

**THE CIVIL CODE OF THE REPUBLIC OF KAZAKHSTAN**  
**THE GENERAL PART**  
**THE 27th DECEMBER 1994**  
**Almaty 1994**  
**(the document has been amended by the 2.03.01)**

as amended by:

- 1) *Edict No. 2447 Having the Force of A Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts. August 31, 1995 (Article 3);*
- 2) *Edict No. 2489 Having the Force of A Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan and Edict Having the Force of Law of the President of the Republic of Kazakhstan "Concerning the State Registration of Legal Entities". October 5, 1995 (Articles: 106, 107, 109);*
- 3) *Edict No. 2835 Having the Force of A Law of the President of the Republic of Kazakhstan. Concerning the Introduction of An Addendum to the Civil Code of the Republic of Kazakhstan. (GENERAL PART). January 27, 1996;*
- 4) *Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996 (Articles: 38, 41, 42, 43, 50, 59, 62, 77, 93);*
- 5) *Law No. 50-I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. December 7, 1996 (Article 86);*
- 6) *Law No. 68 of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997. (Articles: 49, 51, 52, 53, and 54);*
- 7) *Law No. 80 of 5th March 1997 of the Republic of Kazakhstan. Concerning the Introduction of An Addition and Amendments to the Civil Code of the Republic of Kazakhstan (General Part). (Articles: 129, and 135).*
- 8) *Law of No. 132 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. (Article 41).*
- 9) *Law of No. 134 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Act of the Republic of Kazakhstan. Effective from the 1st of July 1997. (Articles 45, 49, 85, 182);*
- 10) *Law No. 144 of 2nd July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. (Articles 19, 21);*
- 11) *Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity. (Articles: 2, 10, 34, 41, 42, 44, 50, 55, 58, 59, 61, 64, 65, 67, 69, 71, 73, 74, 77, 78, 79, 80, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 97, 98, 99, 106, 107, 130, 136, 137, 138, 139, 140, 144, 187, 199, 200, 207, 282, 291, 301, 302, 303, SYMBOL 167 ¶ "Times New Roman CE" 4 of Chapter 18 (Articles 329-336), Articles: 341, 353, 366, 387);*
- 12) *Law No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to N 409-1 the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)". (Articles 3, 21, 34, 35, 37, 38, 39, 41, 42, 44, 48, 49, 50, 56, 58, 59, 60, 61, 64, 70, 72, 73, 74, 77, 78, 79, 80, 82, 83, 85, 86, 87, 90, 91, 92, 96, 97, 98, 100, 102, 103, 106, 108, 109, 110, 117, 118, 119, 125, 132, 141, 152, 155, 156, 159, 162, 182, 188, 191, 192, 193, 195, 196, 200, 202, 207, 209, 221, 223, 227, 228, 230, 231, 233, 240, 243, 251, 253, 261, 269, 281, 287, 291, 293, 299, 301, 311, 325, 328, 339, 344, 348, 350, 354, 357, 358, 364, 368, 370, 372, 390, 401, 403, 404,);*
- 13) *Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. (Article 41, 60, 77, 79, 81, 84);*
- 14) *Law No. 238 of 29th June 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments to the Civil Code of the Republic of Kazakhstan (General Part). (Article 52, 53, and 55);*

(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies. (Article 34, 41, 42, 50, 58, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 130, 136, 139);

(16) Law No. 283 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. (Article 10);

(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities (Articles 34, 35, 44, 50, 104, 105 replaced, 202, 204, 205, 206, 207 replaced) effective from the 1st of January 1999;

(18) Law No. 436 of 16th July 1999 of the Republic of Kazakhstan "Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan" (Article: 62, 77, 107, 282). Published on the 3rd August 1999;

(19) Law No. 440 of 16th July 1999 of the Republic of Kazakhstan Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Taxation. (Article 38). Effective from the date of publication;

(20) Law No. 472 of 4th November 1999 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Functioning of Public Enterprises. (Articles 44 and 192). Effective from 1st January 2000;

(21) Law No. 96 of 8th November 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Appraisal of Property. (Article 319);

(22) Law No. 128 of 18th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Insurance and Insurance Activities. (Article 45, 49, 86, 306). Effective from 23rd December 2000;

(23) Law No. 141 of 15th January 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Grain Procurement Enterprises. (Article 3) Effective from 23rd January 2001; and

(24) Law No. 162 of 2nd March 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions To Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the Banking Activity. (Article 192, 206, 328, 331). Effective from 12th March 2001.

## **SECTION I. GENERAL PROVISIONS**

### **Chapter 1. Regulation of Civil Rights Relations**

#### **Article 1. Relations Regulated by Civil Legislation**

1. Civil legislation shall regulate commodity-money relations and other property relations based on the equality of the participants, and also personal non-property relations which are associated with property relations. Citizens, legal entities, state, and also administrative and territorial units shall be participants of the relations regulated by civil legislation.

2. Personal non-property relations not associated with property relations, shall be regulated by civil legislation, unless it is otherwise provided for by legislative acts or ensues from the essence of a personal property relation.

3. Civil legislation shall apply to family relations, labour relations and relations associated with the use of natural resources and the protection of the environment, which meet the requirements of paragraph 1 of this Article, in the cases where those relations are not regulated respectively by legislation concerning family, labour, use of the natural resources and protection of the environment.

4. Civil legislation shall not apply to property relations which are based on the administrative or any other power subordination of one party by the other, including tax and other budget relations, except for the cases provided for by legislative acts.

#### **Article 2. The Fundamental Principles of Civil Legislation**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. Civil legislation is based on the recognition of the equality of the participants of the relations regulated thereby, inviolability of property, freedom of agreement, prohibition of arbitrary interference in somebody's private affairs, indispensability of the free exercise of civil rights, and provision for the restitution of violated rights and their defence in the court.

2. Citizens and legal entities shall acquire and exercise their civil rights by their will and in their interests. They shall be free in establishing their rights and obligations on the basis of agreements and in specifying any conditions in their agreements, which do not contradict legislation.

3. Goods, services and ~~monetary resources~~ funds shall be unrestrictedly transferred and circulated in the entire territory of the Republic of Kazakhstan. Restrictions in the circulation of goods and services shall be introduced in accordance with legislative acts, where it is necessary for ensuring safety, protection of life and health of people, protection of the natural environment and valuable cultural assets.

### **Article 3. Civil Legislation of the Republic of Kazakhstan**

*as amended by (1) Edict No. 2447 Having the Force of Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts. August 31, 1995;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(23) Law No. 141 of 15th January 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Grain Procurement Enterprises.*

1. The civil legislation of the Republic of Kazakhstan shall consist of the present Code, laws of the Republic of Kazakhstan adopted in accordance with it, other laws of the Republic of Kazakhstan, edicts of the President of the Republic of Kazakhstan having the force of laws, decrees of the Parliament, and decrees of the Senate and Majilis (legislative acts), as well as edicts of the President of the Republic of Kazakhstan, decrees of the Government of the Republic of Kazakhstan which regulate relations indicated in paragraphs 1 and 2 of Article 1 of the present Code.

2. In case of a contradiction between the provisions of civil law which are contained in the acts of legislation of the Republic of Kazakhstan, except for those indicated in paragraph 3 of Article 1 of the present Code, and the provisions of the present Code, then the provisions of this Code shall apply. Provisions of civil law containing in legislation of the Republic of Kazakhstan which are contradictory to the provisions of the present Code, may apply only after the introduction into the Code of the appropriate amendments.

3. The relations associated with the formation, reorganisation, bankruptcy and liquidation of banks and grain procurement enterprises, supervision of banking activities and their auditing, supervision of activities of grain procurement enterprises, licensing of certain types of banking transactions performance of transactions in warehouse warrants of grain procurement enterprises, shall be regulated by this Code inasmuch as this does not contradict the legislative acts that regulate the banking business and activities of grain procurement enterprises.

Relations between banks and their clients, as well as relations between clients through banks, shall be regulated by civil legislation in accordance with the procedure established in paragraph 2 of this Article.

4. Civil relations may be regulated by tradition, including the tradition of business operation, unless those contradict the civil legislation which is effective in the territory of the Republic of Kazakhstan.

5. Ministries and other central executive bodies, local representative and executive bodies, may issue acts which regulate civil relations, in the cases and within the limits provided for by the present Code, and by other acts of civil legislation.

6. The rights of the citizens and legal entities which are established by the present Code and any other legislative acts of the Republic of Kazakhstan may not be restricted by the acts of the bodies of the

state administration and local representative and executive bodies. Such acts shall be invalid from the moment of their adoption and must not be applicable.

7. Foreign individuals and legal entities and also stateless persons shall have the right to acquire the same rights and they shall be obliged to fulfil the same obligations which are provided for by civil legislation for the citizens and legal entities of the Republic of Kazakhstan, unless legislative acts stipulate otherwise.

8. When an international treaty, to which the Republic of Kazakhstan is a signatory, establishes different rules than those contained in the civil legislation of the Republic of Kazakhstan, the rules of the indicated treaty shall apply. The international treaties to which the Republic of Kazakhstan is a signatory, shall apply to civil relations directly, except for the cases where it ensues from a treaty that its application requires the issuing of a domestic act of the Republic.

#### **Article 4. The Effect of Civil Legislation in Time**

1. Civil legislation acts shall not have retroactive force and they shall apply to relations which arise after their entering into force. The legal force of a civil legislation act shall apply to relations which arose prior to its enactment in the cases where it is directly provided for by it.

2. With regard to relations which arose prior to the entering into force of a civil legislation act, it shall apply to the rights and obligations which arise after its entering into force. Relations of parties to an agreement concluded prior to the enactment of civil legislation act shall be regulated in accordance with Article 383 of this Code.

#### **Article 5. Application of Civil Legislation by Analogy**

1. In the cases where the relations provided for by paragraph 1 and 2 of Article 1 of this Code are not regulated directly by legislation or an agreement of the parties and tradition applicable to such relations does not exist, those provisions of civil legislation shall apply, which regulate similar relations (analogy of a law), unless this contradicts their essence.

2. When it is impossible in the indicated cases to use the analogies of law, the rights and obligations of the parties shall be defined on the basis of the general fundamentals and the spirit of civil legislation as well as the requirements of good faith, reasonableness and fairness (analogy of law).

#### **Article 6. Interpretation of Civil Legislation Provisions**

1. Provisions of civil legislation must be interpreted literally. Where the possibility exists of different understanding of the words used in the text of legislative provisions, preference shall be given to that understanding which is consistent with the provisions of the Constitution of the Republic of Kazakhstan and the fundamental principles of civil legislation which are outlined in this Chapter, and first of all in Article 2.

2. When establishing the precise meaning of a provision in civil legislation, it shall be required to consider the historic conditions under which it was introduced and its interpretation in judicial practice, unless it violates the requirements specified in paragraph 1 of this Article.

#### **Article 7. The Foundations for the Emergence of Civil Rights and Obligations**

Civil rights and obligations shall arise on the fundamentals which are specified in legislation and also from actions of citizens and legal entities which, although not specified in it, but by virtue of the general fundamentals and the spirit of civil legislation, give rise to civil rights and obligations.

In accordance with this, civil rights and obligations shall arise as follows:

- 1) out of agreements and any other transactions provided for by legislation, and also from transactions which although are not specified in it, do not contradict legislation;
- 2) from the administrative acts which give rise to civil rights consequences by virtue of legislation;
- 3) from court decisions which establish civil rights and obligations;
- 4) as a result of creating or acquiring assets on the bases which are not prohibited by legislative acts;
- 5) as a result of creating inventions, industrial samples, works of science, literature and art and any other results of intellectual activity;

- 6) as a result of causing harm to any other person, and equally as a result of the unfair acquisition or saving of assets at the expense of another person (unfair enrichment);
- 7) as a result of any other acts of citizens and legal entities;
- 8) as a result of events to which legislation conditions the emergence of civil rights.

#### **Article 8. The Exercise of Civil Rights**

1. Citizens and legal entities at their discretion shall exercise civil rights which belong to them, including the right to their protection.
2. The refusal of citizens and legal entities to exercise their rights shall not entail the cessation of those rights, except for the cases which are provided for by legislative acts.
3. The exercise of civil rights must not violate the rights and the interests of any other subjects under legislation, and it must not do any harm to the environment.
4. Citizens and legal entities must act in good faith, reasonably and fairly when exercising their rights, and comply with the requirements which are contained in legislation, with the moral principles of the society, while entrepreneurs must also comply with business ethics rules. This obligation may not be excluded or restricted by any agreement. The good faith, reasonableness and fairness of the acts of participants in civil rights relations shall be presumed.
5. Acts of citizens and legal entities which aim to cause harm to any other person, at the abuse of rights in any other form and also at an exercise of a right in contradiction to its intention. In the case of a failure to comply with the requirements specified in paragraphs 3 to 5 of this Article the court may deny a person the protection of his right.

#### **Article 9. Protection of Civil Rights**

1. The protection of civil rights shall be exercised by the court, arbitration tribunal or the judgement of third party by way of: recognition of rights; restitution of the position which existed prior to the violation of the right; putting an end to behaviour which violates the right or create the threat of its violation; awarding the execution of an obligation in kind; compensation of losses; damages; recognition of the transaction as invalid; compensation of moral losses; termination or alteration of legal relations; the recognition as invalid or void of an act which does not comply with legislation of a body of the state administration or of a local representative or executive body; imposition of a fine on the state body or official for impeding a citizen or a legal entity to acquire or exercise a right, and also in the other manner as provided for by legislative acts.
2. The appeal for protection of a violated right to a body of power or administration shall not prevent an appeal to the court with an action to protect a right, unless legislative acts specify otherwise.
3. In the cases which are specifically provided for in legislative acts, the protection of civil rights shall be carried out directly by actual or legal acts of the person whose right is violated (self-defence).
4. The person whose right is violated may require the entire restitution of the losses inflicted on him, unless legislative acts or the agreement do not stipulate otherwise. The expenditure shall be understood to mean losses, which are incurred or must be incurred by the person whose right is violated, the loss or the damage to his property (real damage) and also lost profit which this person would have received under the normal conditions of the turnover, should his right have not been violated (lost profits).
5. The losses which are inflicted upon a citizen or a legal entity as a result of issuing by a governmental body of an act which does not comply with legislation, or by any other state body, and also by acts (failure to act) of the officials of those bodies, shall be subject to compensation by the Republic of Kazakhstan or by the relevant administrative and territorial unit.
6. When emergence of the legal consequences of a violation is related to the guilt of the violator his guilt shall be presumed, except for the cases where legislative acts stipulate otherwise.

#### **Article 10. The Protection of the Rights of Entrepreneurs and Consumers**

*as amended by (3) Edict No. 2835 Having the Force of Law of the President of the Republic of Kazakhstan. Concerning the Introduction of An Addendum to the Civil Code of the Republic of Kazakhstan. (GENERAL PART). January 27, 1996];*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(16) Law No. 283 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

1. Entrepreneurship is the activity of citizens and legal entities, taken on the initiative, irrespective of the form of ownership, which is aimed at the earning of ~~profits or personal~~ net income by way of satisfying the demand for goods (work, services) which is based on the private property (private entrepreneurship) or under the right to business authority of a state-owned enterprise (state entrepreneurship). Entrepreneurial activity shall be carried out on behalf of, under the risk, and under the property liability of the entrepreneur.

2. The state shall guarantee the freedom of entrepreneurial activities and it shall ensure its protection and support.

3. The rights of entrepreneurs who carry out the activities which are not prohibited by legislation shall be protected as follows:

1) by the possibility to carry out entrepreneurial activities without obtaining anyone's permission, except for the types of activity which are subject to licensing;

2) by a simple procedure for the registration of any type of entrepreneurship in any sphere of the economy by one registering authority by way of a arrival;

3) by restricting, through legislative acts, those audits which are carried out by the state bodies;

4) by a compulsory termination of entrepreneurial activities based only upon the decision of the court of law, which is passed on the basis provided for by legislative acts;

5) by establishing through legislative acts of the lists of operations and types of goods and services which are prohibited for private entrepreneurship, or restricted for export and import;

6) by holding the state bodies, officials and any other persons and organisations responsible for loss to the entrepreneurs and for illegal impediments to their activities;

6-1) by prohibiting to executive, supervisory and monitoring bodies, to enter into contractual relations with entrepreneurial entities for the matter of performing the obligations which are the function of those bodies.

7) by any other means provided for by legislation.

4. The manufacture and sale of certain types of goods, work and services, because of considerations of national security; ensuring law and order; protection of the environment; property and lives and health of citizens must be carried out in accordance with the State licences. The list of such goods, work and services shall be defined by legislative acts or in accordance with the procedure established by them.

5. A commercial (entrepreneurial) secret shall be protected by law. The procedure for identifying the information which constitutes a commercial secret, the methods of its protection and also the list of information which must not be included among commercial secrets shall be established by legislation.

6. The protection of the rights of consumers shall be ensured by the means which are envisaged by this Code or any other legislative acts. In particular, each consumer shall have the right:

to freely enter agreements to purchase goods and to use work and services; to proper quality and safety of goods (work, services);

to full and reliable information on goods (work, services); and the right to join public associations of consumers.

### **Article 11. Prohibition of Abusing the Freedom of Entrepreneurship**

1. Monopolistic activities and any other activities aimed at restricting or eliminating legal competition or the extraction of unreasonable advantages by the restriction of rights and legitimate interests of consumers, shall not be allowed.

2. Except for the cases provided for by legislative acts, the use by entrepreneurs of civil rights for the purpose of restricting competition, shall not be allowed, in particular:

1) the abuse by entrepreneurs of their dominant position in the market to restrict or terminate the production or reserve from circulation of any goods in order to create shortages or increase the prices;

2) entering into and implementing by persons who carry out similar entrepreneurial activities of agreements concerning prices, subdivision of markets, elimination of any other entrepreneurs or any other conditions which materially restrict competition;

3) commission of unfair acts which are aimed at restriction of the legitimate interests of a person who performs similar entrepreneurial activities and of consumers (unfair competition), in particular, the misleading of consumers with regard to the manufacturer, designation, method and place of manufacture, quality or any other properties of goods of other entrepreneurs, by way of unfair comparison of goods in advertising and in any other information, copying external design of somebody else's goods and by any other methods. The remedies to control unfair competition shall be established by legislative acts.

## **Chapter 2. Entities in Civil Rights**

### **§ 1. Citizens of the Republic of Kazakhstan and Other Physical Persons**

#### **Article 12. The Definition of a Physical Person**

Citizens of the Republic of Kazakhstan, citizens of other states, as well as stateless persons shall be understood to be physical persons. The provisions of this chapter shall apply to any physical persons, unless it is otherwise established by this Code.

#### **Article 13. The Legal Capacity of Citizens**

1. The capacity to have civil rights and bear obligations (civil rights capacity) shall be recognised as equal in all citizens.

2. The legal capacity of a citizen shall arise at the moment of his birth and it shall cease with his demise.

#### **Article 14. The Principal Contents of the Legal Capacity of a Citizen**

A citizen may have, under his right of ownership, properties including foreign currency, both within the boundaries of the Republic of Kazakhstan and beyond its boundaries; inherit and bequest property; move freely in the territory of the Republic and select the place of residence; freely leave the boundaries of the Republic and return to its territory; engage in any activities which are not prohibited by legislative acts; create legal entities independently or with other citizens and legal entities, enter into any transactions which are not prohibited by legislative acts and participate in obligations; have the right to intellectual property with regard to inventions, works of science, literature and art and any other results of intellectual activity; claim the compensation for financial and moral damage; have any other property rights and personal rights.

#### **Article 15. The Name of a Citizen**

1. A citizen shall acquire and exercise the rights and obligations under his name including the surname and the proper name and at his discretion - the patronymic name.

2. Legislation may provide for cases of anonymous acquisition by citizens of the rights and execution of obligations, or the use of a pen name (fictitious name).

3. The name which is received by a citizen at his birth and also the change of the name shall be subject to registration in accordance with the procedure established by legislation concerning the registration of civil status acts.

4. A citizen shall have the right to change his name in accordance with the procedure established by legislative acts. The change of name shall not be the basis for the cessation or alteration of his rights and obligations which are acquired under the former name, anonymously or under a pseudonym.

5. A citizen shall be obliged to take appropriate steps to notify his debtors and creditors of a change of his name and he shall bear the risk associated with the consequences which are caused by those persons' unawareness of the change of his name.

6. A citizen who has changed his name shall have the right to require the introduction of the appropriate amendments into the documents formulated for his former name.

7. The acquisition of rights and obligations under the name of a different person shall not be allowed.

8. A citizen shall have the right to require the prohibition of the use of his name where it was done without his consent.

9. The harm caused to a citizen as a result of the illicit use of his name shall be subject to compensation in accordance with the provisions of this Code. In the case of a distortion or use of a citizen's name by ways or in a manner which affect his honour, dignity or business reputation, the rules shall apply which are provided for by Article 143 of this Code.

#### **Article 16. The Place of Residence of a Citizen**

1. The populated area where a citizen permanently or predominantly resides shall be recognised as the place of domicile of the citizen.

2. The place of residence of the parents, adopters or guardians of persons who have not reached 14 years of age or citizens who are under guardianship, shall be recognised as their place of domicile.

#### **Article 17. The Deed Capacity of Citizens**

1. The capacity of a citizen by his deeds to acquire and exercise civil rights, create for himself civil obligations and execute them (citizen's deed capacity) shall arise in their entire volume when the citizen reaches the age of majority, that is, upon reaching eighteen years of age.

2. In the case where legislative acts allow for the entering into marriage prior to reaching eighteen years of age, a citizen who has not reached 18 years of age shall acquire deed capacity in its entire volume from the moment of entering marriage.

3. All citizens shall have equal deed capacity, unless it is otherwise provided for by legislative acts.

#### **Article 18. The Prohibition of Deprivation and Restriction of Legal Capacity and Deed Capacity**

1. No one may be restricted in legal capacity and deed capacity otherwise than in the cases and in accordance with the procedure provided for by legislative acts.

2. The non-compliance with the conditions and the procedure established by legislative acts for restricting the legal capacity and the deed capacity of citizens or of their right to engage in entrepreneurial or any other activities shall entail the invalidity of the act of the state body or any other authority which established that restriction.

3. An entire or a partial rejection by a citizen of his legal capacity or deed capacity and any other transactions aimed at restricting the legal capacity or deed capacity, shall be invalid except for the cases where such transactions are permitted by legislative acts.

#### **Article 19. Entrepreneurial Activities of Citizens**

*amended by (10) Law of 2nd July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

1. Citizens shall have the right to engage in entrepreneurial activities without creating legal entities except for the cases provided for by this Code ~~from the moment of the state registration.~~ and other legislative acts.

2. The state registration of private entrepreneurs shall be based on arrival and it shall consist of registration as an individual entrepreneur.

3. The rules of this Code which regulate activities of the legal entities which are commercial organisations shall apply accordingly to entrepreneurial activities of citizens which are performed without formation of a legal entity, unless it is otherwise ensues from legislation or from the essence of the legal relations.

4. Individual entrepreneurs who are subject to one of the following conditions shall be subject to obligatory state registration:

1) use work of hired workers on a permanent basis;

2) have from their entrepreneurial activity an aggregate annual income calculated in accordance with tax legislation in an amount exceeding the amount of aggregate annual income which is exempt from tax as established for physical persons by the legislative acts of the Republic of Kazakhstan.



Activities of said individual entrepreneurs without state registration shall be prohibited.

5. When an individual entrepreneur carries out activities which are subject to licensing, he must have a licence for the right to carry out such an activity.

Licences shall be issued in accordance with the procedure established by legislation concerning licensing.

The Government of the Republic of Kazakhstan shall have the right to establish a simplified procedure for issuing licences to individual entrepreneurs.

#### **Article 20. Property Liability of a Citizen**

1. A citizen shall be liable for his obligations with all the property he has, except for the property upon which, claims may not be imposed, in accordance with legislative acts.

2. The list of the property of citizens upon which claims may not be imposed shall be established by the Civil Procedural Code of the Republic of Kazakhstan.

#### **Article 21. Bankruptcy of an Individual Entrepreneur**

*replaced by (10) Law of 2nd July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

#### **Article 21. Bankruptcy of an Individual Entrepreneur**

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1. Insolvency of an individual entrepreneur (Article 52 of this Codex) shall be the basis for his recognition as bankrupt.

2. Bankruptcy of an individual entrepreneur shall be recognised in a voluntary or compulsory procedure in accordance with the rules established by Article 53 of this Code. From the moment of recognition of an individual entrepreneur as bankrupt his registration as individual entrepreneur shall become invalid.

3. When bankruptcy procedures are applied to an individual entrepreneur, his creditors with regard to obligations which are not connected to entrepreneurial activities shall also have the right to file claims provided the date of execution with regard to such obligations has arrived. Claims of said creditors which are not filed by them in such a procedure as well as claims which have not been satisfied in full volume out of competitive estate, shall remain valid and may be filed against a debtor who is a physical person for collection after the completion of bankruptcy procedures. Amounts of such claims shall be reduced by amounts of satisfaction received in the procedure of debtor's bankruptcy.

4. Court expenses as well as expenses associated with remuneration to the administrator, competitive or rehabilitation managers if they were appointed shall be covered out of competitive estate prior to the satisfaction of creditors' claims. Satisfaction of creditors' claims against an individual entrepreneur in the case of his recognition as bankrupt shall be carried out at the expense of his properties in the following sequence:

1) in the first line the claims associated with collection of alimonies and with compensation for harm caused to lives and health shall be satisfied;

2) the claims of the creditors which are secured with pledge of property owned by the individual entrepreneur shall be satisfied in the second line, within the limits of the pledged amount;

3) in the third line, the liability shall be repaid with regard to obligatory payments to the Budget and non-budgetary funds;

4) the settlements associated with work remuneration of persons who work under service agreements, and payment of remuneration on authorship agreements shall be carried out in the fourth line;

5) in the fifth line, the settlements with other creditors shall be carried out in accordance with legislative acts.

Satisfaction of creditors' claims with regard to each line shall be carried out in accordance with the rules provided for by the legislative act concerning bankruptcy of legal entities.

5. After the completion of settlements with creditors, a debtor recognised as bankrupt shall be released from execution of outstanding obligations connected to entrepreneurial activity, except for claims of citizens to whom a person announced as bankrupt is liable for causing harm to life or health, as well as other claims of personal nature as provided for by the legislative acts of the Republic of Kazakhstan.

#### **Article 22. The Deed Capacity of Minors From Fourteen to Eighteen Years Old**

1. Minors from fourteen to eighteen years old shall enter into transactions with the consent of their parents, adopters or guardians. The form of such consent must be consistent with the form which is established by legislation for transactions entered into by minors.

2. Minors from fourteen to eighteen years old shall have the right to independently dispose of their wages, grants and any other income and the intellectual property rights associated with the items created by them, and also to enter into small day-to-day transactions.

3. Where sufficient reasons exist, the body of guardianship and sponsorship may restrict or deprive the minor of the right to independently dispose of his wages, grants and any other income and of the intellectual property items created by him.

4. Minors from fourteen to eighteen years of age shall independently bear responsibility with regard to the transactions committed by them in accordance with the rules of this Article and they shall be held responsible for any harm caused by their acts, in accordance with the rules of this Code.

#### **Article 23. The Deed Capacity of Minors Under Fourteen Years Old**

1. For minors who have not reached 14 years of age, transactions shall be committed by their parents, adopters, or guardians on their behalf, unless otherwise provided for by legislative acts.

2. Minors under the age of fourteen years shall have the right to independently enter only into small day-to-day transactions which are performed when they are entered into.

#### **Article 24. The Consent of the Bodies of Guardianship and Sponsorship to Commitment of Transactions by Minors and On Behalf of Minors**

Legislative acts may establish cases where the commitment of a transaction by a minor and on behalf of a minor shall require prior consent of the guardianship or sponsorship authorities.

#### **Article 25. The Right of Minors to Lodge Savings into Banks and to Dispose of the Savings**

1. Minors shall have the right to lodge their savings in banks and to independently dispose of their savings which are lodged by themselves.

2. Savings which are lodged by somebody else on behalf of minors who have not reached fourteen years of age, shall be managed of by their parents or any other legitimate representatives, while minors who have reached fourteen years of age may independently dispose of savings lodged on their behalf by somebody else.

#### **Article 26. The Recognition of a Citizen as Incapable**

1. A citizen who, as a result of psychic disease or mental weakness, can not understand the meaning of his acts or direct them, may be recognised by the court as incapable, and in this connection, guardianship shall be established over him.

2. On behalf of citizens recognised as incapable, the transactions shall be carried out by a guardian.

3. In the case of a recovery or a significant improvement of the health of the incapable person, the court shall recognise him as capable, after which guardianship over him shall be alleviated.

#### **Article 27. Restriction of Citizens Capacity**

1. A citizen who consequential to the abuse of alcoholic drinks or narcotic substances puts his family into a difficult financial position may be restricted by the court with regard to his deed capacity in accordance with the procedure established by the Civil Procedural Code of the Republic of Kazakhstan. Tutorship shall be established over him. He shall have the right to independently enter into small day-to-day transactions. He may commit any other transactions, receive wages, pensions and any other income, and he may dispose of them [but] only with the consent of the tutor.

2. Where a citizen severs the abuse of alcoholic drinks or narcotic substances, the court shall abolish restrictions of his capacity. On the basis of the court decision the tutorship established over the citizen shall be abolished.

#### **Article 28. The Recognition of a Citizen as Missing**

1. Pursuant to the application of interested persons a citizen may be recognised by the court as missing, if within one year in the place of his domicile there is no information on his whereabouts.

2. When it is impossible to establish the date of receipt of the last information concerning the missing person, the beginning of the absence shall be deemed to be the first date of the month following the one in which the last information was received on the absentee, and if it is impossible to establish that month, - it shall be the first of January of the following year.

#### **Article 29. The Protection of Property of a Missing Person**

1. On the basis of a court decision, guardianship shall be established with regard to the property of a person who is recognised as missing. Subsistence shall be paid from that property to the persons whom the missing person was to support, and his debts shall be repaid with regard to taxes and any other liabilities.

2. Pursuant to the application of the interested persons, the guardianship and tutorship authority may appoint an administrator to guard and manage the property until the one year expires after the date when last information concerning the location of the missing person was received.

#### **Article 30. The Abolition of a Decision to Recognise A Person As Missing**

In the case of his arrival or the establishment of the locations of a person who is recognised as missing, the court shall abolish its decision to recognise him as missing and to establish guardianship over his property.

#### **Article 31. The Announcement of a Citizen as Deceased**

1. Pursuant to the application of interested persons, a citizen may be announced by the court as deceased, if there is no information about him in the place of his domicile for three years; and, if he disappeared under circumstances which threatened death or which give grounds to assume his demise in an accident, for six months.

2. A military serviceman, or any other person who is missing in connection with military actions, may be announced deceased not earlier than upon the expiry of two years from the date of the termination of the military operations.

3. The date of the demise of a person who is announced as deceased shall be deemed to be the day that the decree of the court, which announced him as deceased, enters into legal force. In the cases of announcing persons as deceased, a person who is missing under circumstances which threaten death or which invoke the assumption of his demise in an accident, the court may recognise the date of the assumed demise of this person as the date of his death.

4. When the decision of a court announcing a person as deceased enters into legal force, his death shall be entered into the books for the registration of civil status acts. The consequences of such an entry shall be the same as of an entry of actual death.

#### **Article 32. The Consequences of the Re-Appearance of a Person Announced as Deceased**

1. In the case that a person who has been announced as deceased, re-appears or his location is established, the relevant court decision shall be annulled.

2. Irrespective of the time of his re-appearance, the citizen may claim the return of remaining assets which were free of charge transferred to persons after the announcement of the citizen as deceased, from those persons.

3. If the property of a person announced as deceased, was sold by his legal successor to third parties who by the time of re-appearance failed to pay the full purchase price, then the person who reappeared shall have the right to claim the outstanding amount.

4. The persons to whom the property of a citizen who was announced as dead was transferred through commercial transactions, shall be obliged to return to him that property; and in case they do not have it, they must compensate for its value, if it is proved that at the time of the acquisition of the property they knew that the citizen who was announced deceased, was alive.

5. The alienator of the assets who knew at the moment of the alienation that the person announced as dead is alive, shall bear, jointly with the buyer, the responsibility to return or compensate the value of the property.

6. When the property of a person who is announced as deceased was transferred to the State under its right to inherit and was sold, then, after the abolition of the decision to announce the person as deceased, he shall be repaid the amount which is received from selling his property subject to its market value as on the date of the payment.

## **§ 2. Legal Entities**

### **I. GENERAL PROVISIONS**

#### **Article 33. The Definition of a Legal Entity**

1. An organisation which has under the right of ownership, the right of business authority or operational management, its separate assets and which is liable with this property for its obligations, which may, in its name, acquire and exercise property rights and personal non-property rights and obligations, and may be the plaintiff or defendant in the court of law, shall be recognised as a legal entity. A legal entity must have its independent balance-sheet or budget.

2. A legal entity shall have a seal with its name.

#### **Article 34. The Types and Forms of Legal Entities**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies; and*

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. A legal entity may be an organisation which pursues the extraction of ~~profits~~ income as the principal purpose of its activities (commercial organisation), or which does not have the extraction of ~~profits~~ income as such a goal and which does not distribute ~~earned profits~~ earned net income between its participants (non-commercial organisation).

2. A legal entity which is a commercial organisation (enterprise) may be created solely in the form of a state-owned enterprise, business partnership, joint-stock company or production cooperative.

3. A legal entity, which is a non-commercial organisation, may be created in the form of an institution, public association, joint-stock company consumer co-operative, public foundation, religions

association and any other form which is provided for by legislative acts. A non-commercial organisation may engage in entrepreneurial activity only for as long as it is consistent with the objectives of its charter.

3-1. A legal entity that is a non-commercial organisation and maintained at the expense of the state budget may be formed exclusively in the form of a state-owned institution.

4. Legal entities may create associations.

5. A legal entity shall act on the basis of this Code, the Law concerning each type of legal entities, any other legislative acts and their foundation documents.

### **Article 35. The Legal Capacity of a Legal Entity**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. A legal entity may have civil rights and bear obligations associated with its activity in accordance with the present Code. Commercial organisations, except for state-owned enterprises, may have civil rights and bear civil obligations, which are necessary for the exercise of any types activity which are not prohibited by legislative acts or their foundation documents.

In the cases stipulated by legislative acts, for legal entities carrying out certain types of activity, a possibility may be excluded or restricted to engage in another activity.

A legal entity may engage in certain types of activities, the list of which is defined by legislative acts, only on the basis of a licence.

2. The legal capacity of a legal entity shall arise at the moment of its creation and it shall cease at the time of completion of its liquidation. The legal capacity of a legal entity in a sphere of activities which requires a licence, shall arise from the moment of the procurement of such a licence and it shall cease at the moment of its revocation, expiry of the term of its validity, or recognition of it as invalid in accordance with the procedure established by legislative acts. 3. The legal capacity of a legal entity who is a non-commercial organisation and maintained solely at the expense of the state budget (state institution) shall be defined by this Code and other legislative acts of the Republic of Kazakhstan.

### **Article 36. The Rights of Foundation Parties (Participants) With Regard to the Property of the Legal Entities Formed by Them**

*as amended by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. The foundation parties (participants) of a legal entity may have obligatory or corporeal rights with regard to the separate property of the legal entity.

2. Business partnerships, joint-stock companies and co-operatives shall be recognised as legal entities whose property remains under the obligatory rights of their participants (foundation parties).

3. The organisations which hold their property under the right to business authority or under the right of operational management shall be recognised as legal entities whose properties remain under the right of ownership or under other corporeal rights of their participants (foundation parties).

4. Public associations, public foundations and religious associations shall be recognised as legal entities, and their foundation parties (participants) shall not retain any property rights with regard to their property.

### **Article 37. Bodies of a Legal Entity**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A legal entity shall acquire civil rights and assume obligations solely through its bodies which operate in accordance with legislative acts and the foundation documents.

2. The types of, the procedure for appointing or electing the bodies of a legal entity, and their powers shall be defined in legislative acts and the foundation documents.

### **Article 38. The Name of a Legal Entity**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996;*

*12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(19) Law No. 440 of 16th July 1999 of the Republic of Kazakhstan Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Taxation.*

1. A legal entity shall have its name, which permits to distinguish it from any other entities. The name of a legal entity shall consist of its name and an indication of its organisational and legal form. It may contain any additional information provided for by legislation. The name of a legal entity shall be indicated in its foundation documents. It shall be prohibited to use in the name of a legal entity, names which contradict the requirements of legislation or the norms of public ethics; the proper names of persons, unless they coincide with the names of participants, or where the participants failed to obtain the permission from those persons (their heirs) to use the proper name;

2. The name of a legal entity which is a commercial organisation, after the registration of the legal entity, shall be its commercial name. Under their commercial names, legal entities shall be entered into the single state register of legal entities.

A legal entity shall have an exclusive right to use its business name. A person who illicitly uses somebody else's business name must terminate the use of such a name and to compensate the losses caused, pursuant to the requirement of the owner of the right to the business name.

The rights and obligations of a legal entity which are associated with the use of a business name shall be determined in legislation.

3. For the use by legal entities (except for state-owned enterprises, state institutions and non-commercial organisations) and physical persons of the words "Kazakhstan", "Republic", "National" (in full, as well as any derivations from them) in their business names, service signs, trade marks, they shall pay levy in accordance with the procedure and in amounts established by tax legislation.

4. It shall be prohibited to use in business names, service signs, trade marks of the legal entities which are not state authorities of references to official names of the state authorities of the Republic of Kazakhstan as established by legislative acts, acts of the President and Government of the Republic of Kazakhstan.

