

Appendix B

**CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA
(Extracts)**

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CHAPTER 4 PERFORMANCE OF CONTRACTS

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Article 60

The parties shall perform their obligations thoroughly according to the terms of the contract.

The parties shall abide by the principle of good faith and perform the obligations of notice, assistance and maintaining confidentiality, etc. based on the character and purpose of the contract or the transaction practices.

Article 68

One party, which shall render its performance first, may suspend its performance, if it has conclusive evidence that the other party is under any of the following circumstances:

(1) Its business conditions are seriously deteriorating;

- (2) It moves away its property and takes out its capital secretly to evade debt;
 - (3) It loses its commercial credibility;
 - (4) Other circumstances showing that it loses or is possible to lose the capacity of credit.
- Where a party suspends performance of a contract without conclusive evidence, it shall be liable for the breach of contract.

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CHAPTER 6 TERMINATION OF THE RIGHTS AND OBLIGATIONS OF CONTRACTS

Article 91

The rights and obligations of contracts shall be terminated under any of the following circumstances:

- (1) The debt obligations have been performed in accordance with the terms of the contract;
- (2) The contract has been rescinded;
- (3) The debts have been offset against each other;
- (4) The obligor has deposited the object according to law;
- (5) The debt obligations have been exempted by the obligee;
- (6) The creditor's rights and debt obligations are assumed by the same person; or
- (7) Other circumstances for termination as stipulated by the laws or agreed upon by the parties in the contract.

Article 92

When the rights and obligations of contracts are terminated, the parties to a contract shall, abiding by the principle of good faith, perform such obligations as making a notice, providing assistance and maintaining confidentiality according to transaction practices.

Article 93

A contract may be rescinded if the parties to the contract reach a consensus through consultation. The parties to a contract may agree upon the conditions to rescind the contract by one party. When such conditions are accompanished, the party entitled to rescind the contract may rescind it.

Article 94

The parties to a contract may rescind the contract under any of the following circumstances:

- (1) The purpose of the contract is not able to be realized because of force majeure;
- (2) One party to the contract expresses explicitly or indicates through its acts, before the expiry of the performance period, that it will not perform the principal debt obligations;
- (3) One party to the contract delays in performing the principal debt obligations and fails, after being urged, to perform them within a reasonable time period;
- (4) One party to the contract delays in performing the debt obligations or commits other acts in breach of the contract so that the purpose of the contract is not able to be realized; or
- (5) Other circumstances as stipulated by law.

Article 95

Where the laws stipulate or the parties agree upon the time limit to exercise the right to rescind the contract, and no party exercises it when the time limit expires, the said right shall be extinguished.

Where the law does not stipulate or the parties make no agreement upon the time limit to exercise the right to rescind the contract, and no party exercises it within a reasonable time period after being urged, the said right shall be extinguished.

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Article 101

The obligor may deposit the object if the debt obligations are difficult to be performed under any of the following circumstances:

- (1) The obligee refuses to accept them without justified reasons;
- (2) The obligee is missing;
- (3) The obligee is deceased and the heir is not yet determined, or the obligee has lost his conduct capacity and the guardian is not yet determined; or
- (4) Other circumstances as stipulated by law.
- (5) If the object is not fit to be deposited or the deposit expenses are excessively high, the obligor may, according to law, auction or sell the object and deposit the money obtained therefrom.

Article 102

After the object is deposited, the obligor shall, except that the obligee is missing, make a notice promptly to the obligee or the obligee's heir or guardian.

Article 103

The risk of damage to and missing of the object after being deposited shall be borne by the obligee. During the period of depositing, the fruits generated by the object shall belong to the obligee. The deposit expenses shall be borne by the obligee.

Article 104

The obligee may claim the deposited object at any time. However, if the obligee is under a debt due to the obligor the deposit authorities shall refuse him to claim the deposited object at the request of the obligor, before the obligee has performed his debt obligations or provides a guaranty. The right to claim the deposited object by the obligee shall be extinguished if it has not been exercised within 5 years as of the date of deposit. The deposited object shall be owned by the State with deduction of the deposit expenses.

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CHAPTER 7 LIABILITY FOR BREACH OF CONTRACTS

Article 107

Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract, the party shall bear such liabilities for breach of contract as to continue to perform its obligations, to take remedial measures, or to compensate for losses.

