



THE GUARANTEE LAW OF THE
PEOPLE'S REPUBLIC
OF CHINA

中华人民共和国担保法

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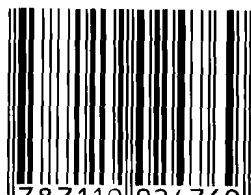
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THE GUARANTEE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995, promulgated by Order No. 50 of the President of the People's Republic of China on June 30, 1995, and effective as of October 1, 1995)

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CHAPTER I

GENERAL PROVISIONS

Article 1 This Law is formulated to promote the pooling of funds and circulation of commodities, guarantee the materialization of credit rights and develop the socialist market economy.

Article 2 During the course of such economic activities as debt and credit, purchase and sale, goods transportation, processing and contracting, where creditors need to safeguard the realization of their credit rights by means of guarantee, guarantees can be established in accordance with the prescriptions of this Law.

The measures of guarantee prescribed in this Law are warranty, mortgage, pledge, lien and deposit.

Article 3 Activities of guarantee must comply with the principles of equality, voluntarism, fairness and good faith.

Article 4 When a third person provides a guarantee for a debtor to the creditor, he may require the debtor to provide a counter guarantee.

Counter guarantees shall be subject to the prescriptions of this Law.

Article 5 A guarantee contract shall be a subordinate

contract of a main contract, the invalidity of which shall lead to the invalidity of the guarantee contract. If the guarantee contract has stipulations otherwise, such stipulations shall apply.

After a guarantee contract has been confirmed to be null and void, where the debtor, guarantor or creditor has committed any fault, they shall undertake the corresponding civil liabilities.

CHAPTER II **WARRANTY**

SECTION 1 WARRANTY AND WARRANTOR

Article 6 The term warranty mentioned in this Law refers to the arrangement agreed on by the warrantor and creditor, according to which the warrantor shall pay the debt or undertake the liability when the debtor fails to pay.

Article 7 Legal persons, and other organizations or citizens who have the ability to liquidate debt can act as warrantors.

Article 8 State organs shall not be warrantors. However, those that conduct re-loans for the purpose of using loans from foreign governments or international economic organizations, approved by the State Council, shall be excluded from this provision.

Article 9 Institutions and social groups such as schools, nursery schools and hospitals, which are for the purpose of the public interest, shall not be warrantors.

Article 10 Branches and functional departments of enterprise legal persons cannot be warrantors.

With the written authorization of the legal person, branches of enterprise legal persons can provide warranties within the scope of the authorization.

Article 11 No unit or individual shall compel banks or other financial institutions or enterprises to provide warranties; banks and other financial institutions or enterprises shall be empowered to refuse to provide warranties.

Article 12 Where a debtor has more than one warrantors the warrantors shall, in accordance with the shares of warranty as stipulated by the warranty contract, undertake the liability for warranty. Where the shares of warranty are not stipulated, warrantors shall undertake joint liability; the creditors can require any of the warrantors to undertake all the liability for warranty and all the warrantors shall be obliged to guarantee the realization of the credit. Warrantors who have already undertaken the liability for warranty shall be empowered to perform the right of recourse to the debtor or require other warrantors who undertake joint liability to undertake their respective shares.

SECTION 2 WARRANTY CONTRACT AND METHODS OF WARRANTY

Article 13 Warrantors and creditors shall conclude warranty contract in writings.

Article 14 Warrantors and creditors may respectively conclude warranty contract with regard to individual main contract, or may conclude one warranty contract within the limit of maximum of credit with regard to the borrowing contract which consecutively occur within a period of time or certain commodity transaction contract.

Article 15 A warranty contract shall include the following contents:

- (1) Type and amount of the main credit which is guaranteed;
- (2) Term for fulfilling the obligation of the debtor;
- (3) Method of warranty;
- (4) Scope of warranty;
- (5) Term of warranty;
- (6) Other items that both parties consider necessary to stipulate.