### **Article 39. The Location of a Legal Entity**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The place where the permanently operating body of a legal entity is situated shall be recognised as the location of that legal entity.

2. The location of a legal entity shall be indicated in its foundation documents with the inscription of its full address.

3. In its relations with third parties a legal entity shall not have the right to refer to non-compliance of its actual address to the address entered into the state register. In this respect, third parties shall have the right to sent to a given legal entity postal and other correspondence both to the address entered into the state register, and to its actual address.

## **Article 40. The Foundation Parties of a Legal Entity**

1. A legal entity may be founded by one or several foundation parties.
2. The owners of the property, or the bodies and persons authorised by them, and in the cases specifically provided for by legislative acts, any other legal entities may be foundation parties of a legal entity. In that respect, the legal entities who own the property under the right to business authority or operational management, may be foundation parties of other legal entities after the approval of their owner or the body authorised by their owner.

## **Article 41. Foundation Documents of a Legal Entity**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996; and (8) Law of 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan]*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. A legal entity shall carry out its activities on the basis of its Charter or the Foundation Agreement and the Charter, unless it is otherwise provided for by legislative acts. In the cases specified by legislative acts, a legal entity which is not a commercial organisation, may operate on the basis of general regulations concerning the organisations of that type.

A legal entity which is a small business may carry out its activities on the basis of the Model Articles the content of which is defined by the Government of the Republic of Kazakhstan.

2. The foundation agreement of a legal entity shall be entered into and its charter shall be approved by its foundation parties. No foundation agreement shall be entered into when a commercial organisation is established by one person.

3. The foundation documents of a non-commercial organisation and of a state-owned enterprise, must define the objects and aims of the activities of that legal entity.

Foundation documents of a business partnership, joint-stock company and a production co-operative may provide for the objects and purposes of their activity.

4. In the foundation agreement parties (foundation parties) undertake to create a legal entity, and they define the procedure for their joint activities to create it, the conditions for the vesting into its ownership (business authority, operational management) of their property and for their participation in its activities. The agreement shall also define the terms and procedure for the distribution of net income between the foundation parties, management of the business of the legal entity, exit of foundation parties from it, and the agreement shall approve its charter, unless it is otherwise provided for by this Code or legislative acts concerning specific types of legal entities.

Any other provisions may be included into a foundation agreement, based on the consensus of the foundation parties.

5. Name, location, procedure for the formation and the authority of its bodies, provisions concerning the reorganisation and termination of its activities shall be provided for by the charter of a legal entity.

When a legal entity is established by one person, then a procedure for the formation of the property and for the distribution of profits shall also be defined in its charter.

Other provisions may be specified in a charter, which do not contradict legislation.

6. In the case of contradictions between the foundation agreement and the charter of the same legal entity, their provisions must apply as follows:

- 1) those of the foundation agreement, when they are associated with internal relationship of foundation parties;
  - 2) those of the charter, when their application may have significance for relations of the legal entity with third parties.
7. Any interested parties shall have the right to peruse the charter of a legal entity.

#### **Article 42. The State Registration and Re-registration of Legal Entities**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. A legal entity shall be subject to state registration by the bodies of Justice. The procedure for the state registration shall be defined by legislation.

2. Information concerning state registration, in particular, the business names of commercial organisations, shall be included in the Single State Register of Legal Entities.

3. A legal entity shall be deemed to be created from the moment of its state registration.

4. Affiliates and representations shall be registered in accordance with the procedure established by legislative acts.

Affiliates and representations shall be subject to re-registration in the event that they change the name.

5. Violation of the procedure established by the law for the formation of a legal entity or non-compliance of its foundation documents with the law, shall entail denial to that legal entity of state registration. The denial of registration on the basis of non-expediency of the formation of a legal entity shall not be allowed. The denial of state registration and also the evasion of such registration may be challenged in a court.

6. A legal entity shall be subject to re-registration in the following cases:

1) reduction of the size of the authorised capital and of the announced authorised capital of a joint-stock company;

2) change of name;

3) alteration of the membership of participants in business partnerships and closed-type joint-stock societies;

Amendments introduced to foundation documents on said bases shall be invalid, unless the legal entity is re-registered.

In the case of passing other amendments and additions to foundation documents, a legal entity shall within one month notify the registering body to that effect.

#### **Article 43. Affiliates and Representations**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996]*

1. A separate subdivision of a legal entity which is located outside the place of its location and which carries out all or part of its functions including the function of representation, shall be an affiliate.

2. A separate subdivision of a legal entity, which is located outside the place of its location, which carries out the protection and representation of the interest of the legal entity and which enters transactions and any other legal acts on its behalf, shall be recognised as representation.



3. Affiliates and representations shall not be legal entities. They shall be vested with property by the legal entity that created them, and they shall operate on the basis of the by-laws approved by it.

4. Managers of structural subdivisions (affiliates and representations) of public associations shall be elected in the procedure specified by the charter of the public association and the by-laws concerning its affiliate or representation.

Managers of structural subdivisions (affiliates and representations) of religious associations shall be elected or appointed in the procedure specified in the charter of the religious association and the by-laws concerning its affiliate or representation.

Managers of affiliates and representations of other forms of legal entities shall be appointed by authorised bodies of the legal entities and they shall operate on the basis of powers of attorney.

#### **Article 44. The Liability of a Legal Entity**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities; and*

*20) Law No. 472 of 4th November 1999 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Functioning of Public Enterprises.*

1. Legal entities, except for institutions, state institutions and public enterprises financed by their foundation party, shall be liable for their obligations with all the assets that they have.

An institution shall be liable for its obligations with the funds at its disposal. When those are not sufficient the liability for the obligations of an institution shall be borne by its foundation party.

A state-owned institution shall be liable for its obligations with the funds at its disposal.

When funds of a state owned institution are not sufficient, the liability for its obligations shall be borne by the Government of the Republic of Kazakhstan or the relevant local executive body. The liability under contractual obligations shall arise within the limits of the approved budget for the maintenance of the given state-owned institution in accordance with legislation.

A public enterprise shall be liable for its obligations with the funds at its disposal.

When funds of a public enterprise are not sufficient, the Government of the Republic of Kazakhstan or the relevant administrative and territorial unit shall bear the subsidiary liability for its obligations. With regard to contractual obligations, the liability shall arise in accordance with the procedure as defined by legislative acts concerning state owned enterprises.

Civil law transactions entered into by public enterprises within the framework of their performance of the state order and by state institutions, shall be subject to registration in accordance with the procedure defined by the Government of the Republic of Kazakhstan.

2. A founder (participant) of a legal entity or the owner of its property shall not be liable under its obligations, and the legal entity shall not be liable under obligations of its founder (participant), or of the owner of its property, except for the cases stipulated by the present Code, other legislative acts, or the foundation documents of a given legal entity.

3. When the bankruptcy of a legal entity is caused by acts of its founder (participant), or the owner of its property, then, in the case of insufficiency of funds of the legal entity, the foundation party (participant), or the owner of its property accordingly, shall bear secondary liability before creditors.

4. A legal entity shall bear liability before third parties under obligations assumed by a body of the legal entity in excess of its powers established by the foundation documents, except for cases stipulated in paragraph 11 of Article 159 of the present Code.

#### **Article 45. Reorganisation of a Legal Entity**

*amended by (9) Law of 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Act of the Republic of Kazakhstan; and (22) Law No. 128 of 18th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Insurance and Insurance Activities.*

1. The reorganisation of a legal entity (merger, acquisition, division, appropriation, transformation) shall be carried out pursuant to the decision of the owner of its property or the body authorised by the owner, of the foundation parties (participants) and also upon the decision of the body of the legal entity authorised by the foundation documents, or upon the decision of the judicial bodies in the cases which are specified by legislative acts. Legislation may also stipulate other forms of reorganisation.

Reorganisation of a legal entity which is an accumulation pension fund, insurance (reinsurance) organisation shall be carried out subject to the special considerations provided for by legislation concerning pension support and insurance activities.

2. Reorganisation may be conducted voluntarily or compulsorily.

3. A compulsory reorganisation may be effected pursuant to the decision of judicial bodies in the cases specified by legislative acts.

When the owner of the property of a legal entity, a body authorised by it, its foundation parties or a body of a legal entity which is authorised to reorganise it by the foundation documents, does not perform the reorganisation of the legal entity within the term defined in the decision of the judicial body, the court shall appoint an administrator of the legal entity and it shall entrust to the administrator the reorganisation of the legal entity. From the moment when an administrator is appointed, all the powers associated with the management of the legal entity's business shall be transferred to the administrator. The administrator shall act on behalf of the legal entity in the court of law, compile the division balance sheet and present it for the approval of the court together with the foundation documents of the legal entities which emerge as a result of the reorganisation of the legal entities. The approval by the court of the indicated documents shall be the basis for the state registration of the newly-emerged legal entities.

4. A legal entity shall be deemed to be reorganised, except for the case of reorganisation in the form of acquisition, from the moment of the registration of the newly-emerged legal entities.

When a legal entity is reorganised by way of acquisition of any other legal entity, the former of them shall be deemed to be reorganised from the moment when the entry is made into the State Register of Legal Entities on the termination of the activities of the acquired legal entity is made.

#### **Article 46. The Legal Successorship When Legal Entities Are Reorganised**

1. When legal entities merge, the rights and obligations of each of them shall be transferred to the newly-emerged legal entity in accordance with the conveyance act.

2. When a legal entity is acquired by any other legal entity, the rights and obligations of the acquired legal entity shall be transferred to the latter in accordance with the conveyance act.

3. When a legal entity is divided, its rights and obligations shall be transferred to the newly-emerged legal entities in accordance with the division balance sheet.

4. When one or several legal entities are appropriated out of a legal entity, the rights and obligations of the reorganised legal entity shall be transferred to each one of them in accordance with the division balance-sheet.

5. When a legal entity of one type is transformed into a legal entity of any other type (altering its organisational and legal form), the rights and obligations of the reorganised legal entity shall be transferred to the newly-emerged legal entity in accordance with the conveyance act.

#### **Article 47. The Conveyance Act and the Division Balance-Sheet**

1. The property rights and obligations of a reorganised legal entity shall be transferred to the newly-created legal entity: in accordance with the conveyance act in the case of mergers and acquisitions; and in accordance with the division balance-sheet in the case of divisions and appropriations.

The conveyance act and division balance-sheet must contain the provisions concerning the legal successorship with regard to all the obligations of the reorganised legal entity with regard to all its creditors and debtors, including the obligations which are challenged by parties.

2. The conveyance act and division balance-sheet shall be approved by the owner of the property of the legal entity or by the body which adopted the decision to reorganise the legal entity, and they shall be submitted together with the foundation documents for the registration of the newly-emerged legal entities or the introduction of amendments to the foundation documents of existing legal entities.

Failure to present together with the foundation documents an appropriate conveyance act or division balance-sheet, and also the absence in them of provisions concerning legal successorship with regard to the obligations of the reorganised legal entity, shall entail the denial of the state registration of the newly-emerged legal entities.

3. Property (rights and obligations) shall be transferred to a legal successor at the moment of its registration, unless otherwise provided for by legislative acts or in the decision concerning the reorganisation.

#### **Article 48. The Guarantees of the Rights of Creditors of a Legal Entity In the Case of Its Reorganisation**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The owner of the property of a legal entity, or the body which adopted the decision to reorganise a legal entity, shall be obliged to notify in writing the creditors of the legal entity to be reorganised.

2. In the case of division or appropriation the creditor of a legal entity under reorganisation shall have the right to demand a premature termination of the obligations, the debtor under which is that legal entity and compensation of losses.

3. The newly-emerged legal entities as well as the legal entity from which another legal entity was appropriated shall be severally liable for the obligations of the reorganised legal entity before its creditors when the division balance-sheet does not provide for any possibility to identify the legal successor of the reorganised legal entity.

#### **Article 49. Foundations for the Liquidation of a Legal Entity**

*[as amended by (6) Law No. 68-I of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997;*

*(9) Law of 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Act of the Republic of Kazakhstan;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"]; and*

*(22) Law No. 128 of 18th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Insurance and Insurance Activities.*

1. A legal entity may be liquidated for any reasons, pursuant to a decision of the owner of its property, or of the body authorised by the owner, and also pursuant to the decision of a body of the legal entity so authorised by the foundation documents.

Liquidation of a legal entity which is an accumulation pension fund, insurance (reinsurance) organisation shall be carried out subject to the special considerations provided for by legislation concerning pension support and insurance activities.

2. A legal entity may be liquidated in accordance with a court decision in the following cases:

1) bankruptcy;

2) recognition of registration of a legal entity as invalid, because of violations of legislation made in the formation of that legal entity, and which cannot be eliminated;

3) systematic performance of activities which contradict the charter objectives of the legal entity;

4) performance of activities without appropriate permit (licence) or activities prohibited by legislative acts, or with multiple or gross violation of legislation;

5) in any other cases specified by legislative acts.

3. The claim to liquidate a legal entity on the bases indicated in the second paragraph of this Article, may be filed with a court by the state body to which the right to file such claims is granted by the law legislative acts, and in the cases of bankruptcy - also by the creditor.

Obligations associated with the performance of the liquidation of a legal entity may be entrusted by a court decision concerning the liquidation of that legal entity, to the owner of its property; to the body authorised by the owner, to the body authorised for the liquidation of a legal entity by the foundation documents, or to any other bodies (person) appointed by the court.

4. When the value of properties of a legal entity with regard to which entity a decision is taken, in accordance with paragraph 1 of this Article, to liquidate, is insufficient for satisfying creditors' claims, such a legal entity may be liquidated in accordance with legislation concerning bankruptcy.

5. Liquidation of certain types of legal entities shall be possible, pursuant to a decision of the relevant body which is authorised by the state, on the bases stipulated in legislative acts.

### **Article 50. The Procedure for the Liquidation of Legal Entities**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies; and*

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. The owner of the property of a legal entity or a body which adopted the decision to liquidate the legal entity, shall be obliged to communicate that immediately in writing to the body of Justice which performs the registration of legal entities.

2. The owner of the property of a legal entity or a body which took the decision to liquidate the legal entity, shall appoint the Liquidation Commission and establish the procedure and dates for the liquidation in accordance with this Code.

From the moment that the Liquidation Commission is appointed, it shall acquire the powers associated with managing of the property and the business of the legal entity. The Liquidation Commission shall act in the court on behalf of the legal entity under liquidation.

3. A Liquidation Commission shall publish the information concerning the liquidation of a legal entity, as well as the information concerning the procedure and the period for filing claims by its creditors, in the official publications of the central body of justice. The period for filing claims may not be less than two months from the time of publication concerning the liquidation.

A Liquidation Commission shall take steps to identify creditors and to recover debts, and also it shall notify creditors in writing of the legal entity liquidation.

4. Upon expiry of the period for creditors filing of their claims, the Liquidation Commission shall compile the intermediary liquidation balance-sheet which shall contain information concerning the composition of the property of the legal entity under liquidation, the list of claims filed by the creditors, and also concerning the results of the examination of them.

The intermediary liquidation balance-sheet shall be approved by the owner of the property of the legal entity or by the body which took the decision to liquidate that legal entity.

5. Where a legal entity under liquidation (except for state-owned institutions) is short of funds for the satisfaction of the creditors' claims, the liquidation commission shall carry out a sale of the assets of the

legal entity in a public auction in accordance with the procedure established for the execution of court decisions.

6. The payment of the amounts of ~~monetary resources~~ funds to the creditors of a legal entity in liquidation, shall be carried out by the liquidation commission in a priority procedure as established by Article 51 of this Code, in accordance with the interim balance-sheet, beginning from the date of its approval. Special considerations in distribution of assets of joint-stock companies shall be established by legislation concerning them.

7. Upon completion of the settlements with creditors, the liquidation commission shall compile the liquidation balance-sheet, which shall be approved by the owner of the assets of the legal entity, or by the body which adopted the decision to liquidate the legal entity .

8. The assets which remain upon the satisfaction of creditors' claims shall be used for the purposes indicated in the foundation agreements.

9. In the event that a public enterprise in liquidation is short of assets, and in the case of an institution in liquidation being short of ~~monetary resources~~ funds for satisfying the claims of creditors, the latter shall have the right to appeal to the court with an action to satisfy the remaining amount of claims at the expense of the owner of the assets of the enterprise or institution.

10. The liquidation of a legal entity shall be deemed to be accomplished, and a legal entity to have terminated its existence after the entry is made to that effect in the State Register of Legal Entities.

### **Article 51. Satisfying the Claims of Creditors**

*[as amended by (6) Law No. 68-I of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. When liquidating a legal entity, the claims of its creditors shall be satisfied in the following sequence:

1) in the first turn, the claims of citizens to whom the enterprise in liquidation bears the liability for causing harm to life and health, by way of capitalising appropriate periodic payments;

2) the claims of creditors with regard to obligations secured with pledge of property of the bankrupt in liquidation shall be satisfied within the confines of pledged amounts, in the second line;

3) settlements with regard to work remuneration with persons who work under work agreements, and settlements under authorship agreement shall be carried out in the third line;

4) in the fourth turn, the debt shall be repaid on the compulsory payments to the Budget and to the non-budgetary funds.

5) in the fifth turn, settlements shall be conducted with any other creditors in accordance with legislative acts.

2. The claims of each turn shall be satisfied upon the complete satisfaction of the claims of the previous turn.

3. When assets of a legal entity in liquidation are not sufficient, they shall be distributed among the creditors of each relevant turn in proportion to the amounts of claims which are subject to satisfaction, unless otherwise is provided for by law.

4. In the case of the refusal of the liquidation commission to satisfy the claims of a creditor or of an evasion from consideration, the creditor shall have the right, prior to the approval of the liquidation balance-sheet of a legal entity, to appeal to the court with the action against the liquidation commission. Upon the decision of the court, the claims of the creditor may be satisfied at the expense of the remaining assets of the legal entity in liquidation.

5. The assets which remain upon the satisfaction of the claims of creditors of the legal entity, shall be transferred to its owner or the foundation parties (participants) which have corporeal rights to those assets or any obligatory rights to the legal entity, unless otherwise provided for by legislation or the foundation documents of the legal entity.

6. The claims of creditors which are not satisfied because of a shortfall of assets of the legal entity in liquidation and also those which are not claimed before the approval of the liquidation balance-sheet shall be deemed to be satisfied.

Also the claims of creditors which are not recognised by the liquidation commission shall be deemed to be cancelled, unless the creditor appeals to the court with the action, as well as the claims the satisfaction of which was denied to the creditors by the court.

#### **Article 52. Bankruptcy**

*[replaced by (6) Law No. 68-I of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997; and amended by*

*(14) Law No. of 29th June 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments to the Civil Code of the Republic of Kazakhstan (General Part)].*

Bankruptcy - the insolvency of a debtor as recognised by a court decision, which is the basis for the liquidation of a debtor.

Insolvency is understood to be incapacity of a debtor which is an individual entrepreneur or a legal entity to satisfy claims of creditors with regard to monetary obligations, to carry out settlements with regard to work remuneration of persons who work under work agreements, and also incapacity to provide obligatory payments to the Budget and non-budgetary funds.

#### **Article 53. ~~The Bases of Bankruptcy~~ Recognition of Bankruptcy**

*[replaced by (6) Law No. 68-I of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997; and amended by*

*(14) Law No. of 29th June 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments to the Civil Code of the Republic of Kazakhstan (General Part)].*

1. Recognition of bankruptcy is possible in a voluntary or compulsory procedure.
2. Recognition of bankruptcy in a voluntary procedure shall be carried out on the basis of the debtor's application to the court.
3. Recognition of bankruptcy in a compulsory procedure shall be carried out on the basis of the creditor application to the court, and in the cases provided for by legislative acts, also applications from other entities.

#### **Article 54. ~~Reorganisation Procedures in the Bankruptcy Cases~~ The Rehabilitation Procedure In Bankruptcy Cases**

*[replaced by (6) Law No. 68-I of the Republic of Kazakhstan. Concerning the Recognition as Invalid of the Edict of the President of the Republic of Kazakhstan, Having the Force of a Law "Concerning Bankruptcy" and Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. January 21, 1997].*

Any measures aimed at the restoration of the debtor's solvency for the purpose of preventing the liquidation, which do not contradict legislation, may be applied to an insolvent debtor.

Said measures shall be implemented within the framework of a rehabilitation procedure, of which the order and the period of performance shall be defined in legislation concerning bankruptcy.

#### **Article 55. The Consequences of Instituting the ~~Liquidation~~ Competitive Proceedings**

*as amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(14) Law No. of 29th June 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments to the Civil Code of the Republic of Kazakhstan (General Part)].*

1. From the moment of instituting the ~~liquidation~~ competitive proceedings:
  - 1) the insolvent debtor shall be prohibited to alienate assets (except for the cases where the permission to alienate is granted by the meeting of the creditors), to transfer assets or to repay debts;
  - 2) deadlines of all debt obligations of an insolvent debtor shall be deemed to have expired;
  - 3) the assessment of ~~penalties and percentage~~ damages and remuneration (interest) shall terminate with regard to any debts of an insolvent debtor;
  - 4) all legislative restrictions regarding the imposition of claims on the property of an insolvent debtor shall be alleviated;
  - 5) the disputes of property nature with the participation of the insolvent debtor which are considered by the court, shall be terminated, provided the decisions adopted in relation to them have not entered into the legal force.
2. Any requirements of the property nature from that moment may be presented to the debtor only within the framework of the ~~liquidation~~ competitive proceedings.

#### ~~Article 56. Release of an Insolvent Debtor from Debts~~

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

#### **Article 56. Release of an Insolvent Debtor from Debts**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. After the sale of property and distribution of funds received from the sale among creditors, the insolvent debtor shall be released from execution of outstanding obligations and other requirements filed for execution and accounted for, when the legal entity was recognised as bankrupt.
2. An insolvent debtor shall not receive a release from his obligations in the event that he concealed, or transferred a part of his property to another party for the purposes of concealing, within a year prior to the beginning of the bankruptcy proceedings, or concealed or falsified relevant accounting information, in particular accounting ledgers, accounts, and documents.

#### **Article 57. The Termination of Activities of a Legal Entity Which is a Bankrupt**

1. The recognition by the court of a legal entity as insolvent (bankrupt) shall entail its liquidation.
2. Activities of an enterprise which is a bankrupt shall be deemed to be terminated from the moment of its exclusion from the State Register of Legal Entities.

## **II. BUSINESS PARTNERSHIPS**

### **1. General Provisions**

#### **Article 58. The Fundamental Provisions Concerning Business Partnerships**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General*

Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and

(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.

1. A business partnership shall be recognised to be a commercial organisation with its ~~charter fund~~ authorised capital divided into shares (contributions) of the foundation parties (participants). Properties created at the expense of the investments of the foundation parties (participants) and also produced and acquired by the business partnership in the course of its activities shall belong to it under the right of ownership.

2. Business partnerships may be created in the form of a general partnership, limited partnership, limited liability partnership, partnership with additional liability, ~~joint stock company~~.

3. Only citizens may be the participants of a general partnership and to be general partners in a limited partnership.

4. The charter and the foundation agreement shall be the foundation documents of a business partnership.

The charter shall be the foundation document of a business partnership which is established by one person (one participant).

5. The foundation documents of a business partnership (the charter and the foundation agreement) shall be subject to notarisation.

6. The foundation documents of a business partnership must also contain, apart from the information indicated in paragraphs 4 and 5 of Article 41 of this Code the provisions concerning the shares of each of participants; the size, composition, deadlines and the procedure for their making the contributions to the ~~charter fund~~ authorised capital of the partnership; concerning the liability of the participants for the violation of the obligations with regard to making the contributions to the ~~charter fund~~ authorised capital of the partnership, and any other information which is contemplated by legislative acts.

8. A business partnership may be the foundation party of any other business partnerships, except for the cases specified in legislative acts.

9. Business partnerships, ~~except for joint stock companies~~, shall not have the right to issue shares.

**Article 59. Contributions to the ~~Charter Fund~~ Authorised capital  
of a Business Partnership. The Share of a Participant in the ~~Charter  
Fund~~ Authorised capital and in the Assets of a Partnership**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996 (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Money, securities, objects, property rights, ~~including intellectual property~~ including the rights to results of intellectual ~~property~~ activity and any other assets may be a contribution to the ~~charter fund~~ authorised capital of a business partnership.

Contributions of founders (participants) into the authorised capital in kind, or in the form of property rights, shall be valued in the monetary form by agreement of all founders, or by a decision of the general meeting of all participants of a given partnership. When the value of such contribution exceeds the amount equivalent to twenty thousand fold of monthly calculation bases, its value must be confirmed by an independent expert.

The money's worth of the participants' contributions may be confirmed by accounting documents of the partnership or the statement of its auditors, when a business partnership is re-registered.

The foundation parties (participants) of a partnership, within five years from the moment of such valuation, shall bear joint and several liability to creditors of the partnership within the limits of the amount on which the value of the contribution was overstated.



In the cases where the right to use property is transferred to a partnership as a contribution, the size of such a contribution shall be determined by a payment for the use of such property, as calculated for the entire period indicated in the foundation documents.

It shall not be allowed to make contributions in the form of personal non-property rights and other incorporeal assets, nor by way of an offset of claims of participants to the partnership.

2. Shares of all participants in the authorised capital, and accordingly their shares in the value of property of the business partnership (a share in the property) shall be proportionate to their contributions into the authorised capital, unless it is otherwise stipulated in the foundation documents.

A participant of a partnership shall have the right to pledge and sell his share in the property of the partnership, unless it is otherwise provided for by legislative acts of foundation documents.

3. The procedure and deadlines for making the contributions to the ~~charter fund~~ authorised capital and also liability for the failure to fulfil the obligations associated with the formation of the ~~charter fund~~ authorised capital, shall be established in legislative acts and (or) foundation documents.

4. Reduction of the authorised capital of a business partnership shall be allowed only after the notification of all its creditors. The latter, in this case, shall have the right to demand premature termination the partnership ahead of time, or execution of the relevant obligations, and compensation for their losses.

Reduction of the authorised capital, in violation of the procedure established in this paragraph, shall be the basis for the liquidation of the partnership, pursuant upon a decision of the court, pursuant to an application from interested parties.

### **Article 60. Managing a Business Partnership**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)" and*

*(13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

1. The general meeting (meeting of the representatives) of the participants shall be the supreme body of a business partnership.

In business partnerships founded by one person, the powers of a general meeting shall belong to its single participant.

2. In a business partnership there shall be an executive body (collective or (and) individual), which carries out the day-to-day management of its activities and which is accountable to the general meeting (meeting of the representatives) of its participants. The individual governing body may not be from among its participants.

The following may be formed as collegiate bodies of a partnership:

1) the board (directorate);

2) the supervisory council;

3) other bodies in the cases stipulated in legislative acts, or by a decision of the general meeting (the meeting of representatives) of participants of a business partnership.

3. The authority of the ~~governing~~ bodies of a business partnership, the procedure for their election (appointment) and also the procedure for their adoption of decisions shall be determined in accordance with this Code, legislative acts and the foundation documents. 4. In order to audit, and to confirm the accuracy of financial statements, a business partnership may hire a professional auditor, who is not related to the partnership or its participants by property interests (independent audit).

Auditing of a business partnership must be carried out at any time, pursuant to a claim of one or several participants of the partnership at the expense of its (their) funds.

The procedure for conducting an audit of a business partnership activity shall be established by legislation and the foundation documents of the partnership.

### **Article 61. The Rights and Obligations of Participants of a Business Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The participants of a business partnership shall have the following rights:

1) to participate in managing the affairs of the business partnership in accordance with the procedure which is determined in the foundation documents;

2) to obtain information concerning the activities of the business partnership and to peruse its documents in accordance with the procedure established by the foundation documents;

3) to participate in the distribution of ~~profits~~ net income. The conditions of the foundation documents which stipulate the removal of one or several participants from the participation in the distribution of ~~profits~~ net income shall be invalid;

4) to obtain in the case of liquidation of a business partnership part of its property which corresponds to their share in the property of the partnership, which remains after the settlements with the creditors or its worth;

2. The participants of a business partnership shall be obliged as follows:

1) to comply with the requirements of the foundation documents;

2) to make contributions in accordance with the procedure, in the amounts, by the methods and within the deadlines specified in the foundation documents;

3) not to divulge the information which the business partnership declares as a commercial secret.

The foundation parties of a business partnership may bear any other responsibilities which are specified in the foundation documents.

## **Article 62. Transformation of Business Partnerships**

*as amended by (4) Law No. 30 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996; and*

*(18) Law No. 436 of 16th July 1999 of the Republic of Kazakhstan "Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan"*

1. Business partnerships of one type may be transformed into business partnerships of the other types or into joint stock companies or in to production co-operatives upon a decision of the general meeting of the participants in the cases and in accordance with the procedures provided for by legislative acts.

2. When transforming a general or a limited partnership into a joint-stock company, limited liability or additional liability partnership, each general partner that became a participant of the joint-stock company, limited liability partnership or additional liability partnership, shall within two years bear subsidiary liability with all his assets on the obligations which were transferred to the joint-stock company, the limited liability partnership or additional liability partnership from the general or limited partnership. The alienation by a former general partner of his shares shall not exempt him from such a liability.

## **2. General Partnerships**

### **Article 63. The Fundamental Provisions Concerning General Partnerships**

1. A general partnership shall be a partnership, the participants whereof in the case of the insufficiency of the property of the general partnership, shall bear a joint liability upon it obligations with all the property that they have.

2. A citizen may be the participant of only one general partnership.

### **Article 64. The Charter Fund Capital of the General Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The amount of the ~~charter fund~~ authorised capital of a general partnership shall be determined by its foundation parties, but it may not be less than the minimum amount specified by legislative acts.

### **Article 65. Managing the Affairs of a General Partnership**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. The general meeting of a general partnership shall be the supreme body of the general partnership. Resolutions on the internal issues of a general partnership shall only be adopted by unanimous consent of all the participants. The foundation agreement of a partnership may stipulate the cases, where a decision is to be adopted by a majority of votes of the participants. Each participant of a general partnership shall have one vote, unless the foundation agreement stipulates any other procedure for determining the number of votes of its participants. The foundation agreement may stipulate that the number of votes which is available to the participants shall be determined in proportion to their share in the ~~charter fund~~ authorised capital.

2. Managing a general partnership subject to the provisions of paragraph 1 of this Article, shall be carried out by the executive bodies of the general partnership. The types of, the procedure for the formation of governing bodies and their authority shall be defined in the foundation documents.

3. A participant of a general partnership shall not have the right to commit in his name and his interests or in the interests of third parties without consent of other participants, the transactions which are identical to those which constitute the object of activities of the partnership. In the case of violating this rule, the partnership shall have the right to demand from such a participant either compensation of losses incurred by the partnership, or transfer to the partnership of all the benefits acquired through such transactions.

4. The bodies of a general partnership, to which it is delegated to transact the business of the partnership, shall be obliged to present to all the participants, upon their request, comprehensive information about their activities.

5. A participant who acts for common interests without authorisation, in the cases where his actions are not approved by all the other participants, shall have the right to claim from the partnership compensation of expenditures incurred by him, under the condition that he proves that due to his efforts the partnership has economised or appropriately acquired assets which exceed in their value the expenditures incurred by the partnership.

### **Article 66. The Transfer of a Share (Part of a Share) of a Participant of a General Partnership**

1. A transfer by a participant of his share (part of share) to any other participants of a general partnership or to third parties shall be possible only with the consent of all the other participants.

2. When transferring a share (part of the share) to a third entity, the transfer shall take place at the same time of the whole set of rights and obligations which belong to the participant who is exiting the general partnership.

3. In the case of the demise of a participant of a general partnership, the legal successor (inheritor) may, with the consent of all the other participants enter the partnership.

4. The legal successor (inheritor) shall bear the liability on the debts of the participant before the general partnership and also on the debts of the partnership before the third parties, which arise during the period of the partnership's business.

5. When the legal successor (inheritor) refuses to enter the general partnership or the partnership refuses to accept the legal successor (inheritor), he shall be paid the value of his share in the assets of the partnership, which belongs to him on the basis of the legal successorship as determined on the day of the demise of the participant.

In those cases the amount of property of the partnership, which is indicated in the foundation agreement (charter) shall be appropriately reduced within the deadlines which are provided for by the foundation agreement (charter) but not later than in three months.

#### **Article 67. The Departure of a Participant from a General Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. The participant of a general partnership may at any time depart from the partnership after notifying thereof the other participants not later than the term provided for by legislative acts or the foundation agreement.

2. When, after the exit of a participant, the general partnership persists, the participant shall be paid the value his share in the assets of the partnership in proportion to the contribution made, in accordance with the balance-sheet compiled on the day of the departure. Upon the demand of the participant, and with the consent of the partnership, the contribution may be returned entirely or partially in kind. The participant who exited shall also be paid the amount of ~~profit~~ net income which has been received by the partnership in that year during the period of his being with the partnership within that year, which is owed to him in that year. Properties transferred by the participant of a partnership for use only shall be returned to him in kind without remuneration.

#### **Article 68. The Exclusion of a Participant from a General Partnership**

1. The participants of a general partnership shall have the right to require in a judicial procedure the exclusion of one or of several participants from the partnership upon a unanimous resolution of the remaining participants, provided there are serious reasons for that, in particular, a gross violation by him (them) of his (their) obligations or when the inability to manage business becomes established.

2. A participant who is excluded from a general partnership, shall be paid the value of the part of property in accordance with the procedure determined in paragraph 2 of Article 67 of this Code.

#### **Article 69. Imposition of a Claim upon the Share of a Participant in a General Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. The imposition of a claim upon the share of a participant in the property of a general partnership for his personal debts shall be allowed only in the case where his other assets are not sufficient to cover the debt. Creditors of such a participant shall have the right to demand from the general partnership of appropriation of a part of the property of the partnership in proportion to the share of the debtor in the ~~charter fund~~ authorised capital for the purpose of imposing the claim on that property. The part of property of the partnership which is subject to appropriation, or its worth, shall be determined on the basis of the balance-sheet compiled at the moment of the presentation by the creditors of their claims to appropriate [compensation].

2. The imposition of a claim upon the share of a participant in the property of a general partnership shall terminate his participation in the partnership, and it shall entail the consequences which are provided for by Articles 70 and 71 of this Code.

#### **Article 70. The Liability of Participants for Debts of a General Partnership**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. If in liquidating a general partnership it so happens that the property available is not sufficient to cover all its debts, the participants shall bear joint liability for the missing part, with all their property upon which in accordance with legislative acts, a claim may be imposed.

A participant of a general partnership shall be liable for the debts of the partnership irrespective of whether they emerged after or before his entering the partnership, unless otherwise specified in legislative acts.

2. A participant who repaid the debts of a general partnership in excess of his share in the property of the partnership, shall have the right to appeal with a regress claim for the appropriate amount, to the other participants who shall bear a shared liability before him in proportion to their shares in the property of the partnership.

3. A participant who left a general partnership of his own accord, or was excluded from the partnership upon the decision of the court, and also a legal successor (inheritor) of a deceased participant who refused the proposal to enter the partnership, shall be liable for the obligations of the partnership which arose prior to the moment of their departure, during the two year period from the date of the approval of the report on the activities for the year in which they exited the partnership.

4. A participant who left a general partnership in a procedure of transferring his share to any other participant or third persons, in a procedure of imposing a claim upon his share in the property of the partnership by a creditor (creditors), and also a legal successor (inheritor) of a deceased participant, whom the other participants denied acceptance to the partnership, shall not be liable for the obligations of the partnership.

5. After the cessation of a general partnership, the participants shall be liable upon the obligations of the partnership, which arose prior to the moment of its cessation, for two years from the date of the cessation of the partnership.

6. Arrangements of participants, which alter the procedure of their liability for the obligations of the general partnership, which are specified in this Article, shall be invalid.

### **Article 71. Liquidation of a General Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. A general partnership aside from the provisions indicated in Article 49 of this Code, shall also be liquidated in the case where a sole participant is left in a partnership, if within six months he does not reorganise the partnership, nor does he accept new participants.

2. In the cases of a departure or a death of one of the participants of a general partnership, of recognition of one of them as missing, incapable or partially incapable or a bankrupt, or of the imposition by a creditor of one of the participants of a claim on the property which corresponds to his share in the ~~charter fund~~ authorised capital, the partnership may continue its activities, provided this is specified in the foundation documents of the partnership or by agreement of the remaining participants.

3. Where one of the participants left the partnership on the bases indicated in paragraph 2 of this Article, the shares of the remaining participants in the ~~charter fund~~ authorised capital of the partnership shall be increased in proportion to their contributions, unless otherwise specified in the foundation documents.

## **3. Limited Partnerships**

### **Article 72. The Fundamental Provisions Concerning a Limited Partnership**

*amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General*

Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".

1. A partnership which includes besides one or more participants who bear additional liability for the obligations of the partnership with all their property (general partners) also one or more participants whose liability is limited by the amount of contribution made by them to the assets of the ~~general~~ partnership (investors) and which do not participate in the partnerships' entrepreneurial activities, shall be a limited partnership.

2. The legal status of general partners who participate in a limited partnership and the liability for the obligations of the partnership shall be determined by the rules concerning the participants of the general partnerships.

3. A person may be a general partner only in one limited partnership.

A general partner in a limited partnership may not be a participant of a general partnership.

4. The rules of this Code concerning general partnership shall apply to limited partnerships, provided this does not contradict the provisions of this Code concerning limited partnerships.

### **Article 73. The Investor of a Limited Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An investor of a limited partnership shall be obliged to make his first contribution and additional contributions (investments) in the amount by the method and in accordance with the procedure which are stipulated in the foundation documents.