Article 108

Where one party to a contract expresses explicitly or indicates through its acts that it will not perform the contract, the other party may demand it to bear the liability for the breach of contract before the expiry of the performance period.

Article 109

If one party to a contract fails to pay the price or remuneration, the other party may request it to make the payment.

Article 110

Where one party to a contract fails to perform the non-monetary debt or its performance of non-monetary debt fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:

- (1) It is unable to be performed in law or in fact;
- (2) The object of the debt is unfit for compulsory performance or the performance expenses are excessively high; or
- (3) The creditor fails to request for the performance within a reasonable time period

Article 112

Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract, the party shall, after performing its obligations or taking remedial measures, compensate for the losses, if the other party suffers from other losses.

Article 113

Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract and causes losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract.

The business operator who commits default activities in providing to the consumer any goods or service shall be liable for paying compensation for damages in accordance with the Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

Article 114

The parties to a contract may agree that one party shall, when violating the contract, pay breach of contract damages of a certain amount in light of the breach, or may agree upon the calculating method of compensation for losses resulting from the breach of contract.

If the agreed breach of contract damages are lower than the losses caused, any party may request the people's court or an arbitration institution to increase it; if it is excessively higher than the losses caused, any party may request the people's court or an arbitration institution to make an appropriate reduction.

If the parties to a contract agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the debt obligations after paying the breach of contract damages.

Article 111

In case that a contract is not able to be performed because of force majeure, the liabilities shall be exempted in part or wholly in light of the effects of force majeure, except as otherwise stipulated by law. If the force majeure occurs after one party has delayed in performance, the liability may not be exempted.

Force majeure as referred to in this Law means the objective circumstances that are unforeseeable, unavoidable and insurmountable.

Article 118

One party to a contract that is not able to perform the contract because of force majeure shall

make a notice to the other party promptly so as to reduce the probable losses to the other party and provide evidence within a reasonable time limit.

Article 119

After one party violates a contract, the other party shall take proper measures to prevent from the enlargement of losses; if the other party fails to take proper measures so that the losses are enlarged, it may not claim any compensation as to the enlarged losses.
The reasonable expenses paid by the party to prevent from the enlargement of losses shall be borne by the party in breach.

Article 120

In case that both parties violate a contract, they shall bear the liabilities respectively.

Article 121

One party that violates the contract because of a third party shall be liable for the breach of contract to the other party. The disputes between the said party and the third party shall be settled according to law or their agreement.

Article 122

In case that the breach of contract by one party infringes upon the other party's personal or property rights, the aggrieved party shall be entitled to choose to claim the assumption by the violating and infringing party of liabilities for breach of contract according to this Law, or to claim the assumption by the violating and infringing party of liabilities for infringement according to other laws.

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CHAPTER 17 CONTRACTS FOR TRANSPORTATION

Section 1 General Rules

Article 288

A transportation contract refers to a contract whereby the carrier carries passengers or goods from the starting place of carriage to the agreed destination, and the passenger or the shipper or the consignee pays for the ticket-fare or freight.

Article 289

A carrier engaged in public transportation may not refuse the normal and reasonable carriage request of a passenger or shipper.

Article 290

A carrier shall carry the passenger or goods safely to the agreed destination within the agreed time period or within a reasonable time period.

Article 291

A carrier shall carry the passenger or goods to the agreed destination via the agreed or customary carriage route.

Article 292

A passenger or a shipper or a consignee shall pay for the ticket-fare or for the freight. Where a

carrier has not taken the agreed route or a customary carriage route, and consequently increased the ticket-fare or the freight, the passenger or the shipper or the consignee may refuse to pay for the increased part of the ticket-fare or the freight.

Section 2 Contracts For Passenger Transportation

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Section 3 Contracts For Goods Transportation

Article 304

A shipper, when handling the formalities for goods carriage, shall precisely indicate to the carrier, the title or name of the consignee or consignee by order, the name, nature, weight, amount and the place for taking delivery of the goods, and other information necessary for goods carriage.

Where a carrier suffers from damage due to untrue declaration or omission of important information by the shipper, the shipper shall be liable for damages.

Article 305

Where such formalities as examination and approval or inspection are required for goods carriage, the shipper shall submit the documents of fulfillment of the relevant formalities to the carrier.

Article 306

A shipper shall pack the goods in the agreed manner. Where there is no agreement in the contract as to the manner of packing or such agreement is unclear, the provisions of Article 156 of this Law shall be applied.