Warranty contracts which do not have the contents as complete as prescribed above may be supplemented or corrected.

Article 16 The methods of warranty are as follows:

- (1) General warranty;
- (2) Joint liability warranty.

Article 17 The liability for warranty shall be undertaken by the warrantors upon the failure of the debtor to fulfill the obligation, which has been stipulated by the parties in a warranty contract. This is a general warranty.

Warrantors of a general warranty can refuse to undertake the liability for warranty before the disputes arising from the main contract are heard or arbitrated and the obligation still cannot be fulfilled by enforcement in accordance with the laws regarding the property of the debtors.

Under any one of the following circumstances, warrantors are not liable for performance of the right as stipulated in the foregoing paragraph:

(1) Alteration of domicile of the debtor which leads to substantial difficulties for the creditor to require the debtor to fulfil the obligation;

(2) A people's court has accepted the debtor's bankruptcy case and suspended the procedures of enforcement against the debtor;

(3) Warrantors abandon the right as prescribed above in writing.

Article 18 The warrantor and the debtor shall bear joint liability for the debt, which has been stipulated in a warranty contract. This is a joint liability warranty.

Where debtors of joint liability guarantee fail to fulfil the obligation upon expiration of the term for the performance as prescribed in the main contract, creditors may require debtors to fulfil the obligation or require the warrantor to undertake the liability for warranty within the scope of the warranty.

Article 19 Where there are no stipulations on the methods of warranty or such stipulations are not clear, the parties concerned shall undertake liability in accordance with joint liability warranty.

Article 20 Warrantors of general warranties and joint liability warranties shall enjoy the right of protest of debtors. Even if debtors abandon the right of protest to the debt, warrantors shall still enjoy the right of protest.

The right of protest refers to the right of debtors to protest the performance of the right of claim of creditors in accordance with statutory causes when the creditors perform the right of credit.

SECTION 3 LIABILITY FOR WARRANTY

Article 21 The scope of a warranty guarantee mainly includes the main right of credit and interest, penalty, damage compensation and expenses for realizing the right of credit. If there are different stipulations in the warranty contract, such stipulations shall apply.

If parties do not stipulate the scope of the warranty guarantee or the stipulations are not specified, warrantors shall undertake liability for all the debt.

Article 22 During the term of warranty, if creditors transfer the main right of credit to a third party in accordance with the law, warrantors shall continue to undertake liability for warranty within the original warranty scope. If there are different stipulations in the warranty contract, such stipulations shall apply.

Article 23 During the term of warranty, if creditors permit debtors to transfer the debt, written consent of the warrantors shall be obtained, and warrantors will not undertake any liability for warranty with respect to debts which are transferred without consent.

Article 24 Where creditors and debtors agree to alter the main contract, written consent of the warrantors shall be obtained, and warrantors shall not undertake any liability for warranty if there is no such consent. If there are different stipulations in the warranty contract, such stipulations shall apply.

Article 25 Where warrantors and creditors of general warranty do not stipulate the term of warranty, such a term shall be six months starting from the day when the term for fulfillment of the main obligation expires.

Within the term of warranty stipulated in the contract and the term as prescribed in the preceding paragraph, where creditors do not bring any lawsuit or apply for arbitration against the debtors, warrantors shall be exempted from liability for warranty. Where creditors have already brought lawsuits or applied for arbitration, the term of warranty shall be subject to the provisions on interruption of litigation prescription.

Article 26 Where warrantors and creditors of joint liability warranties do not stipulate the term for warranty, creditors shall be empowered to require warrantors to

undertake liability for warranty within six months starting from the day when the term for the fulfillment of the main obligation expires.

Within the term for warranty stipulated in the contract and the term as prescribed in the preceding paragraph, where creditors do not require warrantors to undertake liability for warranty, warrantors shall be exempted from such liability.