2. An investor of a limited partnership shall have the following rights:

1) to receive part of ~~profits~~ net income of the partnership which is due on his share in the ~~charter fund~~ authorised capital in accordance with the procedure stipulated in the foundation documents;

2) to peruse ~~annual report and balance sheet~~ financial statements of the partnership and also to require an opportunity to establish the accuracy of ~~its~~ their compilation;

3) to transfer his share in the ~~charter fund~~ authorised capital or its part to any other investor or a third party in accordance with the procedure stipulated in legislative acts and the foundation documents of the partnership. The transfer by the investor of his entire share to any other person shall terminate his participation in the partnership;

4) through the procedure stipulated in legislative acts and the foundation documents, to exit from the partnership.

3. Where an investor commits a transaction in the interest of the limited partnership without due authorisation, then in the case of approving his actions by the partnership, it shall be liable for the transaction before the creditors in the full volume. When approval is not obtained, the investor shall be liable to third parties independently with all his property, upon which claims may be imposed in accordance with legislation.

### **Article 74. The ~~Charter Fund~~ Authorised capital of a Limited Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The ~~charter fund~~ authorised capital of a limited partnership shall be made up of the contributions of its participants. In the course of business activities, the ~~charter fund~~ authorised capital may be altered. The ~~charter fund~~ authorised capital less contributions of the investors shall determine the share of general partners in the property of a limited partnership.

2. The amount of the charter fund authorised capital shall be determined by the general partners of a limited partnership and it may not be less than the minimum established by legislative acts. ~~The total amount of shares of the investors may constitute not more than 50% of the charter fund authorised capital of a limited partnership.~~

3. The reduction of the ~~charter fund~~ authorised capital of a limited partnership shall be allowed after notifying all its creditors. The latter shall have the right in that case to require a premature termination or execution of the relevant obligations and compensation to them of their losses. Reduction of a ~~charter fund~~ authorised capital in violation of the procedure established in this Article shall be a reason for the liquidation of the limited partnership in accordance with the decision of the court upon the application of the interested parties.

#### **Article 75. Managing Affairs of a Limited Partnership**

Managing the affairs of a limited partnership shall be carried out by general partners. The procedure for managing and maintaining affairs of a general partnership by its general partners shall be established by themselves in accordance with the rules concerning general partnership. The investors shall not have the right to participate in the managing of the affairs of the limited partnership, nor to act on its behalf otherwise than on the basis the power of attorney. The investors of a limited partnership shall not have the right to challenge the actions of general partners with regard to managing the affairs of the partnership.

#### **Article 76. The Cessation a Limited Partnership**

1. A limited partnership shall be terminated when all the investors participating in it exit from it. The general partners shall have the right, instead of liquidation, to transform the limited partnership into a general partnership. A limited partnership shall be liquidated also upon the bases which are stipulated for the liquidation of a general partnership.

2. In the liquidation of a limited partnership the investors shall have a priority right, as compared to general partners, to receive their contributions from the property of the partnership, which remain after the satisfaction of the claims of its creditors. The assets which remain after that of the limited partnership, shall be distributed between the general partners and investors in proportion to their contributions to the assets of the partnership, unless another procedure is established in the foundation documents.

### **4. Limited Liability Partnerships**

#### **Article 77. The Fundamental Provisions Concerning Limited Liability Partnership**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996;*

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan; and*

*(18) Law No. 436 of 16th July 1999 of the Republic of Kazakhstan "Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan"*

1. A partnership with limited liability shall be recognised to be a partnership established by one or several persons, the ~~charter fund~~ authorised capital [amended by 11] whereof is divided into shares of the size which is stipulated in the foundation documents; the participants of a limited liability partnership

shall not be liable for its obligations and they shall bear the risk of losses associated with the activities of the partnership within the limits of the value of the contributions made by them. Exceptions from this rule may be provided for by this Code and legislative acts.

The participants of a limited liability partnership who did not make their contributions in full, shall bear joint liability for its obligations within the value of the ~~unpaid~~ uncontributed part of the contribution of each participant.

2. The number of participants in a limited liability partnership must not exceed ~~fifty~~ one hundred. In the event that the number of participants in a limited liability partnership exceeds ~~fifty~~ one hundred, it shall be subject to sub-division, or appropriation, or transformation into another business partnership, joint-stock company or production co-operative within one year, and upon expiry of that term - subject to liquidation in a judicial procedure pursuant to a petition of the body which performed the state registration of the partnership or pursuant to a petition of any other interested person, unless the number of participants is reduced to fifty.

A limited liability partnership may not have another business partnership which consists of one person, as a sole participant.

3. Upon the claim by any of its participants there must be a conducted an audit of the activities of the limited liability partnership. The public reports of shall not be required of a limited liability partnership, except for the cases stipulated in legislation or the foundation documents.

4. A limited liability partnership may be voluntarily reorganised or liquidated upon a ~~unanimous~~ resolution of its participants. Any other grounds for a reorganisation or liquidation of a limited liability partnership shall be determined by this Code and legislative acts.

A limited liability partnership shall have the right to transform into another business partnership, joint-stock company or a production co-operative.

6. The legal status of a limited liability partnership, the rights and obligations of its members shall be determined by this Code and legislative acts.

#### **Article 78. ~~The Charter Fund~~ Authorised capital of a Limited Liability Partnership**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The size of the ~~charter fund~~ authorised capital of a limited liability partnership shall be determined by the foundation parties (participants) of the limited liability partnership and it may not be less than the amount established by legislative acts.

#### **Article 79. Managing a Limited Liability Partnership**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

1. The scope of authority of the bodies of a partnership, as well as the procedure for their adoption of decisions or for acting on behalf of the partnership, shall be defined in accordance with legislative acts and the charter of the partnership.



2. The following shall be referred to the exclusive authority of the general meeting of the participants of a limited liability partnership:

1) amendments to the charter of the partnership including the amendments of the amount of its ~~charter fund~~ authorised capital;

2) formation of the executive body of a partnership and a premature termination of its powers, as well as adoption of a decision on the transfer of the limited liability partnership or its property into trust management and defining of the terms of such a transfer; 3) approval of financial statements of the business partnership and distribution of its net income.

4) the decision concerning reorganisation and liquidation of the partnership;

5) election and premature termination of the powers of the supervisory council and (or) auditing commission (auditor) of a partnership, as well as the approval of reports and statements of the auditing commission (auditor) of a partnership;

6) approval of internal rules, procedures for their adoption and of other documents which regulate internal functioning of the partnership;

7) decision of the partnership's participation in other business partnerships as well as in non-profit organisations;

8) appointment of the liquidation commission and approval of liquidation balance sheets;

9) decision on forced purchase of a share from a participant of the limited liability partnership in accordance with Article 82 of this Code.

3. Issues recognised as exclusive authority of General Meeting of the partnership participants may not be delegated to an executive body of the partnership for its deciding.

#### **Article 80. The Transfer of a Share in the ~~Charter Fund~~ Authorised capital of a Limited Liability Partnership to Another Person**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A participant of a limited liability partnership shall have the right to sell or in any other way to assign his share in the ~~charter fund~~ authorised capital of a partnership or its part, at his discretion to one or several participants of that partnership.

2. Alienation by a limited liability partnership participant of his share (its part) to third parties shall be allowed, unless it is otherwise stipulated by the foundation documents of the partnership.

The participants of a limited liability partnership shall enjoy a pre-emption right, as compared to third parties, with regard to the purchase a share, or its part. Unless the foundation documents or an agreement between the participants of a given partnership stipulate otherwise, the priority right to purchase a share (its part) shall be exercised by the participants in proportion to the sizes of their shares in the authorised capital of the partnership. In the case of a sale of a share (its part) in violation of the pre-emption right, any participant of a limited liability partnership shall have the right to claim in a judicial procedure the transfer to him of the rights and obligations of a buyer, within three months from the day of the sale.

3. Where in accordance with the ~~charter~~ foundation documents of a limited liability partnership the selling of the share of a participant (part thereof) to third parties is not possible and the other participants of the partnership refuse to purchase it, the partnership shall be obliged to pay to the participant its actual value or to issue to him in kind the assets which correspond to that value.

4. The share of a participant of a limited liability partnership may be sold prior to its full payment only in the part which had been paid-up already.

5. In the case where a share of a participant (part thereof) is acquired by the limited liability partnership itself, it shall be obliged to sell it to any other participants or third parties within the deadlines and in accordance with the procedure stipulated in legislative acts and the foundation documents of the partnership, or to reduce its ~~charter fund~~ authorised capital. During that period the distribution of ~~profits~~

net income and also voting in the supreme governing body shall be carried out without taking into account the share acquired by the limited liability partnership.

6. The shares in the ~~charter fund~~ authorised capital of a limited liability partnership shall be transferred to the inheritors of citizens and to the legal successors of legal entities which are participants in partnership, unless the foundation documents of the partnership stipulate that such a transfer is permitted only with the consent of the other participants of the partnership. Refusal to accept the transfer of a share shall entail the obligation of the partnership to pay to the inheritors (legal successors) of the participant its actual value or to issue to them in kind the assets worth the same value, in accordance with the procedure and on the conditions stipulated in legislative acts and in the foundation documents of the partnership.

Legislative acts may stipulate special considerations in the transfer of a share to the legal successors of legal entities.

### **Article 81. Additional Contributions by the Participants of a Limited Liability Partnership**

*replaced by (13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

Unless the charter of a limited liability partnership provides otherwise, the general meeting of its participants may take a decision on making by the participants of additional contributions to the partnership's property. A decision shall be adopted by a majority of three quarters of votes of all participants of the partnership.

### **Article 82. ~~The Exclusion of a Participant from a Limited Liability Partnership~~**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

### **Article 82. Forced Purchase of a Share from a Participant of a Limited Liability Partnership**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

In case of violation by a limited liability partnership participant of his obligations to the partnership, which are established by legislative acts or the foundation documents, the partnership, in accordance with a decision of the general meeting, shall have the right, in a judicial procedure, to demand compulsory purchase of a share from such a participant at the price established in an agreement of the partnership with the participant. In the case of failure to reach consensus, the price of a share to be purchased in a compulsory procedure shall be established by the court.

### **Article 83. Imposition of a Claim Upon the Share of a Participant in a Limited Liability Partnership**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

~~Claims against the share of a participant in a limited liability partnership for his own debts shall not be allowed.~~ In the case where the participants' assets are not sufficient to cover his personal debts, the

creditors may require, in accordance with the established procedure, to appropriate the share of the debtor who is a participant.

## **5. Partnerships with Additional Liability**

### **Article 84. The Fundamental Provisions Concerning The Partnership with Additional Liability**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(13) Law No. 221 of 22nd April 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan.*

1. A partnership with additional liability shall be partnership, the participants whereof shall be liable for its obligations with their contributions to the ~~charter fund~~ authorised capital, and in the case those are insufficient, additionally with the assets that belong to them in the amount which is a multiple of the contributions made by themselves.

2. A maximum amount of the liability of the participants shall be stipulated in its ~~foundation documents~~ ~~documents~~ charter.

In the case of bankruptcy of one of the participants, his liability for the obligations of the partnership shall be spread amongst other participants in proportion to their contributions, unless a different procedure of distribution of the liability is stipulated in foundation documents.

3. To an additional liability partnership the rules of this code shall be applied concerning limited liability partnerships, unless otherwise stipulated in this Article.

## ~~VI. A Joint-stock Company~~

### **III. JOINT-STOCK COMPANY**

*modified by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

### **Article 85. The Definition of a Joint-stock Company**

*amended by (9) Law of 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Act of the Republic of Kazakhstan;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. A legal entity which issues shares for the purposes of raising funds for the performance of its activities shall be recognised as a joint-stock company. The shareholders of a joint-stock company shall not be liable for its obligations, and they shall bear the risk of losses associated with the company's business, within the limits of value of the shares they hold, except for the cases provided for by legislative acts.

2. A joint-stock company shall possess the assets which are separate from the assets of its participants; it shall be liable for its obligations within the limits of its property and it shall not bear any liability for the obligations of its participants.

Shareholders of corporate cumulative pension funds shall be subject to several liability with regard to obligations of said funds in accordance with the procedure and on the terms as established by legislation concerning pension support.

3. A joint-stock company may be created by one person and it may consist of one person in the case the acquisition by one shareholder of all the shares of the company, unless it is otherwise stipulated in legislative acts.

4. The legal status of a joint-stock company, the rights and obligations of the shareholders shall be determined by legislative acts in accordance with this Code. Special considerations with regard to the legal status of joint-stock companies which are created by way of privatising state-owned enterprises, shall be determined in legislation.

5. Non-commercial organisations may be created in a form of the joint-stock company in the cases provided for by legislation.

### **Article 86. Open Type and Closed Type Joint-stock Companies**

*[as amended by (5) Law of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. December 7, 1996;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies; and*

*(22) Law No. 128 of 18th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Insurance and Insurance Activities.*

1. A joint-stock Company, the participants whereof may sell the shares which belong to them without the consent of any other shareholders shall be a joint-stock Company of the open type. An open-type company shall have the right to place the shares it issues by the closed-type and by the open-type methods.

2. An open-type company shall be obliged to publish its annual and quarterly balance-sheets and profit-and-loss accounts in accordance with the procedure established by legislation in a newspaper;

3. A joint-stock company whose shares are placed among its foundation parties and a pre-determined circle of persons shall be recognised as a closed-type joint-stock company. A closed-type joint-stock company shall have the right to place the shares it issues only by the closed-type method.

4. A shareholder in a closed-type joint-stock company, who wishes to sell his shares, shall be obliged to offer them for sale to the other participants of the company, and in the case of their refusal - to the company itself. Special considerations with respect to the selling of shares in a closed-type joint-stock company, shall be defined by legislative acts.

5. The foundation documents of a closed-type joint-stock company may stipulate a possibility for compulsory purchase of by the company, in a judicial procedure, of shares of its participant who materially violates the interests of the company by his acts.

6. Legislative acts may stipulate the possibility and the grounds for compulsory purchase of shares from banks, ~~and non-banking financial institutions~~ organisations organisations and insurance (reinsurance) organisations which perform certain types of banking transactions in the event that they have negative value of their capital as calculated in accordance with the procedure established by legislation.

### **Article 87. The Foundation Documents of a Joint-stock Company**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. The Foundation documents of a joint-stock company are the foundation agreement and the charter. The charter shall be foundation document of a joint-stock company which is founded by a sole participant.

The foundation documents of a joint-stock company shall be subject to notarisation.

2. The foundation agreement of a joint-stock company shall be concluded by the foundation parties. The foundation documents of a joint stock company must contain information as defined by this Code and other legislative acts.

3. The charter of a joint-stock company shall be approved by the general meeting of the foundation parties.

#### ~~Article 88. The Charter Fund Charter Capital of a Joint stock Company~~

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

#### **Article 88. The Announced and the Issued (Paid-Up) Authorised Capital of Joint-Stock Companies**

1. The announced authorised capital of a joint-stock company shall consist of the aggregate nominal value of all the shares announced to be issued and it shall be expressed in a single currency. A joint-stock company shall have the right to issue all or part of shares announced to be issued. Incomplete allotment of shares from an announced volume of an issue of a joint-stock company in the case of the closed-type allotment, shall not lead to reduction of the announced authorised capital.

2. Issued (paid-up) authorised capital of a joint-stock company shall consist of the aggregate nominal value of the issued shares.

3. The procedure for the formation of the announced and the issued (paid-up) authorised capital of a joint-stock company shall be defined in legislative acts.

#### ~~Article 89. The Increase of the Charter Fund Charter Capital~~

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

#### **Article 89. Increase of the Announced and of the Issued (Paid-Up) Authorised Capital**

1. A joint-stock company shall have the right, pursuant to a decision of the general meeting of its shareholders, to increase the announced authorised capital by way of increasing the nominal value of the

shares or by issuing additional shares. Increasing of the announced authorised capital of a joint-stock company shall be allowed only after it has been fully paid.

2. A decision to increase the issued (paid-up) authorised capital by way of issuing new shares within the announced authorised capital, shall be taken by the board of directors of a joint-stock company (in a joint-stock company which has no board of directors - by the general meeting of the joint-stock company's shareholders) in accordance with the procedure established by legislation. A joint stock company shall not have the right to issue shares when it makes losses, except for the cases provided for by legislative acts.

3. When a joint-stock company announces its intent to issue shares or any other securities convertible into shares, then it shall be obliged to offer those new shares or securities convertible into shares, on equity terms to its shareholders in accordance with the pre-emption right, in proportion to the shares they hold, and in accordance with the procedure established by legislation.

4. The procedure for increasing the announced and the issued (paid-up) authorised capital shall be defined in legislative acts.

#### ~~Article 90. Reduction of the Charter Fund Charter Capital~~

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

#### **Article 90. Reduction of the Announced and of the Issued (Paid-Up) Authorised Capital**

Reduction of the announced and of the issued (paid-up) authorised capital of a joint-stock company shall be carried out in accordance with the procedure established by legislation.

#### **Article 91. Issue and Distribution of Securities and Payment of Dividend**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. The types of securities to be issued by joint-stock companies shall be defined in legislative acts.

A joint-stock company shall have the right to issue only registered shares.

2. A joint-stock company shall allot its shares as follows:

by the closed-type method - amongst its foundation parties and a pre-determined circle of persons;

by the private method - amongst qualified investor;

by the open-type method - amongst an indefinite circle of persons by way of holding an auction and(or) free trade in accordance with legislation concerning the securities market.

Special consideration in the registration of share issues of joint-stock companies and in their allotment shall be defined by legislation concerning the securities market.

3. A joint-stock company shall have the right to issue debentures secured with a pledge of the company's own property, those secured with guarantees of third parties, unsecured debentures. Joint-stock companies shall have the right to issue coupon bonds and discounted bonds. The terms and the procedure for issuing debentures shall be defined by legislation concerning the securities market.

4. The form, method and the procedure for payment of income on securities shall be defined in the charters of joint stock companies or in prospectuses of issues (terms of issues) of securities subject to special considerations provided for by legislative acts.

5. A joint-stock company shall not have the right to pay dividends on its ordinary shares in the forthcoming year when its owned capital is negative nor when a company shows the symptoms of insolvency or illiquidity, in accordance with legislation concerning bankruptcy, nor when indicated symptoms are shown by a company after announcing and paying dividends.

Legislative acts may specify other circumstances prohibiting payment of dividends on ordinary shares, and issuing of debentures by joint-stock companies.

6. A joint-stock company shall have the right to issue derivative securities, options and convertible securities in accordance with the procedure defined by legislation.

### **Article 92. Managing a Joint-stock Company**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. The general meeting of the shareholders of a joint-stock company shall be its supreme body.

2. The exclusive authority of the general meeting of shareholders shall be defined in legislative acts.

3. The taking of decisions on the issues comprised by the exclusive authority of the general meeting of shareholders, may not be delegated to other bodies of the joint-stock company.

4. A board of directors shall be formed in a joint-stock company, which shall exercise the general guidance of the company's business, except for deciding on the issues conferred by this Code, legislative acts and the company's charter, to the exclusive authority of the general meeting of shareholders. The issues which are conferred by this Code, legislative acts and the joint-company's charter to the exclusive authority of the board of directors, may not be delegated to the executive body of the joint-stock company to be decided on.

The charter of a closed-type joint-stock company may provide for the possibility of managing the joint-stock company without creating a board of directors. In this case, the issues conferred by this Code and legislative acts to the exclusive authority of the board of directors, shall be transferred to the exclusive authority of the general meeting of shareholders.

5. The executive body of a joint-stock company may be a collective body (board) or (and) a personal one (director, general director, president). It shall carry out the current management of the activities the joint-stock company and it shall report to the board of directors and the general meeting of the shareholders.

The exclusive [inserted by 12] authority of the executive body of a joint-stock company shall include the deciding on all the issues which do not constitute the exclusive authority of any other ~~governing~~ bodies of the company which is determined by legislation or by the foundation documents.

6. An audit commission may be formed or a company's auditor may be elected from amongst its shareholders or professional auditors (accountants) in order to perform supervision of financial and operational activities. The general meeting of shareholders shall not have the right to define the joint-stock company's annual financial statements without a report from the audit commission (auditor).

Other bodies may be formed by a joint-stock company in accordance with legislative acts.

7. The authority of the ~~governing~~ bodies of a joint-stock company and also the procedure for adopting by them of the resolutions and acting on behalf of the company, shall be determined by

legislation in accordance with this Code and by the foundation documents. 8. Any shareholder shall have the right to demand at his expense an audit of the company's annual financial statements and of current state of its business by an independent auditor.

### **Article 93. Reorganisation and Liquidation of a Joint-stock Company**

*[as amended by (4) Law No. 30 - I of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan. July 15, 1996]*

1. A joint-stock company may be voluntary reorganised or liquidated upon the decision of the shareholders meeting. Any other bases and the procedure for reorganisation and liquidation of a joint-stock company shall be determined in this Code and any other legislative acts.

2. A joint-stock company shall have the right to transform into a limited liability partnership or a production co-operative.

## **IV. SUBSIDIARY ORGANISATION AND RELATED JOINT-STOCK COMPANY**

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

### ~~Article 94. A Subsidiary Business Partnership~~

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

### **Article 94. A Subsidiary Organisation**

1. A legal entity whose predominant part of the authorised capital (issued authorised capital) is formed by another legal entity (henceforth - principal organisation), or when in accordance with an agreement concluded by them (or otherwise) the principal organisation has the possibility to control the decisions of a given organisation, shall be recognised as a subsidiary organisation.

2. A subsidiary organisation shall not be liable for the debts of its principal organisation.

The principal organisation which pursuant to its agreement with a subsidiary organisation (or otherwise) has the right to issue instructions which are mandatory for it, shall be liable subsidiarily with the subsidiary with regard to the transactions entered into by the latter in order to implement such instructions.

In the case of bankruptcy of a subsidiary organisation, due to a fault of the principal organisation, the latter shall bear subsidiary liability with regard to its debts.

3. The participants of a subsidiary organisation shall have the right to demand from the principal organisation of the compensation of losses caused by its fault to the subsidiary organisation, unless it is otherwise established by legislative acts.

4. Special considerations with regard to the status of subsidiary organisations, which are not specified in this Article, shall be defined by legislative acts.

### **Article 95. Related Joint-stock Company**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*



1. A joint-stock company shall be recognised as related where the other (participating, majority) legal entity has more than 20% of its voting shares.

2. The predominant (participating) legal entity must immediately publish the information concerning the acquisition by it of the relevant number of shares of the related joint-stock company in accordance with the procedure stipulated in legislative acts.

3. Mutual participation of joint-stock companies in the issued authorised capital of each other may not exceed twenty-five percent of either of issued (paid-up) authorised capitals, unless it is otherwise provided for by legislative acts. Joint-stock companies which mutually participate in issued (paid-up) authorised capitals of each other's, may not enjoy more than twenty-five per cent of votes in a general meeting of shareholders of each other's.

4. Special considerations concerning related joint-stock companies and joint-stock companies mutually participating in issued (paid-up) authorised capitals of each other's, which are not provided for by this Article, shall be defined by legislative acts.

## **V. PRODUCTIVE CO-OPERATIVE**

### **Article 96. General Provisions Concerning Productive Co-Operatives**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A voluntary association of citizens on the basis of the membership for joint entrepreneurial activities, which is based on personal labour participation and the co-operation by the members of their property contributions, shall be recognised as productive co-operatives.

2. Members of a co-operative must be not less than two.

3. Members of a productive co-operative shall bear a complimentary (subsidiary) liability on the obligations of the co-operative in the amounts in accordance with the procedure stipulated by the law concerning productive co-operatives.

4. The legal status of productive co-operatives and its members shall be determined in accordance with this Code and legislative acts.

### **Article 97. The Charter of a Productive Co-Operative**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

The charter of a productive co-operative must contain aside information indicated in paragraph 5 of Article 41 of this Code, the provisions concerning the size of unit shares of the co-operative's members; concerning the composition and the procedure for making contributions by the co-operative members and their liability for violating obligations associated with the making of contributions; concerning the nature and the procedure for the labour participation of its members in the activities of the co-operative, and their liability for violating the obligations with regard to the personal labour participation; concerning the procedure for the distribution of losses net income of the co-operative, concerning the membership and the authority of the governing bodies of the co-operative and the procedure for their adoption of decisions, in particular concerning the issues on which decisions are adopted unanimously or by a qualified majority of votes.

### **Article 98. Property of a Productive Co-Operative**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Property which is in the ownership of a production co-operative, shall be divided into unit shares of its members in proportion to their contributions, unless it is otherwise stipulated in the charter of a given co-operative.

2. Net income of a co-operative shall be distributed amongst its members in accordance with their labour participation, unless any other procedure is stipulated in the charter of the co-operative.

3. In case of liquidation of a production co-operative, or a member exiting the co-operative, that member shall have the right to appropriation of his unit share.

### **Article 99. Managing Productive Co-Operatives**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. The supreme body of a productive co-operative shall be the general meeting of its members.

In the productive co-operative there may be created a supervisory council which exercises the control of activities of the executive bodies of the co-operative. The members of a supervisory council shall not have the right to act on behalf of the productive co-operative.

Executive bodies of a co-operative shall be the board and (or) its chairman. They shall carry out the current management of the activities of the co-operative and they shall be accountable to the supervisory council and the general meeting of the members of the co-operative. Only co-operative's members may be supervisory council and the board of a productive co-operative. A member of a co-operative may not be at same time the member of the supervisory council and the member of the board.

2. The authority of the governing bodies of a productive co-operative and the procedure for its adoption of decisions as well as their acting on behalf of the co-operative shall be determined in legislative acts and the foundation documents.

3. The following shall be referred to the executive authority of the general meeting of the members of a productive co-operative:

1) alteration of the charter of the co-operative;

2) formation of the executive, audit bodies and supervisory council, and the removal of their members;

3) acceptance and exclusion of the members of the co-operative.

4) approval of financial statements of the co-operative and distribution of its net income;

5) the decision concerning the reorganisation or liquidation of the co-operative. Also, any other issues. may be referred by legislative acts and the foundation documents to the exclusive authority of the general meeting.

The issues which are referred to the exclusive authority of the general meeting or the supervisory council of a co-operative may not be delegated by them for the resolution of an executive body of the co-operative.

4. A member of a co-operative shall have one vote when a decision is adopted by the general meeting.

### **Article 100. The Cessation of Membership in a Productive Co-Operative**

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A member of a productive co-operative shall have the right to leave the co-operative at his discretion. In that case, he must be paid or given his share and also any other benefits must be issued, which are stipulated in the charter.

The return of the share or any other assets to the co-operative member who is leaving shall be carried out upon expiry reporting period and the approval of the financial statements of the co-operative.

2. A member of a productive co-operative may be excluded from the co-operative upon the decision of the general meeting in the case of a failure to execute or improper execution of the duties which are delegated to him by the charter of the co-operative and also in any other cases which are stipulated in legislative acts and the foundation documents.

The exclusion from membership of a productive co-operative may be challenged in the court.

A member of a productive co-operative may be excluded from it upon the decision of the General meeting in relation to the membership in a similar co-operative.

A member of a productive co-operative who is excluded from it shall have the right to get the share and any other benefits which are stipulated in the charter of the co-operative, in accordance with the paragraph 1 of this Article.

3. A member of a productive co-operative shall have the right to transfer his share or its part to any other co-operative member, unless otherwise stipulated in legislative acts and the foundation documents. The transfer of a share (part thereof) to a citizen who is not a member of the productive co-operative, shall only be allowed with the consent of the co-operative. In that case, the other members of the co-operative shall exercise the pre-emption right in the purchase of such a share (its part).

4. In case of death of a member of a production co-operative, his heirs may be accepted into the co-operative as members, unless it is otherwise stipulated in the charter of the co-operative. In the case of a refusal of an heir of the deceased co-operative member to enter the co-operative, or a refusal of the co-operative to accept an heir, he shall be paid a share in the property proportionate to the share of the deceased co-operative member, as well as a part of the co-operative's net income due to the deceased, and remuneration for personal labour participation in the activity of the co-operative.

5. The claims against the share of a productive co-operative member related to his personal debts shall be allowed only in the case of the shortage of his other assets for covering such debts, in accordance with the procedure stipulated in legislative acts and the foundation documents of the co-operative.

#### **Article 101. Reorganisation and Liquidation of a Productive Co-Operative**

1. A productive co-operative may be voluntarily reorganised or liquidated upon the resolution of the General meeting of its members.

Any other bases and the procedure for reorganisation and liquidation of a productive co-operative shall be determined in this Code and other legislative acts.

2. A productive co-operative, upon the unanimous decision of its members, may be transformed into a business partnership.

### **VI. STATE ENTERPRISE**

#### **Article 102. The Fundamental Provisions Concerning the State Enterprise**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The following shall be referred to state-owned enterprises:

- 1) those based on the right to business authority;
- 2) those based on the right to operational management (public enterprise).

2. The assets of a state-owned enterprise shall be indivisible and it may not be distributed by contributions (shares, unit shares), including among the workers of the enterprise.

3. The commercial name of state-owned enterprises must contain the indication of the ownership of its assets.

4. A state-owned enterprise shall be created, liquidated, and reorganised pursuant to a decision of the authorised state body.

5. The manager of a state-owned enterprise who is appointed by the authorised state body, shall be its [governing] body accountable to it.

7. The status of a state enterprise and a public enterprise shall be determined by this Code and other legislative acts.

### **Article 103. An Enterprise Based on the Right to Business Authority**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The charter approved by the foundation party, shall be the foundation document of an enterprise based on the right to business authority.

2. An enterprise which is based on the right to business authority, shall be liable on its obligations with all the property belonging to it. An enterprise which is based on the right to business authority shall not be liable upon the obligations of the state.

The state shall not be liable for the obligations of an enterprise based on the right to business authority, except for the cases, stipulated by this Code and other legislative acts.

### **Article 104. A Public Enterprise**

*as amended by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. An enterprise which possesses the state-owned assets under the right to operational management shall be a public enterprise.

2. Public enterprises shall be created upon the decision of the Government of the Republic of Kazakhstan or a local executive body.

3. The charter approved by the foundation party shall be the foundation document of the of the public enterprise.

4. The commercial name of an enterprise based on the right to operational management, must contain an indication that the enterprise is public.

5. Business activities of a public enterprise shall be determined by its aims and objectives which are stipulated in its charter.

6. The Republic of Kazakhstan or the [relevant] administrative and territorial unit shall bear the subsidiary liability upon the obligations of public enterprises. With regard to contractual obligations the liability shall arise in accordance with the procedure as established by legislative acts concerning state owned enterprises.

## **VII. NON-COMMERCIAL ORGANISATION**

### ~~Article 105. An Institution~~

*replaced by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

*replaced by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

### **Article 105. An Institution**

1. An organisation created and financed by its founder for the performance of managerial, social and cultural or any other functions of non-commercial nature, shall be recognised as institution.

2. An institution created by the State in accordance with the Constitution and the laws of the Republic of Kazakhstan or on the basis of the decisions of the President of the Republic of Kazakhstan, Government of the Republic of Kazakhstan and the akims of the Capital City, Provinces, major cities, and maintained solely at the expense of the State Budget, unless it is otherwise established by legislative acts, shall be recognised as state-owned institution.

3. A state-owned institution may not create, nor act as the founder (participant) of any other legal entity, except for those institutions to which the right of ownership, use, disposal of state property is granted in accordance with the established procedure.

4. The rights of institutions and state-owned institutions with regard to the assets allotted to them shall be determined in accordance with Articles 202 - 208 of this Code.

#### **Article 106. A Public Association**

*[as amended by (2) Edict No. 2489 Having the Force of Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan and Edict Having the Force of Law of the President of the Republic of Kazakhstan "Concerning the State Registration of Legal Entities". October 5, 1995;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In the Republic of Kazakhstan political parties, trade unions and other associations of citizens created on a voluntary basis for the attainment by them of the goals in common which do not contradict legislation, shall be recognised as public associations;

The participants (members) of public associations shall not have the right to the assets which are transferred to those associations, including the membership fees. They shall not be liable for the obligations of the public associations in which they participate as their members, and the indicated associations shall not be liable for the obligations of their members.

3. Public associations may on a voluntary basis unite into unions of public associations and to exit them.

7. Assets of a public association which is liquidated upon the resolution of the convention (conference) or the general meeting, shall be used on the purposes which are stipulated in its charter.

Assets of a public association liquidated upon a court decision shall be used in accordance with this Code or other legislative acts.

8. The legal status of public associations shall be determined by legislative acts in accordance with this Code.

#### **Article 107. A Public Foundation**

*[as amended by (2) Edict No. 2489 Having the Force of Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan and Edict Having the Force of Law of the President of the Republic of Kazakhstan "Concerning the State Registration of Legal Entities". October 5, 1995;*

*(11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(18) Law No. 436 of 16th July 1999 of the Republic of Kazakhstan "Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan"*

1. A public foundation shall be recognised as a non-commercial organisation which has not any membership, which is founded by citizens and (or) legal entities on the basis of their voluntary property contributions, and which pursues social, educational, and any other publicly-useful purposes.

2. A public foundation shall be a legal entity and in the Civil rights turnover it shall be represented by the bodies of the foundation, it shall have an independent balance-sheet and the bank account.

3. The assets which are transferred to a public foundation by its founders shall be property of the foundation.

Foundation parties of a foundation shall have not property rights with regard to the property of a given public foundation.

4. The funds as well as other assets of the founders, sponsorship, voluntary, charity donations and any other legal receipts shall be the financial source of a public foundation.

5. The procedure for managing a public foundation and the procedure for the formation of its bodies shall be determined by its charter which is approved by the founder.

The charter of a public foundation, aside of the information contained in paragraph 5 of Article 41 of this Code, must contain the indications concerning the bodies of the foundation, concerning the procedure for the appointment of the foundation officials and their release, the destiny of the foundation property in the case of its liquidation.

6. The foundation shall be obliged to publish in official publications annually the reports concerning the use of its assets.

7. Upon the resolution of the court a public foundation may be liquidated in the following cases:

1) where the assets of the foundation are not sufficient for attaining its objectives and the probability of obtaining the required assets is not realistic;

2) where the purposes of a foundation may not be reached and appropriate changes of foundation's objectives may not be made;

3) in the event that the foundations in its activities deviates from the objectives which are stipulated in its charter;

4) in any other cases which are stipulated in legislative acts or the foundation documents.

8. The assets which remain after the liquidation of a public association shall be used for the purposes contemplated in its charter.

### **Article 108. Consumer Co-Operatives**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A consumer co-operative shall be recognised as a voluntary association of citizens on the basis of the membership, for the satisfaction of their financial and or any other needs, which is implemented by way of its members uniting their property (share) contributions.

2. Members of a consumer co-operative shall be obliged within three months after the approval of the annual balance-sheet to cover the losses which form, by way of additional contributions. In the case of a failure to execute this obligation, the co-operative may be liquidated in a judicial procedure upon demand of the creditors.

Members of a consumer co-operative shall jointly bear a subsidiary liability with regard to its obligations, within the limits of the unpaid amount of the additional contribution of the co-operative members.

3. The charter of the consumer co-operative must contain, aside from the information indicated in the paragraph 5 of Article 41 of this Code, the conditions with regard to the size of the co-operative member shares; the composition and procedure for contribution of shares by the co-operative members and their responsibility for the violation the obligations associated with the contribution of the shares; concerning the composition and the authority of the governing bodies the co-operative and the procedure for adopting by them of the resolutions, including on the issues, the resolutions on which are to be adopted unanimously or by a qualified majority of votes; concerning the procedure for the compensation by the members of the losses incurred by the co-operative.

4. Income received by a consumer co-operative may not be distributed amongst its members and it shall be used on the charter purposes.

5. In the case of the liquidation of a consumer co-operative, or in the case of departure from it of a co-operative member, he shall have the right to appropriate his share in the assets of the consumer co-operative in proportion to his share. In the case of demise of a co-operative member, his legatees shall have the priority right to be accepted as members of the co-operative, unless otherwise stipulated in the co-operative charter. If the latter is the case, the co-operative shall pay to the legatees the share in the property of the consumer co-operative, in proportion to his share.

6. The legal status of the consumer co-operative, and also the rights and obligations of its members, shall be determined by legislative acts in accordance with this Code.

7. Rural consumer co-operatives may be created for the satisfaction of financial and any other needs of not only their members, but other citizens as well, who reside in rural areas. Special considerations in the rural consumer co-operation shall be determined by special-purpose legislation in compliance with this Article.

#### **Article 109. Religious Association**

*[as amended by (2) Edict No. 2489 Having the Force of Law of the President of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan and Edict Having the Force of Law of the President of the Republic of Kazakhstan "Concerning the State Registration of Legal Entities". The 5th of October, 1995; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A voluntary association of citizens who unite in accordance with the procedure stipulated in legislative acts, on the basis of their common interests for satisfying their spiritual needs, shall be recognised as religious associations.

3. Religious associations in the Republic of Kazakhstan, which have governing centres beyond the boundaries of the Republic shall be subject to registration at the bodies of justice. Charters (articles) of the governing centres may be used as a basis of charter (articles) of such religious associations, if they do not contradict legislation of the Republic of Kazakhstan;

9. A religious association shall have the right to own the assets which are acquired or created by it at the expense of its own resources, as well as those donated by citizens, or organisations, or those transferred by the State, and acquired on any other bases, which do not contradict legislative acts.

10. The participants (members) of a religious association shall not retain rights with regard to the assets which are transferred by them to that organisation, including their membership fees. They shall not be liable for the obligations of the religious association and the religious association shall not be liable for the obligations of its members.

11. Special considerations concerning the legal status of religious associations shall be determined in accordance with this Code and legislative acts of the Republic of Kazakhstan.

