，债权消灭的，质权也消灭。

第二节 权利质押

第七十五条 下列权利可以质押：

- （一）汇票、支票、本票、债券、存款单、仓单、提单；
- （二）依法可以转让的股份、股票；
- （三）依法可以转让的商标专用权，专利权、著作权中的财产权；
- （四）依法可以质押的其他权利。

第七十六条 以汇票、支票、本票、债券、存款单、仓单、提单出质的，应当在合同约定的期限内将权利凭证交付质权人。质押合同自权利凭证交付之日起生效。

第七十七条 以载明兑现或者提货日期的汇票、支票、本票、债券、存款单、仓单、提单出质的，汇票、支票、本票、债券、存款单、仓单、提单兑现或者提货日期先于债务履行期的，质权人可以在债务履行期届满前兑现或者提货，并与出质人协议将兑现的价款或者提取的货物用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十八条 以依法可以转让的股票出质的，出质人与质权人应当订立书面合同，并向证券登记机构办理出质登记。质押合同自登记之日起生效。

股票出质后，不得转让，但经出质人与质权人协商同意的可以转让。出质人转让股票所得的价款应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

以有限责任公司的股份出质的，适用公司法股份转让的有关规定。质押合同自股份出质记载于股东名册之日起生效。

第七十九条 以依法可以转让的商标专用权，专利权、著作权中的财产权出质的，出质人与质权人应当订立书面合同，并向其管理部门办理出质登记。质押合同自登记之日起生效。

第八十条 本法第七十九条规定的权利出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的可以转让或者许可他人使用。出质人所得的转让费、许可费应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

第八十一条 权利质押除适用本节规定外，适用本章第一节的规定。

第五章 留置

第八十二条 本法所称留置，是指依照本法第八十四条的规定，债权人按照合同约定占有债务人的动产，债务人不按照合同约定的期限履行债务的，债权人有权依照本法规定留置该财产，以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

第八十三条 留置担保的范围包括主债权及利息、违约金、损害赔偿金、留置物保管费用和实现留置权的费用。

第八十四条 因保管合同、运输合同、加工承揽合同发生的债权，债务人不履行债务的，债权人有权留置。

法律规定可以留置的其他合同，适用前款规定。

当事人可以在合同中约定不得留置的物。

第八十五条 留置的财产为可分物的，留置物的价值应当相当于债务的金额。

第八十六条 留置权人负有妥善保管留置物的义务。因保管不善致使留置物灭失或者毁损的，留置权人应当承担民事责任。

第八十七条 债权人与债务人应当在合同中约定，债权人留置财产后，债务人应当在不少于两个月的期限内履行债务。债权人与债务人在合同中未约定的，债权人留置债务人财产后，应当确定两个月以上的期限，通知债务人在该期限内履行债务。

债务人逾期仍不履行的，债权人可以与债务人协议以留置物折价，也可以依法拍卖、变卖留置物。

留置物折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

第八十八条 留置权因下列原因消灭：

- （一）债权消灭的；
- （二）债务人另行提供担保并被债权人接受的。

第六章 定金

第八十九条 当事人可以约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

第九十条 定金应当以书面形式约定。当事人在定金合同中应当约定交付定金的期限。定金合同从实际交付定金之日起生效。

第九十一条 定金的数额由当事人约定，但不得超过主合同标的额的百分之二十。

第七章 附则

第九十二条 本法所称不动产是指土地以及房屋、林木等地上定着物。

本法所称动产是指不动产以外的物。

第九十三条 本法所称保证合同、抵押合同、质押合同、定金合同可以是单独订立的书面合同，包括当事人之间的具有担保性质的信函、传真等，也可以是主合同中的担保条款。

第九十四条 抵押物、质物、留置物折价或者变卖，应当参照市场价格。

第九十五条 海商法等法律对担保有特别规定的，依照其规定。

第九十六条 本法自1995年10月1日起施行。