Article 27 Warrantors shall offer warranties with respect to rights of credit which consecutively occur in accordance with the provisions of Article 14 of this Law. If the term of warranty is not stipulated, warrantors may at any time notify the creditors in writing to terminate the warranty contract. However, warrantors shall undertake liability for warranty with respect to the rights of credit which occurred before the notice is served on the creditors.

Article 28 Where there are both warranty and guarantee in goods to a credit right, warrantors shall undertake liability for warranty to the right of credit other than the guarantee in goods.

If creditors abandon guarantees in goods, warrantors shall be exempted from liability for warranty within the scope of the rights so abandoned by the creditors.

Article 29 If branches of enterprise legal persons conclude warranty contract with creditors without written authorization of the legal persons or exceeding the scope of authorization, such contract or the part exceeding the scope

of authorization shall be invalid. If both creditors and legal persons have committed faults, they shall respectively undertake the corresponding civil liability in accordance with their own culpability. If creditors have no culpability, the enterprise legal persons shall undertake the civil liability.

Article 30 Under either of the following circumstances, warrantors shall not undertake any civil liability:

- (1) Parties to the main contract colluding with each other to fraudulently get warrantors to offer warranties;
- (2) Creditors of the main contract using fraud or force to get warrantors to offer warranties against their will.

Article 31 After having undertaken liability for warranty, warrantors shall be empowered to demand recovery from the debtors.

Article 32 After a people's court has declared a debtor bankrupt, if creditors do not claim the rights of credit, warrantors may participate in the distribution of bankrupt property and perform the right of recovery with priority.

CHAPTER III

MORTGAGE

SECTION 1 MORTGAGE AND MORTGAGE OBJECT

Article 33 The term mortgage in this Law refers to the

treating by debtors or third parties of property as listed in Article 34 of this Law as credit guarantees instead of transferring the possession of such property. Creditors shall be empowered to priority compensations in accordance with the prescriptions of this Law by pricing, auctioning or selling such property.

Debtors or third parties as prescribed in the preceding paragraph shall be the mortgagers, creditors shall be the mortgagees, and property used as guarantees shall be the mortgage objects.

Article 34 The following property can be mortgaged:

- (1) Houses and other objects attached to land owned by mortgagers;
- (2) Machines, vehicles and other property owned by mortgagers;
- (3) Land use rights, houses and other objects attached to land owned by the State, to which mortgagers enjoy the right of disposal in accordance with the law;
- (4) Machines, vehicles and other property owned by the State, to which mortgagers enjoy the right of disposal in accordance with the law;
- (5) Right of using waste land such as waste mountains, waste canals, waste hills and waste shoreland which is contracted by mortgagers in accordance with the law and consented to by contractors to be mortgaged;
- (6) Other property which can be mortgaged in accordance with the law. Mortgagers can mortgage one or more of the property listed above at the same time.

Article 35 Rights of credit which are guaranteed by mortgagers shall not exceed the value of the mortgage objects.

After being mortgaged, if the value of the property is found to exceed the value of the guaranteed rights of credit, the excess value can be mortgaged again but shall not exceed the value of the rights of credit it guarantees.

Article 36 Where houses on State-owned land are acquired in accordance with the law as mortgage objects, the use rights of State-owned land within the scope of the occupancy of the said houses shall be mortgaged simultaneously.

Where use rights of State-owned land are acquired as mortgage objects by means of transfer, houses on the said State-owned land shall be mortgaged simultaneously.

Land use rights of enterprises of towns (townships) and villages shall not be individually mortgaged. When buildings such as factory buildings of enterprises of towns (townships) and villages are mortgaged, the land use rights within the scope of the occupancy shall be mortgaged simultaneously.

Article 37 The following property shall not be mortgaged:

- (1) Land ownership;
- (2) Land use rights of cultivated land, residential property, private plots and mountainous plots, and collectively owned land, except as prescribed by Item (5) of Article 34 and Paragraph 3 of Article 36;