#### **Article 110. Amalgamation of Legal Entities in the Form of an Association (Union)**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Commercial organisations for the purpose of co-ordinating their entrepreneurial activities, and also for providing for the protection of their common property interests, may by agreement between themselves as well as in conjunction with non-profit organisations, create amalgamations in the form of associations (unions).

2. Public associations and any other non-commercial organisations, including institutions, may voluntarily unite into associations (unions) of those organisations.

3. Associations (unions) shall be non-commercial organisations.

4. Members of an association (union) shall retain their independence and the rights of legal entities.

5. An association (union) shall not be liable for the obligations of its members. Members of an association (union) shall bear subsidiary liability for its obligations in the amount and in accordance with the procedure stipulated in the foundation documents of the association (union).

### **3. Participation of the State and Administrative-Territorial Units In Relations Regulated by Civil Legislation**

#### **Article 111. The Participation of the Republic of Kazakhstan in the Civil Rights Relations**

1. Republic of Kazakhstan shall act in relations which are regulated by the civil legislation on the basis of principles which are equal with any other participants in those relations.

2. The bodies of the state power and administration of the Republic of Kazakhstan within the bounds of their authority established by legislative acts, regulations or any other acts which determine the status of those bodies, may by their actions acquire and exercise property and personal non-property rights and obligations and to act in the court on behalf of the Republic of Kazakhstan.

Any other State bodies, legal entities and citizens may act on behalf of the Republic of Kazakhstan in the cases and in accordance with the procedure stipulated in legislation, upon its special mandate.

3. The civil rights disputes in which the Republic of Kazakhstan is a participant shall be settled by courts.

#### **Article 112. The Participation of the Administrative and Territorial Units in the Civil Rights Relations**

1. An administrative and territorial unit shall act in the relations which are regulated by the civil rights legislation on principles equal to those by which any other participants of those relations act.

2. Local representative and executive bodies, within the framework of their authority established by legislative acts, regulations or any other acts which determine the status of those bodies, may by their actions acquire and exercise property and personal non-property rights and obligations on behalf of an administrative and territorial unit, and represent it in the court.

In the cases and in accordance with the procedure stipulated in legislation, and upon special instructions, local state bodies, legal entities and citizens may act on the behalf of an administrative and territorial unit.

3. In the cases determined by legislation, an administrative and territorial unit may act in civil rights relations on behalf of the State.

4. The provisions of this Code concerning the participation, respectively, of the State and its bodies in relations regulated by civil rights legislation shall apply to administrative and territorial units and their bodies, unless otherwise ensues from legislation.

5. Civil rights disputes with the participation of an administrative and territorial unit shall be settled by the courts.

#### **Article 113. Imposition of Claims for the Obligations of the Republic of Kazakhstan and Administrative and Territorial Units**

1. The Republic of Kazakhstan shall be liable for its obligations with the property of the State treasury, while a administrative and territorial unit shall be liable for its obligations with the property of the local treasury.

2. The Republic of Kazakhstan and the administrative and territorial units shall not be liable for the obligations of one another and also for the obligations of citizens and legal entities, while citizens and legal entities shall not be liable for the obligations of the Republic of Kazakhstan and administrative and territorial units except for the cases stipulated by this Code and legislative acts.

#### **Article 114. Application of the Provisions Concerning Legal Entities to the State and to Administrative and Territorial Units**

The provisions which determine the participation of legal entities in the relations regulated by civil legislation shall apply to the State and to administrative and territorial units, unless otherwise ensues from legislative acts.



## **Chapter 3. Items in Civil Rights**

### **§ 1. General Provisions**

#### **Article 115. Types of Items in Civil Rights**

1. The property and the personal non-property privileges and rights may be items in civil rights.
2. Objects, money, including foreign currency, securities, work, services, and the objectivised results of creative and intellectual activities, commercial names, trade marks, commercial names and trade marks and any other means of individualisation of products, property rights and any other assets, shall be recognised as property privileges and rights (property).
3. Life, health, the dignity of a person, honour, good name, business reputation, inviolability of private life, personal and family secrets, the right to name, the right to be an author, the right to inviolability of production and any other intangible privileges and rights shall be referred to the personal non-property privileges and rights.

#### **Article 116. The Turnover Capacity of the Items of Civil Rights**

1. Items of the civil rights may be freely alienated or transferred from one person to another in the course of the universal legal successorship (inheritance, reorganisation of a legal entity) or by any other method, unless they are exempt from circulation or restricted in their turnover.
2. The types of things the alienation whereof is not prohibited, (the things exempt from the circulation) must be directly indicated in legislative acts.
3. The types of objects which may not belong only to specific participants in circulation, or those, the acquisition and alienation whereof is allowed only upon special-purpose permission, (things whose circulation is restricted), shall be determined by legislation.
4. The personal non-property privileges and rights shall be unalienable and non-transferable by any other method, except for the cases which are established by legislative acts.

#### **Article 117. Movable and Immovable Assets**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The real estate (immovable assets, immovables) shall comprise the following: land plots, buildings, structures, perennial plantations, and other property, which is firmly associated with land, i. e. items the transportation of which is impossible without infliction of unreasonable damage to their designation.
2. Also, air and sea vessels, vessels of domestic water travel, vessels of river and sea sailing, and cosmic facilities, shall be equated to immovable objects which are subject to state registration. Any other assets may be recognised as immovable objects by legislative acts.
3. Assets which are not recognised as immovables, including money and securities, shall be recognised as movable assets. The registration of rights in relation to movable assets shall not be required, except for the cases stipulated in legislative acts.

#### **Article 118. The State Registration of Immovables**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The right to own and any other rights to immovable items, and restriction of those rights, their emergence, transfer and cessation, shall be subject to state registration.
2. The right of ownership, the right of business authority, the right of operative management, and the right to land use, for a period of more than a year, as well as the right of use for a period of more than a

year, pledge of real estate, and rent for lease of immovable property, the right to management under concession, shall emerge from the moment of state registration.

3. Transactions involving immovables shall be subject to State registration in compliance with the rules of Chapter 4 of this Code.

4. The body which carries out the State registration of the rights to immovables and transactions therewith, shall be obliged upon the petition of the title holder to certify the effected registration, by way of issuing a document concerning the registration of the right or transaction or by executing an entry in the document presented for registration.

5. State registration of the rights to immovables and of transactions therein shall be public. The body which carries out the registration, shall be obliged to present the information concerning the effected registration and the rights which are registered, to any person. 6. The refusal of State registration of the right to immovables, or of transactions therein, or unmotivated evasion from registration, may be challenged in court.

7. The procedure of state registration, and the reasons for refusal to register, shall be established in accordance with this Code, and by the law of the Republic of Kazakhstan Concerning the Registration of Rights to Immovable Property and of Transactions Therein.

### **Article 119. An Enterprise**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An enterprise, as an item in rights, shall be recognised to be a property complex which is used for carrying out entrepreneurial activities.

An enterprise in general as a property complex shall be recognised as immovable property.

2. As a property complex, an enterprise shall include all the types of assets which are intended for its operation, including buildings, installations, equipment, tools, raw materials, inventories, the right to a land plot, the right to claim, debts and also the right to designations which individualise its activities (commercial name and trade marks), and any other exclusive rights, unless otherwise stipulated in legislative acts or in an agreement.

3. An enterprise as a whole, or a part thereof, may be an item in purchasing and selling, pledging, leasing and any other transactions which are related to the establishment, alteration or cessation of corporeal rights.

4. When debts are acquired as part of an enterprise recognised as a property complex, the rights of creditors shall be guaranteed in accordance with the procedure provided for by Article 48 of this Code.

### **Article 120. Divisible and Indivisible Property**

1. Property may be divisible and indivisible.

Divisible property shall be assets, parts whereof do not lose their designation (function) as result of division.

Indivisible property shall be property which may not be divided without changing its economic designation (function), or which is not to be subdivided by virtue of a prescription in a legislative act.

2. Specific features of indivisible objects as items in law, shall be determined in legislation.

### **Article 121. Compound Items**

1. When heterogeneous items form a single unit which permits the use in accordance with its designation, determined by the nature of their combination, they shall be deemed to be one item (compound item).

2. The effect of a transaction which is concluded with regard to a compound item, shall apply to all its constituent parts, unless an agreement provides otherwise.

### **Article 122. A Principal Item and Its Accessory Item**

An accessory, that is, an object which is intended to serve the principal object and which is tied to it by joint economic designations, shall follow the destiny of the principal object, unless legislation or agreement stipulate otherwise.

### **Article 123. Fruit, Production and Income**

Income obtained as a result of using assets (fruit, production, income), shall belong to the person who uses those assets on a legal basis, unless it is otherwise stipulated in legislation or in the agreement concerning the use of that asset.

### **Article 124. Animals**

General rules concerning objects shall apply to animals in so far as legislation does not stipulate otherwise.

### **Article 125. Intellectual Property**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In cases and in accordance with the procedure stipulated in this Code and other legislative acts, an exclusive right of a citizen, or a legal entity shall be recognised with regard to the results of intellectual creative activities and to the ways of individualisation of a legal entity, of the production by a physical person or a legal entity, work performed by it or services rendered, which are equated thereto (commercial name, trade mark, service mark etc.).

2. The results of intellectual creative activities and of the means of the individualisation, which may be subject of exclusive rights (intellectual property), may be used by third persons only with the consent of the holder of the right.

### **Article 126. Service and Commercial Secrets**

1. Civil legislation shall protect information which constitutes a service or a commercial secret in a case where the information has actual or potential commercial value by virtue of its being unknown to third parties, if there is no access thereto on a legitimate basis and the possessor of the information makes efforts to protect its confidentiality.

2. Persons who by illicit methods obtain such information, and also employees who in spite of their service agreement, or counter-parties in spite of their civil rights agreement, divulge a service or a commercial secret, shall be obliged to compensate for the inflicted damage.

### **Article 127. Money (Currency)**

1. The Tenge shall be the monetary unit in the Republic of Kazakhstan.

2. The Tenge shall be the legal tender, which is obligatory for acceptance, in accordance with its nominal value, in the entire territory of the Republic of Kazakhstan.

3. Payments in the territory of the Republic of Kazakhstan shall be carried out in the form of cash payments and non-cash payments.

4. The cases, the procedure and the conditions for settlement in foreign currency in the territory of the Republic of Kazakhstan shall be determined by legislation of the Republic of Kazakhstan.

### **Article 128. Currency Assets**

1. The types of assets which are recognised as currency assets and the procedure for transactions involving them, shall be determined by legislative acts.

2. The right to own currency assets shall be protected in the Republic of Kazakhstan on common principles.

## **§ 2. Securities**

### **Article 129. A Security**

*[as amended by (7) Law of the Republic of Kazakhstan. Concerning the Introduction of An Addition and Amendments to the Civil Code of the Republic of Kazakhstan (General Part). March 5, 1997].*

1. Securities shall be the documents which certify in compliance with a certain form and the required details, the property rights, the exercise whereof is only possible upon their presentation.

2. In the cases which are stipulated in legislative acts, for the exercise of a conveyance of the rights certified by a security, it shall be sufficient proof to establish in the special register (usual or computerised) of the issuer, the identity of the person who issues the securities and who is liable for the obligation indicated therein as well as the professional participants in the securities market which carry out registration of securities transactions.

### **Article 130. Types of Securities**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. The following shall be recognised as securities: debentures, consignments, shares and other documents which are recognised as securities by legislative acts or in accordance with the procedure established by legislative acts.

2. Securities may be bearer's securities, order securities and registered name securities.

The rights which are certified by registered name securities shall belong to the person inscribed in them.

The rights which are certified by bearer's securities shall belong to the bearer of the securities.

The rights which are certified in order securities shall belong to the person indicated in it, and in the cases of a transfer by him of those rights in accordance with the procedure stipulated in paragraph 3 of Article 132 of this Code, - to any other authorised person.

3. This Code and legislative acts may exclude the possibility of issuing securities of a certain type as registered name securities, order securities or as bearer's securities.

Also, legislative acts may envisage the possibility of issuing securities which combine the features of various types of securities.

### **Article 131. The Requirements to Securities**

1. The types of rights which are certified by securities, the obligatory details of securities, and the requirements with regard to the pro-forma of a security and any other necessary requirements, shall be determined by legislative acts, or in accordance with the procedure established thereby.

2. The absence of obligatory details concerning a security or the non-compliance of a security with the pro-forma established therefor, shall entail its invalidity.

### **Article 132. The Conveyance of Rights Associated with Securities**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In order to convey to any person the rights certified by a bearer's security, it shall be sufficient to hand the security to that person.

2. The rights certified by a registered name security shall be conveyed in accordance with the procedure which is established for the transfer of claims (cession). In accordance with Article 347 of this

Code, a person who cedes the rights associated with a security shall be liable for invalidity of relevant claims, but not for its implementation. In a transfer of the rights associated with a registered name security to another person, the security in the transfer shall be annulled, and another security shall be issued to the new holder.

Legislative acts may stipulate re-assignment of rights under registered shares.

3. The right associated with order securities shall be conveyed by means of making on that security a conveyance inscription, the endorsement. The person who transfers the rights associated with an order security (endorser) shall be liable not only for the existence of the right but also for its exercise.

An endorsement executed on a security shall transfer all the rights certified by the security to the person to whom or by whose order the rights associated with the security (of the endorsee) are transferred. The endorsement may be blank (without any indication of the person to whom the consideration must be addressed).

The endorsement may be restricted only by the order to exercise the rights certified by the security, without any conveyance of those rights to endorser (pre-nomination endorsement). In this case the endorser shall act as a representative.

### **Article 133. Execution with Regard to Securities**

1. The person that issued a security and all the persons who endorsed it shall be jointly liable to its legitimate owner. In the case of satisfying the claims of the legitimate owner of a security, related to the execution of the obligation certified by it, by one or several persons from amongst those liable in relation to the security, they shall acquire the right to revert claim (regress) to the other persons who had become liable in relation to the security prior to them.

2. The refusal to execute the obligations certified by a security with the reference to the lack of basis for the obligations or to its invalidity shall not be allowed.

3. The owner of a security who detected fraud or forgery of the security shall have the right to present the person that conveyed the security to him with the claim to properly execute the obligation certified by the security and to compensate losses.

4. The rights associated with securities held by any illegitimate holder shall not be exercised.

### **Article 134. The Restoration of Securities**

The restoration of the rights associated with the lost bearers' securities and order securities, shall be carried out by the court in accordance with the procedure stipulated in the procedural legislation.

### **Article 135. Non-Documentary Securities**

*[as amended by (7) Law of the Republic of Kazakhstan. Concerning the Introduction of An Addition and Amendments to the Civil Code of the Republic of Kazakhstan (General Part). March 5, 1997].*

1. In the cases which are determined by legislative acts or in accordance with the procedure stipulated therein, organisations which obtained special-purpose licences may carry out the registration of rights affixed in registered-name or order securities, including in a non-documentary form (with the use of electronic and computer equipment etc.). The rules established by this Code and other legislative acts concerning securities, shall apply to such a form of fixation of rights, unless otherwise ensues from the specific features of the fixation.

The fixation which is carried out upon the petition of the issuer or a person who is registered as the holder of the relevant rights, shall be equated to the security, and it shall be sufficient for the exercise and transfer of the right associated with the security. Upon the request of the holder of the rights, the depository shall be obliged the organisation which obtained the special-purpose licence shall be obliged to issue to him a document which certifies the affixed rights.

2. The rights which are certified by way of fixation with the depository, the procedure for the activities of securities depositories and for issuing to them of licences to carry out transactions involving securities, the procedure for the official fixation of rights and title holders by depositories, the procedure for the documentary confirmation of depositories' notes, and the procedure for the commission of transactions in non-documentary securities, shall be determined by legislative acts or in accordance with the procedure established thereby.

3. The exercise, transfer, assignment, and restriction of the rights must be documented in accordance with the legislation of the Republic of Kazakhstan. The professional participants of the securities market which received the special-purpose licence for registration of the rights fixed by registered or bearers securities, including those in the non-documentary form shall be liable for the safety of official entries, ensuring their confidentiality, disclosure of accurate information on such entries, and for the making official entries concerning the transactions performed.

#### ~~Article 136. A Debenture~~

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*replaced by (15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

#### **Article 136. Debentures**

A security which certifies the right of its holder to receive its nominal value or its other equivalent assets, from the entity which issued that security within the period established by the terms of that security's issue shall be recognised as debenture.

A debenture shall also grant to its holder the right to receive remuneration (interest) on it in accordance with the terms of the debentures' issue.

#### ~~Article 137. A Cheque~~

*deleted by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

#### ~~Article 138. A Bill of Exchange~~

*deleted by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

#### **Article 139. A Share**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(15) Law No. 282 of 10th July 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Joint-Stock Companies.*

1. A share shall be recognised to be a security which certifies the right of its holder (shareholder) to receive part of net income of a joint stock company in the form of a dividend, to participate in managing the business of the joint stock company, and to part of the property of the joint stock company, which remains after its liquidation.

2. A joint-stock company shall have the right to issue ordinary and preference shares. The procedure for issuing shares shall be defined in legislation.

3. The foundation parties of joint stock company may introduce a "golden share" which does not participate in the formation of the charter capital and the receipt of dividends. The holder of the golden share shall only have the right to veto the decisions of the general meeting, of the board and of the supervisory council with regard to the issues stipulated in the charter.

~~Article 140. Bank Certificate~~

*deleted by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

**§ 3. Personal Non-Property Rights**

**Article 141. Protection of Personal Non-Property Rights**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A person whose personal non-property rights are violated, apart from the measures stipulated in Article 9 of this code, shall have the right to compensation of moral damage by the rules of this Code.

2. Protection of personal property rights shall be carried out by the court in accordance with the procedure stipulated in civil procedural legislation.

3. Personal non-property rights shall be subject to protection irrespective of the guilt of the person that violated the right, unless it is otherwise stipulated in the present Code. The person who presented a claim of defence must prove the fact of the violation of his personal non-property right.

4. The person whose non-property right is violated may at his discretion, claim from the violator the elimination of the consequences of the violation or at the expense of the violator to independently undertake the necessary actions, or to delegate their execution to a third party.

**Article 142. Personal Non-Property Rights Which are Associated With the Property Rights**

In the event that personal non-property and property rights are simultaneously violated, the amount of compensation for property damage shall be increased by considering the compensation which is due to the victim because of the violation of his personal non-property rights.

**Article 143. Protection of Honour, Dignity and Business Reputation**

1. Through the court a citizen or a legal entity shall have the right to refutation of information which damages his honour, dignity or business reputation, unless the one who spreads such information proves that the information is true.

2. Where the information that damages the honour, dignity or business reputation of a citizen or a legal entity is spread through the mass media, that information must be free of any charge refuted by the same mass media.

In the case where said information is contained in a document issued by an organisation, such a document shall be subject to replacement or annulment with the obligatory communication to the addressees of the inconsistency of the information contained in that document.

The procedure for refutation in other cases shall be established by the court.

3. A citizen or a legal entity with regard to which the mass media published information which restricts his rights or legitimate interests, shall have the right to publish their response in the same mass media free of any charge.

4. The claim by a citizen or a legal entity to publish a refutation or response in the mass media shall be considered by the court in a case where the mass media refused such publication, or did not carry out the publication within one month, and also in the case of its liquidation.

5. Where a court decision is not executed, the court shall have the right to impose a fine upon the violator, which shall be taken for the revenue of the budget. The fine shall be imposed in accordance with

the procedure and in the amounts which are established by the civil procedural legislation. The payment of the fine shall not exempt the violator from the obligation to execute the action stipulated in the court decision.

6. A citizen or a legal entity with regard to whom information was spread that damages his honour, dignity or business reputation, shall have the right, apart from the refutation of such information, to demand compensation for the damage and the moral harm inflicted by their promulgation.

7. Where it is impossible to identify the person that spreads the information which damages the honour, dignity or business reputation of a citizen or a legal entity, the person with regard to whom such information is spread, shall have the right to appeal to the court with an application to recognise that the promulgated information as not true.

#### **Article 144. The Right to Protect Secrets of Private Life**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. A citizen shall have the right to protect the secrecy of his private life, including the secrecy of letter exchange, telephone conversations, diaries, notes, comments, sexual life, adoption, birth, medical secrets, legal secrets, and secrecy of bank investments.

The disclosure of the secrets of private life shall only be possible in the cases which are stipulated by legislative acts.

2. The publication of diaries, notes, comments and any other documents shall be permissible only with the permission of their author, and as regards letters, - with the consent of both their author and the addressee. In the case of demise of one of them, said documents may be published with the consent of the surviving spouse and the children of the deceased.

#### **Article 145. One's Right to the One's Own Picture**

1. Nobody shall have the right to use the image of a person's face without his consent, and in the case of his demise, - without the consent of his inheritors.

2. The publication, reproduction and distribution of a graphic piece (picture, photograph, film etc.), in which another person is depicted, shall only be permissible with the consent of the depicted, and after his death, - with the consent of his children and surviving spouse. Such consent shall not be required where it is established by legislative acts or the person depicted was posing for a fee.

#### **Article 146. The Right to Inviolability of Housing**

A citizen shall have the right to inviolability of his house, that is, to prevent any attempts of intrusion into his house against his will, except for the cases stipulated in legislative acts.

### **Chapter 4. Transactions**

#### **Article 147. The Definition of a Transaction**

The actions of citizens and legal entities which are aimed at establishing, changing or terminating civil rights and obligations, shall be recognised as transactions.

#### **Article 148. Unilateral Transactions and Agreements**

1. The transactions may be unilateral and bilateral or multilateral (agreements).

2. A transaction, the performance whereof, in accordance with legislation or the agreement of the parties, requires the expression of the will of one party and this is sufficient, shall be recognised as a unilateral transaction.

3. In order to enter into an agreement, it shall be necessary to have an expression of the agreed will of two parties (a bilateral transaction) or of three or more parties (multilateral transaction).

#### **Article 149. The Legal Regulation of Unilateral Transactions**



1. A unilateral transaction shall create obligations for the entity that enters into the transaction. It may create obligations for other persons only in the cases which are stipulated in legislative acts or by agreement with those persons.

2. Appropriately, the general provisions concerning obligations and agreements shall apply to unilateral transactions, inasmuch as it does not contradict legislation, or the nature and the essence of the transaction.

#### **Article 150. Transactions Entered into Under Condition**

1. A transaction shall be considered to be entered into under a delaying condition, where the parties conditioned the emergence of their rights and obligations upon a circumstance, with regard to which it is not known whether it will occur or not.

2. A transaction shall be deemed to be entered into under an invalidating provision, when the parties conditioned the invalidation of the rights and obligations by a circumstance, with regard to which it is not known whether it will occur or not.

3. When the emergence of a condition is unfairly impeded by a party to which the emergence of the condition is non-beneficial, then the condition shall be recognised as having taken place.

When the emergence of a condition is unfairly assisted by a party, for whom the emergence of the condition is favourable, then the condition shall be recognised as not having taken place.

#### **Article 151. The Form of Transactions**

1. Transactions can be entered into orally or in written form (simple or notary).

2. A transaction for which legislation or the agreement of the parties does not establish a written form (simple or notary), or any other definite form, may be entered into orally, in particular, any transactions which are executed by their commitment. Such a transaction shall be deemed to be entered into also in the case where the will of the person to enter into the transaction is clear from the behaviour of the person.

3. A transaction which is confirmed by issuing a ticket, label or any other sign which is generally acceptable for confirmation, shall be deemed to be concluded in oral form, unless otherwise is stipulated in legislation.

4. Silence shall be recognised as the expression of will to enter into a transaction in cases which are stipulated by legislation or the agreement of the parties.

5. Transactions to execute an agreement which is concluded in writing may, by agreement of the parties, be entered into orally, provided that does not contradict legislation.

#### **Article 152. The Written Form of Transactions**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The following transaction must be entered into in writing:

1) those which are carried out in the course of entrepreneurial activities, except for transactions which are fulfilled by their execution itself, unless it is otherwise stipulated in legislation for individual types of transactions, nor does it ensue from the customs of the business practice;

2) for the amount of more than one hundred assessment indices, except for the transactions which are executed by their commitment itself;

3) in any other cases which are stipulated in legislation or the agreement of the parties.

2. A transaction which is executed in writing, must be signed by the parties or their representatives, unless otherwise ensues from the usual business practice.

It shall be allowed, when entering into transactions, to use facsimile copying of signatures, unless this contradicts legislation or the requirements of one of the participants.

3. Bilateral transactions may be entered into by way of exchanging documents, each one of them shall be signed by the sending party.

The exchange of letters, telegrams, telephonograms, teletypograms, facsimiles or any other documents which identify the entities and the contents as expression of their will, shall be equated to the

execution of transactions in writing, unless it is otherwise stipulated in legislation or in the agreement of the parties.

Legislation and the agreements of parties may establish additional requirements to which the form of the transaction must correspond, in particular, the execution in accordance with a certain type of pro-forma, affixing the seal and stipulation of the consequences of the failure to comply with those requirements.

4. Where a citizen as a result of a physical shortage, disease or illiteracy is not able to personally sign, then upon his request a transaction may be signed by any other citizen. The signature of the latter, unless it is otherwise stipulated in legislation, must be witnessed by a notary or any other official who has the right to enter into such notary action with an indication of the reasons for which the person who entered into the transaction failed to sign it personally.

5. The party that fulfilled a transaction which was executed in writing, shall have the right to claim from the other party a document which confirms that fulfilment. The same right shall belong to the party which fulfilled an oral entrepreneurial transaction, except for the transactions which are fulfilled by their commitment itself.

### **Article 153. The Consequences of a Failure to Comply With the Written Form of a Transaction**

1. A failure to comply with the simple written form of a transaction shall not entail its invalidity, but it shall deprive the parties of the right to confirm its conclusion, contents or its execution by witness evidence in the case of a dispute. The parties, however, shall have the right to confirm the execution, contents or the implementation of a transaction by written or any other proofs except for the use of witness's evidence.

2. In the cases which are specifically stipulated in legislative acts or in the agreement of the parties, a failure to comply with the simple written form of a transaction shall entail its invalidity.

3. A failure to comply with the simple written form of a foreign economic transaction, shall entail the invalidity of the transaction.

### **Article 154. Notarisation of Transactions**

1. In the cases which are stipulated in legislative acts or by the agreement of the parties, written transactions shall be deemed to be entered into only upon their notarisation. The failure to comply with these requirements shall entail the invalidity of the transaction with the consequences stipulated in paragraph 3 of Article 157 of this Code.

2. Where a transaction which requires notarisation is actually fulfilled by the parties or by one of the parties, and by its contents does not contradict legislation and does not violate the rights of third parties, the court upon the application of the interested party shall have the right to recognise the transaction as valid. In that case the subsequent notarisation of the transaction shall not be required.

### **Article 155. Registration of Transactions**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Transactions which are subject, in accordance with legislative acts, to state registration or other registration, including transactions which create, change, or terminate the rights enumerated in the first part of paragraph 2 of Article 118 of the present Code, shall be considered as concluded after their registration, unless it is otherwise stipulated in legislative acts.

A denial of registration must be formulated in writing, and it may be possible only with a reference to violation of the requirements of legislation.

2. Where a transaction which requires state registration is executed in a proper form, but one of the parties evades its registration, the court shall have the right upon the claim of the counter party to pass the decision to register the transaction. In this case the transaction shall be registered in accordance with the decision of the court.

## **Article 156. Bourse Transactions**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Agreements concerning mutual conveyance of rights and obligations with regard to goods, securities and other assets which are permitted to be circulated at the bourse (bourse transactions), shall be concluded by the participants of the bourse in accordance with the procedure which is established by legislation concerning commodity, stock and other bourses and in the charters of bourses.

2. Bourse transactions may be documented by broker records, and they shall be subject to registration by the bourse.

3. Unless otherwise ensues from legislation, from the agreement of the parties or from the essence of the transaction, the rules for the relevant agreements (purchase and sale agreements, commission agreements, and other) shall apply to bourse transactions in relation to the contents.

4. Legislation or the bourse charter may stipulate the conditions of bourse transactions which constitute commercial secrets of the parties and which are not to be subject to disclosure without their consent.

5. Disputes which are associated with the entering into bourse transactions shall be settled by the arbitration attached to the relevant bourse, the decision of which may be challenged in a court.

## **Article 157. Invalid Transactions and the Consequences of Their Invalidity**

1. When the requirements are violated which are applicable to the form, or contents of a transaction and to the participants of a transaction, and also to the freedom of their will expression, the transaction may be recognised as invalid in accordance with an action of the interested parties, a duly authorised state body or the procurator.

2. The bases of invalidity of a transaction and also the list of persons who have the right to demand the recognition thereof as invalid, shall be established by this Code or any other legislative acts.

3. When a transaction is recognised as invalid, each party shall be obliged to return to the other party everything that was received in the transaction, and where it is not possible to return it in kind, to return its value in money.

4. When a transaction is aimed at the achievement of a criminal purpose, then, where the intention exists on the part of both parties, everything received by them in the transaction or intended to be received, upon the decision or sentence of the court shall be subject to confiscation. In the case of the execution of such a transaction by one party, everything which is received by it and everything which is due from it in the transaction to the first party shall be subject to confiscation. Where none of the parties proceeded to the implementation, everything which is envisaged by the transaction for its implementation shall be subject to confiscation.

5. Where the intention to achieve a criminal purpose exists only with one of the parties, everything that is received by it in the transaction shall be subject to return to the other party, and what is received by the latter or due to it in accordance with the transaction, shall be subject to confiscation.

6. Subject to specific circumstances, the court shall have the right not to apply partially or in full the consequences which are stipulated in paragraph 4 and 5 of this Article, as concerning the confiscation of the assets received or subject to receipt through invalid transactions. In that regard the consequences shall arise which are stipulated in paragraph 3 of this Article.

7. Aside from the consequences stipulated in paragraphs 3 - 6 of this Article, the court may exact for the benefit of the other party the losses incurred by the latter, which are associated with the recognition of a transaction as invalid from the party which is guilty of commission of the acts which cause the invalidity of the transaction.

8. An invalid transaction shall not entail any legal consequences, except for those which are associated with its invalidity, and it shall be invalid from the moment of its commitment.

9. In recognising a transaction as invalid, the court shall have the right to take into account the specific circumstances, and restrict itself at the prohibition of its further execution.

### **Article 158. Invalidity of a Transaction the Contents Whereof Do Not Comply with the Requirements of Legislation**

1. A transaction, the contents of which do not comply with the requirements of legislation, and which is entered into for a purpose which is deliberately opposite to the fundamentals of the law and order or morals, shall be invalid.

2. A person who deliberately concluded a transaction which violates the requirements of legislation, the charter of a legal entity or the authority of its bodies, shall not have the right to claim the recognition of the transaction as invalid, provided such a claim is caused by financial interest or the intention to evade responsibility.

3. In the event that one of the participants of a transaction entered into it with an intent to evade from the execution of the obligation or from the duty to a third person or the state, and the other participant of the transaction new or should have known of that intention, an interested party (the state) shall have the right to claim to recognise the transaction as invalid.

### **Article 159. The Bases for the Invalidity of Transactions**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A transaction entered into without obtaining the required licence or after the expiry of the term of a licence shall be invalid.

2. A transaction which pursues the purposes of unfair competition or which violates the requirements of business ethics shall be invalid.

3. A transaction which is entered into by the person who did not reach fourteen years of age, except for the transactions stipulated in the Article 23 of this Code, shall be invalid.

4. A transaction which is entered into by a junior which reached fourteen years, without consent of his parents (adopters) or sponsors, except for the transactions which he in accordance with the law has the right to enter into independently, may be recognised by the court as invalid upon the action by the parents (adopters) or the guardian.

5. A transaction shall be invalid which is entered into by a person who is recognised as incapable as a result of a mental disease or mental weakness. A transaction which is entered into by a citizen, who afterwards is recognised as incapable (Article 26 of this Code), may be recognised by the court as invalid upon the action by his guardian, provided it is proved that at the moment of the commitment of the transaction that citizen was in the condition of a psychic disorder.

6. Upon the requirement of the guardian the court may recognise as invalid transaction which is entered into by the person whose deed capacity is restricted by the court.

7. A transaction which is entered into by a citizen who, although capable, but at the moment of its commitment was in a state that he could not realise the meaning of his actions or guide them, may be recognised by the court as invalid in accordance with the action of that citizen, but if when alive the citizen did not have an opportunity to file the action, - after the death of the citizen upon the action of any other interested persons.

8. A transaction which is entered into as a result of a significant error may be recognised by the court as invalid upon an action by the party which acted under the influence of misguidance. The misguidance is material where it relates to the nature of a transaction, the identity, or to any other qualities of its subject which significantly reduce the possibility of its intended use. Misguidance in the motives may serve as a basis of invalidity of a transaction only when such motive is included in its contents as a delaying or annulling condition (Article 150 of this Code).

If the misguidance is a consequence of gross carelessness of the participant in the transaction, or it is covered by his entrepreneurial risk, the court, taking into account the specific circumstances and the interest of the other participant of the transaction, shall have the right to refuse the action to recognise the transaction as invalid.

9. A transaction which is entered into under the influence of fraud, violence, or threat, and also a transaction that the person was compelled to enter into as a result of a combination of difficult

circumstances and on conditions extremely unprofitable for himself which was exploited by the other party (shackling agreement), may be recognised by the court as invalid upon the action of the victim.

10. A transaction which is concluded as a result of a malicious collusion of the representative of one party with the other party, may be recognised by the court as invalid upon the action of the victimised party. Compensation for losses which are inflicted upon the victimised party (paragraph 4 Article 9 of this Code), may be imposed upon the unfair representative in the procedure of subsidiary liability.

11. A transaction performed by a legal entity in contradiction to the objects of the activity expressly restricted by the present Code, or other legislative acts, or foundation documents, or in violation of the charter authority of its body, may be recognised as invalid pursuant to a court action of the owner of the property of a given legal entity, provided it is proved that the other party to a given transaction knew, or deliberately must have known about such violations.

12. The transactions which are stipulated in paragraph 3 and 5 of this Article, upon the claim of the parents, adopters or guardians of infants or of incapable persons by the decisions of a court may be recognised as invalid, provided they are entered into for the benefit of the indicated persons.

#### **Article 160. Fictitious or Faked Transactions**

1. A fictitious transaction is one which is entered into only for the sake of appearances, without intentions to cause any legal consequences shall be invalid.

2. If one transaction is entered into only for the purpose of hiding another transaction (faked), then the rules shall be applied which are applicable to the transaction which the parties actually had in mind.

#### **Article 161. The Consequences of Invalidity of Part of a Transaction**

Invalidity of part of a transaction shall not entail the invalidity of its other parts, provided it is possible to presume that the transaction was entered into without inclusion of its invalid part.

#### **Article 162. The Statute of Limitations With Regard to Invalid Transactions**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

2. The statute of limitations with regard to disputes associated with the invalidity of a transaction on the bases stipulated in paragraphs 9 and 10 of Article 159 of this Code, shall constitute one year from the date of the cessation of the violence or the threat under which the transaction was entered into, or from the date when the plaintiff learned or should have to learned about any other circumstances which are the basis for the recognition of the transaction as invalid.

### **Chapter 5. Representation and Power of Attorney**

#### **Article 163. Representation**

1. A transaction which is entered into by one person (representative) on behalf of another person (represented) by virtue of the authority based on power of attorney, legislation, a resolution of the court or on an administrative act, shall directly create, alter or terminate the civil rights and obligations of the represented.

The authority may also be clear from the situation in which the representative is acting (salesman in retail trade, cashier, etc.).

2. The rights and obligations shall be acquired directly by the represented in respect of the transaction entered into by the representative.

3. A representative may not enter into transactions on behalf of the represented, neither with himself personally, nor with any other person whose representative he is at the same time.

4. The persons who act, although in somebody else's interest, but in their own name (commercial intermediaries, executors of will in inheritance etc.) shall not be representatives, nor the persons who are authorised to enter negotiations with regard to transactions which are possible in the future.

5. It shall not be allowed to enter through a representative into transactions which by their nature may be entered into only in person, nor into other transactions in the cases specified in legislative acts.

#### **Article 164. Representation of Incapable Persons**

On behalf of incapable persons, transactions shall be entered into by their legitimate representatives, - parents (adopters) and guardians.

#### **Article 165. Representation Without Authority**

A transaction which is entered into on behalf of another person by the person who is not authorised to enter into the transaction, or in excess of their powers, shall create, alter or terminate the civil rights and obligations of the represented only in the case of the subsequent approval by him of that transaction.

The subsequent approval by the represented shall make the transaction valid from the moment of its commitment.

#### **Article 166. Commercial Representation**

1. The person who permanently and independently represents entrepreneurs in their concluding agreements (a commercial representative), shall act on the basis of a written agreement which contains indications of the authority of the representative, and in the case where such indications do not exist, - also of the power of attorney.

2. A commercial representative may at the same time represent the interests of various parties of an agreement which is concluded with his participation. In that respect, he shall be obliged to execute the instructions given to him with the diligence of a usual entrepreneur.

3. A commercial representative shall have the right to claim payment of the remuneration owed and the expenses incurred by him when executing the instructions of the parties to the agreement in equal shares, unless it is otherwise stipulated in the agreement between them.

4. A commercial representative shall be obliged to keep secret the information which became known to him concerning commercial transactions, also after the implementation of the assignment entrusted to him.

5. Special considerations concerning commercial representation in certain spheres of entrepreneurial activity shall be established by legislation.

#### **Article 167. Power of Attorney**

1. A written authorisation by one person (the trustor) for representation on his behalf, which is issued to another person (the trustee) shall be recognised as a power of attorney.

2. The power of attorney for managing assets and entering into transactions which require notarisation, must be notarised, unless otherwise stipulated in legislative acts.