Where a shipper violates the provisions of the preceding paragraph, the carrier may refuse to undertake the carriage.

Article 307

When shipping such dangerous articles as are inflammable, explosive, corrosive or radioactive, a shipper shall appropriately pack the articles in conformity with the rules of the State governing the carriage of dangerous articles, and put on the marks and labels for dangerous articles and submit the written papers relating to the nature and measures of precaution to the carrier.

Where a shipper violates the provisions of the preceding paragraph, the carrier may refuse to undertake the carriage, or take corresponding measures to avoid damage. Expenses thus caused shall be borne by the shipper.

Article 308

Prior to the delivery of goods to the consignee by the carrier, the shipper may request the carrier to suspend the carriage, to return the goods, to alter the destination or to deliver the goods to another consignee. The shipper shall compensate the carrier for losses thus caused.

Article 309

After the goods carriage is completed, if the carrier has the knowledge of the consignee, it shall notify the consignee promptly and the consignee shall claim the goods promptly. Where the

consignee claims the goods exceeding the time limit, it shall pay to the carrier for such expenses as storage of the goods, etc.

Article 310

When claiming the goods, a consignee shall inspect the goods within the agreed time limit in the contract. Where there is no agreement in the contract on the time limit or such agreement is unclear, nor can it be determined according to Article 61 of this Law, the consignee shall inspect the goods within a reasonable time limit. The failure of the consignee to make any claims on the amount, damage or losses of the goods within the agreed time limit or within a reasonable time limit, shall be deemed as the preliminary evidence that the carrier has delivered the goods in conformity with the statements indicated on the carriage documents.

Article 311

A carrier shall be liable for damages for the damage to or destruction of goods during the period of carriage unless the carrier proves that the damage to or destruction of goods is caused by *force majeure*, by inherent natural characters of the goods, by reasonable loss, or by the fault on the part of the shipper or consignee.

Article 312

The amount of damages for the damage to or destruction of the goods shall be the amount as agreed on in the contract by the parties where there is such an agreement. Where there is no such an agreement or such agreement is unclear, nor can it be determined according to the provisions of Article 61 of this Law, the market price at the place where the goods are delivered at the time of delivery or at the time when the goods should be delivered shall be applied. Where the laws or administrative regulations stipulate otherwise on the method of calculation of damages and on the ceiling of the amount of damages, those provisions shall be followed.

Article 313

Where more than one carriers take a connect carriage in the same manner of transportation, the carrier who concludes the contract with the shipper shall bear the liability for the entire transport. Where loss of goods occurred in a specific section, the carrier who concludes the contract with the shipper and the carrier who is responsible for the specific section shall bear joint and several liability.

Article 314

Where the goods are destroyed due to *force majeure* during the period of carriage and the freight has not been collected, the carrier may not request the payment of the freight. Where the freight has been collected, the shipper may request the refund of the freight.

Article 315

Where the shipper or the consignee fails to pay the freight, storage expense and other carriage expenses, the carrier is entitled to lien on the relevant carried goods except as otherwise agreed upon in the contract.

Article 316

Where the consignee is unclear or the consignee refuses to claim the goods without justified reasons, the carrier may have the goods deposited according to the provisions of Article 101 of this law.

Section 4 Contracts For Multi-Modal Transportation

Article 317

A multi-modal transportation business operator shall be responsible for the performance or the organizing of performance of the multi-modal transportation contract, enjoy the rights and assume the obligations of the carrier for the entire transport.

Article 318

A multi-modal transportation business operator may enter into agreements with the carriers participating in the multi-modal transportation in different sections of the transport on their respective responsibilities for different sections under the multi-modal transportation contract.

Article 319

A multi-modal transportation business operator shall issue multi-modal transportation documents upon receiving the goods from the shipper. The multi-modal transportation documents may be negotiable or non-negotiable, as requested by the shipper.

Article 320

Where a multi-modal transportation business operator suffers losses due to the fault of the shipper when shipping the goods, the shipper shall bear the liability for damages even if the shipper has transferred the multi-modal transportation documents to other parties.

Article 321

Where the damage to, destruction or loss of goods occurs in a specific section of the multi-modal transportation, the liability of the multi-modal transportation business operator for damages and the limit thereof shall be governed by the relevant laws on the specific model of transportation used in the specific section. Where the section of transportation in which the damage or destruction or loss occurred can't be identified, the liability for damages shall be governed by the provisions of this Chapter.

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