3. The following shall be equated to notarised powers of attorney.

1) powers of attorney of military servicemen and of any other persons who are in medical treatment at hospitals, sanatoria and any other military medical institutions, attested to by the chiefs, deputy chiefs for medical issues, senior doctors and doctors on duty of those hospitals, sanatoria and other military medical institutions;

2) powers of attorney of the military servicemen, and at the points of deployment of military units, institutions and military education organisations where there is no state notary offices, nor any other bodies which execute notary actions, and also the powers of attorney of workers and employees, members of their families and family members of the military servicemen, which are attested by the commanders (chiefs) of those units, formations, institutions and organisations;

3) powers of attorney of the persons who are in places of deprivation of freedom, certified by the heads of the places of deprivation of freedom;

4) powers of attorney of capable citizens of full age who are in institutions for the social protection of the population, certified by the head of that institution or of the relevant body for the social protection of the population.

4. The power of attorney to receive correspondence including money and parcels, to receive wages and any other payments from citizens and legal entities, may be certified by the bodies of the local administration of the territory in which the nominator resides, by the organisation at which he works or studies, by the housing maintenance organisation in the place of his residence, by the administration of the stationary medical institution in which he is being medically treated, and also by the commanders of the relevant military units, where the power of attorney is issued to a military serviceman. A power of attorney which is sent by telegraph and by any other types of communications, when the dispatch of the document is carried out by an employee of the communications facility, shall be certified by the bodies of communication.

5. Third parties shall have the right to consider as authentic a power of attorney which is issued for the commission of their acts, which is sent by the trustor to the trustee through facsimile and other method of communication, without use of official bodies of communication.

6. A power of attorney on behalf of a legal entity shall be issued with the signature of its manager or another person who is authorised thereto by the foundation documents, and it shall be attested by the seal of that organisation.

7. A power of attorney on behalf of a state body, or a commercial or non-profit organisation to receive or pay money and any other material assets, must be signed also by the chief (senior) accountant of that organisation.

8. The procedure for issuing and the pro-forma of the power attorney to enter into banking transactions and the power of attorney for entering into transactions in the area of trade may be determined by special-purpose rules.

#### **Article 168. The Term of a Power of Attorney**

1. A power attorney may be issued for a term of not longer than three years. Where a longer term is indicated in a power of attorney, it shall be effective within three years, and if the effective period is not indicated therein, then it will be valid within one year from the date of the issue.

2. A power of attorney shall be invalid, if it has not the date of its issue.

#### **Article 169. Re-Assignment**

1. A trustee must personally enter into the actions to which he is authorised. He may re-assign their commitment to any other person only in the case where he is authorised thereto by the power of attorney received or is compelled to do that by virtue of circumstances for the protection of the interests of the trustor.

2. A power of attorney in which the trustee conveys the powers to any other person must be notified, except for the cases stipulated in paragraph 4 of Article 167 of this Code.

3. The term of validity of a power of attorney which is issued for re-assignment may not exceed the term of effect of the original power of attorney on the basis of which it was issued.

4. The trustee who re-assigned the powers to any other person must immediately notify of that the nominator and to communicate to him the necessary information concerning that person and his place of residence. The failure to comply with this duty shall impose on the trustee the liability for the actions the person to whom he re-assigned the powers, as for his own.

#### **Article 170. Cessation of a Power of Attorney**

1. The effect of a power of attorney shall cease as a result of the following:

- 1) expiry of the term of the power of attorney;
- 2) completion of the actions provided for by the power of attorney;
- 3) annulment of the power of attorney by the person who issued it;
- 4) the refusal of the person to whom the power of a attorney is issued;
- 5) the cessation of the legal entity on whose behalf the power of attorney was issued;
- 6) liquidation of the legal entity on whose behalf the power of attorney was issued;
- 7) the demise of the person who issued the power of attorney, or the recognition of him as incapable, of limited capability or missing;
- 8) the demise of the citizen to whom the power of attorney is issued, or the recognition of him as incapable, of limited capability or missing.

2. The person who issued a power of attorney may at any time annul the power of attorney or the re-assignment, and the person to whom the power of attorney is issued may relinquish it. An agreement to wave this right shall be invalid.

#### **Article 171. The Consequences of Terminating a Power of Attorney**

1. The trustor shall be obliged to notify about the termination of a power of attorney (Article 170 of this Code) the person to whom the power of attorney is issued, and also third parties known to him, for representation to whom the power of attorney was issued. The same obligation shall rest with the legal successor of a person who issued the power of attorney in the cases of its cessation on the bases indicated in paragraphs 5 and 7 of Article 170 of this Code.

2. The rights and obligations which arise as a result of the actions of a person to whom the power of attorney is issued prior to the time when this person learned or should have learned of its cessation, shall remain valid for the one who issued the power of attorney and his legal successors with regard to third parties. This rule shall not apply if the third party knew or should have known that the effect of the power of attorney ceased.

3. Upon the cessation of the power of attorney the person to whom it was issued or his legal successor must immediately return the power of attorney.

4. With the cessation of the power of attorney the conveyance of the powers associated with that power of attorney to the other person (re-assignment) shall lose force.

### **Chapter 6. Calculation of Periods**

#### **Article 172. Determining Periods**

1. A term which is established by legislation, or transaction or is appointed by the court, shall be determined by a calendar date or an indication of an event which must inevitably take place.

2. A term may be established also as a period of time which is calculated by years, months, weeks, days or hours.

#### **Article 173. The Beginning of the Term which is Determined by Period of Time**

The course of a term which is determined by a period of time shall begin on the next day after the calendar date or the arrival of the event which determines its beginning.

#### **Article 174. The Expiry of the Term Determined by Period of Time**

1. A term which is measured by years shall expire in the corresponding month, and on the date of the last year of the term.

The rules which are used for the terms measured by months shall apply to a term which is measured by one half a year.

2. The rules which are used for the terms measured by months shall apply to the term which is measured by quarters of year. In this respect, a quarter shall be deemed to be equal to three months and the calculation of quarters shall be from the beginning of year.

3. A term measured by months shall expire on the corresponding date of the last month of the term.

A term which is determined as one half of a month shall be handled as a term measured by days, and it shall be deemed to be equal to 15 days.

If the expiry of a term measured by months falls on such month in which that date does not exist, then the term shall expire upon the last day of that month.

4. The term which is measured by weeks shall expire on the appropriate day of the last week of the term.

#### **Article 175. Expiry of a Term on a Non-Working Day**

If the last day of a term falls on a non-working day, then the expiry day of the term shall be the nearest working day following that day.



### **Article 176. The Procedure for Entering Into Actions on the Last Day of a Term**

1. If a term is established for entering into any action, it may be entered into before twenty four hours of the last day of the term.

However, if that action must be entered into in an organisation, then that term shall expire at the hour when in accordance with the established rules that organisation ceases the relevant transactions.

2. Written applications and notifications which are submitted to the post office, telegraph or any other institution of communications before 24 hours of the last day of a term, shall be deemed to be submitted within the term.

## **Chapter 7. Statute of Limitations**

### **Article 177. The Definition of the Statute of Limitations**

1. The statute of limitations is a period of time during which a claim may be satisfied, which arises from a violation of rights of a person or of an interest protected by law.

2. Statutes of limitation and the procedure for their calculation shall be stipulated in law and may not be changed by an agreement of parties.

### **Article 178. Terms of the Statute of Limitations**

1. The general term of the statute of limitations shall be established at three years.

2. For certain types of claims legislative acts may establish special-purpose terms of the statute of limitations, which are shorter or longer as compared to the general term.

3. The rules of Articles 177, 179 - 186 of this Code shall apply also to the special-purpose terms of the statute of limitations, unless legislative acts stipulate otherwise.

### **Article 179. The Application of the Statute of Limitations**

1. The requirements to protect a violated right shall be accepted by the court for consideration irrespective of expiry of the term of the statute of limitations.

2. The statute of limitations shall be applied by the court only upon the application by a party in the dispute, which is made prior to the adoption of a decision by the court.

3. The expiry of the term of the statute of limitations prior to the presentation of the claim shall be the basis for the court's passing the decision to deny the action.

With the expiry of the term of the statute of limitations on the principal claim, the term of the statute of limitations shall expire with regard to additional claims (concerning the imposition of damages, the responsibility of the trustor etc.).

### **Article 180. The Course of the Term of the Statute of Limitations**

1. The course of the term of the statute of limitations shall begin on the day when the person learned or should have learned of the violation of the right. Exceptions from this rule shall be established by this Code and the other legislative acts.

2. With regard to the obligations which have a definite term for their implementation, the course of the statute of limitations shall begin upon the expiry of the date of the execution.

3. With regard to the obligations, the implementation term of which is not determined or is determined by the moment of the call, the course of the statute of limitations shall begin from the moment when the call for the implementation of the obligation is made, and where the debtor is granted a privilege term for the implementation of such call, the counting of the statute of limitations shall begin on the expiry of the indicated term (paragraph 2 of Article 177 of this Code).

4. With regard to the regress obligations the course of the statute of limitations shall begin from the moment of execution of the principal obligation.

### **Article 181. The Term of the Statute of Limitations in the Replacement of Persons in an Obligation**

The replacement of persons in an obligation shall not entail any changes with regard to the statute of limitations and the procedure of its calculation.

### **Article 182. Suspension of the Course of the Statute of Limitations Term**

*amended by (9) Law of 19th June 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Act of the Republic of Kazakhstan;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

1. The course of the term of the statute of limitations shall be suspended as follows:

1) where the making of the claim is impeded by an event which is extraordinary or inevitable under those circumstance (force majeure);

2) by virtue of the announcement by the President of the Republic of Kazakhstan of a postponement of the execution of the obligation of that type (moratorium);

3) where the plaintiff or the defendant are military units which are under marshal law;

4) where an incapable person has no legal representative;

5) by virtue of suspending the effect of legislation which regulates the relevant relations.

With regard to actions concerning the compensation for harm caused to life or health of a citizen, the course of the term of the statute of limitation shall be suspended also in connection with the application by a citizen to the appointment of a pension or benefit, or the refusal to appoint those. to appropriate organisations for appointment and/or performance of payment of pensions or for appointment of a benefit - -prior to appointment and/or performance of payment of pensions or appointment of a benefit or refusal to appoint and/or performance of payment of pensions or appointment of a benefit.

2. The course of the term of the statute of limitations shall be suspended where the circumstances indicated in this Article arose or continued to exist during the last six months of the statute of limitations, and if that term does not exceed six months, - during the course of the term of the statute of limitations.

3. The course of the statute of limitation shall continue from the date of the cessation of the obligation which entailed the suspension of the statute of limitations. In that respect, the remaining part of the term shall be extended up to six months, and where the term of the statute of limitations does not exceed six months, - up to the term of the statute of limitations.

### **Article 183. A Break in the Course of the Term of Statute of Limitations**

1. The course of the term of the statute of limitations may be interrupted by the presentation of a claim in accordance with the established procedure and also by the commitment by the obliged person of the actions which evidence the recognition of the debt or any other liability.

2. After an interruption, the course of the term of the statute of limitation shall begin anew; the time which expired prior to the break shall not be included into the new term.

### **Article 184. The Course of the Term of the Statute of Limitations in a Case Where the Action is not Considered**

1. If an action is left by the court without consideration, the course of the statute of limitations which began prior to the presentation of the action shall continue in accordance with the general procedure.

2. Where the court left without consideration an action which is presented in a criminal case, then the course of the term of the statute of limitations, which began prior to the presentation of the action, shall be suspended until the sentence by which the action was left without consideration enters into legal force. The time during which the statute of limitations was suspended shall not be included in the term of the statute of limitations. In that respect, where the remaining part of the term is less than six months, it shall be extended up to six months.

### **Article 185. The Restoration of the Term of the Statute of Limitations**

1. In exceptional cases where the court recognises the reason for neglecting the term of the statute of limitations as serious because of the circumstances which are associated with the personality of the plaintiff (serious disease, helpless condition, illiteracy, etc.) the violated right of the citizen shall be the subject to protection. The reasons for omitting the term of the statute of limitations may be recognised as serious where they took place during the last six months of the term of the statute of limitations, and where the term is equal to six months, or is less than six months, - during the term of the statute of limitations.

2. The term of the statute of limitations shall be re-established and it shall begin its course again in the cases where there in accordance with legislative acts the plaintiff gets the right to file a new action on the same case in relations with the refusal to execute the court decision in that case.

#### **Article 186. Execution of an Obligation Upon Expiry of the Term of the Statute of the Limitations**

A debtor or any other obliged entity that implemented an obligation upon expiry of the term of the statute of limitations, shall not have the right to claim back the implemented obligation, even if at the moment of the implementation the indicated person did not know of the expiry of the statute of limitations term.

#### **Article 187. The Claims to Which the Statute of Limitations Does Not Apply**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

The statute of limitations shall not apply to the following:

- 1) claims concerning the protection of non-material assets and personal non-property rights, except for the cases which are stipulated in legislative acts;
- 2) claims of investors to the bank to repay their bank investments;
- 3) claims concerning the compensation for harm caused to life or health of a citizen. However, the claims which are presented upon the expiry of the statute of limitations shall be satisfied for no longer than three years preceding the presentation of the claim;
- 4) claims of a proprietor or any other legitimate owner concerning the elimination of any violations of his right, where those violations are not associated with deprivation of ownership (Articles 264, 265 of this Code);
- 5) in the cases established by legislative acts, - also to any other claims.

## **SECTION II. THE RIGHT TO OWN AND OTHER CORPOREAL RIGHTS**

### **Chapter 8. The Right to Own. General Provisions**

#### **Article 188. The Definition and Contents of the Right to Own**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The right to own shall be a recognised and protected by legislative acts the right of a person at his discretion to own, use and dispose of the property which belongs to him.

The right of ownership shall be re-assigned to another person with all the encumbrances which existed at the moment of the commission of the transaction.

2. The owner shall have the rights to possess, use and dispose of his assets. The rights to own shall represent the legally-enforced capacity to exercise the actual possession of assets.

The right to use shall represent the legally-enforced possibility to extract from the assets their useful natural properties and also to extract benefits out of it. A benefit may be in the form of income, gain, fruit and in other forms.

The right to dispose shall represent the legally-enforced capacity to determine the legal destiny of property.

3. The owner shall have the right at his discretion to enter into with regard to the property which belongs to him, any actions including the alienation of the property into the freehold of any other persons, or to transfer to them, remaining the owner, his rights associated with ownership, use and disposal of the property, to pledge the property and to encumber it by any other methods and dispose of it in any other way.

4. The exercise by the owner of his powers must not violate the rights and legally protected interests of other persons and the state. The violation of the rights and legitimate interests may be expressed, aside from any other forms, in the abuse by the owner of his monopoly or any other dominant position.

The owner must adopt measures which prevent harm to the health of citizens and to the environment, which may be inflicted in the exercise of his rights.

5. The right to own shall be of indefinite term. The right to own property may be terminated by compulsion only upon the bases provided for by this Code.

6. In the cases, on the conditions and within the limits provided for by legislative acts, the owner must allow for a restricted use of his property by any other persons.

### **Article 189. The Burden of Maintaining Property**

1. The owner shall bear the burden of maintaining the property which belongs to him, unless it is otherwise stipulated by legislative acts or by an agreement, and he may not in a unilateral procedure transfer such a burden to a third person.

2. If property is legally held by third parties, then the costs incurred by them for the maintenance of somebody else's property, shall be subject to reimbursement by the owner, unless otherwise is stipulated in the agreement.

Expenditures associated with the maintenance of the assets shall not be reimbursed to the person who owns the item unfairly and illegally (Article 263 of this Code).

### **Article 190. The Risk of Occasional Destruction or Occasional Damage to Property**

1. The risk of an occasional destruction or an occasional damage to objects to be alienated shall be transferred to the acquirer simultaneously with the emergence of his right to own, unless it is otherwise stipulated in legislative acts or an agreement.

2. Where the alienator guiltily delayed the transfer of objects or the acquirer guiltily delayed their acceptance, the risk of occasional destruction or occasional damage shall be borne by the party which caused the delay.

### **Article 191. The Definition and the Types of Private Property**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Private property shall be recognised as the property of citizens and of non-state-owned legal entities and their associations.

2. Any property, except for certain types of property which in accordance with legislative acts may not belong to citizens or legal entities, may be in private ownership.

The quantity and the value of the assets which are in private ownership shall not be restricted.

### **Article 192. The Right to State Property**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)";*

*(20) Law No. 472 of 4th November 1999 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Functioning of Public Enterprises; and*

*(24) Law No. 162 of 2nd March 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions To Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the Banking Activity.*

1. The state property shall be recognised in the form of the Republic's property and communal property.

2. The property of the Republic shall consist of the state treasury and the property allocated to state-owned Republic's legal entities in accordance with legislative acts.

Funds of the Republic's budget, gold and currency reserves, and the diamond stock, the items of the state property which are enumerated in Article 193 of this Code, and other state property which is not attached to state-owned legal entities, shall form the State Treasury of the Republic of Kazakhstan.

3. Communal property shall consist of the local treasury and assets which are entrusted to the communal legal entities in accordance with legislative acts.

The resources of the local budget and any other communal properties which are not attached to state-owned legal entities, shall constitute the local treasury.

4. The property which is in the state ownership may be entrusted to state legal entities in accordance with the right to business authority or operational management.

5. Special considerations in the legal regime of the state property which is under authority of certain state-owned institutions shall be defined by legislative acts.

#### ~~Article 193. The Exclusive State Ownership~~

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

#### **Article 193. Ownership of Land and Other Natural Resources**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

Land, its subsurface, water, flora, and fauna, and other natural resources, shall be in the state ownership. Land may also be in private ownership on the bases, conditions, and within the limits, stipulated by legislative acts.

#### **Article 194. The Right to Own and Other Corporeal Rights to Housing**

*20) Law No. 472 of 4th November 1999 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Functioning of Public Enterprises.*

Special considerations for the exercise of the right of ownership and any other corporeal rights to housing shall be regulated by legislation concerning housing.

#### **Article 195. The Corporeal Rights of Persons Who are Not Owners**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Aside from the right to own, the following shall be recognised as corporeal rights:
  - 1) the right to use land;
  - 2) the right to business authority;
  - 3) the right to operational management;
  - 4) other corporeal rights, provided for by this Code or any other legislative acts.
2. The provisions concerning the right of ownership shall apply to corporeal rights, unless it is otherwise stipulated in legislation, and when it does not contradict the nature of a given corporeal right.

## **Chapter 9. The Right to Business Authority**

### **Article 196. The Right to Business Authority of a State Enterprise**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

The right to business authority shall be a corporeal right of state-owned enterprises that received their property from the State as the owner, and which exercise within the limits established by this Code and other legislative acts, the right to own, use and dispose of that property.

### **Article 197. Items in the Right to Business Authority**

Any property, unless it is otherwise stipulated in legislation, may be object of the right to business authority.

### **Article 198. The Acquisition and Termination of the Right of Business Authority**

1. The right of business authority over the property which the owner decided to entrust to a state-owned enterprise that has already been formed, shall arise for that enterprise at the moment of the registration of the property in the independent balance-sheet of the enterprise, unless it is otherwise established by legislation or decision of the owner.

2. The fruit, products and income from the use of the assets which are under business authority, and also the assets which are acquired by the enterprise in accordance with agreements or on any other bases, shall be received into the business authority of the enterprise in accordance with the procedure established by legislative acts for the acquisition of the right to own.

3. The right to business authority with regard to property shall cease on the bases and in accordance with the procedure stipulated by legislation for the cessation of the right of ownership, and also in the cases of the legitimate withdrawal of property from the enterprise by decision of the owner.

### **Article 199. The Right of the Owner With Regard to the Property Which is Under Business Authority**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

The owner of the assets which are under business authority, shall in accordance with legislative acts decide issues of creating an enterprise, determining the objectives and purposes of its activity, of its reorganisation and liquidation, and the owner shall exercise the control of use of the property belonging to the enterprise of its purposeful use and safety.

The owner shall have the right to receive part of net income from the use of the assets which are under the business authority of the enterprise formed by him.

### **Article 200. The Conditions for the Exercise of the Property Rights of a State-Owned Enterprise**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A state-owned enterprise which carries out its activities under the rights to business authority, unless it is otherwise stipulated in legislative acts, shall not have the right to enter into the following types of entrepreneurial activity without the approval of the owner or of the state body authorised by the owner:

1) to sell or transfer to any other persons, exchange, long-term lease (longer than three years), entrust for temporary charge-free use the buildings, facilities, equipment and any other fixed assets of the enterprise which belong to it;

2) to form affiliates and subsidiaries, establish in conjunction with private entrepreneurs enterprises and joint production facilities, to invest in them its productive and monetary capital;

3) to grant to private entrepreneurs loans with the payments of remuneration (interest) on them below the official rate of refinancing as established by the National Bank of the Republic of Kazakhstan;

4) to issue suretyship or a guarantee with regard to obligations of third parties.

2. Unless it is otherwise stipulated in legislation, a state enterprise shall independently dispose of the property which is attached to it under the right of business authority, and which is not recognised as fixed assets.

#### **Article 201. The Application of the Provisions Concerning the Right of Ownership to the Relations With the Participation of State-Owned Enterprises**

The provisions of this Code concerning the right to own shall apply to property relations with the participation of the state enterprises, unless otherwise ensues from this Code and any other legislative acts.

### **Chapter 10. The Right to the Operational Management**

#### **Article 202. The Definition and Contents of the Right to Operational Management**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

The right of operational management shall be recognised as a corporeal right of an institution, state-owned institution which is financed at the expense of the funds of its owner, and of a public enterprise which received property from the owner and which exercise within the confines established by legislative acts, and in accordance with the objectives of their activities, assignments of the owner and designation of the property, the rights to possess, use and dispose of that property.

#### **Article 203. The Acquisition and Cessation of the Right of Operational Management**

The acquisition and cessation of the right of operational management shall be exercised on the conditions and in the accordance with the procedure stipulated in Chapters 13 and 14 of this Code, unless it is otherwise stipulated in legislation.

#### **Article 204. The Rights of the Owner of the Property Entrusted for**

## **Operational Management**

*(17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. The owner of the assets which are in operational management shall in accordance with legislative acts decide the issues of creating an institution, state-owned institution or a public enterprise, of determining the objectives and the purposes of its activities, it shall have the right to determine the legal destiny of the institution, state-owned institution or public enterprise, and the contents of its activities.

2. The owner shall exercise supervision of the efficient use and safety by the institution, state-owned institution or the public enterprise of the assets entrusted by the owner.

3. In the event that an institution, state-owned institution is formed by several owners, the relations between them and the rights of the owners to manage their assets shall be determined by the foundation agreement or a similar contract.

### **Article 205. The Right of the Owner to Withdraw and Re-Allocate the Property Entrusted for Operational Management**

*as amended by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

The owner of the assets entrusted to an institution, state-owned institution or a public enterprise shall have the right to withdraw that property or re-allocate it between other legal entities formed by the owner at his discretion, unless it is otherwise stipulated in legislative acts.

### **Article 206. The Disposal of the Property of an Institution State-Owned Institution or a Public Enterprise**

*as amended by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities; and*

*(24) Law No. 162 of 2nd March 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions To Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the Banking Activity.*

1. An institution, state-owned institution shall not have the right to alienate or in any other way dispose of the assets which are entrusted to it and of the assets which are acquired at the expense of the resources appropriated to it in accordance with the budget, unless it is otherwise specified by a legislative act.

2. A public enterprise shall have the right to alienate or in any other way dispose of the assets entrusted to it only with the consent of the owner of those assets.

A public enterprise shall independently sell the production manufactured by it, unless it is otherwise stipulated in legislation.

The procedure for distributing income of a public enterprise shall be determined by the owner of its assets.

### ~~**Article 207. Making a Claim on the Assets Transferred for Operational Management Liability of the Owner under Debts of a Public Enterprise and Institution**~~

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity;*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the*



*Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and  
replaced by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

**Article 207. The Liability of the Foundation Party With Regard to Debts of the Public Enterprise, Institution and State-Owned Institution**

*replaced by (17) Law No. 320 of 16th December 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the State-Owned Legal Entities.*

1. A public enterprise shall be liable for its obligations with the funds at its disposal.

When funds owned by a public enterprise are insufficient, the Government of the Republic of Kazakhstan or the relevant local executive body shall bear the subsidiary liability under its obligations.

With regard to contractual obligations, the liability shall arise in accordance with the procedure as defined by legislative acts concerning state-owned enterprises.

2. Liability of institutions and state-owned institutions shall arise in accordance with the procedure provided for by paragraph 1 of Article 44 of this Code.

**Article 208. The Transfer of the Right to Own an Institution**

When the right to own an institution is transferred to any other entity, that institution shall retain the right of operational management of the property which belongs to it.

**Chapter 11. Common Property**

**Article 209. The Definition and Bases for the Emergence of Common Property**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Property which is in the ownership of two or more persons shall belong to them under the right of common ownership.

2. Assets may be in common ownership with the determination of the share of each of the owners in the right to own (shared ownership) or without determining such shares (joint property).

3. Common ownership of any assets shall be shared-ownership, except for the cases where the law stipulates the formation of joint ownership of the property.

4. Common ownership shall emerge when two or several persons receive the property which may not be divided without changing its designation (indivisible items), or may not be divided by virtue of law.

Common ownership of indivisible assets shall emerge in the cases which are stipulated in legislative acts or an agreement.

5. By agreement of the participants of common property, and in the case of failure to reach consensus, upon the decision of a court, shared ownership of the entities may be established with regard to the common property.

6. Ownership of real estate may arise in the form of a condominium, whereby certain parts of real estate are in individual (separate) ownership of citizens and (or) legal entities, and those parts of real estate which are not in separate ownership, shall belong to the owners of parts of real estate under the right of common shared ownership.

The share of each owner in the common property shall be inseparable from his separate ownership of a part of real estate belonging to him.

The size of a share of each owner in the common property, and the degree of participation in costs of its maintenance, shall be related to the size of the parts of real estate which are in individual (separate) ownership, unless it is otherwise stipulated in legislative acts or an agreement.

Special considerations in the legal regime of different types of condominium may be defined in legislative acts.

#### **Article 210. Determining the Shares in the Right of Shared Property**

1. When the size of the shares of participants of shared property may not be established on the basis of legislative acts and is not established by an agreement of all its participants, the shares shall be deemed to be equal.

2. An agreement of all the participants in a shared property may establish a procedure for determining or changing their shares in relation to the contribution of each one of them to the formation and the increase of the common property.

#### **Article 211. The Rights of A Participant in Shared Property Which Are Associated with Its Improvement**

1. A participant in shared property who carries out at his own expense, in compliance with the procedure established for the use of common property, its inseparable improvements, shall have the right to proportionate increase of his share in the right to the common property.

2. The separable improvements of common property, unless it is otherwise stipulated in an agreement of the participants in common property, shall become the property of the one of the participants who made them.

#### **Article 212. Disposal of the Assets Which are in Shared Ownership**

1. Disposal of the assets which are in shared property shall be carried out by with the agreement of all its participants.

2. Each participant in the shared property shall have the right at his discretion to sell, transfer as a gift, bequeath, or mortgage his share, or to dispose of it in any other manner in compliance with the conditions stipulated by Article 216 if this Code.

#### **Article 213. Ownership and Use of the Property Which is in Shared Ownership**

1. Managing and using the assets which are in shared ownership shall be carried out by agreement of all its participants, and where consent is not reached, it shall be established by the court.

2. Each participant in shared ownership shall have the right to be granted, into his ownership and use a part of the common property commensurate with his share, and where it is impossible, he shall have the right to claim from the other participants who own and use the property corresponding to his the share of payment of the appropriate amount or other compensation.

#### **Article 214. Fruit, Production and Income from the Use of the Property Which is in Shared Ownership**

The fruit, production and income from the use of the property which is in shared ownership, shall become part of the common property. Subsequent distribution of the fruits, production and income shall be carried out between the participants of shared property in proportion to their shares, unless it is otherwise stipulated in the agreement between them.

#### **Article 215. Expenditures Associated with the Maintenance of the Property Which is in the Shared Ownership**

Each participant in shared ownership shall be obliged to participate in the payment of taxes, levies and any other payments in respect of their common property in proportion to his share, and also in the costs of its maintenance and preservation.

#### **Article 216. The Pre-Emption Right**

1. When a share in the right of shared ownership is sold to a stranger, the other participants in the shared ownership shall have a pre-emption right to purchase the share which is being sold, at the price at which it is being sold and on other equal conditions, except for the case of selling through a public auction.

Public auctions for selling shares in the right of shared ownership, where the approval of all the participants in the shared ownership is not reached, may be carried out in the cases, stipulated in paragraph 2 of Article 222 of this Code, and in other cases stipulated in legislative acts.

2. The seller of a share shall be obliged to notify in writing the other participants in shared ownership concerning his intention to sell his share to an outside party with an indication of the price and any other conditions on which he is selling it. If the other participants in shared ownership refuse to purchase or fail to acquire the share which is sold in the right to own immovable property during one month, and with regard to any other assets within 10 days from the date of the receipt of the notice, the seller shall have the right to sell his share to any other person.

3. When a share is sold in violation of the pre-emption right, another participant in shared ownership shall have the right within three months to claim in the court a transfer to him of the rights and obligations of the buyer.

4. The assignment of the pre-emption right to purchase a share shall not be allowed.

5. The rules of this Article shall also apply when a share is alienated in accordance with a barter agreement.

### **Article 217. The Moment of the Transfer to the Buyer of a Share in the Right of Shared Ownership In Accordance with An Agreement**

A share in the right of shared ownership shall be transferred to the buyer through an agreement from the moment of concluding the agreement, unless the agreement of the parties stipulates otherwise.

The moment of transfer of a share in the right of shared ownership in accordance with the agreement which is subject to state registration or notarisation, shall be determined in accordance with paragraph 2 of Article 238 of this Code.

### **Article 218. Division of Property Which is in the Shared Ownership and Appropriation of a Share Out of It**

1. The property which is in shared ownership may be divided between its participants by an agreement between them.

2. A participant in shared ownership shall have the right to claim the appropriation of his share out of common property.

3. Where participants in shared ownership fail to reach an agreement on the methods and conditions of dividing the common property or appropriation of the share of one of them, a participant in shared ownership shall have the right to claim the appropriation of his share out of the common property, in kind.

When the appropriation of a share in kind is not allowed by legislative acts or it is impossible without unreasonable damage to the property which is in the common ownership, the owner who is appropriating, shall have the right to be paid by the other participants in shared ownership for the value of his share.

4. The disproportion of the property which is appropriated in kind to a participant in the shared ownership on the basis of this Article, to his share in the right of ownership shall be eliminated by payment of appropriate amount of money or by other compensation.

The payment to a participant in shared property by the other owners of compensation instead of appropriating his share in kind, shall be allowed upon his consent. In the cases where the share of certain owner is minor, and it may not be realistically appropriated and he has not any substantial interest in the use of the common assets, the court may in the case of the absence of consent of that owner, compel the other participants in shared ownership to pay him compensation.

5. With the receipt of compensation, in accordance with paragraphs 3 and 4 of this Article, the owner shall lose the right to his share in the common property.

6. Where the non-expedience of division of common property or the appropriation of a share out of it in accordance with the rules outlined in paragraphs 3 - 5 of this Article are obvious, the court shall have the right to adopt the decision to sell the property through a public auction with the subsequent

distribution of the received amount between the participants in common property in proportion to their shares.

#### **Article 219. Joint Common Property**

1. Joint common property shall exist in the following forms:
  - 1) the common property of spouses;
  - 2) the common property of a peasant (farmer's) farm;
  - 3) the common property to privatised housing.
2. Legislative acts may stipulate any other types of the joint common property.
3. The joint common ownership shall be established and it shall exist, unless an agreement between its participants stipulates otherwise.

#### **Article 220. Ownership, Use and Disposal of the Property Which is in the Joint Ownership**

1. The participants in joint ownership, unless it is otherwise stipulated in an agreement between themselves, shall collectively own and use common property.

2. The disposal of the assets which are in the joint ownership, shall be carried out with the consent of all the participants, which is presumed irrespective of which of the participants entered into the property disposal transaction.

3. Each of participants in joint ownership shall have the right to enter into transactions disposing of the common property, unless it is otherwise ensues from the agreement of all the participants. A transaction which is entered into by one of the participants in joint ownership, and which is connected with the disposal of the common property, may be recognised as invalid by the claim of the other participants on the motive that the participant who entered into the transaction did not have the requisite powers, only in a case where it is proved that the other party in the transaction knew or should beforehand have known of it.

When entering into the transactions which require the notarisation or state registration, the consent of the other participants in joint ownership, to the commitment of the transaction must be confirmed in the notarial procedure.

4. Paragraphs 1-3 of this Article shall apply, unless it is otherwise stipulated by this Code or other legislative acts with regard to specific types of the joint property.

#### **Article 221. Division of the Property Which is in the Joint Ownership and Appropriation of a Share Out of It**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The division of common assets between participants in joint ownership, and also the appropriation of the share of one of them, may be carried out under the condition that there has been a prior definition of the share of each of the participants in the right to common property.

2. When dividing common property or appropriating a share out of it, provided it is not stipulated otherwise in legislative acts or agreement of the participants, their shares shall be recognised as equal.

3. The basis and the procedure for the division of joint property and the appropriation of a share out of it shall be determined in accordance with the rules of Article 218 of this Code, unless it is otherwise stipulated by this Code, or other legislative acts for certain types of joint property, nor does it ensue from the essence of relations of the participants in the joint property.

#### **Article 222. Imposition of a Claim on a Share in Common Property**

1. The creditor of a participant in shared or joint property in the case of insufficiency of other assets of the latter, shall have the right to impose a claim of appropriating the share of the debtor in the common property for the imposition of the claim upon it.

2. In the event that the other participants in common property refuse to purchase the share of the debtor, the creditor shall have the right to claim through the court the imposition of the claim upon the share of the debtor in the common property by way of selling that share in a public auction.

3. Where in such cases the appropriation of a share in kind is impossible or the other participants in shared or joint property object thereto, the creditor shall have the right to claim the sale by the debtor of his share to the other participants of the common property at the price which is related to the market value of that share, with the use of the funds received from the sale for the repayment of the debt.

### **Article 223. Common Property of Spouses**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Property which is gained by spouses during their marriage, shall be the common property, unless an agreement between themselves stipulates that those assets are shared property of the spouses, or it belongs to one or certain parts of it belong to either spouse in accordance with the right of ownership.

2. The assets which belonged to spouses prior to entering the marriage, and also those received by them during the marriage, as a gift or in the procedure of inheritance, shall be the property of either of them.

The items of individual use (clothes, footwear etc.), except for jewellery and other items of luxury, although acquired during the marriage at the expense of common funds of the spouses, shall be recognised as the property of that spouse who used them. Property of each of the spouses may be recognised as their joint property, provided it is established that during their marriage investments have been made at the expense of the common property of the spouses, which significantly increased the value of that property (capital repairs, refurbishment, re-equipment, etc.).

3. Upon the obligations of one of the spouses, a claim may be imposed only on the assets which are in his ownership, and also upon his share in the common assets of the spouses, which would be due to him, should that property be divided.

4. Special considerations in the right to joint property of spouses shall be determined by legislation of the Republic of Kazakhstan concerning the marriage and family.

### **Article 224. The Ownership of a Peasant (Farmer) Holding**

1. The property of a peasant (farmer) holding shall belong to its members on the right of joint ownership, provided the agreement between them does not stipulate otherwise.

2. In joint ownership of the members of a peasant (farmer) holding there shall be plantations on a land plot, business and any other structures, melioration and any other installations, productive and working cattle, poultry, agricultural and other machinery and equipment, transport vehicles, inventories and other assets which are purchased for the farm at the expense of common funds of its members.

3. The fruit, production, and income received as a result of activities of the peasant (farmer) holding, shall be recognised as common property of the members of the peasant (farmer) holding and they shall be used by agreement between them.

### **Article 225. The Division of Property of a Peasant (Farmer) Holding**

1. When terminating a peasant (farmer) holding in relation to the departure therefrom of all its members, or on other basis, the common property shall be subject to division in accordance with the rules stipulated in Article 218 and 221 of this Code.

2. The means of production which belong to a peasant (farmer) holding, in the case of the exit of one of its members from the farm, shall not be subject to division. The person who exited the farm shall have the right to receive a monetary compensation proportionate with his share in the common ownership of that property.

3. In the cases stipulated in paragraph 1 and 2 of this Article, shares of the members of a peasant (farmer) holding in the right of joint ownership of the property of the farm shall be recognised as equal, unless the agreement between themselves stipulates otherwise.

#### **Article 226. The Legal Regime of the Property in the Case of Reorganisation a Peasant (Farmer) Holding into a Business Partnership or Co-Operative**

1. Members of a peasant (farmer) holding on the basis of the farm's property may form a business partnership or a productive co-operative. Such a reorganised peasant (farmer) holding as a legal entity, shall have the right to own the property transferred to it in the form of investments and other contributions by the members of the farm, and also the property received as a result of its activities and acquired on other bases which do not contradict legislation.

2. The amounts of contributions of members of a peasant (farmer) holding, who are participants of a partnership or members of a co-operative, shall be established on the basis of their shares in the right of common ownership of the property of the peasant (farmer) holding as determined in accordance with the procedure specified in paragraph 3 of Article 225 of this Code.

#### **Article 227. Common Ownership of Privatised Housing**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

Housing which is purchased or acquired free of charge by the tenant in accordance with legislation concerning privatisation in the buildings of the state housing stock, shall be transferred into the common ownership of the tenant and his family members who reside permanently with him, including minors and those temporarily absent, unless it is otherwise stipulated in an agreement between them.

Special considerations with regard to the right of joint ownership of privatised housing shall be determined by legislative acts concerning housing relations.

### **Chapter 12. Agreement On Joint Activities (Ordinary Partnership)**

#### **Article 228. Ordinary Partnership**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An ordinary partnership shall be formed on the basis of an agreement on joint activities.

In accordance with the agreement concerning joint activities (the agreement on ordinary partnership) the parties undertake to act jointly in order to earn income or attain any other objective which does not contradict the law.

An ordinary partnership shall not be a legal entity.

2. The agreement concerning joint activities (the agreement on ordinary partnership) shall be concluded between citizens, citizens and legal entities, and between legal entities (consortium).

3. The obligations of the participants of an ordinary partnership, which are related to the agreement on joint business activities, before third parties shall be joint obligations, unless their joint activities agreement stipulates otherwise.

#### **Article 229. Managing Common Business of the Participants of an Agreement**

Managing of common business of the participants of an agreement on joint activities shall be carried out on the basis of their common consensus. Upon agreement between themselves, they may entrust the

management of their joint activities and managing of common business to one of the participants, who in that case shall act on the basis of a power of attorney issued to him by the other participants of the agreement.

### **Article 230. Common Property of the Participants in Agreement**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In order to attain their objectives, the participants in agreement on joint activities shall make contributions in money or in other property or by way of labour contribution.

2. The monetary or any other property contributions of the participants in agreement and also the assets which are created or acquired as a result of their joint activity shall be their joint shared property.

4. The property of the participants of an agreement shall be subject to the provisions of this Code on common shared property, unless it is otherwise stipulated by the provisions of this Chapter, other legislative acts or an agreement on joint operation.

### **Article 231. Common Expenditures and Losses of the Participants of the Agreement**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

The procedure for covering general costs associated with joint activity and losses which are incurred as a result of it shall be defined by the agreement of the participants. When the agreement does not provide for such a procedure, the general costs and losses shall be covered at the expense of the common property of the participants in agreement, and the missing amounts shall be distributed between them in proportion to their shares in that property.

### **Article 232. The Conveyance of the Right and Refusal to Participate in Joint Activities**

1. The conveyance of the right to participate in joint activities may be carried out only with the consent of the participants of an agreement on joint activities (ordinary partnership agreement).

2. A participant of the agreement on joint activities (ordinary partnership agreement) shall have the right at his discretion to refuse participation in joint activities.

3. Losses which are inflicted by the refusal of any one of them from the participation in joint activities shall be claimed in full volume, unless the agreement on joint activities (ordinary partnership agreement) stipulates otherwise.

### **Article 233. Consortium**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The consortium shall be a temporary voluntary equal-rights union (association) on the basis of an agreement on joint business activities in which legal entities unite certain resources and co-ordinate efforts to solve specific business issues.

2. The participants of a consortium shall retain their business independence and may take part in the activities of any other consortia or associations.

Relations between the members of a consortium shall be built on a contractual basis.

3. Managing a consortium shall be carried out in accordance with the consortium agreement between the members of the consortium.

4. The participants of a consortium shall be jointly liable for the obligations related to the activities of the consortium, unless it is otherwise stipulated in the agreement on consortium.

5. A consortium shall cease its activities after the execution of the task set to it, upon the decision of its participants.

#### **Article 234. The Rules for Certain Types of Joint Activities**

Certain types of business activities shall be regulated by the legislation of the Republic of Kazakhstan in accordance with this Code.

### **Chapter 13. The Acquisition of the Right to Own and of Other Material Rights**

#### **Article 235. The Bases for the Acquisition of the Right to Own**

1. The right to own a new object shall belong to the person who manufactured or created it, unless it is otherwise stipulated in an agreement or legislation.

The right to own fruit, production, or income received as a result of the use of the assets, shall be acquired in accordance with Article 123 of this Code.

2. The right to own the property which has an owner may be acquired by any other person on the basis of a purchase and sale agreement, exchange agreement, a gift agreement, or any other transaction to alienate that property.

In the case of demise of a citizen, the right to own the assets which belong to him shall be transferred by inheritance to other persons in accordance with the will or law.

In the case of reorganising a legal entity, the right to own the assets which belong to it shall be transferred to the legal entities which are legal successors of the reorganised legal entity (Article 46 of this Code).

The alienation of the assets from an owner to another person past the approval of the owner shall not be allowed, except for the cases stipulated in this Code.

3. In the cases and in accordance with the procedure stipulated in this Code, a person may acquire the right of ownership of the property which does not have an owner, or the property of which the owner is not known, or the property of which the owner refused it or lost the right to own it for other reasons.

4. Members of a consumer co-operative (housing, housing construction co-operative, dacha co-operative, garage and any other co-operative), and other persons who have the right to accumulate share-units, who fully paid their unit-share contribution for the apartment, dacha, garage or any other premises granted to those persons by the co-operative for their use, shall acquire the right to own the indicated assets.

#### **Article 236. The Emergence of the Right to Own Newly-Created Immovable Assets**

1. The right to own buildings under construction, installations or any other property complexes, and also any other newly-created immovable assets, shall arise from the moment of the completion of the creation of those assets.

2. When legislative acts or an agreement stipulate the acceptance of the finished construction items, then the creation of the relevant property shall be considered to be accomplished from the moment of such acceptance.

3. In the cases where immovable assets are subject to state registration, the right to own them shall arise from the moment of such registration.

4. Prior to the completion of the creation of immovable assets, and in the appropriate cases prior to its state registration, the rules concerning the right of ownership of materials and other assets of which the immovable property is created shall be applied to that property.

#### **Article 237. Re-Processing**



1. Unless otherwise stipulated in the agreement, the right of ownership of a new movable asset manufactured by a person by way of processing the materials which do not belong to him, shall be acquired by the owner of the materials.

However, when the cost of processing substantially exceeds the cost of the materials, the right to own the new item shall be acquired by the person who, acting in good faith, carried out the processing for himself.

2. Unless it is otherwise stipulated in the agreement, the owner of the materials who acquired the right of ownership of the item manufactured thereof, shall be obliged to compensate the cost of the processing to the person who carried it out, and in the case of the purchase of the right to own the new item by that person, the latter must accordingly compensate to the owner of the materials for their value.

3. The owner of materials who lost them as a result of dishonest actions of the person who carried out the processing, shall have the right to claim the transfer of the new item into his ownership and the reimbursement of the losses inflicted upon him.

### **Article 238. The Moment of the Emergence of the Buyer's Right to Own by Agreement**

1. The buyer of the property shall acquire the right of ownership by agreement from the moment of the conveyance of the item, unless it is otherwise stipulated in legislative acts or agreement.

2. When an agreement to alienate property is subject to state registration or notarisation, the right of ownership shall be acquired by the buyer from the moment of the registration or notarisation, and when both notarisation and state registration of the agreement are required, then from the moment of its registration.

### **Article 239. Transfer of Objects**

1. A conveyance shall be recognised as handing objects to the buyer, and equally the submission to a transport organisation for shipment to the buyer, and the submission to the post-office for the conveyance to the buyer of the objects which are alienated without obligation of delivery, unless it is otherwise stipulated in legislation or agreement.

2. If by the moment of concluding an agreement on the alienation of an object it is already in the possession of the buyer, the thing shall be recognised as transferred to him from that moment. The transfer of a waybill or bill of lading or any other document of title concerning objects, shall be equated to the transfer of those objects.

### **Article 240. Usucapio**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A citizen or a legal entity who is not the owner of certain property but who honestly, openly and continuously possess as his own the immovable assets for fifteen years, or any other assets for not less than five years, shall acquire the right to own those assets (usucapio, acquisition by prescription).

The right to own immovable and any other assets which are subject to state registration, shall arise with the person who acquired that property by virtue of usucapio, from the moment of such registration.

2. Prior to the acquisition of the right to own property, a citizen or a legal entity which holds it as their own, shall have the right to protect their ownership against third persons who are not the owners of the property and also against third persons, who have no right to own it by virtue of any other reason stipulated in legislative acts or the agreement.

3. A citizen or a legal entity which refer to the length of possession, may add to their possession all the time during which the item was possessed by the person whose legal successors they are.

4. The course of the usucapio period in respect to the property which is held by the person from whose possession it may be claimed in accordance with Articles 260-263 and 265 of this Code, shall begin not earlier than the expiry date of the term of the statute of limitations on the such claims.

5. In the case where an owner is refused recognition by the court of his right to own, the person who holds the property shall become the owner thereof.

#### **Article 241. Conversion into Property of the Things Which are Commonly Available for Collection or Extraction**

In the event that, in accordance with legislation, local tradition, or general permission given by the owner, in forests, bodies of water or in any other territories, it is allowed to collect berries, catch fish, hunt animals, collect or extract any other items, the right to own the relevant items shall be acquired by the person who has collected or extracted them.

#### **Article 242. Ownerless Objects**

1. Ownerless objects shall be recognised as items which have no owner, or whose owner is unknown, or the item the right to own which is rejected by the owner.

2. Unless excluded by the rules for the acquisition of the right to own items rejected by the owner (Article 243 of this Code), findings (Article 245 of this Code), unattended animals (Article 246 of this Code), and hoard (Article 247 of this Code), the right to own ownerless movable items may be acquired by virtue of acquisition by usucapio (Article 240 of this Code).

3. Ownerless immovable items shall be registered for accounting by the body which carries out the state registration of immovable assets, in accordance with an application to the local executive body in whose territory they are identified. Upon expiry of a year from the date of registering an ownerless immovable item, the body which is authorised to manage communal property may petition to the court with the claim to recognise that item as the one received by the communal property. An ownerless immovable item which is not recognised by the court decision as received by the communal property, may be again taken into possession, use and disposal by the owner who left it, or acquired into ownership through acquisition by prescription. (Article 240 of this Code).

#### ~~Article 243. Movable Items Rejected by the Owner~~

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

#### **Article 243. Movable Objects Rejected by the Owner**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Movable objects abandoned by their owner or otherwise left by him for the purposes of rejecting the right of ownership with regard to them (abandoned items) may be turned by other persons into their ownership in accordance with the procedure provided for by paragraph 2 of this Article.

2. A person who owns, holds or uses a land plot where an abandoned item whose value is apparently lower than twenty monthly assessment indices is located, or abandoned metal scrap, damaged goods are located, shall have the right to turn those items into his ownership by beginning to use them or by performing any other acts which witness the conversion of an item into ownership.

Any other abandoned items shall come into ownership of the person who entered their ownership when pursuant to an application of that person, they are recognised by the court as ownerless.

#### **Article 244. Unauthorised Construction**

1. A residential house, any other structure, facility or any other immovable asset which is created on a land plot which is not allocated for those purposes in accordance with the procedure stipulated in legislation and also one which is built without obtaining appropriate permits, shall be recognised as unauthorised construction.

2. A person who carries out unauthorised construction shall not acquire the right to own it. That person shall not have the right to dispose of the structure, nor to sell, transfer as gift, lease or commit any other transactions.

An unauthorised construction item shall be subject to pull-down by the person who built it or at his expense, except for the cases stipulated in paragraphs 3 and 4 of this Article.

3. The right to own an unauthorised structure may be recognised by the court as belonging to the person who carried out the construction on a land plot which does not belong to him, provided such land plot will be granted to that person in accordance with the established procedure for the placement of the structure so erected.

The right to own an unauthorised construction item may be recognised by the court also as belonging to the person in whose legitimate use the land plot on which the construction took place, is. In that case, the person whose right to own the structure is recognised, shall compensate the builder for the costs of the construction in the amount determined by the court.

The right to own an unauthorised structure may not be recognised as belonging to said persons when the preservation of the structure entails violation of the rights and interests protected by law of other persons, or where it creates a threat to the life and health of citizens.

4. In exceptional cases, taking into account social and economic expedience, unauthorised structure may be transferred to communal property with compensation for the costs of its construction in the amount determined by the court.

### **Article 245. Finding**

1. A person who found a lost item must immediately notify the person who lost it about its discovery, or the owner of the item, or anyone of the other persons known to him, who have the right to receive it, and return to him the found item.

When an item is found on the premises or in transport, it shall be subject to submission to the person who represents the owner of those premises or transport. In such case the owner shall acquire the rights and bear the responsibilities of the person who found the item.

2. When a person who has the right to receive the found item or his location are unknown, the person who found the item shall be obliged to report on his finding to the militia or the local executive body.

3. The person who found a thing shall have the right to keep it with himself or leave it for the safe custody to the militia, the local executive body or to a person indicated by them. A perishable item, or an item the cost of the custody of which is not commensurate with its value, may be sold by the person who found it with the receipt of written evidence certifying the amount received. The money received from the sale of the found item shall be subject to safe custody or returned to the person who has the right to receive the item, or to transfer into the ownership of other persons in accordance with the procedure and on the conditions established for that item itself.

The person who found an item shall be liable for its loss or destruction only in the case of his intention or gross neglect, and within the limits of the value of the item.

4. When, upon expiry of six months from the moment of the report on finding to the militia or the local executive body, the person who has the right to receive the lost item is not identified and does not declare his right with respect to the item to the person who found it or to militia, or to the local executive body, the person who found the item shall acquire the right to own it.

When the person who found an item refuses to acquire the found item into ownership, then it shall be transferred to communal ownership.

5. The person who found and returned an item to the person who is authorised to receive it, shall have the right to receive from that person, and in the case of the transfer of the item into the communal property, from the relevant local executive body, compensation for the unavoidable expenses, associated with the storage, submission, sale of the item, and the costs of identifying the person authorised to receive it.

6. A person who found an item shall have the right to receive an award from the person authorised to receive it, in an amount of thirty per cent of the value of the item. When the found item represents a value only for the person who is authorised to receive it, then the amount of the award shall be determined in accordance with an appraisal carried out by the parties.

The right to an award shall not arise if the person who found the item does not execute his obligation to report on the finding, or where he committed other actions in order to conceal the finding.

## **Article 246. Unattended Animals**

1. A person who detained unattended or stray cattle and other domestic or tame animals shall be obliged to return them to the owner, and if he or his location are unknown, not later than within three days from the moment of such detention, to report on the found animals to the militia or the local executive body which shall adopt measures to find the owner.

During the period of the search for the animals' owner, they may be left by the person who detained the animals for his maintenance and use, or turned in by him to another person who has sufficient facilities for their maintenance and use. Upon the request of the person who detained the animals, the local executive body shall find a person who has the required conditions for their maintenance and use, and convey to him the animals.

2. The person who detained animals and the person to whom they are transferred for maintenance and use shall be responsible for the death and damage to the animals only if their guilt exists, and only for the value of those animals.

3. If within six months from the moment of a report on the detention of working and large cattle, and two months for any other domestic animals, their owner is not identified and does not declare his right to them, the right to own those animals shall be transferred to the person with whom they stayed for their maintenance and use. In the case of refusal of that person to accept the ownership of the animals maintained by him, they shall become communal property and shall be used in accordance with the procedure determined by the relevant local executive body.

4. In the case of return of the animals to the owner, the person who detained the animals and the person with whom they stayed for maintenance and use shall have the right to receive from that owner compensation for the expenses associated with the maintenance of the animals, with reckoning the benefits derived from their use.

5. The person who detained unattended or stray cattle, and other domestic or tame animals, shall have the right to claim from their owner the payment of a reward in accordance with paragraph 6 of Article 245 of this Code.

6. In the event that the former owner of the animals arrives after their transfer into the ownership of any other person, the owner shall have the right, in a case where circumstances are present which indicate attachment of the animals to the original owner, or cruel or other improper treatment of them by the new owner, to require their return to him on the conditions to be established by an agreement with the new owner, and if they fail to agree, through the court.

## **Article 247. Treasure-Trove**

1. A treasure-trove, which is money or any other valuables hidden in the earth or concealed by any other method, the owner of which may not be identified or, by virtue of legislation lost the right to it, shall become the property, in equal shares, of the owner of the land plot or the owner of the immovable asset in which the treasure-trove was hidden and of the person who found the treasure-trove, unless the agreement between them establishes otherwise.

In a case of the finding of a treasure trove by a person who conducts excavations or research for valuables without the approval of the user of the land plot or the owner of the immovable property where the treasure-trove was hidden, the treasure-trove shall be subject to transfer to that owner.

2. In the case of finding a treasure-trove which contains items which are memorials of historical or cultural value, they shall be subject to transfer to the ownership of the Republic of Kazakhstan. In that instance, the user of the land plot or the owner of the immovable property in which such treasure-trove has been found, and the person who found the treasure-trove, shall have the right to receive a reward in the amount of fifty per cent of the value of that treasure-trove. The reward shall be distributed between those persons subject to the rules stipulated in paragraph 1 of this Article.

## **Article 248. The Acquisition of Property Confiscated from the Owner**

If a person, in accordance with the procedure and under the conditions stipulated in legislative acts, acquired property confiscated from the owner, on a legitimate basis that person shall acquire the right to own the property.

## **Chapter 14. Cessation of the Right to Own and of Other Corporeal Rights**

### **Article 249. The Basis for the Cessation of the Right to Own**

1. The right of ownership shall cease after the alienation by the owner of his property to other persons, the refusal by the owner of the right to own, the death or destruction of property, and the losing of the right to own the property in any other cases stipulated in legislative acts.

2. Compulsory confiscation from an owner of his property shall not be allowed except in the following cases:

- 1) imposition of a claim upon the assets based on the liability of the owner;
- 2) compulsory alienation of assets which by virtue of legislative acts may not belong to that person;
- 3) requisition;
- 4) confiscation;
- 5) alienation of immovable assets in connection with the reservation of a land plot;
- 6) purchase of ownerless cultural or historic valuables;
- 7) in any other cases stipulated in this Code.

3. In the cases, on the conditions and in accordance with the procedure stipulated in the legislative acts concerning privatisation, the assets which are in state ownership shall be alienated into private property of citizens and legal entities.

4. In the case of adoption of the Law of the Republic of Kazakhstan concerning conversion into state ownership of the property which is in private ownership of citizens and legal entities (nationalisation), their losses shall be compensated in accordance with the procedure stipulated in Article 266 of this Code.

### **Article 250. The Refusal of the Right to Own**

A citizen or a legal entity may waive the right of ownership of the property which belong to them, by announcing this, or by committing other actions which definitely prove their rejection of the ownership, use and disposal of the assets, without intention to retain any other rights in respect to those assets.

The refusal of the right to own shall not entail the cessation of the rights and obligations of the owner in respect to the relevant property prior to acquisition of the right to own that property by any other person.

### **Article 251. Imposition of a Claim on the Assets of an Owner**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The imposition of a claim upon assets based on the liability of the owner shall be carried out in a judicial procedure, unless it is otherwise stipulated in the agreement.

2. The owner's right to own the assets upon which a claim was imposed shall cease from the moment of the emergence of the right to own the confiscated assets by the person to whom the right to own transfers in accordance with the procedure stipulated in the legislation.

### **Article 252. Cessation of the Right to Own of a Person to Whom by Virtue of Legislative Acts the Assets May Not Belong**

1. If due to reasons allowed by legislative acts a person came into ownerships of the items which may not belong to him by virtue of legislative acts, that property must be alienated by the owner within one year from the moment of the acquisition of the right of ownership of that property, unless other period is specified in legislative acts. In a case where the assets are not alienated by the owner within the indicated deadlines, they, in accordance with the decision of the court, shall be subject to compulsory alienation with compensation to the owner for the value of the assets, less the expenditures associated with their alienation.

2. When a citizen or a legal entity owns an item for the acquisition of which special permission is required, on the bases allowed by the legislative acts, and its issue to the owner is denied, that item shall

be subject to alienation in accordance with the procedure which is established for the property which may not belong to that owner.

### **Article 253. Requisition**

*as amended (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In cases of natural calamities, accidents, epizootic epidemics, and under any other circumstances which have an extraordinary nature, property may be requisitioned in the interests of the society upon the resolution of the state bodies from an owner in accordance with the procedure and on the conditions established by legislative acts, with the payment to him of the value of the property (requisition).

2. The evaluation on the basis of which the owner is reimbursed for the value of the requisitioned property may be challenged by him in a judicial procedure.

3. A person whose assets are requisitioned shall have the right to claim through the court the return to him of the remaining assets, after the cessation of the effect of the circumstances in relation to which the requisition took place.

### **Article 254. Confiscation**

In the cases stipulated in legislative acts, property may be confiscated without compensation from an owner in a judicial procedure in the form of a sanction for the commitment of a crime or any other violation of law (confiscation).

### **Article 255. Cessation of the Right to Own Immovable Property in Relation to the Reservation of Land and Other Natural Resources**

1. The termination of the right to own immovable property due to a decision by a state body which is not directly aimed at the confiscation of property from the owner, including by the decision to reserve the land plot upon which a house or any structures, installations or plantations which belong to the owner are located, shall be allowed only in cases in accordance with the procedure established by the legislative acts, with the granting to the owner of equally valuable assets and the reimbursement of any other losses incurred, or refunding to him in full volume the losses inflicted by the termination of the right to own.

2. In the case of a disagreement by the owner with a decision which entails the termination of his right of ownership, it may not be effected prior to the settlement of the dispute in a judicial procedure. When a dispute is considered, all the issues associated with the reimbursement of the owner for the inflicted losses shall be also settled.

3. The rules of this Article shall appropriately apply when the right of ownership of immovable assets is terminated in connection to the decision of a state body to reserve mining allotments, parts of the sea bed and any other plots on which assets are located.

### **Article 256. Purchase of Ownerless Cultural and Historic Assets**

In the cases when an owner of cultural and historic valuables, which in accordance with legislation are recognised as especially valuable and protected by the State, carelessly keeps those valuables, and this threatens the loss by them of their significance, such valuables upon the decision of the court may be confiscated from the owner by the State by way of purchase or sale through a public auction.

When cultural valuables are purchased, the owner shall be compensated for their value in an amount established by agreement of the parties, and in the case of a dispute, by the court. In selling through an auction, the amount received from the sale shall be transferred to the owner, less the expenditure on the conduct of the auction.

### **Article 257. The Appraisal of the Assets When Terminating the Right to Own**

When terminating the right to own, assets shall be appraised on the basis of their market value.

## **Article 258. Cessation of Material Rights Which Belong to a Non-Owner**

Corporeal rights which belong to a non-owner shall terminate in accordance with the rules established by Articles 249-257 of this Code, and also upon the decision of the owner in accordance with the procedure established by legislative acts, by the charter of the legal entity or by agreement of the owner with the holder of the property.

## **Chapter 15. Protection of the Right to Own and of Other Material Rights**

### **Article 259. Recognition of the Right to Own**

An owner shall have the right to claim recognition of his right to own.

### **Article 260. Owner's Claim to Return Property from Somebody Else's Illegal Possession**

An owner shall have the right to seek the return of his property from somebody else's illegal possession.

### **Article 261. Claiming Property From a Bona Fide Buyer**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. When assets are purchased from a person who did not have the right to alienate them, for a price, and the buyer had no knowledge and should not have had knowledge of this (a bona fide buyer), then the owner shall have the right to claim that property from the buyer only in the case where the assets were lost by the owner, or by the person to whom the assets were transferred by the owner for possession, or if the assets were stolen from one of them, or went out of their possession in any other way outside their will.

2. If assets are purchased free of charge from a person who did not have the right to alienate them, the owner shall have the right to claim the assets in any case.

3. Claiming assets on the bases indicated in paragraph 1 of this Article shall not be allowed, provided the assets were sold in accordance with the procedure established for the execution of court decisions.

### **Article 262. Limitation on the Claims of Money and Securities**

Money and also bearers' securities may not be claimed from a bona fide buyer.

### **Article 263. Settlements in Returning Items from Illegal Possession**

1. In claiming assets on the basis of Articles 260 and 261 of this Code, the owner shall also have the right to claim from a mala fides holder the return, or reimbursement, of all the income which he derived or should have derived during the entire time of possession; while from the bona fide holder, of all the income which he derived or should have derived from the time when he learnt of the illegitimacy of his possession and received the subpoena related to the action of the owner to return the assets. A bona fide holder in his turn shall have the right to claim from the owner reimbursement of the necessary costs incurred in relation to the property from the time when income from the property became due to the owner. An mala fides holder shall have the right to obtain such reimbursement entirely or in part only in the cases in which the claim of the owner is recognised by the court as substantial.

2. An illegitimate possessor shall have the right to retain the improvements made by him, if they may be separated without damaging the item. When such separation of improvements is impossible, the bona fide holder shall have the right to claim reimbursement of costs incurred for the improvement, but not for

more than the amount of the increase in the value of the item. The male fides holder shall have no such right.

**Article 264. Protection of the Right of the Owner From the Violations Which are not Related to the Deprivation of Ownership**

An owner may claim the removal of any violation of his right, even though those violations are not related to deprivation of ownership.

**Article 265. Protection of Material Rights of the Person Who is not an Owner**

The rights which are stipulated in Article 259 - 264 of this Code shall also belong to a person who, although he is not the owner, holds the property under the right to business authority, operational management, permanent land use or on another basis which is stipulated in the legislative acts or the agreement. That person shall have the right to protect his possessions from the owner, as well.

**Article 266. Protection of the Interests of the Owner When His Rights Are Terminated for Reasons Stipulated in the Law**

In the case of adoption by the Republic of Kazakhstan of legislative acts which terminate the right to own, the losses inflicted upon the owner as a result of the adoption of those acts shall be reimbursed to the owner in full volume by the Republic of Kazakhstan.

**Article 267. Invalidity of the Acts of the Bodies of Power, Administration and of the Officials, Which Violate the Rights of an Owner and Other Corporeal Rights**

1. Where as a result of issuing a regulatory or individual act which does not comply with legislation, by a body of the state administration, a local representative or executive body, or by an official person, the rights of an owner and of any other persons are violated in relation to ownership, use and disposal of the property which belongs to them, such an act shall be recognised as invalid in a judicial procedure through the action of the owner or a person whose rights are violated.

2. When a court passes its decision on a specific case, the acts of the bodies of state administration, and of a local representative or executive body, which contradict the legislative acts shall not be applicable.

Any losses which are inflicted upon an owner as a the result of the issue of said acts shall be subject to reimbursement in full volume by the relevant body of authority or administration from the resources of the relevant budget.

**SECTION III. LAW OF OBLIGATIONS**

**SUBSECTION I. GENERAL PROVISIONS CONCERNING OBLIGATIONS**

**Chapter 16. The Definition and the Bases for the Emergence of Obligations**

**Article 268. The Definition of Obligations**

If due to an obligation one person (the debtor) shall be obliged to commit for the benefit another person (the creditor) certain actions, e.g. to transfer property, perform work, pay money etc., or abstain from certain actions, then the creditor shall have the right to claim from the debtor the execution of his obligation. The creditor shall be obliged to accept the execution from the debtor.

**Article 269. Parties to an Obligation**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General*



*Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

2. Several persons may participate simultaneously in an obligation as either of the parties, the creditor or the debtor. In those cases, a shared, joint or subsidiary obligation shall arise in accordance with the rules established by this Code (Article 286 - 288).

The invalidity of the claims of a creditor toward one of the persons who participate in an obligation on the side of the debtor by itself shall not affect the creditor's claims toward other such persons, and this is also applicable as to the expiration of the term of the statute of limitations of the claim toward such a person.

3. If due to an obligation either of the parties has an obligation for the benefit of the counter party, either first party shall be deemed to be a debtor of the counter party with regard to what it is obliged to do to benefit the other, and simultaneously its creditor in what it has the right to claim from the other.

#### **Article 270. Participants of an Obligation**

1. Participants in an obligation shall be the parties (debtor and creditor) and third persons.

2. The persons who are bound by obligations or other legal relations with one of the parties of an obligation shall act as third parties.

3. An obligation shall not create duties for third parties. In the cases stipulated by the legislation or agreement of the parties, an obligation may give rise to the rights of third parties in respect of one or both parties to the obligation.

#### **Article 271. The Bases for the Emergence of Obligations**

Obligations shall emerge from an agreement, infliction of damage or on any other bases which are stipulated in Article 7 of this Code.

### **Chapter 17. Execution of Obligations**

#### **Article 272. Proper Execution of Obligations**

Obligations must be fulfilled in a proper manner, in accordance with the conditions of the obligation and requirements of legislation, and if such conditions and requirements do not exist, then in accordance with the traditions of business practice or any other requirements which are usually applicable.

#### **Article 273. Prohibition of a Unilateral Refusal to Execute an Obligation**

A unilateral refusal to execute an obligation and a unilateral alteration of its conditions shall not be allowed, except for the cases stipulated by the legislation or agreement.

#### **Article 274. Execution of an Obligation by Part**

A creditor shall have the right not to accept the execution of an obligation by part, unless it is otherwise provided for by the conditions of the obligation, the legislation, or ensues from the traditions of business practice or the essence of the obligation.

#### **Article 275. The Execution of an Obligation to the Proper Person**

Unless it is otherwise provided for by an agreement of the parties or ensues from the tradition of business practice, or the essence of the obligation, when an obligation is executed the debtor shall have the right to claim proof that the execution is accepted by the creditor himself or by a person authorised by the creditor, and the debtor shall bear the risk of the consequences of failure to present such a claim.

#### **Article 276. The Execution of Obligations By a Third Party**

1. The execution of an obligation may be delegated, entirely or in part, to a third party, provided it is stipulated in legislation or the agreement, and also when the third party is related to one of the parties through an appropriate agreement.

2. When the obligation of a debtor to execute an obligation personally does not ensue from legislation, conditions of the obligation or from its essence, the creditor shall be obliged to accept the execution offered for the debtor by a third party.

3. The third party that bears the risk to lose its right to the property of a debtor (the right to use, own, mortgage etc.), as a result of the imposition by the creditor of a claim upon that property, may at its expense satisfy the claim of the creditor without the consent of the debtor. In that case the rights of the creditor in the obligation shall be transferred to the third party, and the rules of this Code concerning the assignment of a claim (Article 339 - 347 of this Code) shall apply.

#### **Article 277. The Term for the Execution of an Obligation**

1. When an obligation stipulates or permits the identification of the date of its execution or a period of time during which it must be executed, the obligation shall be subject to execution on that date or appropriately at any moment within that period.

2. In the cases where an obligation does not stipulate the date for its execution and does not contain any conditions which allow the identification of that date, it must be executed within a reasonable period after the emergence of the obligation.

An obligation which is not executed within a reasonable term, and equally an obligation the term for the execution of which is identified as the moment of the claim, must be executed by the debtor within seven days from the date of the presentation by the creditor of the claim for its execution, unless the duty to execute by any other date ensues from legislation, the conditions of the obligation, traditions of business practice or the essence of the obligation.

#### **Article 278. The Requirement of a Regular Execution of an Obligation**

The obligations which are intended to be for a long term of execution must be executed regularly within reasonable periods for such types of obligations (a day, ten days, a month, a quarter, etc.), unless it is otherwise stipulated in the legislation, or the conditions of the obligation, or ensues from the essence of the obligation, or traditions of business practice.

#### **Article 279. Premature Execution of an Obligation**

1. A debtor shall have the right to execute obligations prior to the deadline, unless it is otherwise stipulated in legislation or conditions of the obligation or ensues from its essence.

2. A premature execution of obligations related to entrepreneurial activities shall be allowed only in cases where the possibility of fulfilling the obligation prior to the deadline is stipulated in legislation, or the conditions of the obligation, or ensues from the tradition of business practice or the essence of the obligation.

#### **Article 280. Information Concerning the Course of Execution of an Obligation**

The legislation or conditions of an obligation may stipulate a duty of the debtor to report to the creditor upon the course of execution of the obligation.

#### **Article 281. The Place of the Execution of an Obligation**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

If the place of the execution is not determined by legislation or the conditions of the obligation, and it does not clearly ensue from the essence of the obligation or traditions of business practice, the execution must be carried out as follows:

- 1) an obligation to transfer immovable property, - in the place where the property is situated;
- 2) an obligation to transfer goods or other property with the use of transport,- in the place of transfer of the goods to the first carrier for delivery to the creditor;
- 3) other obligations of an entrepreneur to transfer goods or other assets,- in the place of the manufacture or storage of the property, provided that place is known to the creditor at the moment of the emergence of the obligation;
- 4) a monetary obligation - in the place of residence of the creditor at the moment of the emergence of the obligation, and if the creditor is a legal entity, - in the place where it is situated at the moment of the emergence of the obligation; if the creditor by the time of the execution of the obligation changed his place of residence or the place of its location and notified the debtor of it, - at the new place of residence or location of the creditor, with the charging of all the costs associated with the change of the place of the execution to his account;
- 5) with regard to any other obligations, - in the place of residence of the debtor, and if the debtor is a legal entity at the place of its location.

### **Article 282. Monetary Obligations**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(18) Law No. 436 of 16th July 1999 of the Republic of Kazakhstan "Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan"*

1. Monetary obligations in the territory of the Republic of Kazakhstan must be expressed in the Tenge (Article 127 of this Code).

The use of foreign currency, and also of payment documents in foreign currency when making payments on obligations in the territory of the Republic of Kazakhstan, shall be allowed in the cases and on the conditions defined by legislative acts of the Republic of Kazakhstan or in accordance with the procedure established by them. A monetary obligation may stipulate that it is subject to payment in the Tenge in the amount which is equivalent to a certain amount in foreign currency. In this case the amount to be paid in the Tenge shall be determined on the basis of the official exchange rate of the National Bank as established for the relevant foreign currency at the day of payment or on the basis of any other exchange rate as established by the agreement of the parties.

The procedure and methods for effecting payments and settlements shall be established by banking legislation of the Republic of Kazakhstan and they shall be defined by the parties in relevant agreements.

2. An amount of the performed payment, which is insufficient for the execution of a monetary obligation, unless it is otherwise agreed by the parties, shall first of all repay the costs of the creditor in respect of the receipt of the execution, and then the damage and remuneration (interest), and the outstanding part shall be applied to the principal amount of debt.

3. In long term obligations, the indexation of payments on the conditions specified by the parties may be indicated.

### **Article 283. The Increase of the Amounts Which are Payable for the Maintenance of a Citizen**

With an official increase of the minimum wage, the amounts which are payable on a monetary obligation directly for the maintenance of a citizen (compensation for harm caused to life or health, in accordance with the agreement of life-long support, etc.), shall be increased proportionally.

### **Article 284. Execution of Mutual Obligations**

1. Mutual obligations must be executed by the parties simultaneously, unless it otherwise ensues from the legislation, traditions of business practice, conditions of the obligation, or its essence.

2. Non-execution or improper execution of an obligation by one of the parties shall release the other party, when mutual obligations are executed and counter claims are satisfied, from the execution of its duties, unless legislative acts or the conditions of the obligation stipulate otherwise.

#### **Article 285. Execution of an Alternative Obligation**

A debtor who is obliged to commit one of two or of several actions shall have the right to select among them, unless it otherwise ensues from legislation or conditions of the obligation.

#### **Article 286. Execution of an Obligation in Which Several Creditors or Several Debtors Participate**

When several creditors or several debtors participate in an obligation (obligation with a number of persons), then either of the creditors shall have the right to claim the execution of the obligation, and each of the debtors shall be obliged to execute the obligation in a share equal to others, unless it otherwise ensues from legislation or the conditions of the obligation (shared obligation).

#### **Article 287. The Execution of a Joint Obligation**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An obligation with a number of persons, by virtue of which each creditor has the right to claim, and each debtor is obliged to execute the obligation in full, shall be recognised as a joint obligation.

A joint obligation or a joint claim shall arise if it is provided for in the agreement or established by legislative acts, in particular, where the subject of the obligation is indivisible.

2. The duties of several debtors in respect to an obligation associated with entrepreneurial activity, as well as the claims of several creditors in such an obligation shall be recognised as joint ones, unless legislation or conditions of the obligation stipulate otherwise.

3. In the case of joint obligation of debtors, the creditor shall have the right to claim the execution both from all the debtors and from any one of them separately, and in this respect for full repayment and for part of the debt. The creditor who have not received complete satisfaction from one of the joint debtors shall have the right to claim the amount in arrears from the other joint debtors.

The joint debtors shall remain obliged until the obligation is executed in full. The execution of a joint obligation in full by one of the debtors shall release the other debtors from their execution to the creditor.

4. When claims are joint, any of the joint creditors shall have the right to present to the debtor the claim in full volume.

The execution of an obligation in full to one of the joint creditors shall release the debtor from execution to the other creditors.

5. In the case of a joint obligation, the debtor shall not have the right to make objections against the claims of the creditor which are based on such relations of the other debtors to the creditor in which that debtor does not participate.

In the case of joint claims, the debtor shall not have the right to make objections against the claims of one of the joint creditors, which are based on such relations of the debtor with another joint creditor, in which that creditor does not participate.

#### **Article 288. The Execution of a Subsidiary Obligation**

The legislative acts or conditions of an obligation between the creditor and the debtor may specify that, in the case of a failure by the principal debtor to satisfy the claim of the creditor to execute the obligation, that claim may be made to the other debtor (a subsidiary debtor) such part of it as is not executed.

#### **Article 289. Regress Claims**

1. A debtor who executed an obligation of another person shall have the right of return claim (regress) to that person in the amount of the obligation executed.

A debtor who failed to execute an obligation as a consequence of actions of a third party, shall have the right to claim compensation for the losses from that party.

2. A debtor who executed a joint obligation shall have the right to a return claim against each of the other debtors in equal shares less the share which is his own share.

The amount unpaid by one co-debtor to the debtor who executed a joint obligation shall equally fall on that debtor and on the other co-debtors.

The rules of this paragraph shall apply appropriately when a joint obligation is terminated by offset of a counter claims of one of the debtors.

3. A joint creditor who received execution from a debtor shall be obliged to recompense the other creditors for the shares which are due to them, unless it otherwise ensues from relations between them.

#### **Article 290. Certification of the Execution of Obligations**

1. Upon the claim of a debtor, a creditor, when accepting a execution, shall be obliged to issue to him a written confirmation of receipt of the execution in full or in part.

When the debtor issues to the creditor a debt document to certify the obligation, then the creditor accepting the execution must return that document to the debtor. Where it is impossible to return, he must indicate that in the receipt which he issues.

The receipt may be substituted by an inscription on the debt document which is returned to the debtor.

2. The placement of the debt document with the debtor shall certify, unless the contrary is proven, the termination of the obligation.

3. In the case of the refusal by the creditor to issue a receipt for the execution, to return the debt document, or to indicate the impossibility of its return in the receipt, the debtor shall have the right delay execution. In that case the creditor shall be deemed to be delaying.

#### **Article 291. The Execution of an Obligation by Depositing the Debt**

*amended by (11) Law of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A debtor in order to execute obligations shall have the right to place on the terms of depositing the money he owes, and securities - on the terms of custody in the name of a notary and in the cases established by legislative acts - in the name of the court, if the obligation may not be executed by the debtor as a result of the following:

1) absence of the creditor or the person who is authorised by him to accept the execution in the place where the obligation must be executed;

2) incapacity of the creditor and his not having a representative;

3) obvious lack of certainty as to who the creditor is with regard to the obligation, particularly, in connection with a dispute about that between the creditor and other persons;

4) evasion by the creditor of acceptance of the execution, or any other delay on his behalf;

2. The placement of money or securities on the terms of depositing or custody in the name of notary or a court shall be deemed to be execution of an obligation.

A notary or a court in whose name money or securities are deposited, shall notify the creditors accordingly.

### **Chapter 18. Securing Execution of Obligations**

#### **§ 1. General Provisions**

#### **Article 292. Methods of Securing the Execution of Obligations**

1. The execution of an obligation may be secured with damages, pledge, lien of the debtor's property, suretyship, guarantee, advance payments, and other methods provided for by legislation or the agreement.
2. The invalidity of an agreement on securing an obligation shall not entail the invalidity of that obligation (the principal obligation).
3. The invalidity of the principal obligation shall entail the invalidity of the obligation which secures it.

## **§ 2. Damages**

### **Article 293. The Definition of Damages**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

Damages (fine, penalty) shall be recognised as a monetary amount defined by legislation or agreement, which must be paid by a debtor to the creditor in the case of failure to execute, or improper execution of an obligation, in particular, in the case of a delay in execution. Upon the claim to pay the damages, the creditor shall not be obliged to prove losses caused to him.

### **Article 294. The Form of an Agreement on Damages**

The agreement on damages must be committed in writing, irrespective of the form of the principal obligation.

Failure to comply with the written form requirement shall entail invalidity of the agreement on damages.

### **Article 295. Legal Damages**

1. A creditor shall have the right to claim the payment of damages as determined by legislation (legal damages), irrespective of whether the obligation for its payment is stipulated in the agreement of the parties.

2. The amount of the legal damages may be increased by agreement of the parties, provided legislation does not prohibit it.

### **Article 296. Amount of Forfeit**

The amount of forfeit shall be determined in a fixed monetary amount or in a percentage of the amount in default or the amount of the improperly executed obligation.

### **Article 297. The Reduction of the Amount of Damages**

If the damages (fine, penalty) which is subject to payment is exorbitantly large as compared to the losses of the creditor, the court shall have the right to reduce the damages (fine, penalty), considering the degree of the execution of the obligation by the debtor and the interests of the debtor and the creditor, which are worth attention.

### **Article 298. The Bases for Levying Damages**

Damages shall be levied for failure to execute or for improper execution of an obligation, when the conditions exist for holding of the debtor responsible for violation of the obligation (Article 359 of this Code).

## **§ 3. Pledge**

### **Article 299. Definition of Pledge**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Pledge shall be recognised as a method of securing the execution of an obligation, by which a creditor (pledge holder) has the right, in the case of failure by the debtor to execute the obligation secured with the pledge, to receive satisfaction from the value of the pledged property, in a priority procedure before the other creditors of the person to whom that property belongs (pledger), with the exceptions established by this Code.

The pledge holder shall have the right to receive on the same principles as satisfaction from the insurance compensation for the loss or damage to the pledged property, irrespective of for whose benefit it is insured, unless the loss or damage took place for reasons outside the control of the pledge holder.

2. The pledge of enterprises, buildings, installations, apartments, rights to land plots and any other immovable property (mortgage) shall be regulated by the Law of the Republic of Kazakhstan Concerning Mortgage of Immovables. The general rules concerning pledge, which are contained in this Code shall apply to mortgage in the cases where the Law of the Republic of Kazakhstan Concerning Mortgage does not stipulate any other rules.

### **Article 300. The Bases for the Emergence of Pledge**

1. Pledge shall arise by virtue of an agreement. Pledge shall arise also on the basis of legislative when the events indicated therein take place, provided the legislative acts specify what property is recognised as held under pledge and which obligations are secured.

2. The rules of this Code concerning the pledge, which arises by virtue of an agreement, shall appropriately apply to a pledge which arises on the basis of legislative acts, unless legislative acts stipulate otherwise.

### **Article 301. Pledgeable Items**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity; and*

*(12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Any property including objects and property rights (claims), except for the objects which are excluded from circulation (paragraph 2 of Article 116 of this Code), claims which are inseparably associated with the person of the creditor, in particular the claims of alimony, compensation for harm caused to life or health, and other rights the assignment of which to any other person is prohibited by legislative acts, may be pledged.

2. The right to pledge may be applied by agreement to the property which will come into ownership or under business authority of the pledger in the future.

3. Pledge of certain types of property, in particular the property of citizens upon which it is prohibited to make claims, may be restricted or prohibited by the legislative acts.

4. Funds which are subject to pledge shall be placed in a bank.

5. Pledge of securities of joint stock companies (including banks), and of any other entities, shall be carried out subject to legislation concerning securities.

### **Article 302. Claims Which Are Secured by Pledge**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. Unless it is otherwise stipulated by the agreement or legislative acts, the pledge shall secure a claim in the volume which it has at the moment of the actual satisfaction, including remuneration (interest), and compensation of losses incurred by delay in the execution, damages (fine, penalty), the necessary expenses associated with the maintenance of the pledged property, and also the compensation for the costs associated with the collection.

2. Pledge may be established in respect to the claims which will arise in the future, provided the parties agree on the amount of such claims, which is secured by the pledge.

### **Article 303. Types of Pledge**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. Mortgage is a type of pledge under which the pledged property remains in the possession and use of the pledger or a third person.

Enterprises, structures, buildings, installations, apartments in blocks of apartments, transport vehicles, cosmic items, goods in circulation and other property which is not excluded from the civil circulation, may be subject to mortgage.

Separable fruits may be subject to mortgage only on the condition that they do not become subject to rights of any third party from the moment of separation. The mortgage of enterprises, structures, buildings, installations, apartments in blocks of apartments, transport vehicles and cosmic items shall be subject to registration at the bodies which carry out the registration of such items.

2. Pawning shall be the type of pledge whereby the pledged property is transferred by the pledger into the possession of the pledge holder.

With the consent of the pledge holder the pledged items may be left with the pledger under lock and seal of the pledge holder. The pledged item may be left in the possession of the pledger with the application of the signs which witness the pledge (secure pledge).

3. In the pledge of rights, the property rights which may be alienated may be subject to pledge, and in particular, the leasing rights to enterprises, structures, buildings, installations, the right to a share in the assets of a business partnership, debt claims, copyright, inventor's rights and other property rights.

The pledge of the rights to a land plot and also of the rights to other natural resources shall be allowed within the limits and under the conditions stipulated in the legislation concerning land and any other natural resources.

A term right may be subject to pledge only prior to the expiry of the term of its validity.

The debtor of a pledged right must be notified of the pledge.

When a pledged right is confirmed by a document, the pledge agreement may be documented in the form of a transfer of the document which establishes the right.

4. In pledging a property right certified with a security, the security shall be transferred to the pledge holder or office placed in a bank, unless the agreement stipulates otherwise.

5. Unless it is otherwise stipulated in the pledge agreement, money which are the pledged item shall be placed in a bank.

Remuneration (interest) owing on those funds shall belong to the pledger.

### **Article 304. The Pledge of the Property Which is in Common Ownership**

The property which constitutes common property may be pledged only with the consent of all the owners. The right to a share in common property may be an independent pledgeable item.

### **Article 305. A Pledger**

1. Both the debtor and a third party may be pledgers.

2. The owner of an item, or with the consent of the owner, any other person who has in respect to that item the right of business authority, may be pledgers, unless it is otherwise provided for by legislative acts.

3. A person to whom the right to be pledged belongs may be a pledger of the right.



The pledging of the right to lease or any other right to somebody else's item shall not be allowed without consent of its owner, or of the person who has, in respect to that item the right of business authority, when legislative acts or an agreement prohibit the alienation of that right without consent of said persons.

### **Article 306. Insuring Pledged Assets**

*as amended by (22) Law No. 128 of 18th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Insurance and Insurance Activities.*

1. An agreement or legislative acts may impose upon the pledge holder the obligation to insure the pledged property transferred to his possession.

Insuring of pledged assets which remain in the use of the pledger shall be imposed upon the latter.

2. In the case of the occurrence of an insurable event, the right to claim the assets pledged in accordance with the insurance agreement shall be acquired by the pledger only in the case of the refusal of the claim by the pledge holder.

When the amount of insurance compensation exceeds the amount of the obligation secured with the pledge, the pledge holder shall be obliged, within three banking days from the moment of its receipt, to transfer the difference to the pledger.

### **Article 307. Contents and the Form of the Pledge Agreement**

1. A pledge agreement must indicate the pledged item and its evaluation, including the amount and the deadline for the execution of the obligation which is secured with the pledge. It must contain an indication of which of the parties is to keep the pledged property and whether it is allowed to use it.

2. A pledge agreement must be concluded in writing.

3. Failure to comply with the rules contained in paragraphs 1 and 2 of this Article shall entail invalidity of the pledge agreement.

### **Article 308. Registration of Pledge**

1. Pledge of property which is subject to state registration must be registered with the body which carries out the registration of that property.

2. The body which carries out the registration shall be obliged to maintain the register of pledges and to adopt measures to protect the interests of pledge holders and to prevent alienation of pledged assets without consent of the pledge holder.

When the nature and contents of a debt claim secured with the pledge are changed, an additional registration shall be carried out.

When the right to own pledged assets is transferred to another person, the note of transfer of the pledge to the new owner shall be made in the register.

3. A pledger who executed an obligation secured with a pledge shall have the right to claim the annulment of the note of the pledge from the register. Upon the claim of the pledger, the pledge holder shall be obliged to present to the body which carries out the registration the necessary documents and written applications. In the case of failure to execute, or an untimely execution by the pledge holder of those obligations, the pledger shall have the right to claim compensation of losses inflicted on him.

### **Article 309. Assets to Which the Rights of a Pledge Holder Apply**

1. Unless it is otherwise stipulated in the agreement or legislative acts, the rights of the pledge holder (the right to pledge) in respect to the item which is pledged item, shall apply to its accessories and inseparable fruit.

In the cases stipulated in the agreement or legislative acts the right to pledge shall apply to the separable fruit, production and income received as a result of the use of the pledged property.

2. In the case of mortgage of an enterprise or any other property complex as a whole, the right of pledge shall apply to all the property, both movable and immovable, including the right to claim and

exclusive rights, including those acquired during the mortgage, unless it is otherwise stipulated in legislative acts or the agreement.

3. Mortgage of a building or installation shall be allowed only with a simultaneous mortgage through the same agreement of the land plot on which the building or installation is located, or of the part of the plot which is functionally related to the mortgaged facility.

### **Article 310. The Emergence of the Right to Pledge**

1. Unless it is otherwise stipulated in the pledge agreement, the right to pledge shall arise in respect to the property, the pledging of which is subject to registration, - from the moment of the registration of the agreement, and in respect of other property, - from the moment of the transfer of that property to the pledge holder, and where it is not subject to transfer, from the moment of concluding the pledge agreement.

2. The right to pledge goods in circulation shall arise in accordance with the rules of paragraph 2 of Article 327 of this Code.

### **Article 311. Subsequent Pledge (Re-Pledge)**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. When pledged property becomes subject to another pledge to secure any other claims (re-pledge), then the claims of the subsequent pledge holder shall be satisfied from the value of the pledged item after the satisfaction of the claims of previous pledgeholders.

2. Re-pledge shall be allowed unless it is prohibited by the previous pledge agreements.

3. The pledger shall be obliged to communicate to each subsequent pledge holder information concerning all the existing pledges of that property and he shall be liable for losses inflicted upon the pledge holders by failure to execute that duty.

### **Article 312. Maintenance and Safety of Pledged Assets**

1. The pledger or the pledge holder, depending on which of them keeps the pledged property, unless it is otherwise stipulated in legislative acts or the agreement, shall be obliged as follows:

1) to adopt measures which are required to ensure the safety of pledged property including for its protection from encroachments and claims by third parties;

2) immediately notify the other party of the emergence of a threat of losing or damaging pledged property.

2. The pledge holder and the pledger shall have the right to check against documents and to verify the physical presence, size, status and conditions of storage of pledged assets which are kept by the counter party.

3. In case of a gross violation by the pledge holder of the obligations indicated in paragraph 1 of this Article, which creates the threat of loss or damage to pledged property, the pledger shall have the right to claim a premature termination of the pledge.

### **Article 313. The Consequences of a Loss or Damage to Pledged Assets**

1. A pledger shall bear the risk of an accidental destruction or damage to pledged assets, unless it is otherwise stipulated in the pledge agreement.

2. A pledge holder shall be responsible for a full or partial loss or damage of the pledged item entrusted to him, unless he proves that he may be exempt from the responsibility in accordance with Article 359 of this Code.

3. A pledge holder shall be responsible for the loss of a pledged item in the amount of its actual value, and for any damage to it, - in the amount by which that value was reduced, irrespective of the amount at which the pledged item was evaluated when it was transferred to the pledge holder.

4. If as a result of damage to a pledged item, it has changed so much that it may not be used in accordance with its direct designation, the pledger shall have the right to reject it and to claim compensation for its loss.

5. The agreement may envisage the obligation of the pledge holder to also compensate the pledger for any other losses inflicted by the loss or damage to the pledged item.

6. A pledger who is the debtor in an obligation secured with pledge shall have the right to offset a claim of compensation for losses caused by the loss or damage to the pledged item against the pledge holder, as repayment of the obligation secured with the pledge.

#### **Article 314. Replacement and Restitution of a Pledged Item**

1. The replacement of a pledged item shall be allowed with the consent of the pledge holder, unless legislative acts or the agreement stipulate otherwise.

2. When a pledged item is destroyed or damaged, or the right to own or the right of business authority of it ceased on the bases established by legislative acts, the pledger shall have the right within a reasonable period to restore the pledged item or replace it with any other equally valued asset.

#### **Article 315. Use and Disposal of Pledged Items**

1. A pledger shall have the right, unless it is otherwise stipulated in the agreement and does not ensue from the essence of the pledge, to use the pledged item in accordance with its designation, in particular, to derive fruit and income from it.

2. Unless it is otherwise stipulated in legislative acts or the agreement, and does not ensue from the essence of the pledge, the pledger shall have the right to alienate pledged items into ownership, business authority or operational management, to transfer it into lease or charge-free use to another person, or in any other way dispose of it, only with the approval of the pledge holder.

An agreement which restricts the right of a pledger to bequest pledged property shall be invalid.

3. A pledge holder shall have the right to use the pledged item entrusted to him, only in the cases which are stipulated by the agreement, and regularly present to the pledger reports on its use. In accordance with the agreement, the pledge holder may be entrusted with the duty to derive fruit and income from the pledged item for the purpose of repaying the principal obligation or in the interests of the pledger.

#### **Article 316. Protection by a Pledge Holder of His Rights to Pledged Items**

1. A pledge holder who held or should have held pledged property, shall have the right to claim it from anybody else's illegal possession including from the pledger himself.

2. In the cases where, in accordance with the agreement, the pledge holder is granted the right to use the pledged item entrusted to him, he may claim from other persons, including from the pledger the elimination of any violations of his right, even though those violations are not related to deprivation of possession.

#### **Article 317. The Bases of the Imposition of Claims on Pledged Property**

1. Claims on pledged property for the satisfaction of claims of the pledge holder (creditor) may be imposed in the case of a failure to execute or improper execution by the debtor of the obligation secured with the pledge for which he is liable.

2. The imposition of a claim on pledged property maybe denied when the violation committed by the debtor of the obligation which is secured with the pledge, is extremely insignificant, and the amount of the claim of the pledge holder as a result of that is clearly disproportionate with the value of the pledged property.

#### **Article 318. The Procedure for the Imposition of Claims on Pledged Items**

1. Satisfaction of a claim of a pledger out of the value of pledged property shall be carried out in accordance with the judicial procedure, unless it is otherwise stipulated in this Code or other legislative acts or the agreement.

2. In the cases stipulated in the pledge agreement and also in this Code and other legislative acts, the pledger shall have the right to independently sell pledged assets in a compulsory non-judicial procedure by way of holding a tender sales (auction). A bank which is a pledge holder shall have the same right to sell pledged items which secure monetary loans.

### **Article 319. Selling Pledged Assets**

*as amended by (21) Law No. 96 of 8th November 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Appraisal of Property.*

1. The selling of pledged property upon which in accordance with Article 20 of this Code a claim is imposed, shall be carried out by way of selling through public auctions in accordance with the procedure which is established by the procedural legislation, unless legislative acts stipulate any other procedure.

2. Special considerations in selling pledged assets in a compulsory non-judicial procedure shall be established by this Code and the Law Concerning Mortgage of Immovables. The rules and procedures established for selling mortgages by the Law Concerning Mortgage of Immovables, shall apply to selling property when other types of pledge are executed, unless this Code stipulates otherwise.

3. Upon the request of a pledger, the court shall have the right in the decision on imposition of a claim on pledged property to delay its sale through public auctions for a period up to one year. The delay shall not affect the rights and obligations of the parties in respect to the obligation secured with the pledge of that property, and it shall not exempt the debtor from the repayment of the creditor's losses and amounts of damages which have increased during the period of the delay.

4. Any legal entities and citizens, including the pledger and the pledge holder, shall have the right to participate in the auction.

Prior to the beginning of the auction, the court or any nominated person (Article 320 of this Code) shall have the right to require the payment of a guarantee contribution from each of the participants in the auction. The guarantee contributions shall be subject to refund after the auction. A guarantee contribution by a participant who won the auction shall be included in the amount of the final price. A guarantee contribution of a participant who won the auction but who did not pay the final price shall not be refunded and it shall remain at the disposal of the court or the nominated person.

5. When an auction is announced as invalid, because of the participation in them of less than two buyers, the pledge holder shall have the right either to turn the pledged assets into his own property at its current estimated value, which is established by the court decision, or by the nominated person on the basis of the report of the physical persons or legal entities that have licences for the performance of activities associated with appraisal of property or to require the organisation of a new auction.

6. When the amount which is received from selling pledged property is insufficient to cover the claims of the pledge holder, he shall have the right, in the absence of another indication in the legislative acts or agreement, to receive the amount of arrears from other property of the debtor without using the advantages based on the pledge.

When the amount received in selling pledged property exceeds the amount of the claim of the pledge holder, secured with the pledge, the difference shall be returned to the pledger.

7. A debtor and a pledger who is a third party (material surety) shall have the right, at any time prior to when the sale of the pledged item took place, to terminate the imposition of the claim on it and its sale, after executing the obligation secured with the pledge or a part of it the execution of which was delayed. An agreement which restricts this right shall be invalid.

### **Article 320. Selling Pledged Property in a Compulsory Non-Judicial Procedure**

1. When selling pledged property in a compulsory non-judicial procedure, the auction shall be carried out by the nominated person, who may be a legal entity or a citizen who has the power of attorney from the pledge holder, to sell the pledged property in the case of violation of the obligation secured with the pledge.

2. The nominated person shall carry out the following procedure:

1) compile notification to the pledger of the non-execution of the obligations and register it at the body where the pledge agreement was registered;

2) in the case where the claims which ensue from the notice are not satisfied, but not earlier than two months after the moment of its dispatch to the pledger, compile the notice of auction of the pledged property, register it with the body where the pledge agreement was registered, and hand it to pledger;

3) officially publish the announcement of the auction in the local press.

### **Article 321. Premature Execution of an Obligation Which is Secured with the Pledge and the Imposition of a Claim Upon the Pledged Property**

1. A pledge holder shall have the right to claim a premature execution of obligations secured with pledge in the following cases:

1) when the pledged item went out of possession of the pledger with whom it was left not in accordance with the provisions of the pledge agreement;

2) violation by the pledger of the rules for the replacement of pledged property (Article 314 of this Code);

3) the loss of the pledged item under the circumstances for which the pledge holder is not responsible (paragraph 2 of Article 313 of this Code), unless the pledger exercises the right stipulated in paragraph 2 of Article 314 of this Code.

2. A pledge holder shall have the right to claim a premature execution of the obligation secured with pledge, and if his claim is not satisfied, to impose the claim upon the pledged item in the following cases:

1) violation by the pledger of the rules concerning subsequent pledge;

2) non-execution by the pledger of the obligations stipulated in sub-paragraphs 1 and 2 of paragraph 1 and paragraph 2 of Article 312 of this Code;

3) violation by the pledger of the rules for disposal of pledged property (paragraph 2 of Article 315 of this Code).

### **Article 322. Cessation of Pledge**

1. Pledge shall cease as follows:

1) with the cessation of the obligation secured with pledge;

2) upon the claim of the pledger, where the bases exist which are stipulated in paragraph 3 of Article 312 of this Code;

3) in the case of destruction of a pledged item or cessation of the pledged right, unless the pledger failed to exercise the right stipulated in paragraph 2 of Article 314 of this Code;

4) in the case of selling pledged property through a public auction and also in the event that its sale turned out to be impossible (Article 319 of this Code).

2. An note must be made on the cessation of pledge in the register in which the pledge agreement was registered.

3. In cessation of pledge as a result of the execution of the obligation secured with the pledge, or by demand of the pledger (paragraph 3 of Article 312 of this Code), the pledge holder who holds pledged property shall be obliged to immediately return it to the pledger.

### **Article 323. Preservation of Pledge in the Transfer of the Right to Pledged Property to Another Person in the Procedure of Legal Successorship**

1. In the case of a transfer of the right to own pledged property or the right to business authority over it, from the pledger to any other person as result of a chargeable or charge-free alienation of that property, or in the procedure of the universal legal successorship, the right of pledge shall remain valid.

The legal successor of a pledger shall take the place of the pledger, and he shall bear all the obligations of the pledger, unless the agreement with the pledge holder stipulates otherwise.

2. When the assets of a pledger, which are the pledged items are transferred in accordance with the procedure of legal successorship to several persons, then each of the legal successors (acquirers of the property) shall bear the consequences of non-execution of the obligation secured with pledge, which ensue from the pledge in proportion to the part of the property which was acquired by him. However,

where a pledged item is indivisible or for any other reasons remains in common joint ownership of legal successors, they shall become joint pledgers.

#### **Article 324. The Consequences of Compulsory Withdrawal of Pledged Property**

1. When the pledger's right to own the property which is the pledged property ceases upon the bases and in accordance with the procedure stipulated in legislative acts, as a result of withdrawal (purchase) for state needs, requisition or nationalisation, and the pledger is granted other property or appropriate compensation, the right to pledge shall apply to the property granted instead, or where appropriate, the pledge holder shall acquire the right of priority satisfaction of his claims out of the amount of the remuneration which is due to the pledger. A pledge holder may also require premature execution of the obligation which is secured with pledge (paragraph 1 of Article 321 of this Code).

2. In the cases where the property which is pledged is confiscated from the pledger in accordance with the procedure established by the legislative acts, on the grounds that in reality the owner of that property is a different person, or in the form of a sanction for the commission of a crime or any other violation, the pledge in respect to that property shall cease. In those cases, the pledge holder shall have the right to claim a premature execution of the obligation secured with the pledge.

#### **Article 325. Assignment of Rights in a Pledge Agreement**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A pledge holder shall have the right to assign his rights in a pledge agreement to another person, in compliance with the rules for conveyance of rights of a creditor by way of assigning a claim (Article 339 - 347 of this Code).

2. The assignment by a pledge holder of his rights in a pledge agreement to any other person shall be valid, provided the rights to claim the principal obligations secured with the pledge, from the debtor, are assigned to the same person.

#### **Article 326. Transfer of Debt in an Obligation Secured with Pledge**

Pledge shall terminate with the transfer to another person of the debt under an obligation secured with pledge, if the pledger have not given his approval to the creditor to be liable for the new debtor.

#### **Article 327. Pledge of Goods in Circulation**

1. Pledge of goods in circulation shall be recognised as the pledge of goods by storing them with the pledger and granting to the pledger of the right to change the composition and the physical condition of the pledged property (inventories, raw materials, consumables, semi-finished goods, finished production etc.), provided that their total value does not become less than the one indicated in the pledge agreement.

Reduction of the value of pledged goods in circulation shall be allowed in proportion to the executed part of the obligation which is secured with pledge, unless it is otherwise stipulated in the agreement.

2. The goods in circulation which are alienated by the pledger shall cease to be subject to pledge from the moment of their transfer into the ownership, business authority or operational management of the buyer, while the goods purchased by the pledger, which are indicated in the pledge agreement shall become the pledged item from the moment of the acquisition by the pledger of the right of ownership or business authority over them.

3. A pledger of goods in circulation shall be obliged to keep the book of record of pledges in which the notes are made concerning the conditions of pledging goods, and concerning any transactions which entail changes in the composition or in the natural condition of pledged goods, including their processing, as at the date of the last operation.

4. In the event that a pledger violates conditions for pledging of goods in circulation, the pledge holder shall have the right to suspend transactions in pledged goods until violations are eliminated, by way of affixing to the goods his signs and seals.

## **Article 328. Pledging Items in a Pawnshop**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)"; and*

*(24) Law No. 162 of 2nd March 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions To Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the Banking Activity.*

1. Acceptance from citizens of movable assets which are intended for personal use to secure short-term loans, may be carried out as an entrepreneurial activity by specialised organisations, - pawnshops which have licences therefor.

2. An agreement for pledging items in a pawnshop shall be documented through the pawnshop's issuing a pledge ticket.

3. Pledged items shall be entrusted to the pawnshop. A pawnshop shall be obliged to insure, for the benefit of the pledger at its expense, the items accepted as pledge in the full amount of their estimated value, which is established in accordance with the prices of the items of that type and quality, which are usually charged in the trade at the moment of their acceptance as pledge.

A pawnshop shall not have the right to use and dispose of pledged items.

4. The pawnshop shall bear responsibility for loss and damage to pledged items, unless it proves that the loss or damage occurred as a result of force majeure.

6. The rules for crediting citizens by pawnshops under the pledge of the items which belong to citizens, and also the procedure for licensing pawnshops, shall be established by legislative acts in accordance with this Code.

7. The provisions of an agreement to pledge items in a pawnshop, which restrict the rights of the pledger as compared to the rights which are granted to him by this Code and the appropriate legislative act, shall be invalid from the moment of the conclusion of the agreement. Relevant provisions of this Code and of the appropriate legislative acts shall apply instead of such provisions.

### ~~§ 4. Suretyship and Guarantee~~

*replaced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

### ~~Article 329. Suretyship~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

### ~~Article 330. Guarantee~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

### ~~Article 331. Basis and form of Suretyship and Guarantee~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

### ~~Article 332. Liability of Surety and Guarantor~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

~~Article 333. Rights and obligations of the Surety In the event of a claim upon him by the Creditor~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

~~Article 334. The Right of a Surety and Guarantor Who Executed their Obligation~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

~~Article 335. Notification of the Surety and Guarantor of the Execution of an Obligation by the Debtor~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

~~Article 336. Termination of Suretyship and Guarantee~~

*excluded by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

#### **§ 4. Guarantee and Suretyship**

##### **Article 329. Guarantee**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. By virtue of a guarantee the guarantor shall become liable to the creditor of another person (debtor) severally in full or in part for the execution of obligations of that person, except for the cases provided for by legislative acts.

2. Persons who jointly issued a guarantee shall be liable to the creditor severally, unless it is otherwise stipulated in the guarantee agreement.

3. A guarantee agreement may be entered into also in order to secure an obligation which will emerge in the future.

##### **Article 330. Suretyship**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

By virtue of a suretyship, the surety assumes the obligation before the creditor of any other person (debtor) to be liable severally for the execution of that person's obligation in full or in part.

##### **Article 331. Bases and Forms of Guarantees and Suretyships**



*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

*amended by (24) Law No. 162 of 2nd March 2001 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions To Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of the Banking Activity.*

1. A guarantee and a suretyship shall arise on the basis of suretyship or guarantee agreements. Application of guarantees may be established by legislation.

2. Guarantee or suretyship agreements must be made in writing. Any failure to comply with the written form shall render an agreement of suretyship or guarantee invalid.

3. The written form of guarantee or surety agreements shall be deemed to be complied with, provided the guarantor or surety notified in writing the creditor of his liability for the execution of the obligation by the debtor, and the creditor did not refuse the proposal of the guarantor or surety during the period of time which is reasonably required for such a refusal.

4. Second-tier banks may carry out issuing of banking guarantees and suretyships on the basis of the licences from the National Bank of the Republic of Kazakhstan in accordance with the rules of this Code and subject to the requirements of the regulatory legal acts of the National Bank of the Republic of Kazakhstan which regulate the procedure for conducting said transactions.

### **Article 332. Liability of Guarantors and Sureties**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. Unless it is otherwise established by the agreement, a guarantee or a suretyship shall secure only valid claims. A guarantor and a surety shall not be released from their liability if they assumed the liability for a debtor whose incompetence had been previously known to them, while the creditor had no knowledge of that circumstance.

2. The guarantor shall be liable to the creditor within the same volume as the debtor, including payment of damages, remuneration (interest), court expenses associated with the levying of the debt and other costs of the creditor incurred by the failure to execute the obligation or its improper execution by the debtor, unless it is otherwise established in the guarantee agreement.

3. The surety shall be liable before the creditor within the amount as indicated in the suretyship agreement, unless it is otherwise stipulated by its terms. Prior to presenting any claims to the surety who bears several liability, the creditor shall take reasonable measures to make the debtor satisfy this claim, particularly by offsetting a counter claim and by imposing claims upon the debtors property in accordance with the established procedure.

### **Article 333. The Rights and Obligations of A Guarantor In the Event That The Creditor Files A Claim Against Him**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. A guarantor, prior to satisfying a creditors claim, shall be obliged to notify the debtor of it, and in the event that an action is filed against the guarantor, he shall hold the debtor as a party to the action. If contrary is the case, the debtor shall have the right to present all objections, which he had against the creditor, against the guarantors recourse.

2. A guarantor shall have the right to make objections against the creditor's claims which may be presented by the debtor, unless it otherwise ensues from the guarantee agreement. The guarantor shall not lose the right to those objections even in the case where the debtor refused them, or recognised his debt.

### **Article 334. The Rights of A Guarantor and A Surety Who Executed Obligations**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. The guarantor who executed the obligation shall acquire all the rights of the creditor under that obligation, and the rights which belonged to the creditor as pledge holder, in the amount in which the guarantor satisfied the claims of the creditor. The guarantor shall also have the right to claim from the debtor the payment of damages and interest (remuneration) in the amount paid to the creditor, and reimbursement of other losses incurred in connection with the liability for the debtor.

2. In the execution by the guarantor of an obligation, the creditor shall be obliged to hand to the guarantor the documents which certify the claim against the debtor and to convey the rights which provide for that claim.

3. The rules which are established in paragraphs 1 and 2 of this Article shall apply, unless it is otherwise stipulated by legislation, or in the agreement of the guarantor with the debtor nor ensues from the relations between them.

4. A surety shall acquire the same inasmuch as he executed the obligation of the debtor to the creditor.

### **Article 335. Notice to the Guarantor and Surety On the Execution of an Obligation by the Debtor**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

A debtor who executed an obligation secured with a guarantee or a suretyship shall be obliged to immediately notify the guarantor or the surety of that. If the contrary is the case, the guarantor or the surety, who in their turn executed the obligation, shall have the right to claim from creditor what he received undeservedly, or to file a regress claim against the debtor. If the latter is the case, the debtor shall have the right to claim from the creditor only the amount which was received undeservedly.

### **Article 336. Termination of A Guarantee and Suretyship**

*introduced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. A guarantee and a suretyship shall terminate upon termination of the obligation secured by it, and in the case of a change in this obligation entailing an increase in the liability or other unfavourable consequences for the guarantor and surety, without their consent.

2. A guarantee and a suretyship shall terminate upon transferring to another person the debt secured by the guarantee or surety, unless the guarantor or surety have given to the creditor their consent to be liable for the new debtor.

3. A guarantee and a suretyship shall terminate if upon the date of execution of the obligation secured by it, the creditor has declined to accept a proper execution as offered by the debtor, or the guarantor, and surety.

4. A guarantee and a suretyship shall terminate upon expiry of their effective term for which they were issued, as indicated in the guarantee or surety agreement. If such term is not specified, they shall terminate, unless the creditor files a claim against the guarantor or surety within one year from the date of execution of an obligation secured by the guarantee or surety. Where the term for the execution of the principal obligation is not indicated nor may it be defined, or where it is defined as the moment of calling, the guarantee or the suretyship shall terminate, unless the creditor files an action against the guarantor or surety within two years from the date of entering into the guarantee or suretyship agreement, unless it is otherwise stipulated in legislative acts.

## **§ 5. Advance Payment**

### **Article 337. The Definition of Advance Payment.**

## **The Form of the Advance Payment Agreement**

1. A sum of money which is issued by one of the parties to an agreement, at the expense of the payments, which are due by it in accordance with the agreement, to the other party and in order to secure the conclusion and the execution of the agreement, shall be recognised as an advance payment.

2. An advance payment agreement irrespective of the amount of the advance payment must be concluded in writing. This rule shall also apply in the case where the principal obligation must be notarised. The failure to comply with the written form shall entail invalidity of the advance payment agreement.

### **Article 338. The Consequences of the Termination and the Failure to Execute an Obligation Secured with an Advance Payment**

1. In terminating an obligation prior to the beginning of its execution, by agreement of the parties, or as a consequence of impossibility to execute it, which emerged without their guilt, the advance payment must be returned.

2. When the failure to execute an obligation is the responsibility of a party which issued the advance payment, it shall remain with the other party, and if the party which received the advance payment is the guilty party, it shall be obliged to pay to the other party a double amount of the advance payment. Moreover, the party which is responsible for the failure to execute the obligation shall be obliged to compensate to the other party the losses, taking into account the amount of the advance payment, unless it is otherwise stipulated in the agreement.

## **Chapter 19. Replacing Persons in An Obligation**

### **Article 339. The Bases and the Procedure for the Conveyance of the Rights of the Creditor to Any Other Person**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Any right (claim) which belongs to the creditor on the basis of an obligation may be transferred by him to another person in a transaction (assignment of the claim) or transferred to any other person on the basis of a legislative act.

The rules for the conveyance of creditors rights to any other persons shall not apply to regress claims.

2. For the conveyance to any other person of the rights of a creditor, the consent of the debtor shall not be required, unless it is otherwise stipulated in legislative acts or the agreement.

3. If a debtor is not notified in writing of the conveyance of the creditor's rights to another person, which took place, the new creditor shall bear the risk of negative consequences for him caused by that. In that case, the execution of the obligation to the initial creditor shall be recognised as the execution to the proper creditor.

4. Special considerations in the re-assignment of the right to claim under certain types of obligations may be established by legislative acts.

### **Article 340. The Rights Which May Not be Transferred to Any Other Persons**

Transfer of the rights to another person, which are inseparably associated with the person of a creditor, in particular, the claims of alimony and of compensation of damage caused to life or health, shall not be permitted.

### **Article 341. The Volume of the Rights of the Creditor Which are Transferred to Another Person**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

Unless it is otherwise stipulated in legislative or the agreement, the right of the initial creditor shall be transferred to the new creditor in the same volume and on the same terms which existed at the moment of the conveyance of the right. In particular, the rights shall be conveyed to the new creditor, which secure the execution of the obligation, and also any other rights which are related to the right to claim, including the right to remuneration (interest) not received.

#### **Article 342. Proofs of the Rights of a New Creditor**

1. A debtor shall have the right not to execute obligations to the new creditor until he is presented with the proofs of the transfer of the claim to that person.

2. A creditor who assigned a claim to any other person shall be obliged to transfer to him the documents which certify the right to that claim and to communicate the information which has significance for the exercise of the claim.

#### **Article 343. Objections of the Debtor Against the Claims of a New Creditor**

A debtor shall have the right to put forward against the claims of the new creditor, the objections which he had against the initial creditor prior to the moment of receipt of the notice of conveyance of the rights associated with the obligation to the new creditor.

#### **Article 344. The Transfer of the Rights of a Creditor to Another Person on the Basis of Legislative Acts**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

The rights of a creditor under an obligation shall be transferred to another person on the basis of legislative acts, and when the circumstances take place which are indicated follows:

- 1) as a result of the universal legal successorship in the rights of the creditor;
- 2) upon decision of the court on the transfer of the rights of the creditor to another person where the possibility of such transfer is stipulated in legislative acts;
- 3) consequential to execution of an obligation by its guarantor, surety or pledger, who is not a debtor, with regard to that obligation;
- 4) in the subrogation to the insurer of the rights of the creditor to the debtor who is guilty for the occurrence of the insurable event.
- 5) in other cases stipulated in legislative acts.

#### **Article 345. The Terms for Assignment of a Claim**

1. Assignment of a claim by a creditor to another person shall be allowed, unless it contradicts legislation or the agreement.

2. It shall not be allowed to assign claims under an obligation in which the person of the creditor is important for the debtor, without the approval of the debtor.

#### **Article 346. The Form of Assignment of a Claim**

1. Assignment of a claim which is based on a transaction committed in a written (simple or notarised) form, must be committed in appropriate written form.

2. The assignment of a claim associated with a transaction which requires the state registration, must be registered in accordance with the procedure stipulated for the registration of that transaction.

3. The assignment of a claim associated with an order security shall be committed by way of a note on that security (paragraph 3 of Article 132 of this Code).

#### **Article 347. The Responsibility of a Creditor Who Assigned a Claim**

The initial creditor who assigned a claim shall be liable to the new creditor for the invalidity of the claim transferred to him, but he shall not be liable for the non-execution of that claim by the debtor, except for the case where the initial creditor assumed upon himself the suretiship of the debtor before the new creditor.

#### **Article 348. Transfer of a Debt**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. The transfer by a debtor of his debt to another person shall be allowed only with the consent of the creditor.

2. A new debtor shall have the right to make objections against the claims of the creditor, which are based on the relations between the creditor and the initial debtor.

3. The rules which are contained in paragraphs 1 and 2 of Article 346 of this Code shall accordingly apply to the form of the transfer of the debt.

4. Special considerations in the transfer of debts under certain types of obligations may be established by legislative acts.

### **Chapter 20. The Liability for Violation of Obligations**

#### **Article 349. The Definition of Violation of Obligations**

1. The failure to execute or execution in an improper manner (untimely, with shortage of goods and work, with violating any other conditions determined in the contents of the obligation), - improper execution, shall be understood to be a violation of the obligations. In the event that the impossibility of proper execution arises, the debtor shall be obliged to immediately notify the creditor thereof.

2. The holding of the debtor responsible for the violation of an obligation shall be carried out upon the claim of the creditor.

#### **Article 350. Compensation of Losses, Which are Caused by the Violation of an Obligation**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A debtor who violated an obligation shall be obliged to compensate the creditor for any losses caused by the violation (paragraph 4 of Article 9 of this Code). Compensation of losses for obligations which are secured with a forfeit shall be determined by the rules which are stipulated in Article 351 of this Code.

2. An agreement of the parties which is adopted prior to the violation of the obligation, concerning the exemption of the debtor from compensation of losses which are caused by the violation, shall be invalid, however, the parties by mutual agreement may provide for exacting only the actual damage to property.

3. Unless it is otherwise stipulated in legislation or agreement, when determining losses, the prices shall be taken into account which existed in that place where the obligation should have been executed, on the date of a voluntary satisfaction by the debtor of the claim of the creditor, and if the claim was not satisfied voluntarily, - on the date of the filing of the action. On the basis of the circumstances, the court may satisfy the claim to compensate the losses, taking into account the prices which existed on the date of passing the decision, or on the date of the actual payment.

4. When determining the amount of lost profits, the measures shall be taken into account which are adopted by the creditor for its receipt and the preparations made for that purpose.

5. A creditor shall have the right to require the recognition as invalid of any acts of the debtor, as well as the owner of his property, provided he proves that it was performed for the purpose of evading the liability for the violation of an obligation.

#### **Article 351. Losses and Damages**

1. When a forfeit is established for a failure to execute, or for improper execution of an obligation, then the losses shall be compensated for the part which is not covered by the damages. Legislation or the agreement may stipulate the cases: where it is permitted to claim only damages but not losses; where losses may be levied in full amount in addition to damages; and where at the discretion of the creditor either damages or losses may be claimed.

2. In the cases where for failure to execute or improper execution of an obligation a limited liability is established, the losses which are subject to compensation in the part which is not covered by the damages, or in addition to it or instead of it, may be claimed up to the limits established by such limitation.

#### **Article 352. Compensation of Moral Losses Inflicted by Violation of an Obligation**

Moral losses caused by violation of an obligation shall be compensated in addition of the losses stipulated in Article 350 of this Code.

#### **Article 353. The Liability for Unlawful Use of Somebody Else's Funds**

*replaced by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. Damages shall be paid for an unlawful use of somebody else's funds as a result failure to execute of a monetary obligation or a delay in their payment, or their undeserved receipt or saving at the expense of any other entity. Amounts of damages shall be assessed on the basis of the official rate of refinancing of the National Bank of the Republic of Kazakhstan as at the date of the execution of the monetary obligation or its relevant part. When exacting debts in a judicial procedure, the court may satisfy claims of the creditor on the basis of the official rate of refinancing of the National Bank of the Republic of Kazakhstan as at the date of filing the action or at the date of passing a decision, or as at the date of actual payment. These rules shall apply where the new amount of damages is not established by legislative acts or an agreement.

2. Damages for using somebody else's funds shall be assessed including the date of the payment of those funds to the creditor, unless legislation or agreement provide other procedure for the assessment of damages.

3. When losses inflicted upon a creditor by unlawful use of his funds exceed the amount of damages owing to him on the basis of paragraph 1 of this Article, he shall have the right to claim from the debtor the reimbursement of the losses inasmuch as they exceed that amount.

#### **Article 354. The Liability and Execution of an Obligation In Kind**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Payment of damages and compensation of losses in the cases of improper execution of an obligation, shall not exempt the debtor from the execution of the obligation, unless it is otherwise stipulated in legislative act or agreement.

2. Compensation of losses in case of failure to execute an obligation and payment of damages for failure to execute it shall exempt the debtor from the execution of the obligation in kind, unless it is otherwise stipulated in legislative or the agreement.

3. The refusal of a creditor to accept execution, which as a result of a delay lost interest for him (Article 365 of this Code), and also payment of a monetary sum which is established as smart money (Article 369 of this Code) shall release the debtor from the execution of the obligation in kind.

#### **Article 355. The Consequences of Non-Execution of an Obligation to Transfer an Individually Defined Item**

1. In the case of failure to execute the obligation to transfer an individually defined item into ownership, business authority or operational management or for the use to the creditor, the latter shall have the right to claim the confiscation of that item from the debtor and its transfer to the creditor, except for the cases where a third party has a priority right to that item.

2. The transfer of the item shall not exempt the debtor from the compensation of losses.

#### **Article 356. Execution of an Obligation at the Expense of the Debtor**

In the case of failure by the debtor to execute an obligation to manufacture and transfer an item to the creditor, or to perform for him certain work or render a service, the creditor shall have the right within a reasonable period to delegate the execution of the obligation to third parties for a reasonable price or to execute it himself, unless it otherwise ensues from legislation, agreement or the essence of the obligation, and to claim from the debtor compensation for the necessary expenses and any other losses incurred.

#### **Article 357. Several Liability**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Prior to the presentation of a claim to the person who in accordance with legislation or conditions of an obligation bears a liability in addition to the liability of another person who is the principal debtor (several liability), the creditor must present the claim to the principal debtor.

When the principal debtor refuses to satisfy or fails to execute fully the claim of the creditor, or the creditor has not received from him within a reasonable period the response to the claim presented, that claim, inasmuch of it as has not been executed) may not be presented to the person who bears the several liability.

2. A creditor shall not have the right to claim satisfaction of his claim to the principal debtor from the person who bears several liability where such a claim may be satisfied by way of offsetting a counter claim to the principal debtor (Article 370 of this Code)

3. A person who bears several liability must, prior to the satisfaction of the claim which is presented to him by the creditor, notify the principal debtor accordingly, and if a claim is filed against such person, to bring the principal debtor into participation in the case.

If contrary is the case, the principal debtor shall have the right to issue against the regress claim of the person who is liable severally, the objections which he had against the creditor.

#### **Article 358. Limiting the Amount of Liability in Obligations**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In certain types of obligations and in obligations which are associated with certain types of activities, legislative acts may limit the right to full compensation of losses (limited liability).

2. An agreement to limit the amount of liability of a debtor, in an agreement of adherence or in another agreement in which the creditor is a citizen who acts as a consumer, shall be invalid if the amount of liability for that type of obligations or for that violation is established in legislation.

### **Article 359. The Bases of Responsibility for Violating Obligations**

1. A debtor shall be responsible for failure to execute and (or) improper execution of an obligation if guilt exists, unless it is otherwise stipulated in legislation or agreement. A debtor shall be recognised as innocent, if he proves that he adopted all the remedies under his control for a proper execution of the obligation.

2. A person who failed to execute or improperly executed an obligation when carrying out entrepreneurial activities, shall bear the financial liability, unless he proves that proper execution turned out to be impossible as a result of force majeure, that is extraordinary and unpreventable under given circumstances (natural calamities, military actions, etc.). In particular, lack in the market place of the goods, work or services which are required for the execution, shall not be referred to as such circumstances.

Legislation or the agreement may provide for other bases for liability or release therefrom.

3. An agreement concluded previously for the elimination or limitation of liability for deliberate violation of an obligation shall be invalid.

### **Article 360. Entrepreneurial Risk in an Obligation**

When an obligation envisages the execution of certain work in accordance with the order of an entrepreneur, the risk of impossibility or non-expediency to use the results of the work, shall rest with the entrepreneur. A person who properly executed a work, shall have the right to receive the payment in proportion to the degree of the execution, except for the cases where the agreement provides for other distribution of the entrepreneurial risk.

### **Article 361. Consequences of the Impossibility to Execute a Bilateral Agreement**

When in a bilateral agreement it became impossible for one party to execute, as a result of a circumstance for which neither of the parties is responsible, then neither of the parties shall have the right to claim the execution of the agreement, unless the legislative act or agreement stipulates otherwise. Either of the parties shall have the right to claim in that case the return of everything that it executed without receiving any appropriate counter execution.

### **Article 362. The Liability of a Debtor for his Workers**

Actions of the officials or any other workers of the debtor associated with the execution of his obligations shall be deemed to be actions of the debtor. The debtor shall be liable for those actions if they entailed non-execution or improper execution of an obligation.

### **Article 363. The Liability of a Debtor for Actions of Third Parties**

1. A debtor shall bear liability to the creditor also in the cases where a violation of an obligation was caused by were the actions or by the failure to act in accordance with the obligations to the debtor by third parties.

The debtor shall bear the responsibility also for the actions or failure to act by third parties to whom the debtor entrusted the execution of his obligation to the creditor, unless legislation establishes, that the responsibility shall be borne by the direct executor.

2. A debtor may be exempt from liability for violation of an obligation caused by the actions or failure to act by third parties, having proven their innocence.

When carrying out entrepreneurial activities, a debtor may be released from responsibility for a violation caused by the action or failure to act by third parties, provided that was caused by force majeure (paragraph 2 of Article 359 of this Code).

3. In the case of violation of an obligation which is associated with the encumbrance of the item in the obligation by the rights of third parties, the debtor shall be exempt from liability only in the case if such encumbrance arose prior to the conclusion of the agreement with the creditor and the latter was warned of them when the agreement was caused.



4. Legislation or agreement may stipulate any other conditions for the liability of a debtor for the actions of third parties.

#### **Article 364. Creditor's Fault**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. When a failure to execute or improper execution of an obligation took place because of the fault of both parties, the court shall accordingly reduce the amount of the liability of the debtor. The court also shall reduce the amount of the liability of the debtor if the creditor deliberately or through negligence assisted in the increase of the amount of losses inflicted by the failure to execute or by improper execution, or did not adopt any reasonable measures to reduce them.

2. The rules of paragraph 1 of this Article shall appropriately apply also in the cases where a debtor by virtue of a legislative act or agreement bears the responsibility for non-execution or improper execution of the obligation irrespective of his guilt.

#### **Article 365. Debtor's Delay**

1. A debtor who delayed execution shall be responsible to the creditor for the losses inflicted by the delay and for the consequences of the impossibility to execute which emerged by accident during the time of the delay.

2. When as a result of a delay by the debtor, the execution has lost interest for the creditor, he may reject the acceptance of the execution and claim compensation of losses.

3. A debtor shall not be deemed to be delaying for as long as the obligation may not be executed as a result of the delay by the creditor (Article 366 of this Code).

#### **Article 366. Creditor's Delay**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. A creditor shall be deemed to be delaying if he refused to accept a proper execution, offered by the debtor, or has not committed any actions which are stipulated in legislation or agreement, or which ensue from traditions of business practice or from the essence of the obligation, prior to the commitment whereof the debtor could not execute his obligation.

A creditor shall be deemed to be delaying also in the case of his refusal to properly confirm the execution of obligations performed by the debtor.

2. A creditor's delay shall give to the debtor the right to compensation for the losses caused by the delay, unless the creditor proves that the delay took place due to the circumstances for which neither he himself, nor the persons to whom by virtue of legislation or of the creditor's instructions, the acceptance of the execution was entrusted, are not responsible.

All the unfavourable consequences of the occurrence during the delay of the accidental impossibility to execute the obligation shall be imposed upon the creditor who committed the delay.

3. In a monetary obligation, a debtor shall not be obliged to pay remuneration (interest) for the time of the delay by the creditor.

### **Chapter 21. Cessation of Obligations**

#### **Article 367. The Bases for the Cessation of Obligations**

1. Obligations shall terminate entirely or in part by the execution, granting of smart money, offset, novation, or forgiving of debt, coincidence of the debtor and the creditor in one person, impossibility to execute, the issue of an act by a state body, demise of the citizen, liquidation of the legal entity.

2. The cessation of an obligation by claim of one of the parties shall be allowed only in the cases stipulated by legislation.

3. Legislation and agreement may stipulate any other bases for the cessation of obligations.

### **Article 368. Cessation of an Obligation by the Execution**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Execution which is completed properly shall terminate the obligation.

### **Article 369. Smart Money**

By agreement of the parties, an obligation may be terminated by offering instead of the execution of smart money (payment of money, transfer of assets etc.). The amount, the deadlines and the procedure for presenting the smart money shall be established by the parties.

### **Article 370. Cessation of an Obligation by Offset**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An obligation shall be terminated fully or partially by offsetting a similar claim, the deadline for which has arrived, or the deadline wherefor is not specified or is defined as time of the claim. An application of one party shall be sufficient for an offset.

2. Offset of claims shall not be allowed in the following cases:

1) when pursuant to the application of one party, a claim is subject to statute of limitations, and the term of the statute has expired;

2) claims associated with compensation for harm caused to life or health;

3) claims associated with exacting alimony;

4) claims of life-long support;

5) in other cases provided for by legislation or agreement.

3. In the case of the re-assignment of a claim, the debtor shall have the right to offset his counter-claim to the initial debtor against the claim of the new creditor.

Offset shall be carried out when a claim emerged on the basis which existed by the moment when the debtor received the notice of assignment of the claim, and the time for the claim arrived prior to its receipt, or this deadline is not indicated, or it is defined as whenever called.

### **Article 371. Cessation of an Obligation by the Coincidence of the Debtor and Creditor in One Person**

An obligation shall be terminated by the coincidence of the debtor and creditor in one person.

### **Article 372. Cessation of Obligations by Novation**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. An obligation shall be terminated by agreement of the parties to replace the initial obligation which existed between them, by any other obligation between the same persons, which provides for another item or method of execution (novation).

2. Novation shall not be allowed with regard to the obligations to compensate damage caused to life or health, and to pay alimony.

3. Novation shall terminate additional obligations related to the initial one, unless it is otherwise stipulated by agreement of the parties.

### **Article 373. Forgiving Debt**

An obligation shall be terminated by the exemption of the debtor by his creditor from the obligations which rest with him, unless this violates the rights of any other persons with regard to the property of the creditor.

### **Article 374. Termination of Obligations by Impossibility to Execute**

1. An obligation shall be terminated by impossibility to execute it, provided it is caused by a circumstance for which the debtor is not responsible. This rule shall not apply to monetary obligations.

2. In the case where the impossibility of one party to execute an obligation is caused by a circumstance for which neither one nor the other party are responsible, it shall not have the right to claim from the other party the execution of the obligation, unless it is otherwise stipulated in legislation or the agreement. In that respect, either party which executed its obligation, shall have the right to claim the return of the executed.

3. In the case of the impossibility to execute an obligation by the debtor, which is caused by guilty actions of the creditor, the latter shall not have the right to claim the return of what is executed by him in the obligation.

### **Article 375. Termination of an Obligation on the Basis of the Act of a State Body**

1. When as a result of the issue of an act by state bodies, including local representative and executive bodies (a public act), the execution of an obligation becomes entirely or partially impossible, the obligation shall cease fully or in the relevant part. The parties which incurred losses as a result thereof, shall have the right to claim their compensation in accordance with this Code.

2. In the case of recognition in accordance with the established procedure of the public act as invalid, on the basis of which an obligation terminated, the obligation shall be re-established, unless it otherwise ensues from the agreement of the parties or from the essence of the obligation and where the execution thereof have not lost interest for the creditor.

### **Article 376. Termination of an Obligation by Demise of the Citizen**

1. An obligation shall terminate with demise of the citizen, unless the execution may be carried out without the personal participation of the debtor, or the obligation in any other manner is inseparably connected to the person of the debtor.

2. An obligation shall cease with demise of the creditor, where the execution is intended personally for the creditor or the obligation is in any other way inseparably associated with the person of the creditor.

### **Article 377. Termination of an Obligation by Liquidation of the Legal Entity**

1. An obligation shall be terminated by liquidation of the legal entity (debtor or creditor), except for the cases where legislation delegates the execution of the obligation of the liquidated legal entity to any other legal entity (in the obligations which arise as a result of causing harm to life and health etc.).

2. Termination of activities or reorganisation of the state bodies, including the local representative and executive bodies, shall not terminate the obligations in which such bodies are debtors. The execution of said obligations shall be entrusted to a body which manages the funds of the budget, unless it is otherwise stipulated by the resolution concerning the termination of activities or reorganisation of the relevant bodies.

## **SUBSECTION II. GENERAL PROVISIONS CONCERNING AGREEMENTS**

### **Chapter 22. The Definition and Conditions of Agreements**

#### **Article 378. The Definition of Agreement**

1. An arrangement of two or several persons concerning the establishment, amendment or cessation of civil rights and obligations shall be recognised as agreement.
2. The rules for bilateral and multilateral transactions as stipulated in Charter 4 of this Code, shall apply to agreements.
3. General provisions concerning agreements shall apply to agreements concluded by more than two parties (multilateral agreements), unless this contradicts the multilateral nature of such agreements.

#### **Article 379. The Legal Relations Which Arise from Agreements**

1. Obligatory, corporeal, copyright legal relations and other legal relations may arise from agreements.
2. The general provisions concerning obligations (Article 268 - 377 of this Code) shall apply to obligations arising from agreements, unless it is otherwise specified by the rules of this chapter and rules concerning specific types of agreements which are contained in this Code.
3. The provisions of this Chapter shall apply to corporeal, copyright or other legal relations which arise from agreements (agreements for joint activities, foundation agreement, copyright agreements and other), unless it otherwise ensues from legislation, agreement or the essence of the legal relation.

#### **Article 380. Freedom of Contract**

1. Citizens and legal entities shall be free in concluding agreements. Compulsion to conclude an agreement shall not be allowed, except for the cases where the obligation to conclude an agreement is contemplated by this Code, legislative acts or by the obligation adopted voluntarily.
2. Parties may conclude agreements both as provided for and as not provided for by legislation.

#### **Article 381. Mixed Agreements**

Parties may conclude an agreement which contains the elements of various agreements provided for by legislation (mixed agreement). The relations of the parties in certain parts of a mixed agreement shall be subject to relevant legislation concerning agreements, the elements of which are contained in the mixed agreement, unless it otherwise ensues from the agreement of the parties or the essence of the mixed agreement.

#### **Article 382. Defining Provisions of An Agreement**

1. Provisions of an agreement shall be defined at the discretion of the parties, except for the cases where the contents of a certain provision are prescribed by legislation.  
In the cases where a provision of an agreement is prescribed by a rule which, in accordance with legislation applies, unless the agreement of the parties specifies otherwise (dispositive rule), the parties may by their agreement exclude its application or establish a condition which is different from the one specified in it. Where such agreement does not exist the condition of the agreement shall be determined by the dispositive rule.
2. If a provision of an agreement is not defined by the parties nor by a dispositive norm, the appropriate provisions shall be determined by traditions of business practice, which are applicable to the relations of those parties.

#### **Article 383. Agreements and Legislation**

1. An agreement must comply with the rules which are obligatory for the parties and which are established by legislation (imperative rules), which are effective at the moment of its conclusion.
2. When after the conclusion of an agreement, legislation establishes for the parties the rules which are different from those that were effective when the agreement was concluded, the terms of the

concluded agreement shall remain valid, except for the cases where legislation establishes that it applies to the relations which arose from the agreements concluded earlier.

#### **Article 384. Chargeable and Non-Chargeable Agreements**

1. A agreement in accordance with which one party must receive a payment or other counter consideration for the execution of its obligations, shall be recognised as chargeable.

2. An agreement shall be recognised as non-chargeable in which one party is obliged to supply something to the other party without receiving from it any payment or any other counter consideration.

3. An agreement shall be deemed to be chargeable, unless it otherwise ensues from legislation, contents or the essence of the agreement.

#### **Article 385. Price**

1. Execution of an agreement shall be paid in accordance with the price established by agreement of the parties.

In the cases which are stipulated by legislative acts, the prices (tariffs, fees, rates, etc.) shall apply as established or regulated by the state bodies authorised accordingly.

2. Changing prices after concluding agreements shall be allowed in the cases and on the terms as specified in the agreement, legislative acts, or in accordance with the procedure established by legislative acts.

3. In the cases where, in a chargeable agreement, the price is not stipulated and may not be determined on the basis of the provisions of the agreement, it shall be deemed that the execution of the agreement must be carried out at the price which, at the moment of the conclusion of the agreement was usually charged for similar goods, work and services under similar conditions.

#### **Article 386. Validity of an Agreement**

1. An agreement shall enter into force and it shall be binding for the parties from the moment of its conclusion (Article 393 of this Code).

2. The parties shall have the right to establish, that the provisions of the agreement concluded by them shall apply to their relations which arose prior to the conclusion the agreement.

3. Where legislation or an agreement specify a validity period of the agreement, the expiry of that term shall entail the cessation of the obligations of the parties under the agreement.

An agreement in which there is no indication as to its validity period shall be recognised as valid until the moment specified in it for the termination by the parties of the execution of the obligation.

4. The expiry of the validity period of an agreement shall not release the parties from the responsibility for its violation which took place prior to the expiry of that period.

#### **Article 387. A Public Agreement**

*amended by (11) Law No. 154 of 11th July 1997 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Banking Activity.*

1. An agreement which is concluded by a commercial organisation and which establishes that organisation's obligations to sell goods, perform work or render services, which such an organisation, by the nature of its business, must carry out with regard to any one who applies to it (retail trade, conveyance by the transport of common use, communication services, energy supply, medical, hotel, services, etc.) shall be recognised as a public agreement.

A commercial organisation shall not have the right to grant preference to one person before another with regard to conclusion of a public agreement, except for the cases stipulated in legislation.

2. The price of goods, work and services and also other provisions of a public agreement shall be established as being the same for all customers, except for the cases where legislation allows the granting of privileges for certain categories of consumers.

3. The refusal of a commercial organisation to conclude a public agreement where there is a capacity to provide to the customer appropriate goods (work, services), shall not be allowed.

When a commercial organisation unreasonably evades entering into a public agreement, the provisions stipulated in paragraph 4 of Article 399 of this Code, shall apply.

4. In the cases provided for by legislative acts, the Government of the Republic of Kazakhstan may issue rules which are obligatory for parties when entering into and executing public agreements (model agreements, regulations, etc.).

5. The provisions of a public agreement, which are not consistent with the requirements established by paragraphs 2 and 4 of this Article, shall be invalid.

#### **Article 388. Model Provisions of Agreements**

1. An agreement may specify that its certain provisions are determined by model provisions which are elaborated for the agreements of that type and published in the press.

2. In the cases, where an agreement does not contain any reference to model conditions, such model conditions shall apply to the relations of the parties as traditions of business practice, provided they are consistent with the requirements established by Articles 3 and 382 of this Code.

3. Model provisions may be outlined in the form of a model agreement or any other document which contains those provisions.

#### **Article 389. Adherence Agreement**

1. An agreement of which the conditions are determined by one of the parties in pro-formas or any other standard forms and may be adopted by the other party in no other way but by way of adherence to the proposed agreement as a whole, shall be recognised as an adherence agreement.

2. A party which adheres to an agreement shall have the right to claim the dissolution of the agreement if the adherence agreement, although does not contradict legislation, but deprives that party of the rights which are usually granted in agreements of such a type, excludes or restricts the liability of the other party for violation of the obligations or contains other clearly onerous conditions for the adhering party, which it would not accept on the basis of its reasonably understood interests, should it have the possibility to participate in defining the provisions of the agreement.

3. Where the circumstances exist as stipulated in paragraph 2 of this Article, the claim to dissolve the agreement, made by the party which had adhered to the agreement in connection with its exercise of entrepreneurial activities, shall not be subject to satisfaction, if the party which adhered knew or should have known on which conditions it concluded the agreement.

#### **Article 390. Preliminary Agreement**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. In accordance with a preliminary agreement, the parties assume an obligation to conclude in the future an agreement on the transfer of assets, performance of work or rendering services (principal agreement) on the terms specified in the preliminary agreement.

2. A preliminary agreement shall be concluded in the form as established by legislation for the principal agreement, and if the pro-forma of the principal agreement is not established, then in writing. Failure to comply with rules for the pro-forma of the preliminary agreement shall entail its invalidity.

3. A preliminary agreement must contain the provisions which allow the identification of the subject-matter, and other material conditions of the principal agreement.

4. In a preliminary agreement the period shall be indicated within which the parties are obliged to conclude the principal agreement.

When such a period is not defined in the preliminary agreement, the agreement envisaged by it shall be subject to conclusion within one year from the moment of the conclusion of the preliminary agreement.

5. In the cases where one party which concluded a preliminary agreement evades the conclusion of the agreement which is envisaged thereby, it shall be obliged to compensate the other party for the losses incurred by that, unless it is otherwise stipulated in legislation or the agreement.

6. The obligations which are stipulated in the preliminary agreement shall terminate if prior to the expiry of the period within which the parties must conclude the principal agreement, it is not concluded, or none of the parties sends to the counter-party the proposal to conclude the agreement.

7. A letter of intent (agreement of intentions), unless it directly provides for the intent of the parties to impart to it the status of a preliminary agreement, shall not be deemed to be a civil law agreement and failure to execute it shall not entail any legal consequences.

### **Article 391. An Agreement for the Benefit of a Third Party**

1. An agreement shall be recognised to be an agreement for the benefit of a third party, in which the parties established that the debtor shall be obliged to carry out the execution not to the creditor but to a third party who is indicated or not indicated in the agreement and who has the right to claim from the debtor the execution of the obligations for his benefit.

2. Unless it is otherwise stipulated in legislation or agreement, from the moment that the third party expressed to the debtor the intention to exercise its right in accordance with the agreement, the parties may not dissolve or amend without the consent of the third party the agreement concluded by them.

3. A debtor in an agreement shall have the right to make objections against the claim of a third party, which he may make against the creditor.

4. In the case where a third party waives a right which is granted to it in accordance with the agreement, the creditor may use that right, unless that contradicts legislation and the agreement.

### **Article 392. Interpretation of an Agreement**

1. When interpreting provisions of an agreement, the court shall take into account the literal meaning of the words and expressions contained in it. The literal meaning of a provision of an agreement, where unclear, shall be established by way of comparing that with other conditions and the sense of the agreement as a whole.

2. Where the rules contained in paragraph 1 of this Article do not allow to understand the contents of an agreement, the actual common will of the parties must be identified taking into account the objective of the agreement. In that respect, any relevant circumstances, including the negotiations preceding the agreement, and a letter exchange, the practice prevailing in the mutual relations of the parties, tradition of business practice, the subsequent conduct of the parties, shall be taken into account.

## **Chapter 23. Conclusion of an Agreement**

### **Article 393. Material Terms of An Agreement**

1. An agreement shall be deemed to be concluded when consensus is reached between the parties in accordance with the required form, on all the material terms of it.

The provisions concerning the subject-matter of the agreement, the provisions which are recognised by legislation as material or which are necessary for the agreements of that type, and also all the provisions on which according to the application of either party, consensus must be reached, shall be recognised as material terms.

2. Where in accordance with legislative the conclusion of an agreement requires a transfer of property, the agreement shall be concluded from the moment of the transfer of that property.

### **Article 394. Form of Agreements**

1. If the parties agreed to conclude an agreement in certain form, it shall be deemed to be concluded from the moment of imparting to it the appropriate form, even if legislation does not require that form for such type of agreements.

2. The written form of an agreement shall be deemed to be complied with, if the written offer to conclude the agreement is accepted in accordance with the procedure provided for by paragraph 3 of Article 396 of this Code.

### **Article 395. Offer**

1. A proposal to conclude an agreement, which is made to one or several specific persons, provided it is sufficiently definite and expresses the intent of the person who made the proposal to deem himself bound in case of its adoption (acceptance), shall be recognised as offer. A proposal shall be deemed to be sufficiently definite, if it contains the material terms of the agreement and the procedure for their determination.

2. An offer shall bind the person who sends it from the moment of its receipt by the addressee.

When the notice of revoking an offer is received earlier than or simultaneously with the offer itself, the offer shall be deemed to be not received.

3. An offer received by the addressee may not be revoked during the period which is established for its acceptance, unless it is otherwise stipulated in the offer itself, or ensues from the essence of the proposal or the situation in which it was made.

4. Advertisements and other proposals which are addressed to an indefinite circle of persons shall be considered as an invitation to make an offer, unless it is otherwise stipulated in the proposal.

5. A proposal which contains all the substantial terms of the agreement, from which the will of the person who is making the proposal is understandable, to conclude the agreement on the terms specified in the proposal with anyone who responds, shall be recognised as an offer (public offer).

### **Article 396. Acceptance**

1. The response of a person to whom the offer is addressed, about accepting it shall be recognised as acceptance.

Acceptance must be entire and unconditional.

2. Silence shall not be recognised as acceptance, unless it otherwise ensues from the legislative act, tradition of business practice or previous business relations of the parties.

3. The commitment by the person who received an offer, within the period which is established for its acceptance, of the actions to implement the provisions of the agreement which are indicated in it (shipment of goods, rendering of services, performing work, payment of the appropriate amount etc.), shall be recognised as acceptance, unless it is otherwise stipulated in legislation or indicated in the offer.

4. If a notice of revocation of the acceptance is received by the person who sent the offer, earlier or simultaneously with the acceptance itself, the acceptance shall be deemed not received.

### **Article 397. The Procedure for Concluding Agreements**

1. When an offer contains a deadline for its acceptance, the agreement shall be deemed to be concluded, if the acceptance is received by the person who sent the offer within the period indicated in it.

2. Where a written offer does not contain any deadlines for the acceptance, the agreement shall be deemed to be concluded if the acceptance is received by the person who sent the offer, prior to the expiry of the period established by legislation, and if such period is not established, - within the time which is reasonably required for that. When an offer is made orally without any indication of the period for its acceptance, the agreement shall be deemed to be concluded, if the other party immediately declares its acceptance.

3. In the cases where a notice of acceptance timely sent is received with a delay, the acceptance shall not be considered late, if the party which sent the offer does not immediately notify the other party of receiving the acceptance with a delay.

If the party which sent the offer immediately notifies the other party that the acceptance of the offer has been received with a delay, the agreement shall be deemed to be concluded.

4. The response of consent to conclude the agreement on the conditions different than those proposed in the offer, shall not be recognised as an acceptance. Such response shall be recognised as a refusal from the offer and at the same time it shall be a new offer.

### **Article 398. The Place of Concluding an Agreement**

When an agreement does not specify the place of its conclusion, the agreement shall be deemed to be concluded in the place of residence of the citizen or in the place of location of the legal entity which sent the offer.

### **Article 399. Concluding Agreements in an Obligatory Procedure**



1. In the cases, where in accordance with this Code or any other legislative acts, the conclusion of an agreement is obligatory for one of the parties, that party must send to the other party the notice of acceptance, or of the refusal to accept, or of acceptance of the offer (draft agreement) on different terms (protocol of differences to the draft agreement) within thirty days from the date of the receipt of the offer, unless a different period is established by legislation or is agreed by the parties.

2. The party which sent an offer and received from the party for which the conclusion of the agreement is obligatory a notice of acceptance on different terms (protocol of differences to the draft agreement), shall have the right to enter the disputes which arose in concluding the agreement, to a court for its consideration within thirty days from the date of the receipt of such notice, or upon expiry of the period for the acceptance, unless legislation concerning specific types of agreements establishes a different period.

3. In the cases where in respect of a draft agreement sent by one party for which the conclusion of the agreement is obligatory, a protocol of differences concerning the draft agreement is received, that party shall be obliged within thirty days from the date of the receipt of the protocol of differences to notify the other party of the acceptance of the agreement in that party's version or of declining the protocol of differences.

When declining a protocol of differences or in the case of failure to receive the notice concerning the results of its consideration, within an indicated period, the party which sent the protocol of differences, shall have the right to enter the differences which arose in the conclusion of the agreement for the consideration of the court, unless legislation concerning specific types of agreements establishes otherwise.

4. When a party, for which in accordance with this Code or any other legislative acts, the conclusion of an agreement is obligatory, is evading its conclusion, the other party shall have the right to appeal to the court with the claim to compel to conclude the agreement.

The party which unreasonably evaded the conclusion of an agreement must to compensate to the other party for the losses caused by the refusal to conclude the agreement.

#### **Article 400. Pre-Contractual Disputes**

In the cases specified in paragraphs 2 and 3 of Article 399 of this Code, and also if the disputes which arose in concluding an agreement, were by consensus of the parties entered into a court for its consideration, the provisions of the agreement, on which the parties had differences, shall be determined in accordance with decision of the court.

### **Chapter 24. Amendment and Dissolution of An Agreement**

#### **Article 401. Bases for Amending and Dissolving Agreements**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. Amendments to and dissolution of an agreement shall be possible by agreement of the parties, unless it is otherwise stipulated by this Code, other legislative acts and the agreement.

2. Upon the claim of one of the parties the agreement may be amended or dissolved upon the decision of the court only as follows:

- 1) when there is a material violation of the agreement by the other party;
- 2) in other cases which are stipulated in this Code, other legislative acts or the agreement.

A violation of the agreement by one of the parties shall be deemed material if it entails for the other party such damage that it to a substantial degree loses something on which it had the right to count when concluding the agreement.

3. An agreement shall be deemed to be amended or terminated in the case of a unilateral refusal to implement it (partial or full denial of an agreement accordingly (Article 404 of this Code).

#### **Article 402. Procedure for Amending and Dissolving an Agreement**

1. An arrangement to amend or dissolve an agreement shall be performed in the same form as that of the agreement, unless it ensues otherwise from legislation, the agreement, or traditions of business practice.

2. The claim to amend or dissolve an agreement may be entered by a party to the court only after the receipt of the refusal of the other party with regard to the proposal to amend or dissolve the agreement or in the case of failure to receive a response within the deadlines indicated in the proposal or established by legislation or the agreement, and where it does not exist, - within thirty days time.

### **Article 403. Consequences of Dissolving and Amending an Agreement**

*as amended by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. When dissolving an agreement, the obligations of the parties shall cease.

2. When amending an agreement, the obligations of the parties shall continue to be valid in an amended form.

3. In the case of dissolving or amending an agreement the obligations shall be deemed to be terminated or amended from the moment of the reaching the consensus of the parties concerning the amendment or dissolution of the agreement, unless it otherwise ensues from the agreement of the parties or the nature of the amendment to the agreement, and in the case of termination or amending the agreement in a judicial procedure, - from the moment of the court decision concerning the dissolution or amendment of the agreement entering into legal force.

4. The parties shall not have the right to claim the return of what was executed by them in the obligation prior to the moment of dissolution or amendment to the agreement, unless it is otherwise established in the law legislative acts or the agreement by the parties.

5. Where a substantial violation of an agreement by one of the parties served as the reason for the dissolution or amendment of the agreement, the other party shall have the right to claim the restitution of losses caused by the dissolution or amendment of the agreement.

### ~~Article 404. Cases of Amendment and Dissolution of Agreements Upon the Application of one Party~~

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

### **Article 404. Unilateral Refusal to Implement An Agreement (Rescission of an Agreement)**

*replaced by (12) Law of No. 211 of 2nd March 1998 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Civil Code of the Republic of Kazakhstan (General Part), and to the Decree of the Supreme Soviet of the Republic of Kazakhstan "Concerning the Implementation of the Civil Code of the Republic of Kazakhstan (General Part)".*

1. A unilateral refusal from the implementation of an agreement (rescission of an agreement) shall be allowed in the cases provided for by this Code, other legislative acts or agreement of the parties.

2. Either party shall have the right to refuse to implement the agreement in the following cases:

1) impossibility to perform an obligation based on the Agreement (Article 374 of the present Code);

2) recognition, in accordance with the established procedure, of the other party as bankrupt;

3) amendment or abolition of the act of the state body, on the basis of which the agreement was concluded.

3. A unilateral rescission of performance of an agreement shall be allowed in the cases when the agreement is entered into without indication of a period, unless it is otherwise provided for by legislative acts or the consensus of the parties.

4. In the case of a unilateral rescission of the performance of an agreement the party must notify the other accordingly, not later than one month prior, unless it is otherwise provided for by this Code, other legislative acts or consensus of the parties.

**Article 405. Extension of the Validity Period of  
an Agreement**

The parties shall have the right to extend the validity of the agreement for another period.

Extension of the validity period of an agreement shall be carried out in accordance with the rules of Article 397 of this Code.

President of the Republic  
of Kazakhstan

N. Nazarbaev

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